

THE ODISHA APPELLATE AUTHORITY FOR ADVANCE RULING FOR
GOODS AND SERVICE TAX
(CONSTITUTED UNDER SECTION 99 OF THE ODISHA GOODS AND SERVICES TAX ACT, 2017)
ORDER NO. 02/ODISHA-AAAR/2019-20, DATED:13.06.2019

BEFORE THE BENCH OF

- (1) Shri Naresh Penumaka, Member (Chief Commissioner, GST, CX & Customs, Bhubaneswar Zone)
- (2) Shri Bishnupada Sethi, Member (Commissioner, Commercial Taxes & GST, Odisha)

Legal Name and Address of the Appellant	Indian Institute of Science Education and Research Berhampur, Transit Campus, Govt. ITI, Engineering School Road, Berhampur – 760010, Odisha. (GSTIN Number-21AABAI0732K1Z5)
Details of Appeal	Appeal No-07/2018-19/AAAR-ODISHA filed against Advance Ruling No.07/ODISHA-AAR/2018-19 dated 13.02.2019.
Jurisdictional Officer	Centre Jurisdiction: Berhampur - I Range (Jurisdictional Office) State Jurisdiction:- Bhubaneswar – I Circle.

Present For the Appellant

1. Pramod Kumar Panda, C.A.

Matter heard on : 03.06.2019
Date of Order : 13.06.2019

Indian Institute of Science Education and Research, Berhampur (Appellant) has filed an appeal before AAAR, Odisha on 18.03.2019 aggrieved by advance ruling no 07/ODISHA-AAR/2018-19 dated 05.02.2019 pronounced by the Odisha Authority for Advance Ruling, Bhubaneswar under Section 100 of the Odisha Goods and Service Tax Act, 2017/CGST Act, 2017.

2.0. The Appellant, holding valid registration certificate issued under the CGST Act, 2017 and OGST Act, 2017 bearing GSTIN – 21AABAI0732K1Z5 is stated to be an Educational Institute established by the Ministry of HRD, Government of India and constituted as an Autonomous Body under the NITSER Act of 2007 and inter alia engaged in imparting Science Education and Research.

2.1. The appellant submitted that by virtue of the Customs Notification No 51/1996 dated 23.07.1996 they were exempted from payment of Customs Duty in excess of 5% of the duty of Customs leviable as per First Schedule to the Customs Tariff Act, 1975 and also from the whole of the Additional Duty leviable under Section-3 of the Customs Tariff Act, 1975 before the introduction of Goods and Service Tax. The aforesaid



Notification is applicable to the institutions specified in Column-‘2’ thereof for import of such specified equipments as specified in Column-‘3’ thereof and is subject to such conditions as specified in Column- ‘4’ of the said notification.

2.2. It is the submission of the Appellant that they are importing Scientific Equipments either directly from Original Equipment Manufacturer or through the Agent of the OEM suppliers in India. In case of direct import, they are availing concessional Customs Duty and exemption of IGST as per NN-43/2017-Customs, Dt: 30.06.2017. However, in case the same imported Equipments are procured through the OEM Agents in India, the OEM Suppliers of such Imported Equipments have charged IGST @ 28% from 01.07.2017 and IGST @ 5% with effect from Dt: 14.11.2017, consequent upon NN-47-IGST-Rate, Dt:14.11.2017.

2.3. The Central Government vide NN-45-CGST-Rate and NN-47-IGST-Rate, Dt: 14.11.2017, allowed the concessional GST/IGST Rate of 5% in respect of goods specified as per Column-(3) of the said Notification procured by the Eligible Institutions specified in Column-(2) subject to such conditions as specified under Column-(4) of the said Notification.

2.4. The Appellant is of the view that it is not intended by the statute on a combined reading of NN-51/1996-Customs, Dt: 23.07.1996, NN-43/2017-Customs, Dt: 30.06.2017 and Minutes of the Meeting of the 14th GST Council, Dt: 18th/19th May, 2017 to charge 28%/5 % IGST by the Imported Equipment Suppliers which is becoming a cost to them for which they are in dispute with such OEM suppliers of Imported Equipments. It is their submission that they are being charged with higher tax than what is mandated by the law during the period from 01.07.2017 to 14.11.2017 at 28% IGST and thereafter at 5% IGST Rate on imported Equipments due to absence of clarity in law and the Notification issued from time to time for which they sought rulings from the Advance Ruling Authority.

3. Accordingly, the Appellant sought Advance Ruling before the Authority for Advance Ruling, Odisha (AAR) putting-forth the following question.

(i) Whether the Notification No – 51/1996-Customs, Dt: 23.07.1996 read with Notification No-43.2017-Customs, Dt: 30.06.2017 and Minutes of the 14th GST Council Decision Dated 18th/19th May, 2017 is applicable for specified imported equipments delivered to the eligible institutions and the Appellant is not liable to pay the IGST charged on such imported equipments by the OEM suppliers of imported equipment,” and,

(ii) Whether the decision of the GST Council granting the exemption is binding on the Department in the absence of non-issuance of corresponding



Notification by the Central/State Government to give effect to such decision of the Council, and

(iii) Whether the concessional rate of GST/IGST at the rate of 5 % vide Notification No-45-CGST (Rate), Dt:14.11.2017 and Notification No-47-IGST (Rate), Dt:14.11.2017 are applicable only for supply of specified Indigenous Equipments to the eligible Institutions fulfilling conditions as specified under Column-(4) of the said notification with effect from 15.11.2017.

4. The AAR, Odisha after hearing the appellant and considering their submissions vide their rulings observes/held as follows.

4.1. The AAR, Odisha observes that proviso to Section 5(1) of the IGST Act authorizes levy of IGST on goods imported into India in accordance with the provision of Section 3 of the Customs Tariff Act 1975 and the point of taxation is same as the point of levy of customs duty. Section 2(10) of the IGST Act defines 'import of goods' meaning bringing goods into India from a place outside India. Accordingly, levy of IGST on goods imported under Proviso to Section 5(1) is strictly limited to import of goods into India and such levy has to happen at the time of customs clearance only. Hence, Notification No.51/96-Customs dated 23.07.1996 is very much applicable to the Appellant in case of import of specified goods.

4.2. The AAR, Odisha further observes that the applicability of Notification No. 51/96-Customs dated 23.07.1996 as amended vide Notification No-43/2017-Customs, DT: 30.06.2017 to "OEM Suppliers" needs to be examined as per the facts and circumstances of the case. In this case, the OEM supplier is a supplier located in India and the supply of equipments by such supplier to the specified Research Institutions is undeniably a case of domestic supply. The nature of such domestic supply can be intrastate or interstate depending on the location of such supplier. The equipments supplied might have been imported from other countries and such import might be with the sole intention of supply to some pre-determined Research Institutions, which might be entitled for IGST exemption provided through the aforesaid Notifications, such as the Appellant. In spite of that, such preceding import or the intent behind such import will not alter the nature of the transactions. In other words, there are two consecutive transactions such as (i) import of equipments by the OEM suppliers of his own and (ii) supply of such equipments to some pre-determined or post determined Research Institutions who otherwise qualify for IGST exemption on imports. In the aforesaid case, for the import of equipments by the OEM supplier IGST will be charged under Proviso to Section 5(1) of the IGST Act, since the said OEM supplier is not entitled for the exemption provided in the Notifications under consideration. On the subsequent domestic transaction,



there will be levy of either IGST or CGST and SGST depending on the nature of the supply transaction as per the location of the supplier. In both the cases, the liability to pay GST is on the supplier and not on the Appellant. In the absence of liability there cannot be a claim for exemption. The appellant can avail the exemption benefit only if it goes for direct import or purchase before the goods being imported into the country cross the Customs frontier of India. In that case, the IGST liability will be on the importer (in this case the Appellant) and exemption from the said liability can be claimed and availed. The Appellant cannot claim exemption from the liability of another taxable person.

4.3. The AAR, Odisha also observes that, Notification No.51/96-Customs dated 23.07.1996 is restricted to importers like Public Funded research institution or a university or an Indian Institute of Technology or Indian Institute of Science, Bangalore or a Regional Engineering College, other than a hospital. In the instant case, the intended beneficiary is the specified eligible institutions such as the Appellant but not the OEM suppliers. The said notification is restricted to the public funded and non-commercial research institutions and I.I.T. etc. So, by any stretch of the imagination, the said notification read with notification no.43/2017-customs dated 30.06.2017 cannot be extended to the OEM suppliers.

4.4. The AAR, Odisha also examined the appellant's next question i.e. whether the decision of the GST Council granting the exemption is binding on the Department in the absence of non-issuance of corresponding Notification by the Central/State Government. Obviously the decision of GST Council is final and binding on the State and Central Government and accordingly, as per the decision of the council, Notification No.51/96-customs dated 23.07.1996 was amended providing for exemption from levy of IGST on import of goods. GST council is a constitutional body to formulate GST policies and to make recommendation to the Union and the State. Accordingly, every notification, circular or orders issued by the Central and State Governments are duly vetted by the GST Council. However issues pertaining to rate of tax and tax concessions/exemptions have to be as per the statutory notifications.

4.5. The last question of the Appellant was "whether the concessional rate of GST/IGST at the rate of 5% vide Notification No-45-CGST (Rate), Dt: 14.11.2017 and Notification No-47-IGST(Rate), Dt: 14.11.2017 are applicable only for supply of specified indigenous equipments to the eligible Institutions fulfilling conditions as specified under Column-(4) of the said notification with effect from 15.11.2017. In this regard, it is clarified that Government of India, Ministry of Finance (Department of Revenue) vide the aforesaid notifications exempts in excess of 5% (2.5% in case of CGST) the



specified goods as listed under column (3) of the said notification to specific institutions subject to the conditions as specified in the corresponding entry in column(4) of the said notification. The said notifications do not distinguish between imported and indigenous goods. The specified goods are (a) Scientific and technical instruments, apparatus, equipment (including computers); (b) accessories, parts, consumables and live animals (for experimental purposes); (c) Computer software, Compact Disc Read only Memory (CDROM), recorded magnetic tapes, microfilms, microfiches; (d) proto-types, the C.I.F value of which does not exceed rupees fifty thousand in a financial year. Therefore, concessional rate of IGST at 5%, CGST @ 2.5% and SGST @ 2.5% vide the aforesaid Notifications is applicable to supply of all the specified goods as mentioned above whether imported or indigenous.

5.0. Accordingly, the AAR, Odisha has summed up their rulings as follows:-

- (i) Notification No-51/1996-Customs, dated 23.07.1996 read with Notification No-43/2017-Customs dated 30.06.2017 and Minutes of the 14th GST Council Decision dated 18th / 19th may, 2017 is applicable to the Applicant for import of specified equipments as listed under column (3) of the aforesaid notifications and the said notifications are not applicable to the OEM suppliers of imported equipment.
- (ii) The scope of issuing a ruling u/s 98 of the OGST/CGST Act is limited to the extent prescribed in sub-section (2) of Section 97 of the OGST/CGST Act. A ruling on whether the decision of the GST Council granting the exemption is binding on the Department in the absence of non-issuance of corresponding Notification by the Central/State Government is not within the Competence and mandate of the Authority of Advance Ruling constituted u/s 96 of the OGST Act.
- (iii) Concessional rate of GST/IGST at 5% vide Notification No- 45-CGST (Rate), DT: 14.11.2017 and Notification No-47-IGST (Rate), DT: 14.11.2017 is applicable to the goods as discussed in earlier Para whether imported or indigenous.

6.0. The appellant in its ground of appeal, has assailed the ruling of AAR inter-alia on the following grounds:-

- i. That, the First Ruling of AAR that, Notification No-51/1996-Customs, Dt: 23.07.1996 and Minutes of the 14th GST Council decision dated 18th/ 19th May, 2017 is applicable to the Applicant for import of specified Equipments as listed in column (3) of the aforesaid



notification and the said notification is not applicable to OEM suppliers of Imported Equipments is factually not correct, since Column-4(1) of the said Notification refers to "The Goods are imported by or delivered to" meaning thereby, goods imported by OEM suppliers and delivered to the specified Institutions are also exempted from IGST levy.

- ii. That the AAR erred in concluding vide its Third Ruling that the Concessional rate of GST/IGST at 5% vide Notification No-45-CGST (Rate), Dt: 14.11.2017 and Notification No-47-IGST (Rate), Dt: 14.11.2017 are applicable for goods mentioned at para-6.3.0 as above whether imported or indigenous, since Goods imported by or delivered to the specified Institutions are exempted from levy of IGST vide Notification no-51/1996-Customs, Dt: 23.07.1996 read with Minutes of the 14th GST Council Decision.
- iii. The AAR did not consider the submission of the Appellant that, the Explanation to Section-6 of IGST Act and Section-11 of the CGST and OGST Act, 2017 provides that, "No Registered person shall collect tax in excess of the effective rate," which is unlawful and therefore liable to be reversed.
- iv. The Rulings of the AAR, Odisha is contrary to the intent of the Notification No-51/1996-Customs, DT: 23.07.1997 read with Minutes of the 14th GST Council Decisions, which is bad in law and liable to be reversed.

7.0. During the course of hearing on 03.06.2019, Shri Pramod Kumar Panda, Chartered Accountant on behalf of the Appellant reiterated the points as stated in its Ground of Appeal and submitted that in view of Notification No-51/1996-Customs, DT: 23.07.1997 as amended read with the Minutes of the 14th GST Council Decisions, they should have been granted full IGST exemptions in respect of procurement of imported goods through Agents of O.E.M.

8.0. We have considered the submission of the Appellant in their Grounds of Appeal as well as in the course of personal hearing. The moot point raised by the Appellant is applicability of Notification No-51/1996-Customs, Dt: 23.07.1996 in the facts and circumstances of the case. Notification No 51/1996 dated 23.07.1996 as amended exempts from payment of Customs Duty in excess of 5% of the duty of Customs leviable as per First Schedule to the Customs Tariff Act, 1975 and also from the whole of the IGST to the importers (As per Column - '2' of the Table annexed to the said Notification) for import of such specified goods (As per Column-'3' of the Table annexed to



the said notification), subject to such conditions as specified (Under Column-'4' of the Table annexed to the said notification).

8.1. Serial no '1' of the Col '2' of the Table, annexed to the Notification No. 51/96-Cus. dated 23.07.1996 as amended, specifies the name of the importer like Public funded research institution or a university or an Indian Institute of Technology or Indian Institute of Science, Bangalore or a Regional Engineering College, other than a hospital to whom the aforesaid exemption is applicable. To avail the aforesaid exemption, the primary requirement is - the importer must be a Public funded research institution or any other institution as specified in Column '2' against serial No.1 of the Table as referred to above. The said institution can avail the intended exemption on import of equipments as mentioned under Column '3' of the said Table (in the Annexure to Notification No.51/96-Cus. dated 23.07.1996 as amended) and subject to fulfillment of conditions as specified under Column '5' of the said Table. In case of import by the agents of the Original Equipment Manufacturers and subsequent supply to the Appellant, the primary requirement i.e. importer should be Public funded research institution is not satisfied.

8.2. On examining the Appellant's claim, the AAR, Odisha observed that the appellant satisfies the requirement of being a Public funded research institution as provided in Notification No-51/1996-Customs, dated 23.07.1996 read with Notification No-43/2017-Customs dated 30.06.2017 and ruled accordingly for being entitled to the exemption from levy of IGST on import of specified goods as listed under column (3) of the aforesaid notification.

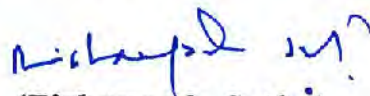
8.3. As regards non-applicability of Notification no 51/1996-Customs, dated 23.07.1996 as amended to the OEM suppliers of imported equipments as ruled by the AAR, Odisha, we are of the view that in this Appeal the Appellant is before us but not OEM suppliers of the Appellant. The relevant contract/agreement/ purchase order of the Appellant with the OEM supplier, purchase order of the OEM supplier with the overseas supplier, import documents such as invoice, bill of lading, and import general manifesto are not part of the Appeal Memorandum. In the absence of such documents, it is not possible on our part to examine the status of the Appellant vis-à-vis the OEM supplier, when import undertaken through such supplier. Further, OEM suppliers of the Appellant are not party to this appeal. Therefore, we are refraining ourselves to pass any specific order with respect to import by such OEM supplier.



8.4. The appellant also referred to the Minutes of the 14th GST Council Meeting where-in the GST Council approved exemption/concessions from IGST with reference to Notification no 51/1996-Customs, dated 23.07.1996 as amended. Government issued Notification No 43/2017-Customs, dated 30.06.2017, to give effect to the decisions of the GST council with effect from 01.07.2017. Accordingly, the AAR, Odisha in their rulings ordered in favour of the Appellant that Notification No-51/1996-Customs, dated 23.07.1996 read with Notification No-43/2017-Customs dated 30.06.2017 is applicable to the Appellant for import of specified goods as listed under column (3) of the aforesaid notifications.

8.5. One of the issues raised by the Appellant is - the AAR did not consider their submission that, the Explanation to Section-6 of IGST Act and Section-11 of the CGST and OGST Act, 2017 provides that, "No Registered person shall collect tax in excess of the effective rate". Collection of GST in excess of the prescribed rate is unlawful and therefore liable to be reversed. On going through the appeal memo, we observe that the appellant could not adduce any material to support their contention that their supplier has charged over and above the effective rate of duty. As such we find such claim preposterous and academic in nature. As and when the Appellant notices any overcharging of CGST/OGST/IGST by their OEM supplier, they may bring those facts to the notice of the jurisdictional officers of such OEM supplier for necessary action.

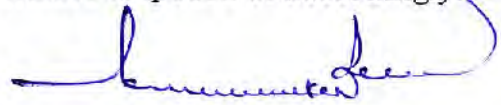
9. In view of our aforementioned findings, the Rulings pronounced by the Advance Ruling Authority, Odisha is thus correct and justified. Thus, the appeal filed by the Appellant fails and the ruling of the Odisha Authority for Advance Ruling pronounced vide Order No 07/ODISHA-AAR/2018-19 dated 13.02.2019, is upheld. The instant appeal stands disposed of accordingly.



(Bishnupada Sethy)

Member

ODISHA APPELLATE AUTHORITY
FOR ADVANCE RULING



(Naresh Penumaka)

Member

ODISHA APPELLATE AUTHORITY
FOR ADVANCE RULING

