

## **Applicability of GST on a Bill to Ship to transaction where Supplier and Recipient of goods are located outside India**

**Gujarat Authority for Advance Ruling, in case of M/s SPX Flow Technology (India) pvt. Ltd., Odhav road, Ahmedabad**

### **Facts:**

The applicant M/s SPX Flow Technology (India) pvt. Ltd. is a company engaged in manufacturing goods like pumps. It has customers located outside India. One of the customers, M/s BRAC Dairy Food Project (Recipient) is located in Bangladesh. Also, applicant has a parent company located Poland named M./s SPX Flow Technology, Poland.

Applicant received an order from a Customer in Bangladesh for supply of spare parts of dairy machinery. After receiving the order, applicant place such order to M/s SPX FLOW Technology, Poland (Supplier). But the goods are directly delivered from Poland to customers located in Bangladesh on a CIF basis without bringing them to India.

As for the payment, the supplier (Poland) issue set of invoices to applicants in India and at the same point of time, the applicant company raises a set of commercial invoice to M/s BRAC Dairy Food Project, Bangladesh and payment is received through normal banking channels.

### **Ruling has been sought for the following two questions:**

- a) Determination of the liability to pay tax on any goods or services or both.
  
- b) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

### **Summarised View:**

There are two legs involved in the present case,

- a)
- b) Whether raising purchase orders by applicants of India with the parent company of Poland amounts to import of goods?

- c) Whether payment received by the applicant in India from a customer in Bangladesh for supply of goods directly from Poland to Bangladesh amounts to export of goods?

**Applicant's Submission:**

1. The applicant has taken a view that placing an order with the parent company and making payment thereafter does not constitute Import of goods into India. Reference has been given to the definition of Import of goods which states that goods must be brought into india from a place outside india.

*“2(10) Import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India.”*

In this case, goods are never brought into India and such goods do not cross the customs frontier of India instead directly exported from Poland to Bangladesh.

Reference has also been made to Customs Act where IGST is applicable on goods which are leviable to custom duty. Since the goods have never crossed custom frontiers, Custom duty shall not be applicable, hence no question of IGST. Also, as per Section 1 of CGST & IGST, the GST Acts are applicable to the whole of India, except Jammu & Kashmir and section 7 of CGST Act, is applicable on supplies made within the territory of India. In the present case, goods have been directly delivered to recipient without entering territory of India. Hence, IGST is not applicable.

*“Section 3(7) of Customs, Tariff Act, as amended, Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8).*

2. The applicant also justified his view that raising an invoice to the recipient located in Bangladesh for goods delivered to him does not qualify as export of goods. Export of goods means where goods are taken out of india to a place outside india.

*“Section 2(5): “Export of goods” would mean—“With its grammatical variations and cognate expressions, means taking goods out of India to a place outside India”.*

In order to qualify the definition of exports, goods must be taken out of India. In this case, when goods are not present in India, there is no question of taking goods out of India, therefore IGST cannot be levied. The present transaction can only be considered as an out and out transaction i.e beyond the territory of India.

3. Reference has been given to definition of “recipient”

*“(93) “recipient” of supply of goods or services or both, means—*

*(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;*

*(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and*

*(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered, and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;”*

As per the above definition, the recipient is the person who is liable to pay the consideration. In this case, M/s BRAC Dairy and Food Project, Bangladesh is liable for paying consideration.

The applicant also referred to the definition of “Supplier”

*“(105) “supplier” in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;”*

Keeping in view the above definition, supplier is the person who is physically supplying the goods and does not deem the other person who is raising the Invoice for goods.

4. Another important reference has been given to Entry No. 7 of Schedule III of CGST Act, 2017 which specifies that a transaction shall neither be treated as supply of goods or services when the goods are supplied from one non taxable territory to another non taxable territory without goods being entered into India.

So, the case fits into schedule III transaction and shall not qualify as supply of goods.

5. So the pray before the advance ruling authority is that:

(i) The present transaction may be declared as a transaction falling within Sr.No.7 of Schedule 3 of the CGST Act, 2017 and hence not taxable;

(ii) It may be held and declared that the present transaction is not liable to GST/IGST in as much as the entire transaction is beyond the territory of India and accordingly beyond the scope and coverage of the CGST and the IGST Act, 2017;

(iii) It may be held and declared that Out and Out transactions where goods move from one foreign country to the other are not chargeable to IGST.

(iv) Any other further order and relief as may be deemed fit in facts and circumstances of this case may also be granted.

**AAR Order:**

6. Regarding the first leg of Import of goods, reference has been made to Circular no. 3/2017 Customs dt 01.08.2017 issued for “High Seas Sale”, wherein it is clarified that all duties and taxes shall be collected at the time of importation before customs authorities. The circular shall be applicable in the present case. Since the goods have never entered custom frontier, no bill of entry is filed and thus there is no question of GST.

7. As far as leviability of GST is concerned on outward supply of goods from vendor to customer. One has to check whether the transaction constitutes “supply”.

*Section 7 of CGST Act,*

*“(1) For the purposes of this Act, the expression “supply” includes —*

*(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*

*(b) import of services for a consideration whether or not in the course or furtherance of business; [and]*

*(c) the activities specified in Schedule I, made or agreed to be made without a consideration;”*

Also as per definition of supplier:

*“(105) “supplier” in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;”*

AAR finds that the applicant is playing a role of THIRD PARTY on whose direction goods are being supplied by the supplier (SPX Flow Technology) of Poland to the customer in Bangladesh. THUS, THE APPLICANT IS ACTING AS

AN AGENT on behalf of supplier, qualifying as supplier and also fulfils the condition of ‘supply’

8. Since, the transaction qualifies as Supply, now it is to be checked whether it is Inter state or Intra State supply . Section 7 of IGST Act, states that where the location of supplier is in taxable territory and place of supply is outside the taxable territory. The supply shall be an Inter state supply.

In order to ascertain POS, section 10 (1)(a) of IGST is applicable which states that POS shall be the place where movement of goods terminated for delivery to the recipient. In this case, goods have been delivered outside India i.e Bangladesh. Hence, it is an Inter state supply.

Since it qualifies as Inter State supply, IGST shall be applicable. The possible scenarios for non leviability of IGST is that either it is an exempt supply or a Zero rate supply. Considering this, the applicant has nowhere mentioned that goods involved are exempted. The last possibility is to determine whether the supply constitutes Zero rated supply or not?

Referring to the definition of export we find that goods have never entered into India thus, there is no question of taking goods out of india. So transaction do not qualify as export of goods, failing to constitute a zero rated supply. So, it is evident to say that the transaction qualifies as inter supply and liable to IGST.

9. Lastly, reference has been given to Entry No.7 of schedule III of CGST Act which deals with No supply transactions. It is pertinent to note that such amendment was inserted through Central Goods and Services Tax (Amendment) Act, 2018 dt. 01.02.2019. Thus, for transactions upto 31.01.2019 IGST shall be leviable and after 01.02.2019, No IGST shall be applicable.

## **Conclusion**

### **Question-1: Whether the activity undertaken by the applicant is covered by Entry No.7 in Schedule 3 of the CGST Act, 2017?**

The activity undertaken by the applicant M/s. SPX Flow Technology (India) pvt.ltd., Ahmedabad is covered under Entry No.7 in Schedule 3 of the CGST Act, 2017 in respect of the transactions undertaken for the period from 01.02.2019 onwards for the reasons discussed hereinabove.

### **Question-2: Whether the applicant is liable to pay IGST on out and out transactions taking place beyond the Customs frontiers of India?**

Applicable IGST is payable on goods sold to customer located outside India, where goods are shipped directly from the vendor's premises (located outside India) to the customer's premises (located outside India) for such transactions effected upto 31.01.2019. However, no IGST is payable on such transactions effected from 01.02.2019 onwards, for the reasons discussed hereinabove.