GUJARAT AUTHORITY FOR ADVANCE RULING, GOODS AND SERVICES TAX, D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	

ADVANCE RULING NO. GUJ/GAAR/R/102/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/30)
Date:14.10.2020

Name and address of the applicant	:	M/s. SPX Flow Technology (India) pvt. ltd., Survey No.275, Odhav road, Ahmedabad-382415.
GSTIN of the applicant	:	24AAACS7234B1ZU
Date of application	:	23.07.2020
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(e) Determination of the liability to pay tax on any goods or services or both. (*g*) 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.
Date of Personal Hearing	:	24.09.2020 (through video conferencing)
Present for the applicant	:	Shri Amal P.Dave.

B R I E F FA C T S

The applicant M/s. SPX Flow Technology (India) pvt. ltd. located at Survey No.275, Odhav road, Ahmedabad-382415 is a company engaged in the business of manufacture of goods like pumps designed for handling water, single and multi-stage pumps designed for handling water, single and multi-stage pumps, dairy machine etc. falling under Chapter 84 and other such products which are classifiable under Chapter 84 of the GST Tariff. The applicant also carries out business of trading in such goods.

2. The applicant has further stated that the present application is in respect of trading by the applicant in foreign countries and that trading business is undertaken in the following manner:

(1) The applicant's parent company located in Poland is engaged in shipping goods such as spare parts of dairy machinery to recipient customer company located in Bangladesh. The transaction involves generation of one invoice by M/s. SPX Flow Technology, Poland to the applicant and generation of another invoice by the applicant on the recipient company which is located in Bangladesh.

(2) The recipient customer company in Bangladesh which is M/s. BRAC Dairy and Food Project, receives such dairy machinery and its spare parts directly from SPX Flow Technology, Poland. In other words, the goods are directly delivered from Poland to the customer located at Dhaka on CIF basis. While undertaking this transaction, the invoices are generated parallel to each other, whereby M/s. SPX Flow Technology, Poland raises a set of invoices to SPX Flow Technology India

pvt.ltd.(herein the applicant) and at the same point of time, the applicant company raises another set of invoice to M/s. BRAC Dairy and Food Project, Bangladesh. Copies of these invoices, purchase orders and relevant documents are attached along with the application.

(3) As it ordinarily happens in the international trade involving multiple parties, a purchase order is received by the applicant from the customer of Bangladesh (i.e. BRAC Dairy and Food Product) specifying therein their requirements in terms of the components, parts etc., and quantity required.

(4) After receiving such order, the applicant would place its purchase order to the polish supplier (i.e. M/s. SPX Flow Technology, Poland) specifying therein details of the goods required, quantity of such goods etc. The details like name and address of the applicant's customer at Bangladesh are also notified to the polish supplier while placing the PO.

(5) Thereupon, the Polish supplier would dispatch the goods directly to the applicant's customer of Bangladesh and documents for transportation of the goods directly from Poland to Bangladesh are also prepared and issued by M/s. SPX Poland.

(6) A VAT invoice is issued by SPX Flow Technology, Poland to the applicant and the applicant has to make payment of the price of the goods so invoiced by the Polish supplier and such payment is actually made also by the applicant to SPX Flow Technology, Poland by following the normal banking channel.

(7) The applicant would issue its commercial invoice to the customer at Bangladesh, and the customer makes payment of the price of the goods so invoiced to the applicant directly.

3. The applicant has submitted that the documents referred to hereinabove are specimen purchase orders between the parties; that VAT invoice and commercial invoice issued by the concerned parties and such documents shows the method of the transaction between three parties involved; that the applicant purchases the goods from SPX Flow Technology, Poland and resells such goods to the customer of Bangladesh but such purchase and resale are made without bringing the goods to India; that in the present case, the invoice is raised by SPX Flow Technology, Poland to the applicant, however the goods are never brought into India and such goods do not cross the customs frontiers of India but are always directly exported from Poland to Bangladesh and therefore the present transaction is not a transaction of import of goods in India; that what is import of goods has been laid down in Section 2(10) of the IGST Act, 2017, which defines import of goods as under:

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

4. The applicant has further submitted that as per the definition of import laid down in the IGST Act, 2017, the transaction undertaken by the applicant does not constitute import for the purpose of the IGST Act, 2017 considering the fact that the goods are not physically brought into India from outside India; that Section 3(7) of the Customs Tariff Act is made applicable to goods imported into India in so far as levy of IGST on such goods is concerned; that in the present transaction, supply has taken place outside India and the Indian GST provisions will not apply to the transaction; that Section 1 of the CGST Act and Section 1 of the IGST Act, 2017 provide that the GST Acts apply to the whole of India except the state of Jammu and Kashmir; that GST is only applicable to supply as defined under Section 7 of the CGST Act, 2017 within

the territory defined as India; that in the present case the sale of goods has taken place from Poland where the goods are located and the delivery has been directly given in Bangladesh; thus none of the territories involved in export and import falls within the territory of India and hence such supply would not be covered within the ambit of CGST Act, 2017 or the IGST Act, 2017; that the applicant refers to the relevant provisions and more particularly to Schedule 3(7) of the CGST Act, 2017 which clearly indicates that the present transaction is not eligible to tax under the CGST Act, 2017 or the IGST Act, 2017; that Section 3(7) of the Customs Tariff Act, 1975 as amended by the Taxation Law Amendment Act, 2017 stipulates as to when an article imported into India is chargeable to Integrated tax. The applicant has mentioned the relevant portion of Section 3 of the Customs, Tariff Act, as amended as under:

"(7) 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).

(8) For the purposes of calculating the integrated tax under sub-section (7) on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of-
(a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and .
(b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962 (52 of 1962), and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9).

(12) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act.

5. The applicant has submitted that the Customs Act, 1962 lays down the provisions when imported goods are to be considered as dutiable goods under the Act for levy of IGST and has reproduced Section 12 of the Customs Act as under:

"12.Dutiable goods. - (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975, or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government."

6. The applicant has stated that from the combined reading of the relevant provisions of the IGST Act, Customs Tariff Act and the Customs Act, it comes out that IGST can be levied and collected only when the duties of customs are assessed on the imported goods and on the duty that is determined under Section 15 of the Customs Act, 1962; that in the present case, the goods are not crossing the customs frontiers of India and therefore the goods cannot be considered as 'imported goods' for the purpose of levy of customs duty and also for the levy of IGST on such goods and therefore in the present case, IGST cannot be levied on this transaction under the Customs Tariff Act, 1975 considering such transaction to be a transaction of import of goods. Further, the definition of export of goods under Section 2(5) of the IGST Act, 2017 is as under:

"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".

7. The applicant has further submitted that on the perusal of the definition of export of goods, it is clear that since the goods are not present in India, there is no question of taking the goods out of India at a place outside India and hence, not being exported goods; that therefore IGST cannot be levied treating this transaction as a transaction of import of goods nor of export of goods; that the present transaction can only be considered as an out and out transaction of supply of goods by a person located in the "non taxable territory" to a person located in the "non taxable territory"; that therefore such transaction between two parties located in the non taxable territory, cannot fall within the purview of the GST Laws; that Section 1 of the CGST Act, 2017 read with Section 1 of the IGST Act, 2017 makes it clear that both these Acts shall extend to the whole of India; that in other words, these Acts do not cover extra territorial activities undertaken beyond the territory of India; that the Hon'ble Supreme Court in the case of M/s. GVK Industries ltd. v/s Income Tax Officer reported at 2017(48)STR 177 has held that the parliament has the right to make laws which extend beyond India and cover activities which are beyond the territory of India; that the Apex Court has also observed that the parliament has to exercise such power and has to frame laws explicitly as regards covering transactions which are taking place beyond the taxable territory of India and that such application of the act cannot be made by any delegated legislation or by way of mere interpretation; that in the present case, the parliament has in its wisdom made it clear that the application of the CGST Act, 2017 and IGST Act, 2017 is limited to the activities taking place within the territory of India and that these acts are only applicable to events that take place within the territory of India.

8. The applicant has further submitted that the question whether the applicant is a supplier of goods, is required to be determined in order to see whether the IGST Act or the CGST Act, 2017 would have any application, and whether the present transaction is within the territory of India and exigible to tax under India taxation laws. The applicant has mentioned the definition of recipient under Section 2(93) of the CGST Act, 2017 as under:

"(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;"

9. The applicant has further submitted that as per the definition of recipient, it is clear that the recipient is a person who is liable to pay the consideration for the supply of goods; that in the present case, the recipient of the goods is M/s. BRAC Dairy and Food Project, Bangladesh in as much as M/s. BRAC Dairy and Food Project is liable for paying the consideration for the goods namely dairy machinery and its components, spare etc. The applicant has also stated that it is also relevant to see in the present case, as to who is the supplier of such goods and has mentioned the definition of 'supplier' as given in Section 2(105) of the CGST Act, 2017 as under:

"(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;"

10. The applicant has further submitted that the definition of supplier as mentioned in Section 2(105) makes it very clear that 'supplier' is a person who is physically supplying the goods; that in the present case, the physical supplier of the goods i.e. the person who actually supplies the goods to the recipient is M/s. SPX Flow Technology, Poland; that the definition of supplier does not provide that a person who is raising the invoice on the other party is deemed to be a supplier; that the definition of the term 'supplier' only covers that person who physically supplies the goods as the supplier; that in other words the person who causes actual movement of the goods is the supplier and in the present case M/s.SPX Flow Technology, Poland is the supplier of these goods in as much as the goods are supplied directly from Poland by M/s.SPX Flow Technology, Poland and the movement directly terminates at Bangladesh; that therefore since in the present case, M/s.SPX Flow Technology, Poland is the supplier of such goods and M/s. BRAC Dairy and Food Project, Bangladesh is indeed the recipient of the goods, the place of supply is beyond the territory of India.

11. The applicant has further submitted that both the supplier and the recipient are located in the non taxable territory, beyond India; that the principle in respect of extraterritorial jurisdiction for taxation as laid down by the Hon'ble Apex Court in case of GVK Industries ltd. shows that the supplier should be located in India i.e. in the taxable territory; that the present one is an out and out transaction which has nothing to do with land mass of India and therefore, the CGST Act, 2017 and IGST, 2017 have no application in the facts of the present case; that the question regarding the leviability of Integrated Goods and Services Tax on High Sea Sales of imported goods and point of collection thereof was raised before the Central Board of Excise and Customs; that the CBEC Circular No.33/2017-Customs dated 01.08.2017 has clarified that such transactions take place beyond the Customs frontiers of India and therefore the same is not exigible to IGST because IGST can only be levied when the goods are imported into India and not otherwise; that the same reasoning is applicable in the present case in as much as the goods do not cross the Customs frontiers of India and are always in the foreign territory which is beyond India; that even otherwise, the provisions of the IGST Act, 2017 are not applicable in as much as the IGST Act, 2017 is only applicable to the transactions taking place within the territory of India; that to make the position clear beyond any doubt, the legislature has made an amendment in the CGST Act, 2017 wherein, in Schedule 3 of the CGST Act, 2017, entry No.7 has been inserted vide Notification No.2/2019-Central Tax dated 29.01.2019 and reads as under:

"Schedule 3(7):- Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India."

12. The applicant has submitted that Schedule 3 of the Act specifies those transactions which shall be neither treated as supply of goods nor as supply of service and on a perusal of the new entry made in Schedule 3, it is clear that the legislature has an intent not to levy tax on the transactions like in the present case; that as per Entry No.7 in Schedule 3, when goods are supplied from a non taxable territory to another place in the non taxable territory and such goods are not entering in India at any point of time, then such transaction is neither a supply of goods nor a supply of services ; that in the present case, by virtue of this fiction created in Schedule 3, the present transaction is not to be treated as a transaction of supply and when a transaction is not to be treated as a transaction of supply, then automatically the CGST Act and the IGST Act, 2017 are not applicable in as much as GST cannot be levied on transactions which do not constitute a supply; that a combined reading of Sections 9 and 7 of the CGST Act, 2017, makes it clear

that GST is a tax on the supply of goods or services or both, and that activities specified in Schedule 3 are not subjected to levy of GST by virtue of Section 7(2)(a);that Section 9 of the CGST Act provides that there shall be levied a tax called Central Goods and Service Tax on all inter-state supply of goods or services or both; that similarly, Section 5 of the IGST Act, 2017 lays down that there shall be levied a tax called Integrated Tax and Service Tax on all inter-state supplies of goods or services or both; that the charging event is thus 'supply' under both the enactments and section 2(21) of the IGST Act provides that 'supply' shall have the meaning as assigned to it in Section 7 of the CGST Act; that therefore transactions which are neither a supply of goods nor services under Section 7 of the CGST Act are not within the scope of levy and collection of tax under the IGST Act, 2017; that the provisions of the CGST Act, 2017 as regards the scope of supply and the schedules thereof are applicable to the IGST Act, 2017 also by virtue of Section 20 of the IGST Act, 2017 and that therefore it is submitted that the transaction in question falls within Entry No.7 in Schedule 3 of the CGST Act, 2017 and accordingly, no tax can be levied on such transaction.

13. The applicant has further submitted that the transaction in question falls within entry No.7 in Schedule 3 of the CGST Act, 2017 and accordingly, no tax can be levied on such transaction; that the authority of advance ruling, Kerala has in similar circumstances held vide Order No.CT/2275/18-C3 dated 26.03.2018 that transactions in which goods are moving from one place overseas to another place overseas and such goods are never crossing the customs frontiers of India; in other words, never reaching the territory of India at any point would not be eligible for GST; that similarly in another ruling by the authority of advance ruling, Maharashtra in the case of M/s. Enmarol Petroleum pvt.ltd. reported at 2019 (20) GSTL 442 has held that the transactions like the present one are not eligible to GST and such transactions would be non taxable supplies as per Section 2(78) of the CGST Act, 2017; that in other words such supply of goods would be not leviable to tax; that the principle upheld by the advance ruling in the case of M/s. Enmarol Petroleum India pvt.ltd. is now clarified by the Parliament by the introduction of Entry No.7 in Schedule 3 of the CGST Act, 2017. The applicant has submitted copies of the aforementioned two decisions of the advance ruling authorities. The applicant has concluded his submission by stating that in the above premises, they submit that an appropriate order in the present advance ruling application may be passed. However, they pray before the advance ruling authority 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 exigible 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.

14. The applicant has asked the following questions seeking Advance Ruling on the same:

(1) Whether the activity undertaken by the applicant is covered by Entry No.7 in Schedule 3 of the CGST Act, 2017?

(2) Whether the applicant is liable to pay IGST on out and out transactions taking place beyond the Customs frontiers of India?

DISCUSSION & FINDINGS:

15. We have considered the submissions made by the applicant in their application for advance ruling as well as the arguments/discussions made by their representative Shri Amal P. Dave at the time of personal hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

16. At the outset, we would like to state that the provisions of both the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 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 similar provisions of the GGST Act. However, looking to the present application submitted by the applicant and the issue in hand, we will also be required to make references to the IGST Act, 2017, the Customs Tariff Act, 1975 as well as the Customs Act, 1962.

17. As per the submission of the applicant, the present application is in respect of trading by the applicant in foreign countries which is carried out as follows:

(i) The applicant's parent company located in Poland is engaged in shipping goods such as spare parts of dairy machinery to recipient customer company namely M/s. BRAC Dairy and Food Product located in Bangladesh.

(ii) A purchase order is received by the applicant from the aforementioned customer of Bangladesh specifying therein their requirements in terms of the components, parts etc., and quantity required.

(iii) After receiving such order, the applicant would place its purchase order to the polish supplier (i.e. M/s. SPX Flow Technology, Poland) specifying therein details of the goods required, quantity of such goods etc. The details like name and address of the applicant's customer at Bangladesh are also notified to the polish supplier while placing the PO.

(iv) Thereupon, the Polish supplier would dispatch the goods directly to the applicant's customer of Bangladesh and documents for transportation of the goods directly from Poland to Bangladesh are also prepared and issued by M/s. SPX Flow Technology, Poland.

(v) A VAT invoice is issued by SPX Flow Technology, Poland to the applicant and the applicant has to make payment of the price of the goods so invoiced by the Polish supplier and such payment is actually made also by the applicant to SPX Flow Technology, Poland by following the normal banking channel.

(vi) The applicant would issue its commercial invoice to the customer at Bangladesh, and the customer makes payment of the price of the goods so invoiced to the applicant directly.

(vii) The recipient customer company in Bangladesh which is M/s. BRAC Dairy and Food Project, receives such dairy machinery and its spare parts directly from SPX Flow Technology, Poland i.e. the goods are

directly delivered from Poland to the customer located at Dhaka on CIF basis.

(viii) While undertaking this transaction, the invoices are generated parallel to each other , whereby M/s. SPX Flow Technology, Poland raises a set of invoices to SPX Flow Technology India pvt.ltd.(herein the applicant) and at the same point of time, the applicant company raises another set of invoice to M/s. BRAC Dairy and Food Project, Bangladesh.

18. The applicant has asked the following questions seeking Advance Ruling on the same:

(1) Whether the activity undertaken by the applicant is covered by Entry No.7 in Schedule 3 of the CGST Act, 2017?

(2) Whether the applicant is liable to pay IGST on out and out transactions taking place beyond the Customs frontiers of India?

19. On going through the submissions of the applicant as well as the questions raised by them seeking Advance ruling on the same, we find that the main issue to be examined is whether the aforementioned activity carried out by the applicant in which goods are shipped directly from the vendor located outside India (in the instant case M/s. SPX Flow Technology, Poland) to the customer located outside India (in the instant case M/s. BRAC Dairy and Food Project, Bangladesh) would be covered under the scope of GST or otherwise for which we will required to refer to the relevant sections of the IGST Act, 2017, the CGST Act, 2017, the Customs Tariff Act, 1975 as well as the Customs Act, 1962.

20. As per Section 2(10) of the Integrated Goods and Services Tax Act, 2017, "import of goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India. Also, as per sub-section (2) of Section 7 of the Integrated Goods and Services Tax Act, 2017, supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-state trade or commerce. Further, sub-section(1) of Section 5 of the Integrated Goods and Services Tax, 2017 states as under:

"Section 5(1): subject to the provisions of sub - section (2), there shall be levied a tax called the integrated goods and services tax in all inter-state supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under Section 15 of the Central Goods and Services Tax Act, and at such rates, not exceeding forty percent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person;

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975, on the value determined under the said Act at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962."

21. The Customs Tariff Act, 1975 was amended by The Taxation Laws Amendment Act, 2017 by introducing sub-section (7) in Section 3 of the Customs Tariff Act, 1975 with effect from 01.07.2017 to enable collection of integrated tax on the goods imported. The relevant provisions of the amended Section 3 of the Customs Tariff Act, 1975 reads as follows:

"(7) 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).

(8) For the purposes of calculating the integrated tax under sub-section (7) on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of-
(a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and .
(b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962 (52 of 1962), and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9).

(12) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act."

22. Further, the relevant provisions of the Customs Act, 1962 are reproduced below:

"SECTION 12:
Dutiable goods. - (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975, or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

SECTION 15: Date for determination of rate of duty and tariff valuation of imported goods. –
(1) Rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force, -
(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;
(b) in the case of goods cleared from a warehouse under section 68, on the date on which a bill of entry for home consumption in respect of such goods is presented under that section;
(c) in the case of any the goods, on the date of payment of duty: Provided that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft or the vehicle by which the goods-are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.
(2) The provisions of this section shall not apply to baggage and goods imported by post."

23. From a combined reading of the above provisions of the IGST Act, 2017, the Customs Tariff Act, 1975, and the Customs Act, 1962, it is evident that the integrated tax on goods imported into India shall be levied and collected at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962 and on the date determined as per provisions of Section 15 of the Customs Act, 1962. Further, we find that the issue has already been decided by Authority for Advance Ruling, Kerala vide ORDER No.CT 12275/18-C3 DATED 26/03/2018 in the case of M/s Synthite Industries Ltd., Ernakulam, Kerala wherein it was held that "*the goods are liable to IGST when they are imported into India and the IGST is payable at the time of importation of goods into India; The applicant is neither liable to GST on the sale of goods procured from China and directly supplied to USA nor on the sale of goods stored in the warehouse in Netherlands, after being procured from China, to customers, in and around Netherlands as the goods are not imported into India at any point.*"

24. Here, we would also like to refer to Circular No. 33/2017 Customs dated August 1, 2017 issued in the context of 'High Sea Sales', wherein it has been clarified that sub section (12) of section 3 of the Customs Tariff Act, 1975 specifies that all duties, taxes, cesses etc shall be collected at the time of importation i.e. when the import declarations are filed before the customs authorities for the custom clearance purposes. The relevant portion of the Circular is reproduced below:

"4. GST council has deliberated the levy of Integrated Goods and Services Tax on high sea sales in the case of imported goods. The council has decided that IGST on high sea sale (s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance.

5. The above decision of the GST council is already envisioned in the provisions of subsection (12) of section 3 of Customs Tariff Act, 1975 inasmuch as in respect of imported goods, all duties, taxes, cesses etc shall be collected at the time of importation i.e. when the import declarations are filed before the customs authorities for the customs clearance purposes. The importer (last buyer in the chain) would be required to furnish the entire chain of documents, such as original Invoice, high-seas-sales-contract, details of service charges/commission paid etc, to establish a link between the first contracted price of the goods and the last transaction. In case of a doubt regarding the truth or accuracy of the declared value, the department may reject the declared transaction value and determination the price of the imported goods as provided in the Customs Valuation rules."

25. The above circular is applicable in the present case. Similarly, we find that, where, Bill of Entry/import declarations are not being filed with respect to the goods so procured, GST would not be leviable. Further, we find that as far as the leviability of GST on outward supply from place of vendor to customer is concerned, it is to mention that the thumb-rule for determining the taxability of any transaction is to ascertain whether the transaction tantamount to 'supply' in terms of the provisions of law. The term 'supply' has been defined at Sec. 7 of the CGST Act, 2017 which reads as under:

"(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;"

Further, the term 'supplier' as given in Section2(105) of the CGST Act, 2017 reads as under:

"(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;"

26. On going through the above definitions and comparing the same to the transactions involved in the issue on hand, we find that the applicant, who is the third party in the transaction involved in the instant case, is acting as an agent on behalf of the supplier i.e. SPX Flow Technology, Poland and is therefore covered under the definition of 'supplier' as mentioned in Section2(105) of the CGST Act, 2017. We also find that the applicant who is the supplier in the instant case, is selling goods for a consideration in the course or furtherance of business and such transaction tantamount to 'supply' in terms of the definition of 'supply'.

27. Once the test of supply is met with, the next step is to determine whether the same is an Intra-state supply or inter-state supply. In this regard it is pertinent to examine the provisions of Section 7 of the IGST Act, 2017 which reads as under:

7. (1) Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in—
(a) two different States;
(b) two different Union territories; or
(c) a State and a Union territory, shall be treated as a supply of goods in the course of inter-State trade or commerce.

(2) Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.
(3) Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in—
(a) two different States;
(b) two different Union territories; or
(c) a State and a Union territory, shall be treated as a supply of services in the course of inter-State trade or commerce.

(4) Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.

(5) Supply of goods or services or both,—
(a) when the supplier is located in India and the place of supply is outside India;
(b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or
(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce."

28. The above statute indicates that in the event that the supplier is located in India and the place of supply is outside India, such supplies shall be treated as Inter-state supplies. The place of supply in the instant case would be governed by the provisions of Section 10 of the IGST Act, 2017 of which the relevant text reads as under:

"10. (1) The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,—
a) where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient."

In the instant case, it is an undisputed fact that the supply involves movement of goods and therefore the place of supply would be the termination for delivery to the recipient. The goods under consideration are supplied to overseas buyers as declared by the applicant and as such the place of supply will be a place outside India. Further, the supplier is the applicant who has declared the principal place of business within India and issues the invoices for sale of such goods.

29. The above indicates that the supplier is located in India and the place of supply is outside India and as such the same would be Inter-state supply in terms of the provisions of Section 7(5) of IGST Act, 2017. Thus, it is very clear that the transaction undertaken by the applicant tantamount to supply and is an Inter-state supply. Having travelled thus far, it is obvious that IGST will be leviable unless the goods are exempted or are zero-rated supplies which have been defined as export of goods or services in terms of the provisions of Section 16 of the IGST Act, 2017. In the instant case, the applicant has not stated the

nature of goods and has not declared that such goods are exempted under any notification issued under the powers of Section 11 of the CGST Act, 2017 and the corresponding State Act or Section 6 of the IGST Act. Thus, the only possibility of goods not subject to levy of IGST would be the circumstances where the goods are exported.

30. The term 'export of goods' has been defined under sub section 5 of Section 2 of IGST Act, 2017 which reads as under:

"Export of goods would mean—'With its grammatical variations and cognate expressions, means taking goods out of India to a place outside India'."

31. The above definition indicates that the act of taking goods out of India to a place outside India qualifies as export. In the instant case, the goods have not crossed the Indian customs frontier and as such it is clear that the goods are not physically available in the Indian territory. When the goods are not physically available in the Indian territory, the question of taking goods out of India does not arise. Thus, the subject transaction does not qualify as export of goods. In view of the above, it appears that the transaction is covered under the ambit of Inter-state supply and is neither exempted nor covered under export of goods or services. Thus, the theory of elimination takes us to the conclusion that such supplies will be subject to levy of IGST. However, we also find that vide Central Goods and Services Tax (Amendment) Act, 2018, Schedule-III of the CGST Act, 2017 (which covers activities or transactions which shall be treated neither as a supply of goods nor a supply of services) has been amended with effect from 01.02.2019 (as per Notification No.02/2019-Central Tax dated 29.01.2019) and entries 7 and 8 have been inserted under the said Schedule. The same reads as under:

"SCHEDULE III of CGST Act 2017:

"Activities or transactions which shall be treated neither as a supply of goods nor a supply of services".

Newly inserted paras after 6:

7. Supply of goods from a place in the non-taxable territory to another place in the non- taxable territory without such goods entering into India.

8.

(a) Supply of warehoused goods to any person before clearance for home consumption;
(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.";

Newly inserted explanation 2:

'Explanation 2.—For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962."

32. Thus, it can be seen from the above that, in view of the amendment in Schedule-III of the CGST Act, 2017, supply of goods from a place in the non-taxable territory to another place in the non- taxable territory without such goods entering into India shall be treated neither as a supply of goods nor a supply of services with effect from 01.02.2019. Since in the instant case, the supply of goods takes place from Poland (which is a non-taxable territory) directly to Bangladesh (which is also a non-taxable territory) without the said goods entering into India, the transactions mentioned in the instant case are similar to that as mentioned in Entry No.7 of Schedule-III of the CGST Act, 2017. Therefore, in view of the facts mentioned above, we conclude that no GST is leviable on such type of transactions which have taken place with effect from 01.02.2019 and onwards.

33. We also find that the applicant has relied on two orders issued by the Advance Ruling Authorities of Kerala and Maharashtra respectively i.e. (i) Order No.CT/2275/18-C3 dated 26.03.2018 issued by the Advance Ruling Authority of Kerala in the case of M/s. Synthite Industries ltd., Ernakulam, Kerala and (ii) Order No.GST-ARA-53/2018-19/B-127-Mumbai dated 10.10.2018 issued by the Advance Ruling Authority of Maharashtra in the case of M/s. Enmarol Petroleum pvt.ltd. reported at 2019 (20) GSTL 442, in support of their contention. In this context, we would like to emphasise here that as per Section 103 of the CGST Act, 2017, the Advance Ruling pronounced by the Authority or the Appellate Authority shall be binding only on the applicant who had sought it and on the concerned officer or the jurisdictional officer in respect of the concerned applicant, and therefore, cannot be relied upon by the applicant in the instant case.

34. In the light of the aforesaid circumstances, we rule as under:

R U L I N G

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

Answer: 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?

Answer: 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.

(**SANJAY SAXENA**)
MEMBER

(**MOHIT AGRAWAL**)
MEMBER

Place: Ahmedabad
Date: 14.10.2020.