THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX

(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/DS-RM/15/2022-23 **Date-** 13.01.2023

BEFORE THE BENCH OF

(1) DR. D.K. SRINIVAS, MEMBER (CENTRAL TAX)

(2) SHRI RAJEEV KUMAR MITAL, MEMBER (STATE TAX)

Name and Address of the Appellant:	M/s. Portescap India Private Limited, Unit no. 2, SDF-1, SEEPZ-SEZ, Andheri East, Mumbai, Maharashtra - 400096.
GSTIN Number:	27AAACK4896K1ZZ
Clause(s) of Section 97, under which the question(s) raised:	(b) applicability of a notification issued under the provisions of this Act;
Date of Personal Hearing:	25.11.2022
Present for the Appellant:	Shri S. Thirumalai, Advocate
Details of appeal:	Appeal No. MAH/GST-AAAR-01/2022-23 dated 05.04.2022 against Advance Ruling No. GST-ARA-93/2019-20/B-110, dated 10.12.2021.
Jurisdictional Officer:	Deputy/Assistant Commissioner CGST & C.Ex., Division X, Mumbai East Commissionerate.

(Proceedings under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

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 provisions under the MGST Act.

2. The present appeal has been filed under Section 100 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 M/s. Portescap India Private Limited **("the Appellant")** against the Advance Ruling No. **GST-ARA-93/2019-20/B-110, dated 10.12.2021.**, pronounced by the Maharashtra Authority for Advance Ruling (MAAR).

BRIEF FACTS OF THE CASE

3.1 The Appellant is a private limited company incorporated in India and registered under Companies Act, 1956. The Appellant has obtained GST registration, having GSTIN: 27AAACK4896K1ZZ, for its office situated at Unit no. 2, SDF-1, SEEPZ-SEZ, Andheri East, Mumbai, Maharashtra-400096.

3.2 The Appellant are *inter alia* engaged in manufacturing of customized motors in India. As the Appellant is an SEZ Unit, it is engaged in exports of the manufactured goods outside India.

3.3 The Appellant procures Rental Services from "Santacruz Electronics Export Processing Zone" (hereinafter referred to as "SEEPZ") SEZ Authority, situated at SEEPZ service centre building, Andheri East, Mumbai-400096, which is a Local authority having GSTIN 27AAALS4995G1ZH. Additionally, other services like Advocate Services and Gate Pass Services from SEEPZ are being procured wherein GST is presently being discharged by the Appellant under the Reverse Charge Mechanism.

3.4 As per the Notification No. 18/2017 - Integrated Tax (Rate) dated 05.07.2017, the Central Government exempts services imported by a unit or a developer in the Special Economic Zone for authorized operations, from the whole of the integrated tax leviable thereon under section 5 of the Integrated Goods and Service Tax Act, 2017.

3.5 The Appellant further submits that the objective of government, according a special status to SEZs include, *inter-alia*, allowing tax free procurement of goods and services with support in basic essential infrastructure facility for production of goods or services. To further add, Section 7 of SEZ Act 2005 provides for exemption to all goods or services procured from a DTA (Domestic Tariff Area) or foreign suppliers specified in first schedule. According to Section 51 of the SEZ Act 2005, the provisions of SEZ Act would have overriding effect on provisions of any other act including taxation laws.

3.6 Further Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017, the Central Government has exempted Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed five thousand rupees subject to the proviso. Additionally, in accordance with the Notification No. 13/2017 - Central Tax (Rate) dated 28.06.2017 read with Notification No. 03/2018 – Central Tax (Rate), Services supplied by Central

Government, State Government, Union territory or local authority to a business entity, the recipient of service is required to pay tax on reverse charge mechanism.

Advance Ruling Application filed by the Appellant

3.7 The Appellant had filed an application dated 07.01.2020 before the MAAR, seeking a ruling on the following questions:

(i) Whether an SEZ unit is required to comply with the reverse charge mechanism as a service recipient for local/domestic renting of immovable property services procured by the unit from SEEPZ Special Economic Zone Authority (Local Authority) in accordance with Notification No. 13/2017 - Central Tax (Rate) dated 28.06.2017 read with Notification No. 03/2018 - Central Tax (Rate) dated 25.01.2018?

(ii) Whether an SEZ unit is required to pay tax under reverse charge mechanism on any other services in accordance with Notification No. 13/2017 - Central Tax (Rate dated 28.06.2017 read with Notification No. 03/2018 - Central Tax (Rate) dated 25.01.2018?

Personal Hearing

4. Thereafter, personal hearing with regard to the application was held by the MAAR on 03.03.2020, wherein the Appellant *inter alia* made the following submissions:

(a) A conjoint reading of Section 16 of IGST Act, 2017 along with FAQ's issued by the Central Board of Indirect Taxes & Customs, make it clear that a supply to SEZ will be considered as an inter-state supply and as long as the same supply is used for authorized operations of the SEZ, the same will be zero-rated. The Default List of Services approved by the Department of Commerce **(F. No. D.12/19/2013-SEZ dated 02.01.2018)** for authorized operations specifically includes Renting of Immovable Property within its ambit.

(b) Reliance was also placed on **GMR AEROSPACE ENGINEERING LIMITED AND ANOTHER VERSUS UNION OF INDIA AND OTHERS 2019 (8) TMI 748,** wherein it was held that as long as the services are used for authorized operations of the SEZ unit, the same should be exempted from the levy of tax.

(c) The SEZ Act has an overriding effect and will prevail over any other provisions which may be inconsistent with the provisions of the SEZ Act.

5. In light of the above submissions, the MAAR, *vide* its order No. GST-ARA-93/2019-20/B-31 dated 12.03.2020, had rejected the Application as being non- maintainable by citing the provision of section 95 (a) of the CGST Act, 2017, which provides for the meaning of Advance Ruling. The MAAR in the aforesaid order dated 12.03.2020 had opined that since the Appellant are the recipient of services under consideration, and not the supplier thereof, hence they are not eligible to seek advance ruling in terms of the

provision of section 95(a) of the CGST Act, 2017, which envisages that only the suppliers of the goods or services or both are entitled to seek advance ruling on matter or questions specified under section 97(2) of the CGST Act, 2017, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by them.

Appeal before the MAAAR

6. Pursuant to the above, the Appellant had filed an appeal dated 28.08.2020 before the MAAAR and the MAAAR, *vide* its order No. MAH/AAAR/RK-SK/27/2020-21 dated 03.11.2020, held that the application is maintainable and remitted the matter back to the MAAR, directing the Advance Ruling Authority to decide the matter on merits.

Present proceedings

Impugned order i.e. GST-ARA-93/2019-20/B-110 dated 10.12.2021

7. In pursuance to the aforesaid remand back Order 03.11.2020 issued by the Maharashtra Appellate Authority, the present matter pertaining to the compliance and liability of the SEZ w.r.t discharge of tax under RCM, were taken up for decision on merits by the MAAR in October, 2021 and passed the impugned order, **GST-ARA-93/2019-20/B-110 dated 10.12.2021** received by the Appellant on 15.12.2021. The impugned order recorded the following findings:

Sl. No.	Findings	Para no.
1.	In the instant case, the Appellant are receiving renting of immovable property services from SEEPZ SEZ (local authority), hence liable to discharge tax liability under RCM as it satisfies all conditions of Notification No. 10/2017 -I.T (Rate) dated 28.06.2017 as amended, as also Question no. 41 of FAQ issued by CBIC, dated 15.12.2018.	6.62-6.65
2.	The Appellant are situated in an Exclusive Economic Zone. The term India as defined under Section 2(56) of CGST Act covers the same. Therefore, Notification 18/2017 I.T (Rate) dated 05.07.2017 is not applicable as both, the supplier and the recipient of services, are situated in India.	6.7-6.8.2

Sl. No.	Findings	Para no.
3.	The Notification No. 10/2017 -I.T. (Rate) dated 28.06.2017 as amended specifically covers Renting of Immovable Property Service, hence cannot be treated as a general notification. Further Section 16(2) itself says credit of input tax may be availed for making zero rated supplies. Also, Section 16(3) does not apply to the Appellant being a recipient. Thus, by virtue of Section 5(3) of IGST Act r/w the relevant notifications and Section 16 of IGST Act, the Appellant is liable to discharge tax under RCM. Further Section 26 of the SEZ Act 2005 has not yet been aligned with CGST or IGST Act and list of taxes under the said section does not cover CGST/IGST/SGST, therefore the same cannot be applied. The case laws relied upon are not applicable as the same pertain to service tax matters.	6.9-6.12
4.	The question w.r.t liability in respect of other services, the question is general and cannot be answered in absence of any information. The communication issued by Ministry of Finance vide letter dated 18.12.2017 relied upon by the Appellant is not a circular per se, and as such, not binding.	6.16-6.21

8. Being aggrieved by the impugned order, the Appellant has filed the present appeal.

GROUNDS OF APPEAL

Reverse charge not applicable in case of SEZ

9. Reverse charge in terms of Notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017 read with Notification No. 03/2018 - Central Tax (Rate) dated 25.01.2018 and Notification No 10/2017 - Integrated Tax (Rate) dated 28.06.2017 (hereinafter referred to as "reverse charge notification") are not applicable in the case of a SEZ Unit and there ought to be a harmonized reading of the aforesaid reverse charge notifications issued under Section 9(3) of the CGST Act 2017, or Section 5(3) of the IGST Act 2017 with the provisions of Section 16(3) of the IGST Act 2017.

10. Further, Section 16 of the IGST Act 2017 pertains to zero-rated supplies. The same is reproduced below for ease of reference: -

Section 16. (1) "zero rated supply" means any of the following supplies of goods or services or both, namely: —

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

11. In support of the principle of harmonized reading of provisions reliance has been placed on **CBIC Circular No 48/22/2018-GST dated 14.06.2018,** which provides the clarification regarding the nature of supplies made to the SEZ developers or SEZ unit as to whether any supplies of goods or services or both made to SEZ developers or SEZ unit will be treated as inter-state supplies or intra-state supplies. As per the aforesaid circular, it has been clarified that any supply made to SEZ developers or SEZ unit for authorized operation as endorsed by the specified officer of SEZ will be treated as inter-state supply even if the supplier of goods or services or both, and the place of supply are in the same state/union territory.

12. The appellant while stressing upon the conjoint reading of the above legal provisions have contended that a supply to SEZ will be considered as an inter-state supply and as long as the same supply is used for authorized operations of the SEZ, the same will be zero-rated. Further, as a recipient of supplies made by DTA to SEZ the Appellant are entitled to the option available under Section 16 of IGST Act 2017, for zero-rated supplies to provide a LUT for the supplies received from the SEEPZ SEZ and used for the authorized activities of the SEZ. Hence the Appellant are not required to make cash payment under reverse charge but receive supplies on the basis of an LUT at its option.

13. In regards to the above, the appellant have cited **Section 2 (o) of SEZ Act 2005;**

"import" means—
(i) bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or
(ii) ***receiving goods, or services by a Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone;***

14. The impugned order has referred the Appellant as an Exclusive Economic Zone unit covered under the term India as defined under Section 2(56) of CGST Act and concluded that since both the supplier and the recipient of service are located in India, therefore, Notification 18/2017 - Integrated Tax (Rate) dated 05.07.2017 is not applicable. In this regards, the Appellant is an SEZ and not an EEZ. As according to UN Convention 1982, an EEZ is an area of the sea in which a sovereign state has special rights regarding the exploration and use of marine resources. However, an SEZ is a specifically delineated duty-free enclave and shall be deemed to be foreign territory for the purposes of trade operations and duties and tariffs.

15. So, receiving goods or services by a SEZ Unit from a SEZ Developer of same SEZ or different SEZ tantamount to import of goods or services under the SEZ Act, 2005. In the instant case the SEEPZ SEZ is the Developer which is involved in the provision of

service. Therefore, in accordance to Notification No. 18/2017- Integrated Tax (Rate) dated 05.07.2017, SEZ Unit is exempted from whole of the IGST leviable under Section 5 of IGST Act, 2017.

Overriding effect of SEZ Act, 2005 and SEZ Rules 2006. Recognize Section 16 of IGST Act for domestic procurement by SEZ.

16. Without prejudice to the aforesaid submissions, the Appellant submits that the policy of the Government with regard to a special status to SEZs include, *inter-alia,* allowing tax free procurement of goods and services with support in basic essential infrastructure facility for production of goods or services. Section 7 of SEZ Act 2005, provides for exemption in respect of all goods or services procured from a DTA (Domestic Tariff Area) or foreign suppliers as specified in First Schedule. According to Section 51 of the SEZ Act 2005, the provisions of SEZ Act would have overriding effect on provisions of any other legislation including taxation laws.

17. The Appellant further relies upon the following amendments made to the SEZ Rules, 2006 in order to align the SEZ Rules, 2006 with the GST laws as well as for removal of various difficulties faced. The Central Government made the 'Special Economic Zone (Amendment) Rules, 2018, vide Notification No. G.S.R. 909 (E), dated 19.09.2018, which came into effect from 19.09.2018.

In relation to above, the aforesaid amendments provide:

Exemption to SGST :- Rule 5(5)(a) provides exemption to SEZ from 'State Goods and Services Tax'

Procedure for procurement from DTA:- The amendment substituted the existing Rule 30(1) for a new one. The newly substituted provision of 30(1) provides that the Domestic Tariff Area supplier supplying goods or services to a Unit or Developer shall clear the goods or services, **as in the case of zero-rated supply as per provisions of section 16 of the Integrated Goods and Services Tax Act, 2017 either under bond or legal undertaking or under any other refund procedure permitted under Goods and Services Tax laws** or Central Excise law, or as duty or tax paid goods under claim of rebate, on the cover of documents laid down under the relevant Central Excise law for the purpose of export by a manufacturer or supplier.

18. In light of the above, the Appellant is entitled to receive the supplies from DTA either under LUT or on payment under reverse charge in terms of Section 16 of the IGST Act 2017.

19. Therefore, on a combined reading of the SEZ Act and the Rules as aforesaid, the "reverse charge" notifications cannot have any application in this case. Also, the reverse charge notifications were issued prior to the amendment to the SEZ Rules which has been made in order to align the same with GST Laws with effect from 19.09.2018.

20. To further add, the over-riding effect of the SEZ Act and Rules have been upheld by the Courts and Tribunal in the following judgement/order:

21. The Appellant relies on the judgment in **GMR AEROSPACE ENGINEERING LIMITED AND ANOTHER VERSUS UNION OF INDIA AND OTHERS (2019 (8) TMI 748)** cited in support of the contention that the SEZ Act - Section 51 has overriding effect.

22. The **reliance has also been placed upon the case of M/s Metlife Global Operations Support Center Private Limited Vs Commissioner, Service Tax, New Delhi 2020-VIL-560-CESTAT-DEL-ST.**

23. Therefore, applying the ratio of the decisions mentioned above, the Appellant shall not be liable to payment of tax under RCM.

24. Alternatively, the Appellant submits that even for purpose of argument it is assumed that "reverse charge" notifications as aforesaid are applicable even then the SEZ unit in terms of Section 16 of the IGST 2017 could exercise the option to provide LUT as provided in respect of supplies made from DTA to an SEZ unit specifically under Section 16(3) of the IGST Act 2017.

25. This is because in terms of Section 9(3) of CGST Act or Section 5(3) of the IGST Act, the recipient of such goods or services is subject to all the provisions of the Act as if such recipient is the person liable for paying the tax in relation to the supply of such goods or services. In this context it is relevant to refer to the order passed in the earlier proceedings before the MAAAR wherein by order dated 03.11.2020 the said Authority has noted the submission on behalf of this Appellant that invoice/payment voucher under Section 31(3) is applicable in the case of the Appellant.

26. Further, the Ministry of Finance, vide letter F. No 334/335/2017-TRU dated 18.12.2017, has issued, in the context of reverse charge mechanism liability on procurement of service by International Financial Services Centre, SEZ which clarifies that – *"a Unit in SEZ or SEZ developer can procure such services, where they are required to pay GST under reverse charge, without payment of integrated tax provided the actual recipient i.e., unit in SEZ or SEZ developer, furnishes a Letter of Undertaking in place"*.

27. It has been clarified that – "The above provisions shall apply *mutatis mutandis* in respect of supply of services covered under Notification No. 13/2017-Central Tax (Rate) to a unit". However, the Appellant mentioned that the aforementioned letter was not readily available on any public domain and therefore the Appellant had filed an RTI Request in order to verify the validity / genuineness of letter.

28. The aforesaid RTI Request is disposed of as on 22.07.2021 and mentioned that – "*The said communication F. No. 334/335/2017-TRU dated 18.12.2017 is not circular perse, it was issued to the recipient on request for clarification of certain issue. The said communication is self-explanatory*".

29. So, the Communication Letter issued by Ministry of Finance vide F. No 334/335/2017-TRU dated 18.12.2017 is valid / genuine and issued by the aforesaid authority on request for clarification on RCM applicability issue.

30. Applicant would like to submit that in case any clarification / judgement is issued by board /competent authorities and if facts are similar in other case then such clarification / judgement should be followed consistently and in accordance with binding judgements / clarifications rendered by competent Board or Courts or Tribunals. In context to above, Appellant relied on the judgment of Hon'ble Gujarat High Court in case of Darshan Boardlam Ltd vs. Union of India.

31. Further, the Appellant place reliance on Hon'ble Delhi High Court judgement issued in case of Interglobe Aviation Ltd Vs. Union of India and ANR.

32. It is a settled position of law that the department cannot take contradictory stand on the same facts and issue in different proceedings. For this submission appellant relied on the following decisions;

- Damodar J. Malpani vs. CCE: 2002 (146) ELT 483 (SC)
- Ralli Enginer Ltd. vs. UOI: 2004 (4) TMI 590 – Guj. HC
- Steel Authority of India vs. CC, Bombay: 2000 (115) ELT 42 (SC)

33. The Appellant relied on the **Hon'ble CESTAT ruling in case of CESTAT Mumbai Commissioner of Central Excise, Mumbai-III Versus M/S. Narendrakumar and Co**

Therefore, the authorities should take into consideration the clarification issued by Ministry of Finance vide F. No 334/335/2017-TRU dated 18.12.2017.

PERSONAL HEARING

34. The personal hearing in the matter was held on 25.11.2022, which was attended by Shri S. Thirumalai, Advocate on behalf of the Appellant. Shri Thirumalai reiterated the earlier submissions made in the Appeal Memorandum. He cited the provisions of the SEZ

(Amendments) Rules, 2018 which provides for the necessary alignment with the GST laws by carrying out the amendments in rule 30 of the SEZ Rules, 2006 in as much as Domestic Tariff Area supplier supplying goods or services to a Unit or Developer shall clear the goods or services, as in the case of zero-rated supply as per provisions of section 16 of the Integrated Goods and Services Tax Act, 2017 either under bond or legal undertaking or under any other refund procedure permitted under Goods and Services Tax laws or Central Excise law, or as duty or tax paid goods under claim of rebate, on the cover of documents laid down under the relevant Central Excise law for the purpose of export by a manufacturer or supplier. He also contended that the Notification No. 10/2017-I.T. (Rate) dated 28.06.2017 ought to be read harmoniously with the SEZ (Amendment) Rules, 2018, which would lead to the scenario where they would have two options, i.e., either pay the tax on the services received and claim refund thereof, or avail the facility of LUT wherein they would not be required to pay tax on the impugned services. He has also contended that in order to implement the Notification No. 10/2017-I.T. (R) dated 28.06.2017, the SEEPZ SEZ, which is also a SEZ developer, has to be construed as a local authority as per the provisions of section 2(69) of the CGST Act, 2017. As such, the transaction under consideration, i.e., renting of immovable property, would turn out to be between DTA and a SEZ unit, and hence, they would be in position to avail the benefit of LUT as per the SEZ (Amendment) Rules, 2018, and accordingly, they would not be required to pay any GST on the receipt of impugned services.

RESPONDENT'S SUBMISSION

35. The jurisdictional officer have filed their reply dated 15.12.2022, wherein they have submitted as under:

35.1 Since, in the instant case, all the conditions laid down under Notification No. 13/2017-C.T. (R) dated 28.06.2017 as amended by the Notification No. 03/2018- C.T. (R) dated 25.01.2018, and the Notification No. 10/2017-I.T. (R) dated 28.06.2017 as amended by Notification No. 03/2018- I.T. (R) dated 25.01.2018 are squarely satisfied, the Appellant, being registered under the CGST Act, 2017, are liable to pay GST under RCM on the impugned transaction, i.e., supply of services of renting of immovable property by SEZ authority to them.

35.2 As regards the Circular No. 48/22/2018-GST dated 14.06.2018 cited by the Appellant, it is submitted that the aforesaid Circular deals with the types of supply as to whether a supply is to construed as inter-state or intra-state, and therefore, the said Circular is not

applicable in the present case as the present case deals with the applicability of GST on the impugned services.

35.3 As regards the applicability of the provisions of section 16(3) of the IGST Act, 2017 read with Rule 30 of the SEZ Rules, 2006 as amended by the SEZ (Amendment) Rules, 2018, wherein the Appellant have advocated that they are entitled to avail the benefit of LUT in as much as they are not required to pay GST on the impugned services received from SEEPZ SEZ, it is submitted that SEEPZ SEZ, being a SEZ developer, will not be categorised as the supplier located in DTA, and hence the said rule 30 of the SEZ Rules, 2006, which permits the supplier to avail either of the two options, i.e., making supply of goods or services or both to SEZ units/SEZ developers on payment of IGST, or avail the facility of LUT for making supplies of goods or services or both to SEZ units/SEZ developers, are not applicable in the case of Appellant, as the impugned transaction is not between the supplier located in DTA and SEZ unit.

35.4 As regards the applicability of the Notification No. 18/2017-I.T. (Rate) dated 05.07.2017, which contemplates the exemption from levy of IGST on the import of services by SEZ units/developers, in the present case, it is submitted that receipt of services of renting of immovable property from the SEEPZ SEZ cannot be construed as import of services as per the provisions of section 2(11) of the IGST Act, 2017, which provides for the meaning of "import of services" under the IGST Act, 2017

35.5 As regards the various Court Judgments relied upon by the Appellant, it is submitted that the said judgments are pertaining to the service tax matters, and since the concept of GST law is different from the earlier service tax laws in as much as supplies under the GST law are of two different types, i.e., inter-state supply and intra-state supply, which were not there in the service tax regime, hence the ratio of the said judgments will not be applicable in the instant case and therefore, Appellant are liable to pay GST under RCM as contemplated under Notification No. 13/2017-C.T. (Rate) dated 28..06.2017 as amended by the Notification No. 03/2018-C.T. (Rate) dated 25.01.2018

DISCUSSIONS AND FINDINGS

36. We have carefully gone through the appeal memorandum encapsulating the facts of the case and the grounds of the appeal along with other relevant documents. We have also examined the impugned advance ruling passed by the Maharashtra Advance Ruling Authority, wherein it has been held that the Appellant are liable to pay IGST on the impugned services, i.e., services of renting of immovable property, under RCM in

accordance with the Notification No. 10/2017-I.T. (Rate) dated 28.06.2017 as amended by the Notification No. 03/2018-I.T. (Rate) dated 25.01.2018. As regards question regarding the applicability of GST on any other services received by the Appellant from the suppliers located in DTA, the MAAR has held that since the Appellant has not specified the services being procured from DTA suppliers, the said question regarding applicability of GST thereon cannot be answered. The MAAR in the impugned order has inter alia observed that SEEPZ SEZ is a SEZ developer, and hence section 16(3) of the IGST Act, 2017 will not be applicable to the Appellant as the impugned supply of renting of immovable property services are taking place between the SEZ developer and SEZ unit, and not between a supplier located in DTA and SEZ unit as contemplated in the above provisions of section 16(3) ibid.

37. On perusal of the impugned Advance Ruling Order vis- a- vis the submissions made by the Appellant in defence of their case, the moot issues before us are as under:

(i) Whether the impugned supply of renting of immovable property services provided by the SEZ Authority is zero-rated supply in terms of section 16(1) of the IGST Act, 2017;

(ii) Whether the supply of any other services by the suppliers located in DTA to the SEZ unit is zero-rated supply in terms of section 16(1) of the IGST Act, 2017;

38. Now, we set out to examine the first issue, i.e., whether the impugned supply of renting of immovable property services provided by the SEEPZ SEZ Authority to the SEZ unit, i.e., the Appellant, is zero-rated supply in terms of section 16(1) of the IGST Act, 2017. In this regard, we would like to refer to the relevant provisions of zero-rated supply, which has been provided under section 16(1) of the IGST Act, 2017. The same is being reproduced hereinunder:

> ***16. (1) "zero rated supply" means any of the following supplies of goods or services or both, namely:—***
>
> ***(a) export of goods or services or both; or***
>
> ***(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.***

39. Thus, on perusal of the aforesaid provisions of the zero-rated supply, it is clear that any supply of goods or services or both made to a SEZ developer or SEZ unit for carrying out the authorised operation in SEZ will be considered as zero-rated supply. That is, the said supply will not attract any GST whatsoever. It is further mentioned here that this provisions of zero-rated supply will cover even the supply of services which are specified under the reverse charge Notification 10/2017-I.T. (Rate) dated 28.06.2017 as amended

by Notification No. 03/2018-I.T. (Rate) dated 25.01.2018. This is so because it is the settled proposition of the law that the specific provisions made in the Act will have greater legal force than that of a notification issued under same or any other provisions of the same Act. Hence, the provisions laid down under section 16(1) of the IGST Act, 2017 will supersede over the Notification issued under section 5(3) of the IGST Act, 2017, which enumerates the services which attract GST under reverse charge basis. It is also pertinent to mention here that the said provision of section 16(1) *ibid.* merely mentions about the supply of goods or services or both to the SEZ developer or SEZ unit. The said provision does not mention any thing about the type of the supplier. That is, whether the supplier supplying the services is located in DTA, or in SEZ area. As long as the supply is being made to SEZ developer or SEZ unit for carrying out the authorised operation in SEZ, the same will be treated as zero-rated supply, and will not be subject to GST. Therefore, it will not matter in the present case that the impugned services of renting of immovable property is being provided by the SEZ developer, i.e. SEEPZ SEZ to the Appellant, and not by a supplier located in DTA as observed by the MAAR in the impugned ruling while holding that the provisions of section 16(1) *ibid.* will not be applicable in the Appellant's case as the impugned services of renting of immovable property is not being provided by the supplier located in DTA rather the same is being supplied by the SEZ developer, i.e., SEEPZ SEZ, hence the facility of LUT is not available to the Appellant as proposed by them. Thus, the contention put forth by the Respondent that the said services are being supplied by the SEZ developer, and not be supplier located in DTA does not hold water, and hence not sustainable.

40. From the provisions of section 16 (1) and Section 5 (3) of IGST Act it is clear that the intention of the legislature is not to tax the supplies made to a unit in SEZ or a SEZ developer, which has been made zero rated under clause (b) of section 16 (1) of the IGST Act, 2017. By virtue of deeming provision under section 5 (3) of the IGST Act, 2017, the levy on procurement of services specified in Notification 13/2017 CT (Rate) falls upon the unit in SEZ or SEZ developer. Therefore, a unit in SEZ or SEZ developer can procure such service for use in authorised operation without payment of integrated tax provided the actual recipient i.e. SEZ unit or SEZ developer, furnishes a LUT or bond as specified in condition (i) of para 1 of notification No. 37/2017-CT. The actual recipient here in the subject supplies is a deemed supplier for the purpose of aforesaid condition. The appellant will not be required to pay any GST under RCM on the impugned supply of renting of immovable property services received SEEPZ SEZ, if appellant furnishes LUT.

41. Further, as regards any other services supplied by the DTA to the SEZ unit or developer, it is stated that the aforesaid principle will also be applicable in such cases. That is, all the supply of services procured by SEZ unit from the suppliers located in DTA for carrying out the authorised operation in SEZ will not attract any GST in accordance with the provision of section 16(1) of the IGST Act, 2017, and the Appellant will not be required to pay any GST under RCM on the services received from DTA supplier for carrying out the authorized operation in SEZ, subject to LUT.

42. Thus, in view of the above discussions and findings, we pass the following order:

ORDER

43. We, hereby, set aside the Advance Ruling No. GST-ARA-93/2019-20/B-110 dated 10.12.2021, passed by the MAAR and hold as under:

(i) that the Appellant are not required to pay GST under RCM on the impugned services of renting of immovable property services received from SEEPZ SEZ for carrying out the authorised operation in SEZ subject to furnishing of LUT or bond as a deemed supplier of such services;

(ii) that the Appellant are not required to pay GST under RCM on any other services received from the suppliers located in DTA for carrying out the authorized operation in SEZ subject to furnishing of LUT or bond as a deemed supplier of such services.

(RAJEEV KUMAR MITAL)
MEMBER

(Dr. D.K. SRINIVAS)
MEMBER

Copy to the:

1. **Appellant; i.e – M/s. Portescap India Private Limited, Unit No. 2, SDF-1, SEEPZ-SEZ, Andheri East, Mumbai – 400096.**
2. **AAR, Maharashtra**
3. **Pr. Chief Commissioner, CGST and C. Ex., Mumbai**
4. **Commissioner of State Tax, Maharashtra**
5. **Assistant Commissioner, CGST & C.Ex, Division -X, Mumbai East**
6. **Commissioner, CGST & C.Ex, Mumbai East**
7. **Web Manager, WWW.GSTCOUNCIL.GOV.IN**
8. **Office copy.**