

No IGST payable on high sea sales

The Telangana Authority of Advance Ruling (“AAR”) in Re: ***M/s AIE Fiber Resource and Trading (India) Private Limited. [Advance Ruling No. /07/2019 TSAAR Order No. 30/2021 dated December 24, 2021]*** held that no IGST is payable on supply of imported goods on High Sea Sales basis to Indian customers and proportionate reversal of input tax credit (“ITC”) is not required.

Facts:

M/s AIE Fiber Resource and Trading (India) Private Limited, Hyderabad (“the Applicant”) is intending to supply imported goods to Indian customers on High Sea Sale (“HSS”) basis from Free Trade Warehousing Zone (“FTWZ”). The Applicant sells the imported goods before goods cross the customs frontier of India i.e., prior to clearance of goods from the customs to pre-identified customers.

The Applicant directs the FTWZ warehouse keeper to deliver the goods to a customer chosen by the Applicant.

Issues:

- Whether the Applicant’s activity of supplying the goods before clearance for home consumption is liable to IGST or not under Integrated Goods and Services Tax Act, 2017 (“the IGST Act”). If not, then whether proportionate ITC required to be reversed.
- Further, whether the Applicant is required to take registration at the FTWZ facilities.

Held:

The AAR, Telangana in ***[Advance Ruling No. /07/2019 TSAAR Order No. 30/2021 dated December 24, 2021]*** held as under:

- The transaction proposed to be made by applicant are covered in entry no 8 of Schedule III of Central Goods and Services Tax Act, 2017 (“the CGST Act”), i.e. “*supply of goods by consignee to any other person, by endorsement of document of title of the goods, before the clearance for home consumption*” which is not taxable under the CGST Act w.e.f. February, 01, 2019.
- According to the explanation to Section 17(3) of CGST Act inserted vide CGST (Amendment) Act 2018, w.e.f. February 01, 2019 all transaction falling under Schedule III except entry no 5 will not be considered as value of exempted supply for purpose of reversal of ITC of common input services. Hence, no need of reversal of ITC.

- Under Section 10(1)(a) of the IGST Act the place of supply shall be the location of goods at the time of which the movement of goods terminates for the delivery to the recipient - the Applicant i.e. supplier in this case is situated at Hyderabad, Telangana state whereas the goods are delivered in other states. That is the supplier of the goods and the place of supply of goods are in two different states. Therefore, it is an inter-state supply. Hence the Applicant need not obtain any registration in the other state in order to effect such inter-state transactions.

Our comments:

It is to be noted that in our opinion, even prior to February 01, 2019 High Sea Sales were not taxable as IGST Act is only applicable in India as per Section 1(2) of the IGST Act and India is defined under Section 2(56) of the CGST Act applicable to IGST Act vide Section 20 of the IGST Act as under:

“(56) “India” means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976), and the air space above its territory and territorial waters;”

Thus, IGST can only be levied on the inter-state transactions (see Section 5(1) of the IGST Act) taking place inside the Indian territory. Since, High Sea Sales is taking place outside India IGST may not be leviable.

Further, in *Circular No. 3/1/2018-IGST dated May 25, 2018* wherein it has been categorically stated that high seas sale transaction or bond sale transaction are not supply and no GST is leviable.

Furthermore, in 28th GST council meeting held on June 28, 2018 it was said that High Sea Sales is categorized as “No Supply”. Also, above-mentioned amendment is clarificatory in nature and thus, applicable with retrospective effect.

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