

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

**GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai –
400010.**

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Ms. P. Vinitha Sekhar, Additional Commissioner of Central Tax, (Member)

(2) Mr. A. A. Chahure, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	27AAACK4896K1ZZ
Legal Name of Applicant	Portescap India Private Limited
Registered Address/Address provided while obtaining user id	Unit no. 2, SDF-1, SEEPZ-SEZ, Andheri East, Mumbai, Mumbai Suburban, Maharashtra, 400096
Details of application	GST-ARA, Application No. 93 Dated 17.01.2020
Concerned officer	Division – X, Mumbai East Commissionerate.
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Factory/Manufacturing, SEZ
B Description (in brief)	Applicant is engaged in the activity of manufacturing of customized motors in India. Applicant is a SEZ Unit engaged in exports of the manufactured goods.
Issue/s on which advance ruling required	(v) Determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

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

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to

as “the CGST Act and MGST Act” respectively] by **Portescap India Private Limited**, the applicant, seeking an advance ruling in respect of the following question.

1. *Whether Portescap India Pvt. Ltd. is required to pay tax under reverse charge mechanism on procurement of renting of immovable property services from Seepz Special Economic Zone Authority (Local Authority) in accordance with Notification No. 13/2017 dated 28th June, 2017 read with Notification No. 03/2018 - Central Tax (Rate) dated 25th January 2018?*
2. *Whether Portescap India Pvt. Ltd. is required to pay tax under reverse charge mechanism on any other services in accordance with Notification No. 13/2017 dated 28th June, 2017 read with Notification No. 03/2018 - Central Tax (Rate) dated 25th January 2018?*
3. *If, answer to the above point is in the affirmative, then the tax under reverse charge mechanism is required to be paid under which tax head i.e., IGST or CGST and SGST?*

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression ‘GST Act’ would mean CGST Act and MGST Act.

FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions of the applicant are as follows:-

- 2.1 M/s Portescap India Pvt. Ltd., the Applicant, a SEZ Unit, situated in Maharashtra, is engaged in the manufacture of customized motors in India and exports the said goods.
- 2.2 Applicant procures Rental Services from Seepz, SEZ Authority, Mumbai-400096 which is a Local authority having GSTIN 27A4ALS4995G.
- 2.3 Notification No. 18/2017 – I.T. (Rate) dated 05.07.2017 exempts services imported by a unit or a developer in the Special Economic Zone (SEZ) for authorized operations, from the whole of the Integrated Tax leviable thereon under Section 5 of the IGST Act, 2017.
- 2.4 The issue in the present case is whether tax is payable under reverse charge mechanism on procurement of domestic services like renting of immovable property services from

Seepz SEZ Authority in accordance with Notification No. 13/2017 – C.T. (Rate) & 03/2018- C.T. (Rate) dated 25.01.2018.

- 2.5 Section 7 of SEZ Act, 2005 provides for exemption to all goods or services procured from a DTA (Domestic Tariff Area) or foreign suppliers specified in first schedule. According to Section 51 of the SEZ Act 2005, the provisions of SEZ Act would have overriding effect on provisions of any other act including taxation laws.
- 2.6 Section 26 of SEZ Act, 2005 deals with the exemption from tax on services provided to a developer or unit to carry out the authorized operations in a SEZ. The grant of exemption is subject to the terms and conditions as prescribed by the Central Government in terms of sub-section (2) of Section 26. Rule 22 of these Rules stipulates the terms and conditions for availing exemptions by the developer and entrepreneur in respect of authorized operations.
- 2.7 As per Notification No. 12/2017 – C.T. (Rate) dated 28.06.2017, Central Government has exempted Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed five thousand rupees subject to the proviso.

Hence, there is a need to determine whether a SEZ unit is required to comply with the provisions of reverse charge mechanism as a service recipient for local/domestic services procured by the unit.

Notification No. 13/2017- C.T. (Rate) dated 28-06-2017 as amended by Notification No. 03/2018- C.T. (Rate) dated 25.06.2018, notifies categories of services on which GST will be payable under reverse charge mechanism. Relevant extract is reproduced below:

Sr.No	Category of supply of Services	Supplier of Service	Recipient of Service
5A	Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (12 of 2017).	Central Government, State Government, Union territory or local authority	Any person registered under the Central Goods Tax Act, 2017.

- 2.10 From a perusal of the aforementioned notification and the relevant entry, it is appears that any registered person is liable to pay tax under reverse charge basis on procurement of services of renting of immovable property from Central Government, State Government, Union territory or local authority.
- 2.11 Applicant has reproduced Section 16 of the IGST Act as under:-
16.(1) "zero rated supply" means any of the following supplies of goods or services or both, namely:--
(a) export of goods or services or both; or
(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.
- 2.12 Applicant has also referred to FAQ's issued by the CBIC clarifying the below:
"6. When a SEZ unit or SEZ developer procures any goods or services from an unregistered supplier, whether the SEZ unit or SEZ developer needs to pay IGST under reverse charge or these will be zero rated supplies?
Supplies to SEZ unit or SEZ developer have been accorded the status of inter-State supplies under the IGST Act. Under the GST Law, any supplier making inter-State supplies has to compulsorily get registered under GST, Thus anyone making a supply to a SEZ unit or SEZ developer has to necessarily obtain GST registration."
- 2.13 Based on a conjoint reading of the aforementioned points, it is evident that a supply to SEZ will be considered as an inter-state supply and as long as the same supply is used for authorized operations of the SEZ, the same will be zero rated.
- 2.14 The Default List of Services approved by the Department of Commerce (F. No. D.12/19/2013-SEZ dated 02.01.2018 for authorized operations specifically includes Renting of Immovable Property within its ambit. Therefore, Applicant submits that there can be no liability under the aforementioned notification on the SEZ unit, since the service received by the SEZ would be considered as a zero-rated service.
- 2.15 Further, Notification No. 18/2017- I.T. (Rate) dated 05.07.2017 exempts services imported by a unit or a developer in a SEZ for authorized operations, from the whole of the integrated tax leviable thereon under Section 5 of the IGST Act, 2017.
- 2.16 Applicant submits that aforementioned notification is applicable not only for services procured from overseas service providers but from services procured within India as well, since the transaction with an SEZ is considered an inter-state supply and aforementioned notification exempts an SEZ unit from IGST on import of service. Therefore, Applicant is not liable to pay GST on reverse charge in the subject case.



- 2.17 Applicant is relying on the judgment of the Hon'ble Telangana and Andhra Pradesh High Court in **GMR Aerospace Engineering Ltd. & another V/s U.O.I. & Ors (2019 (8) TMI 748)** which states that so long as services are used for authorized operations of a SEZ unit, the same should be exempted from the levy of tax.
- 2.18 Hence, Applicant is not required to comply with the requirements of Notification No. 13/2017 dated 28.06.2017 read with Notification No. 03/2018 – C.T. (Rate) dated 25.01.2018 for any or all services mentioned therein.

03. CONTENTION – AS PER THE JURISDICTIONAL OFFICER:

Jurisdictional officer has not made any written submission in the said matter with respect to admission/rejection of the application.

04. HEARING

- 4.1 Preliminary hearing in the matter was held on 11.02.2020. Shri Jai Lokwani, Authorized Representative and Shri Nitin Khot, C.A. appeared, and requested for admission of the application. Jurisdictional Officer Ms. Lathika R. Pillai, Superintendent, CGST, Mumbai, also appeared. The case was adjourned for submission of documents with respect to the subject Rent Agreement.

The case was again called for hearing on 03.03.2020. Shri Jai Lokwani, Authorized Representative, appeared, made oral and written submissions. Jurisdictional Officer Shri Pravin Kumar, Superintendent, CGST, Mumbai, also appeared. We heard both the sides.

05. DISCUSSIONS AND FINDINGS

- 5.1 We have gone through the facts of the case, documents on record and written submissions of the applicant and oral contention of the jurisdictional officer.
- 5.2 In the subject case, we find as per the sub lease agreement dated 09.01.2020 that, the applicant is procurer of domestics services like renting of immovable property services from Seepz Special Economic Zone Authority (Local Authority). Thus, the applicant has raised the subject questions as a recipient of services.
- 5.3 This authority is governed by the provisions of Chapter XVII of CGST ACT and the relevant Sections are 95 to 98, 102, 103, 104 and 105. As per Section 95, the term '*advance ruling*' means a decision provided by this authority to an applicant on matters or questions specified in subsection 2 of Section 97, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.



- 5.3 Therefore, before we decide the question raised by the applicant in this application, it is essential that we first determine whether or not the activities undertaken by the applicant pertains to the supply of goods or services or both, being undertaken or proposed to be undertaken by the applicant.
- 5.4 Section 95 of the CGST Act, 2017 allows this authority to decide the matter in respect of supply of goods or services or both, *undertaken or proposed to be undertaken by the applicant*. We find that the applicant has not undertaken the supply in the subject case. We find that, the applicant is a recipient of services pertaining to renting of immovable property in the subject case. The impugned transactions are not in relation to the supply of goods or services or both undertaken or proposed to be undertaken by the applicant and therefore, the subject application cannot be admitted as per the provisions of Section 95 of the GST Act. Hence without discussing the merits of the case, we reject the subject application as not being maintainable.
06. In view of the above discussions, we pass an order as follows:

ORDER

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

NO.GST-ARA- 93/2019-20/B- 31 Mumbai, dt. 12/03/2020

For reasons as discussed in the body of the order, the questions are answered thus –

“The present application filed for advance ruling is rejected, as being non-maintainable as per the provisions of law.”



— srf —
A. A. CHAHURE
(MEMBER)

— srf —
P. VINITHA SEKHAR
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer

CERTIFIED TRUE COPY

A. A. Chahure
MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint Commissioner of State Tax, Mahavikas for Website.

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai – 400021.

