

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

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

BEFORE THE BENCH OF

- (1) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)
 (2) Shri Pankaj Kumar, Joint Commissioner of Central Tax, (Member)

GSTIN Number, if any/ User-id		27AAECS2623Q1ZY
Legal Name of Applicant		SONKAMAL ENTERPRISES PRIVATE LIMITED
Registered Address/Address provided while obtaining user id		602, Sunil Enclave, Periera Hill Road, Off. Andheri Kurla Road, Opp. Cinemagic Theatr, Andheri (E), Mumbai - 400099
Details of application		GST-ARA, Application No. 48 Dated 30.06.2018
Concerned officer		Commissioner, GST/CX Mumbai East Commissionerate
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Wholesale Business
B	Description (in brief)	We are importer of Chemicals especially phenol which we currently import at JNPT Port, Maharashtra and Kandla Port, Gujarat. We wish to Import the Chemicals at Haldia Port (Kolkata, West Bengal). We are storing goods at rented Customs warehouse at Haldia Port, we do not have any establishment or place of operation in State of West Bengal,
Issue/s on which advance ruling required		(vi) whether applicant is required to be registered under the Act
Question(s) on which advance ruling is required		

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"] by SONKAMAL ENTERPRISES PRIVATE LIMITED, the applicant, seeking an advance ruling in respect of the following ISSUE. .

1) Whether the procedure to raise the invoice from Mumbai Head Office for imports received at Haldia Port Kolkata where we do not have any separate GST Registration and Charge IGST from Mumbai to our Customers is correct? or do we have to take separate Registration in the State of West Bengal for the below mentioned transactions?

2) If we do not need separate registration in west Bengal, can we do the transaction on Mumbai Head Office GSTIN, then in case of issuance of e way bill is it correct to Mention the GSTIN of Mumbai and Dispatch place of Haldia Port ?

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 such 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, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02 FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-

Statement of relevant facts having a bearing on the question(s) raised

Sonkamal Enterprises Private Limited is a Company having its Head office at Mumbai and a Branch in Gujarat - Gandhidham, Both are Registered Under the GST Act. We are importer of Chemicals especially phenol which we currently import at JNPT Port, Maharashtra and Kandla Port, Gujarat. We wish to Import the Chemicals at Haldia Port (Kolkata, West Bengal). We are storing goods at rented Customs warehouse at Haldia Port, we do not have any establishment or place of operation in State of West Bengal, we endeavour to clear the goods from that warehouse (Ex Bond) in the name of our Mumbai Head Office so here importation will be completed by payment of Custom Duty in Mumbai Head Office Name and we want to sell the goods to customers in West Bengal and other States nearby from that warehouse and charge IGST to our customer by raising bill from Mumbai and not West Bengal.

We do not have any godown in the state of West Bengal and will not have any other godown or storage facility in the state other than the Haldia Port Customs Warehouse.

16. STATEMENT CONTAINING APPLICANTS INTERPRETATION OF LAW AND/OR FACTS, AS THE CASE MAYBE, IN THE CASE OF THE AFORESAID QUESTIONS :

We will be Supplying Goods to our Customer in West Bengal from Custom Warehouse situated at kolkata, therefore place of supply is west Bengal as per section 10(1)(a) of IGST act 2017. Since we are only registered at Maharashtra and are supplying the goods on our Maharashtra GST TIN Registration number for this transaction, so it is an interstate supply of goods as defined in Section 7(3) of the IGST Act 2017 and therefore the transaction attracts IGST. Hence we are not required to have separate GST registration in the state of West Bengal.

Additional submissions

According to Section 22 of the CGST Act, Every Supplier is liable to be registered under this Act in the State 'from' where he makes a taxable supply of goods or services or both. Thus as per our understanding registration is required 'in' the state 'from which' taxable supplies are made. Registration is not required 'in' the State 'to which' taxable supplies are made. It is important to identify the 'origin' of supply even though GST is a 'destination' based tax. Tax goes to the destination-state but registration is required in the Origin-State. So the Location of Supplier is relevant for registration. In case of goods the Location of the supplier includes 'place where goods are stored'. Hence, location of supplier of goods is where business is ordinarily carried on or where the goods themselves are located, it is the place where the supplier holds control over the goods ready to deliver. In other words, location of supplier may be understood as the location of goods ready for supply. The word 'location' in this phrase refers to the site or premises (geographical point) where the supplier is situated, with the goods in his control, ready to be supplied.

Now in our case we will be storing the goods at rented Customs Bonded warehouse at Haldia Port- Kolkata, we do not have any establishment or place of operation or storage facility within the State of West Bengal, We will import the goods at Kolkata port in the name of M/s. Sonkamal Enterprises Pvt. Ltd. - Mumbai H.O. GSTIN. We will remove the goods from Custom Bonded warehouse only when we get any orders from customers for delivery, the terms of delivery will be Ex-Terminal (i.e., the ownership and its respective risks and rewards will be transferred to our customer the moment goods are cleared from the customs port and we will cease to have control over the goods at that point). The material will be transported directly from that port to Customers in Kolkata or in any other states. The Tax Invoice will be raised From Mumbai H.O. with Mumbai GSTIN levying IGST.

As we will not be storing any goods within the state of West Bengal, in our opinion the location of Supplier would be the customs bonded warehouse and we will not be required to have registration in West Bengal.

WRITE UP FOR THE PRACTICE TO BE FOLLOWED AND PRE GST PRACTICE FOR THE SAID TRANSACTION:

There is no Pre GST practice in this case, as transaction is to be undertaken for the 1st time at Kolkata port. The Practice that we are intending to follow is : We will import the goods at Kolkata port in the name of M/s. Sonkamal Enterprises Pvt. Ltd. - Mumbai H.O. GSTIN. The Material will be stored at Kolkata Custom Port in the Custom Bonded Warehouse, we will remove the goods from warehouse only when we get any customers for delivery. The material will be supplied directly from that port to Customers in Kolkatta and in other nearby states.

The Tax Invoice will be raised From Mumbai Branch with Mumbai GSTIN levying IGST, These invoice data will be uploaded by us in GSTR1 Form of Mumbai Branch.

E Way bill will be issued as Follows :

Bill From : SEPL Mumbai GSTIN
Dispatch From : Kolkata Port Bonded Warehouse
Bill To : Customer GSTIN
Dispatch to : Customer Address

DOCUMENTATION TO BE FOLLOWED FOR INWARD AND OUTWARD SUPPLY OF GOODS:

In case of documentation of inward supply we would like to draw your attention that all material will be imported by us from foreign supplier and there will be no purchase from local supplier at Kolkata.

Documentation for inward supply will be as follows :

- i) Import Foreign Supplier Invoice
- ii) Bill of Lading
- iii) Packing List
- iv) Certificate of origin
- v) Bill of Entry



vi) Duty Payment Challan paid by Mumbai Branch with Mumbai GSTIN if the goods are cleared by us and stored at port warehouse and in other cased bill of entry and duty payment challan will be in the name of our customers who have cleared the goods.

Documentation for Outward Supply of Goods :

- i) Tax Invoice levying IGST From Mumbai Branch with Mumbai GSTIN
- ii) E Way bill only in case where Movement is made by us
- iii) In case of Highseas/ Bond Transfer sales - Supply Agreement will be made and maintained properly.

03. CONTENTION - AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

M/s Sonkamal Enterprises Pvt. Ltd., 47, 602, Sunil Enclave, Periera Hill Road, Off. Andheri Kurla Road, Cinemagic Theatre, Andheri (East), Mumbai 400099 (here in after referred to as 'the applicant') has filed above detailed application under Section 98 of the Central Goods and Service Tax Act, 2017 read with Rule 104 (1) Of the CGST Rules, 2017 seeking advance ruling on:

- (i) whether the procedure to raise the invoice from Mumbai Head Office for imports received at Haldia Port, Kolkata where they do not have any separate GST Registration and Charge IGST from Mumbai to our Customers is correct? Or do they have to take separate Registration in the State of West Bengal for the below mentioned transactions?.
- (ii) If they do not need separate registration in West Bengal, can they do the transaction on Mumbai Head Office GSTIN, then in case of issuance of e-way bill is it correct to Mention the GSTIN of Mumbai and Dispatch place of Haldia Port?.

2. In Point No.15 of the application, the applicant has stated that, M/s Sonkamal Enterprises Pvt. Ltd., is a company having its Head Office at Mumbai and a Branch in Gujrat - Gandhidham, Both are registered under the GST Act. They are importer of Chemicals especially phenol which they currently import at JNPT Port, Maharashtra and Kandla Port, Gujarat. They wish to import the Chemicals at Haldia Port (Kolkata, West Bengal). They are storing goods at rented Customs Warehouse at Haldia Port, they do not have any establishment or place of operation in State of West Bengal, they endeavour to clear the goods from that warehouse (Ex Bond) in the name of their Mumbai Head Office so here importation will be completed by payment of Customs Duty in Mumbai Head Office Name and they want to sell the goods to customers in West Bengal and other states nearby from that warehouse and charge IGST to their customers by raising bill from Mumbai and not West Bengal. They do not have any godown in the state of West Bengal and will not have any other godown or storage facility in the state other than the Haldia Port Customs Warehouse.

3. In point No.16 of the application, the applicant has stated and interpreted that they will be supplying Goods to their customers in West Bengal from Customs Warehouse situated at Kolkata, therefore place of supply is West Bengal as per Section 10(1)(a) of IGST Act, 2017. Since they are only registered at Maharashtra and are supplying the goods on their Maharashtra GSTIN registration number for this transaction, so it is an interstate supply of goods as defined in Section 7(3) of the IGST Act, 2017 and therefore the transaction attracts IGST. Hence, they are not required to have separate GST registration in the state of West Bengal.

FINDINGS

The basic issue to be decided in the application is whether

- (i) whether the procedure to raise the invoice from Mumbai Head Office for imports received at Haldia Port, Kolkata where they do not have any separate GST Registration and Charge IGST from Mumbai to their customers is correct? Or do they have to take separate Registration in the State of West Bengal for the below mentioned transactions?
- (ii) If they do not need separate registration in West Bengal, can they do the transaction on Mumbai Head Office GSTIN, then in case of issuance of e-way bill is it correct to Mention the GSTIN of Mumbai and Dispatch place of Haldia Port?.

5. The applicant in Point No.15 of the application have stated that they wish to import the Chemicals at Haldia Port(Kolkata, West Bengal) and store the same at rented Customs Warehouse at Haldia Port and they do not have any establishment or place of operation in State of West Bengal. The applicant in Point No.16 of the application, have stated that they will be supplying Goods to their customers in West Bengal from Customs Warehouse situated at Kolkata.

6. Since, the applicant wish to import Chemicals viz. goods at Haldia Port (Kolkata, West Bengal), the nature of supply of goods is an interstate supply of goods as defined in Section 7(2) of the IGST Act, 2017 because Section 7(2) deals with Supply of goods imported into the territory of India and not Section 7(3) of the IGST Act, 2017, as claimed by the applicant, as it pertains to Supply of Services.

Secondly, the place of Supply of Goods as per Section 11(a) of the IGST Act,2017 which is for goods imported into India and the place of supply shall be the location of the importer and not Section 10(1)(a) of IGST Act, 2017, as claimed by the applicant, which is for place of supply of goods other than supply of goods imported into.

7. Coming to the 1st question, i.e. "whether the procedure to raise the invoice from Mumbai Head Office for imports received at Haldia Port, Kolkata where they do not have any separate GST Registration and Charge IGST from Mumbai to our Customers is correct? Or do they have to take separate Registration in the State of West Bengal for the below mentioned transactions?", it appears that as per the application, the applicant are storing goods at rented Customs Warehouse at Haldia Port, they do not have any establishment or place of operation in State of West Bengal, they endeavour to clear the goods from that warehouse (Ex Bond) in the name of their Mumbai Head Office so here importation will be completed



by payment of Customs Duty and IGST. Since the applicant is an importer, the place of Supply of Goods shall be the location of the importer as per Section 11(a) of the IGST Act,2017. Further, the applicant does not have any office in West Bengal as per the application and the goods will be cleared from rented Custom Warehouse(Ex bond) at Haldia. As per Section 22(1) of CGST Act, 2017, "Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees: ...". In this case, the applicant makes a taxable supply of goods from Mumbai Head Office, as he does not have any office in the state of West Bengal as per his applicant. Hence, place from where the supplier makes a taxable Supply of Goods shall be the location of the supplier i.e Mumbai Head Office, since the applicant do not have any godown in the state of West Bengal as per their application and hence it appears that separate registration need not be taken in the State of West Bengal.

8. Coming to the 2nd question, i.e. "If they do not need separate registration in West Bengal, can they do the transaction on Mumbai Head Office GSTIN, then in case of issuance of e-way bill is it correct to Mention the GSTIN of Mumbai and Dispatch place of Haldia Port?", the answer appears to be positive i.e. the applicant need not take separate registration in West Bengal and they can do the transaction on Mumbai Head Office GSTIN and it appears to be correct to mention the GSTIN of Mumbai Head Office in the E-way Bill and dispatch place as Customs Warehouse situated at Haldia, Kolkata. However, the aforesaid is subject to issuance of an invoice and paying applicable IGST or CGST+SGST or Compensation Cess etc., as applicable as per the CGST/SGST/UTGST/IGST Acts respectively.

PRAYER

Considering the facts discussed in foregoing paragraphs, the question framed by the applicant in Point No.14,

- (i) whether the procedure to raise the invoice from Mumbai Head Office for imports received at Haldia Port, Kolkata where they do not have any separate GST Registration and Charge IGST from Mumbai to our Customers is correct? Or do they have to take separate Registration in the State of West Bengal for the below mentioned transactions, the answer is "they need not take separate Registration in the State of West Bengal".
- (ii) If they do not need separate registration in West Bengal, can they do the transaction on Mumbai Head Office GSTIN, then in case of issuance of e-way bill is it correct to Mention the GSTIN of Mumbai and Dispatch place of Haldia Port?, the answer appears to be positive i.e. the applicant need not take separate registration in West Bengal and they can do the transaction on Mumbai Head Office GSTIN and it appears to be correct to mention the GSTIN of Mumbai Head Office in the E-way Bill and dispatch place as Customs Warehouse situated at Kolkata. However, the aforesaid is subject to issuance of an invoice and paying applicable IGST or CGST+SGST or Compensation Cess etc., as applicable as per the CGST/SGST/UTGST/IGST Acts respectively.

04. HEARING

The case was taken up for Preliminary hearing on dt. 31.07.2018 when Ms. Dhvani Piyush Shah, Accountant of the company along with Sh. Dinesh Taylor, Chief Accountant and Sh. Vinod Shah, Director appeared and requested for admission of application as per contentions in their ARA. Jurisdictional Officer, Ms. Usha Iyer, Supdt., Mumbai East Commissionerate appeared and made written submissions .

The application was admitted and called for final hearing on 28.08.2018, Ms. Dhvani Piyush Shah, Accountant of the company along with Sh. Dinesh Taylor, Chief Accountant appeared and made oral and written submissions. Jurisdictional Officer, Ms. Usha Iyer, Supdt., Mumbai East Commissionerate appeared and stated that they have already made written submissions.

05. OBSERVATIONS

We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the department.

The applicant, an importer of chemicals is a Company having its Head office at Mumbai and a Branch in Gujarat - Gandhidham, both the offices being registered under the GST Laws. They are wanting to import the Chemicals at Haldia Port (Kolkata, West Bengal) on their own but with Mumbai Head Office GSTIN. After import the goods will be stored at the rented Customs Bonded warehouse at Haldia Port. They do not have any establishment or place of operation or any godown or GSTIN in the State of West Bengal and after importation, want to clear the goods from that warehouse (Ex Bond) in the name of their Mumbai Head Office. They want to sell such imported goods to customers in West Bengal and other States



nearby from that warehouse and charge IGST by raising bills/invoices from Mumbai and not from West Bengal. The terms of delivery will be Ex-Terminal (i.e., the ownership and its respective risks and rewards will be transferred to their customer the moment goods are cleared from the customs port). The goods will be transported directly from that port to Customers in Kolkata or in any other states. The Tax Invoice will be raised From Mumbai H.O. with Mumbai GSTIN levying IGST.

Hence the following two questions have been raised by the in this application:-

- (i) *whether the procedure to raise the invoice from Mumbai Head Office for imports received at Haldia Port, Kolkata where they do not have any separate GST Registration and Charge IGST from Mumbai to our Customers is correct? Or do they have to take separate Registration in the State of West Bengal for the below mentioned transactions?*
- (ii) *If they do not need separate registration in West Bengal, can they do the transaction on Mumbai Head Office GSTIN, then in case of issuance of e-way bill is it correct to Mention the GSTIN of Mumbai and Dispatch place of Haldia Port?.*

First and foremost, since the applicant will be importing the goods into India as per Section 7(2) of the IGST Act, 2017, such supply of goods imported into India shall be treated as supply of goods in the course of Inter State Trade or commerce.

Secondly in respect of goods imported into India, as per Section 11(a) of the IGST Act, 2017, the place of supply shall be the location of the importer and in the present case since the importer is registered in Mumbai, the place of supply shall be Mumbai, Maharashtra.

Chapter VI of the CGST Act, 2017, consisting of Sections 22 to 30 deals with registration under GST. Section 22 speaks of persons who are liable for registration and as per Section 22 (1) --- "Every supplier ~~shall~~ be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if"

In the present case as mentioned above the place of supply is the location of the importer who is situated in the State of Maharashtra and hence the applicant will be clearing the goods by paying IGST from their GSTIN issued in Mumbai, Maharashtra. Since the applicant has no establishment or place of operation or any godown or GSTIN in the State of West Bengal i.e. the port of import, therefore, after exbonding of imported goods from the Customs warehouse at Kolkata and for further sales after exbonding, whether that would be interstate or intrastate supply would depend upon the place of supply of goods as per Section 10 and Section 11 of the IGST Act, 2017. Hence we are of the opinion that the place from where the applicant makes a taxable Supply of Goods shall be his location, in this case, the Mumbai Head Office and since the applicant does not have any godown in the state of West Bengal and we feel that the applicant can clear the goods on the basis of invoices issued by the Mumbai Head Office and therefore they need not take separate registration in the State of West Bengal. This would answer their first question mentioned above.

Now we deal with the second question raised by the applicant, which is mentioned above. In view of the discussions made in respect of question no. 1, we find that, since as an importer the place of supply for the applicant in this case will be Mumbai, and the goods also will be cleared on the name of the Mumbai



registered address while paying IGST at the time of Customs Clearance, it would follow that they can do the further transaction mentioning the GSTIN of their Mumbai office. Hence we are of the opinion that they can do the transaction on Mumbai Head Office GSTIN and can mention the GSTIN of Mumbai Head Office in the E-way Bill and dispatch place as Customs Warehouse, Kolkata.

05. In view of the extensive deliberations as held hereinabove, 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- 48/2018-19/B-

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Mumbai, dt.

27/9/2018

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

Question 1:- Whether the procedure to raise the invoice from Mumbai Head Office for imports received at Haldia Port Kolkata where we do not have any separate GST Registration and Charge IGST from Mumbai to our Customers is correct? or do we have to take separate Registration in the State of West Bengal for the below mentioned transactions?

Answer :- Answered in the affirmative as per detailed discussions above. For this transaction, no separate registration in the State of West Bengal is required .

Question 2:- If we do not need separate registration in west Bengal, can we do the transaction on Mumbai Head Office GSTIN, then in case of issuance of e way bill is it correct to Mention the GSTIN of Mumbai and Dispatch place of Haldia Port ?

Answer :- Answered in the affirmative subject to following procedure and payment of taxes as per law.



—sd—
B. V. BORHADE
(MEMBER)

—sd—
PANKAJ KUMAR
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
3. The Chief Commissioner of Central Tax

CERTIFIED TRUE COPY
[Signature]
MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

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.