

GOA AUTHORITY FOR ADVANCE RULING.

(Constituted under section 96 of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017) read with Rule 103 of the Goa Goods and Services Tax Rules, 2017)

BEFORE THE BENCH OF

- (1) Shri. J. K. Meena, Addl Commissioner of Central Tax
- (2) Shri. Ashok V. Rane, Addl Commissioner of State Tax

Advance Ruling No. GOA/GAAR/11 of 2018-19/ 514

Name of the Applicant	M/s Chowgule & Co Pvt. Ltd.,
Address	Chowgule House, Mormugao Harbour, Goa – 403803
GSTIN	30AAACC5479J1ZP
Date of Application	06/03/2019
Under Section 97(2) of the CGST/GGST Act, 2017 under which question raised	<p>1. Whether IGST at 5% of assessable value is applicable on import of iron for conversion into pellets and export the resultant product (Iron ore pellets) back to same supplier in view of the fact that import duty is not applicable in view of the exemption under General Exemption No. 66 (Exemption Notification No. 32/97-Cus dated 01stApril, 1997) for job work.</p> <p>2.If answer to question 1 is yes, whether the applicant as recipient of imported iron ore will be liable to pay the IGST under</p>



	<p>applicant GSTIN as the applicant in any case is the consignee of the imported iron ore.</p> <p>3. If answer to question 2 is yes, whether the applicant can avail the input Tax Credit for the IGST so paid as per section 16 of CGST Act.</p> <p>4. Whether the applicant can claim refund of unutilised input tax credit on export of services as per section 16(3)(a) of IGST Act and 54(3) of CGST Act.</p>
Date of Hearing	19/03/2019
Persons Present for Hearing	C.A. Pradip Mahatme and C.A. Kishor M. Bandekar, Authorised Representatives

PROCEEDING

(Under Section 98 of the Goa Goods and Services Tax, Act 2017)

The present application has been filed under section 97 of the Goa Goods and Services Tax Act, 2017 and the Central Goods and Services Tax, Act 2017 (hereinafter referred to as the SGST Act and CGST Act) by M/s Chowgule & Co Pvt. Ltd., Chowgule House, Mormugao Harbour, Goa – 403803 seeking an Advance Ruling in respect of the following question: “Whether IGST at 5% of assessable value is applicable on import of iron ore for conversion into pellets and export the resultant product (Iron ore pellets) back to the same supplier in view of the fact that import duty is not applicable in view of the exemption under General Exemption No. 66 (Exemption Notification No. 32/97-Cus dated 01st April, 1997) for job work.”.

The applicant is in the business of mining, shipbuilding, ship repair and



pelletisation. The applicant has a pelletisation plant for the manufacture of iron ore pellets using high-grade iron ore.

The applicant proposes to enter into a contract with a non-resident party for rendering service of conversion of iron ore into pellets. The non-resident will arrange for iron ore from abroad and the same would be imported in India by the applicant using its own GSTIN, though the iron ore shall always remain the property of the non-resident. The applicant will carry out the job work of conversion of the iron ore into pellets at their plant in Shiroda Goa by adding necessary condiments such as lime stone, Bentonite, coke breeze etc. All these items will be purchased by the applicant locally on their own account. The applicant will export the pellets to the non-resident or to any other non-resident parties as nominated by the non-resident. The applicant will raise the invoice for the conversion charges from the non-resident at the agreed rate in Foreign Exchange.

The iron ore so imported remains the property of the non-resident. The applicant will be receiving the proceeds for conversion of iron ore fines into iron ore pellets in foreign exchange.

The applicant sought clarification on the following issues:

1. Whether IGST at 5% of assessable value is applicable on import of iron for conversion into pellets and export the resultant product (Iron ore pellets) back to the same supplier in view of the fact that import duty is not applicable in view of the exemption under General Exemption No. 66 (Exemption Notification No. 32/97-Cus dated 01st April, 1997) for the job work.
2. If answer to question 1 is yes, whether the applicant as recipient of the imported iron ore will be liable to pay the IGST under applicant GSTIN as the applicant in any case is the consignee of the imported iron ore.



3. If answer to question 2 is yes, whether the applicant can avail the input Tax Credit for the IGST so paid as per section 16 of the CGST Act, 2017.
4. Whether the applicant can claim refund of unutilized input tax credit on export of services as per section 16(3)(a) of IGST Act and 54(3) of CGST Act.

The point-wise reply to the applicant's queries is as follows –

Point No. 1 & 2: The applicant is liable to pay IGST or not is determined as per the provisions of Section 5(1) of the IGST Act, 2017 which reads as under:

- (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the Integrated Goods and Services Tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

Ongoing through the provision of Section 5(1) of the IGST Act, 2017 the applicant is liable to pay IGST on iron ore imported into India in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975 on the value as determined under the Customs Act, 1962 at the point when duties of customs are levied on the goods under section 12



of the Customs Act, 1962.

Regarding applicability of Exemption Notification no. 32/97-Cost dated 1st April 1997 referred by the applicant is not issued under the Goa Goods and Service Tax Act 2017 or under the Central Goods and Service Tax Act 2017 or under the Integrated Goods and Service Tax Act 2017, hence this Authority has no jurisdiction.

As for the rate of 5% concerned, the authority in the absence of any relevant notification quoted by the applicant is not able give an advance ruling on the rate of tax.

Point No 3: To examine whether the applicant can take input tax credit of IGST paid at the time of import, provisions of Section 16(1) of CGST Act, 2017 are applicable which reads as under-

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of the input tax charged on any supply of the goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

Since the imported goods are used in the furtherance of business, the applicant is eligible to take input tax credit of IGST paid on import of the iron ore.

Point No.4: Export of service is defined under Section 2 of IGST Act, 2017. As per the provisions of Section 2(6) of the IGST Act, 2017, export of services means the supply of any service when, -

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;



- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

In order to be qualified as export of service under IGST Act, 2017, the above 5 conditions need to be fulfilled. In the instant case, conditions (i), (ii), (iv) and (v) are fulfilled. To examine whether in the instant case condition (iii) is also fulfilled or not, the place of supply of service needs to be determined. However, the place of supply of service is determined as per the provisions of Section 13 of the IGST Act, 2017 which reads as under-

13 (1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.

(2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services: Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

(3) The place of supply of the following services shall be the location where the services are actually performed, namely: —

(a) services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:



Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process;

In the instant case, goods are temporarily imported into India for the process of conversion into pellets and are exported after such process, the exclusion clause provided under Section 13(3) of the IGST Act, 2017 is applicable. Hence the place of supply of service is determined as per Section 13(2) of the IGST Act, 2017 which is the location of the recipient of the service i.e. outside India. Since the place of supply of service is outside India, condition (iii) under Section 2(6) of the IGST Act, 2017 is also fulfilled. Hence the service provided by the applicant falls within the definition of export of service as defined under Section 2(6) of the IGST Act, 2017.

Whether the applicant is eligible to take refund of the unutilized input tax credit or not is determined as per the provisions of Section 16 of the IGST Act, 2017 and Section 54 of the CGST Act, 2017.

The provision of section 16(3)(a) of the IGST Act, 2017 reads as under:

16(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely: —

(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or



(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.

The provisions of Section 54(3) of the CGST Act, 2017 reads as under:

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than-

(i) zero-rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both claims refund of the integrated tax paid on such supplies.

The Government of India vide Notification No. 1-2016/Customs dated 04th Jan 2016 reduced the rate of export duty on Iron Ore Pellets from 5% to Nil. It is a settled law that NIL rate of tax is also a rate of tax. Since the goods exported are covered under Second Schedule of the Export Tariff appended to the Customs Tariff Act, 1975 the same goods are to be considered as subjected to tax. In view of the above, the exclusion clause provided under Section 54(3)(ii) is



applicable in the instant case. Hence, the applicant is not eligible for the refund of unutilized input tax credit.

In view of the above facts and provisions the ruling is given as under:

ADVANCE RULING UNDER SECTION 98 OF THE CGST/GGST ACT,
2017

- 1&2. The applicant is liable to pay IGST on import of iron ore.
3. The applicant is eligible to avail the input tax credit towards payment of IGST under Section 16 of the IGST Act.
4. The applicant is not eligible for refund of unutilized input tax credit on export of goods or services as per the second proviso to Sub Section 3 of Section 54 of the CGST Act.


(J. K. Meena)
Member


(Ashok V. Rane)
Member



Dated: - 21/05/2019

Place: - Panaji – Goa

To,

M/s Chowgule Industries Private Limited,

Chowgule House, Mormugao Harbour, Goa – 403803.

Copy to

1. The State Tax Officer, Vasco da Gama Ward, Panaji – Goa;
2. The Dy. Commissioner of State Tax, Vasco da Gama Ward, Panaji;
3. The Commissioner of State GST, Panaji – Goa;
4. The Commissioner of Central GST, Panaji – Goa;
5. Office file;
6. Guard file.

