

**AUTHORITY FOR ADVANCE RULING
TAMILNADU ADVANCE RULING AUTHORITY
PAPJM Buildings, II Floor, No.1, Greams Road, Chennai-6**

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.**

Members present are:

1. Ms. Manasa Gangotri Kata IRS., Joint Commissioner/Member,
Office of Commissioner of GST & Central Excise, Chennai.
2. Thiru S. Vijayakumar, M.Sc., Joint Commissioner (CT)/Member(FAC),
Office of the Joint Commissioner (ST), Enforcement /
Inter-State Investigation Cell, Chennai-6.

ORDER No.23/AAR/2018 DATED : 31.12.2018

GSTIN Number, if any / User id		33AAACB1536H1Z7
Legal Name of Applicant		M/s. The Bank of Nova Scotia
Registered Address/Address provided while obtaining user id		Sequel Logistics Pvt. Ltd., 6/24A, Sowripalayam Road, Raju Garden, Coimbatore - 28.
Details of Application		Form GST ARA -01, Application Sl.No.25/2018/ARA dated 05.06.2018
Concerned Officer		State : The Assistant Commissioner (ST), Trichy Road Circle, Commercial Taxes Buildings, 4th Floor, Dr.Balasundaram Road, Coimbatore - 641 018. Centre : Coimbatore- Division-Coimbatore I
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Bonded Warehouse
B	Description (in Brief)	The Bank is a Multinational Financial Service provider and involved in supply of Bullion.
Issue/s on which advance ruling required		Determination of liability to pay tax on any goods supplied to DTA from Free Trade Warehousing Zone units.
Question(s) on which advance ruling is required		1. Whether IGST is payable on Goods warehoused in FTWZ and supplied to a DTA unit, in addition to the customs duty payable [i.e. Basic Customs Duty(BCD) + IGST] on removal of goods from the FTWZ unit? 2. Whether the Circular No. 46/2017 is applicable to the present factual situation?

Note : Any appeal against the advance ruling order shall be filed before the Tamilnadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

M/s. The Bank of Nova Scotia, India, Sequel Logistics Pvt. Ltd, 6/24A, Sowripalayam Road, Raju Garden, Coimbatore - 28. (hereinafter called BNSI or Applicant) is a leading multinational financial service provider in India, having market leadership in the bullion business. The Bank became the first Bullion bank to set up its operations in India way back in 1997 under the brand name Scotia Mocatta. Since then, Scotia Mocatta has been at the forefront of the bullion industry being the largest supplier of precious metals. Through its network of branches and its bullion vaults established across India, it caters to the bullion requirements of Jewellers, Exporters, Nominated agencies such as Minerals & Metals Trading Corporation (MMTC), Banks & Mutual Funds (Gold ETF's).

The applicant has sought Advance Ruling on:

1. Whether IGST is payable on Goods warehoused in FTWZ and supplied to a DTA unit, in addition to the customs duty payable[i.e. Basic Customs Duty(BCD) + IGST] on removal of goods from the FTWZ unit?
2. Whether the Circular No. 46/2017 is applicable to the present factual situation?

The Applicant has submitted the copy of application in Form GST ARA – 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2. BNSI have informed that they procure gold/silver from Bank's London branch ('BNSL') and supply the same to its customers in India. In order to

undertake the said transaction, at present, BNSI files the Bill of Entry ('BoE') for import of gold/silver into India and stores the same in the vaults in India. The gold/silver stored in vaults in India remains the property of the Bank and are under the legal possession of BNSL. The gold/ silver is withdrawn from the supplied quantity by BNSI and sold to customers in India.

2.1 The Applicant have submitted that they are now contemplating altering the modality of the aforesaid transaction, so as to operate from a Free Trade Warehousing Zone ('FTWZ'). Under this proposed transaction, the gold/ silver will be stored in an FTWZ Unit on account of BNSL and withdrawn by BNSI as and when required for sale to customers in India by BNSI. It is proposed that BNSL will enter into an agreement with Brinks India Pvt Limited who already has a unit in a FTWZ. Brinks India Pvt. Ltd., has entered into a back to back contract with Siddharth Logistics Co Pvt Ltd who is an authorized FTWZ unit operating in the SEZ of Shree City for providing the warehousing services to the clients of Brinks India Pvt. Ltd.,. As per the Letter of Approval granted to Siddharth Logistics, it is authorized to undertake the activity of storage, warehousing, custodian etc. In terms of aforesaid agreements, the FTWZ unit i.e. Siddharth Logistics will undertake the warehousing on account of clients of Brinks i.e. BNSL.

2.2 The modus operandi for this proposed transaction is set out hereunder:

- a. Under the present option, BNSI files a BoE for import of gold/ silver into India;
- b. The gold/ silver is stored in an FTWZ unit in India on account of BNSL, and the charges for storage are borne by BNSL;
- c. Once BNSI receives an order for purchase of gold/ silver from customer in India, BNSI places an order/ requisition on BNSL;
- d. The gold/ silver is then removed from the FTWZ unit and supplied to BNSI;
- e. Subsequently, the gold/ silver is sold to customers in India by BNSI.

2.3 The Applicant has submitted that FTWZ is a special category of Special Economic Zone as per Section 2(Za) of SEZ ACT, 2005. As per proviso to Rule 8 of CGST rules 2017, SEZ/FTWZ unit and Domestic Tariff Area (DTA) unit of BSNI will obtain separate GST Registrations and the units would be treated as distinct

persons under CGST Act. Hence, the transaction of transfer of goods from FTWZ to DTA unit of BSNI can fall within the ambit of supply. Further as per circular 46/2017, the Central Board of Excise & Customs (CBEC) has clarified that in respect of goods stored in a customs bonded warehouse, there is a possibility that certain cases may involve an additional taxable event, if a transfer of ownership of warehoused goods takes place between the importer and another person, before clearance of the goods, whether for home consumption or for export and therefore, be taxable as an 'inter-state' supply under Section 7(2) of the IGST Act. In light of this Circular, the applicant has submitted that in the present factual situation, in respect of goods stored in the FTWZ unit, will involve an additional taxable event — since the FTWZ unit and DTA unit would be treated as a separate entity. Further, the applicant has stated that removal of goods from FTWZ unit to DTA unit of BNSI being an import transaction, subject to Customs duty under Customs Act, cannot be said to have another separate taxable event to attract IGST under the IGST Act. In the case where the goods are supplied by one entity to another while the goods are still in the warehouse, the said supply continues to be a part of import transaction and should be liable to tax only once at the time when the goods are cleared for home consumption and duties of Customs are collected under the Customs Act. The Applicant has submitted that levy of IGST twice in such a situation would completely defeat the purpose of introduction of GST and is completely unwarranted.

2.4 The Applicant is of the view that removal of goods from FTWZ unit to a DTA unit of BNSI should not be subject to IGST under the Section 5 read with Section 7(2) of the IGST Act.

3. The Authorized Representative of the Applicant was personally heard in the matter . They stated that there are several proposed supplies involved for BSNL, BSNI and FTWZ. BNSI would file Bill of Entry for Import of gold/silver from BNSL and store the same in FTWZ unit, which is owned and operated by independent third party who merely warehouse the goods. BNSL would pay the warehousing charges to FTWZ unit. The warehoused goods would be removed to DTA unit of BNSI by filing Bill of Entry for Home consumption by DTA unit of BNSI on payment of Customs duty. Subsequently, they supply the same to their Indian Customers on payment of appropriate GST.

4. The issue before us is to determine whether the removal of goods from FTWZ unit to a DTA unit of BNSI should be subject to IGST under section 5(1) read with Section 7(2) of the IGST Act in addition to the customs duty payable [i.e. Basic Customs Duty (BCD) + IGST] on removal of goods from the FTWZ unit. In the case at hand, the applicant imports the goods from BNSL, files 'into bond Bill of Entry' and stores the goods in the FTWZ run by an independent third party but the legal possession of the goods are with BSNL. When the Applicant receives orders from their customers in India, BNSI clears the goods on filing the 'BOE for Home Consumption' and pays the appropriate customs duty.

4.1. Chapter 7A of the Foreign Trade Policy 2015-2020 states that Free Trade & Warehousing Zones (FTWZ) are a special category of Special Economic Zones with a focus on trading and warehousing. The scheme envisages duty free import of all goods (except prohibited items, arms and ammunitions, hazardous wastes and SCOMET items) for ware housing. As far as bond towards customs duty on import is concerned, the units would be subject to similar provisions as are applicable to units in SEZs. These goods shall also be permitted to be sold in the DTA on payment of customs duties as applicable on the date of such sale. Payment of duty will become due only when goods are sold/delivered to DTA and no interest will be charged as in the case of bonded warehouses. In the present case, the Applicant is storing the imported goods in FTWZ which is a Customs bonded warehouse. Now, the applicant has raised the question whether IGST under section 5(1) read with Section 7(2) of the IGST Act in addition to the customs duty payable [i.e. Basic Customs Duty (BCD) + IGST] under Customs Tariff Act, 1975 on removal of goods from the FTWZ unit i.e. the customs bonded warehouse.

4.2. We find that the above issue has been raised and discussed in the 27th meeting of the GST Council held on 04.05.2018 as under:

Agenda Item 5: Clarification regarding applicability of Integrated Goods and Services Tax on goods supplied while being deposited in a warehouse

Goods imported into India are subjected to customs duties and integrated tax under sub-section (7) of section 3 of the Customs Tariff Act, 1975 (hereafter referred to as "CTA"). The importer has the option to defer the payment of duty on such imports by storing the goods in the Customs bonded warehouse. During the storage of imported goods in warehouse, the importer has the option to supply such goods to any other person even before clearance from the bonded warehouse. It has been clarified vide Circular No. 46/2017-Customs dated 24.11.2017 that integrated tax will be payable on such supplies and buyer will also pay the deferred customs duty at the time of clearance of goods from the warehouse. It has been represented that in this scenario, the buyer is being saddled with double taxation.

2. Kind attention is drawn towards sub-section (2) of section 7 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act") whereby supply of goods imported into the territory of India, till they cross the customs frontiers of India, is treated as a supply of goods in the course of inter-State trade or commerce. Further, proviso to sub-section (1) of section 5 of the IGST Act provides that integrated tax on goods imported into India would be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (hereinafter referred to as the "CTA"). Thus, in case of supply of such warehoused goods the point of levy would be the point at which duty is collected under section 12 of the Customs Act, 1962 (hereinafter referred to as the "Customs Act") which is at the time of clearance of goods under section 68 of the Customs Act.

3. Furthermore, sub-section (8A) has been inserted with effect from 31st March, 2018 in section 3 of the CTA vide Section 102 of the Finance Act, 2018 so as to provide that the valuation for the purpose of levy of integrated tax on imported goods deposited in a warehouse, at the time of clearance for home consumption, would be either the transaction value or value as per sub-section (8) of section 3 of the CTA (i.e. valuation done at the time of filing into-bond bill of entry), whichever is higher. It is significant as this amendment takes care of any revenue concerns that might arise on account of non-capturing of value addition happening when the warehoused goods are sold before clearance from warehouse.

4. It is pertinent to mention here that GST Council in its 25th Meeting held on 18th January 2018, has given an in-principle approval to declare the supply of warehoused goods within the Customs bonded warehouse as "no supply" under Schedule III of the CGST Act, 2017 so as to ensure that no integrated tax is paid at the time of supply of warehoused goods by the importer to the buyer. Since the amendment of the law would take time, it is proposed that such intentional decision of the GST Council may be effected through a circular.

5. In view of the above, it is proposed that Circular No. 46/2017-Customs dated 24.11.2017 may be rescinded and a fresh circular may be issued clarifying that supply of warehoused goods before their clearance from the warehouse would not be subject to levy of integrated tax and the same would be collected only when the warehoused goods are cleared for home consumption from the customs bonded warehouse. This clarification would be applicable from 1st of April, 2018. Accordingly, a draft circular as at Annexure-1 is placed for approval of the GST Council.

Accordingly, Circular No.3/1/2018-IGST dated 25th May 2018 was issued re-examining the issues of Circular No. 46/2017 Customs dated 24.11.2017. The Circular clarifies the applicability of IGST on goods supplied while being deposited in customs bonded warehouse effective from 01.04.2018 and states that Integrated tax shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e., at the time of filing the ex-bond bill of entry and the value addition accruing at each stage of supply shall form part of the value on which the integrated tax would be payable at the time of clearance of the warehoused goods for home consumption. In other words, the supply of goods before their clearance from the warehouse would not be subject to the levy of Integrated tax and the same would be levied and collected only when the warehoused goods are cleared for home consumption from the customs bonded warehouse, under the provisions of Customs Act. This circular was made applicable for supply of warehoused goods, while being deposited in a customs bonded warehouse on or after 01.04.2018.

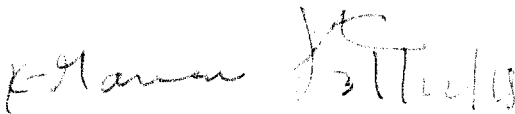
4.3 From the foregoing, it is evident that removal from the FTWZ to DTA is the point of deferred levy/payment of Customs Duty, i.e., at the time of clearance for home consumption from FTWZ. Further, as explained in the Circular referred above, the goods are not to be subjected to IGST when bonded and the payment of integrated tax is to be effected when the goods are removed for home consumption from the bonded warehouse, under the Provisions of Customs Tariff Act. Therefore, there is no requirement to pay IGST under the provisions of GST law at the time of clearance from the FTWZ. In the case at hand, the Applicant proposes to effect sale when the goods are bonded and then files Bill of Entry for Home Consumption and clears the goods from the FTWZ on payment of appropriate Custom duties(BCD & IGST). Therefore, as clarified in the Circular No.3/1/2018-IGST dated 25th May 2018, the payment of IGST again at the point of clearance from the FTWZ to DTA do not arise for supply of warehoused goods, while being deposited in a customs bonded warehouse/FTWZ on or after 01.04.2018. Accordingly, Circular No. 46/2017 Customs dated 24.11.2017 is not applicable for supply of warehoused goods, while being deposited in a customs bonded warehouse/FTWZ on or after 01.04.2018.


5. In view of the above, we rule as under:

RULING

1. For supply of warehoused goods, while being deposited in FTWZ on or after 01.04.2018, the Applicant is not liable to pay IGST at the time of removal of goods from the FTWZ to DTA under the provisions of IGST Act in addition to the duties payable under Customs Tariff Act, 1975 on removal of goods from the FTWZ unit.

2. Circular No. 46/2017 Customs dated 24.11.2017 is not applicable for supply of warehoused goods, while being deposited in a FTWZ on or after 01.04.2018.

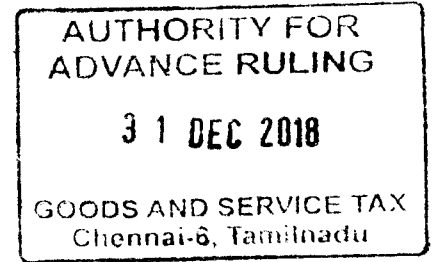

Ms. Manasa Gangotri Kata, IRS
Member, CGST


Shri. S. Vijayakumar, M.Sc.,
Member (FAC), TNGST

To

The Bank of Nova Scotia,
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Raju Garden, Coimbatore - 28.

/By SPAD/



Copy Submitted to:

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2. The Principal Chief Commissioner of GST & Central Excise,
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5. Master File/ Spare-2.