

GUJARAT AUTHORITY FOR ADVANCE RULING,

GOODS AND SERVICES TAX,
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.



ADMISSION ORDER NO. GUJ/GAAR/ADM/2020/118
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/28)

Date: 30.12.2020

Name and address of the applicant	:	M/s. Khaitan Chemicals and Fertilizers Ltd., Plot No. 42/7, GIDC Industrial Estate, Bharuch -382350, Gujrat.
GSTIN of the applicant	:	24AAACK2342Q1ZG
Date of application	:	21.07.2020
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	<i>(e) Determination of the liability to pay tax on any goods or services or both.</i>
Date of Personal Hearing	:	23.12.2020 (Through online Hearing)
Present for the applicant	:	Not appeared in Personal hearing through video conference.

BRIEF FACTS

The applicant M/s. Khaitan Chemical & Fertilizer Ltd. submitted that they are mainly engaged in the manufacture of Single Super Phosphate (Fertilizer), Sulphuric Acid (chemical). The major raw material Rock Phosphate is required for manufacturing for Single Super Phosphate (SSP) which is imported from various countries like Egypt, Jordan & Morocco and also procured locally within country. The company is registered under GST laws for payment of GST/IGST besides being paying the customs duty on import of Rock Phosphate.

2. The applicant submitted that Rock Phosphate and other material is imported only on CIF (Sum of Cost, Insurance & Freight) basis. In CIF basis purchases, the freight invoice is issued by the foreign shipping line to the foreign exporter. The importer (i.e. Khaitan Chemical & Fertilizers Ltd.) is concerned only with the purchase of goods and the supplies of rock phosphate are responsible for transportation of goods upto custom Frontier of India. The company neither have any invoice of ocean freight nor has any idea of payments and the mount of ocean freight by the foreign exporter.

3. The applicant has referred the following provisions for levying IGST on imported goods and determination the value for calculation of IGST :

- Section 5(1) of the IGST Act, 2017 regarding applicability of payment of IGST
- Section 3(7) of the Customs Tariff Act, 1975 levying IGST on the imported goods on the value determined under Section 3(8).
- Section 3(8) of the Customs Tariff Act, 1975.
- Section 14 of the Customs Act, 1962
- Customs Valuation (Determination of Value of Imported goods) Rules, 2007

Accordingly, applicant submitted that with regards to the above Sections of various act, on imported goods, IGST shall be levied on the sum of CIF (Cost, Insurance & Freight) value of the goods and all duties of customs.

4. The applicant submitted that at the time of importation, pays customs duty on the CIF value of the goods (Rock Phosphate and other materials) imported. They also pays the Integrated tax (IGST) under the IGST Act, 2017 on the import material on the CIF value plus custom duty. The said CIF value is the sum of Cost, Insurance & Freight which implies that this value includes the value of the Ocean Freight.

5. The applicant submitted that they pays IGST on the freight component, known as Ocean Freight under Reverse Charge Mechanism on the 10% of the CIF value considering as Ocean Freight as provided deeming fiction in the Not. No. 08/2017-Integrated Tax (Rate), Corrigendum dated 30.06.2017 to the Not. No. 08/2017- Integrated Tax (Rate) and Not. No. 10/2017- Integrated Tax (Rate).

6. The applicant submitted that they are paying the IGST twice on the same amount. Firstly, IGST on the CIF value plus Custom duty and Secondly on the Ocean Freight which is 10% of the CIF value. In such circumstances, to levy and collect once again the Integrated Tax under the same Act on the supply amounts to be double taxation.

7. The applicant has asked the following question seeking Advance Ruling on the same:

“Double taxation on freight portion of imported goods-

- Goods imported and IGST levied on CIF Value (which includes freight) Plus Basic Custom duty plus Social Welfare Cess.
- IGST levied again on the freight component (Ocean Freight) on reverse charge basis.

In such circumstances, to levy and collect once again the Integrated Tax under the same Act on the supply (same aspect) amounts to double taxation.

8. Personal hearing was accorded to the applicant through Virtual Platform (Video conferencing) on 23.12.2020. However neither applicant nor Authorised Representative of the applicant appeared in the Personal hearing.

DISCUSSION & FINDINGS:

9. 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 at the time of personal hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

10. 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.

11. On going through the application filed by the applicant we find that the applicant has paid fees of Rs. 10000/- under the "IGST Head" whereas as per the provisions of Section 97(1) of the CGST Act, 2017 read with Rule 104 of the CGST Rules, 2017 and similar provisions of GGST Act/ Rules, 2017 the total fees of Rs. 10,000/- is required to be paid under each head "CGST" & "GGST". In this regard, we find it imperative to refer to Section 97(1) of the CGST Act, 2017 as well as Rule 104 of the CGST Rules, 2017 which read as under:

Section 97. (1) *An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and **accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.***

Rule 104. Form and manner of application to the Authority for Advance Ruling. (1) *An application for obtaining an advance ruling under sub-section (1) of section 97 shall be made on the common portal in **FORM GST ARA-01** and **shall be accompanied by a fee of five thousand rupees, to be deposited in the manner specified in section 49.***

(2) *The application referred to in sub-rule (1), the verification contained therein and all the relevant documents accompanying such application shall be signed in the manner specified in rule 26.*

12. On going through the provisions of Section 97 of the CGST Act, 2017 and Rule 104 of the CGST Rules, 2017, we find that the application for obtaining an Advance Ruling under sub-section(1) of Section 97 is to be submitted in FORM-GST ARA-01 (which is the prescribed format for the said application) and shall be accompanied by a fee of Five thousand rupees which is to be deposited in the manner specified in Section 49 of the CGST Act, 2017. Similarly, as per Section 97 of the GGST Act, 2017 and Rule 104 of the GGST

Rules, 2017, the application for obtaining an Advance Ruling under sub-section(1) of Section 97 is to be submitted in FORM-GST ARA-01 and shall be accompanied by a fee of Five thousand rupees which is to be deposited in the manner specified in Section 49 of the GGST Act, 2017. On a combined reading of the provisions of the aforementioned Section 97 and Rule 104 of both the aforementioned Acts and Rules, we find that the application for obtaining an Advance Ruling under sub-section(1) of Section 97 is to be submitted in FORM-GST ARA-01 and shall be accompanied by a fee of Ten thousand rupees (Five thousand rupees as per Rule 104 of the CGST Rules, 2017 + Five thousand rupees as per Rule 104 of the GGST Rules, 2017).

13. We, therefore, find that the applicant has not paid the fees of Rs.10,000/- under the proper head i.e. 'CGST' and 'GGST' as required under the provisions of aforementioned Sections and Rules where as paid fees of Rs. 10,000/- under "IGST" head. Therefore, the instant application is liable for rejection under Section 98(2) of the CGST Act, 2017 for not paying the total fees of Rs. 10000/- i.e. under each head CGST & GGST as required under the provisions of CGST Act and Rules and respective GGST Act & Rules.

14. In view of the facts mentioned above, we do not find it necessary to delve into the details or facts of the issue in hand since the applicant has failed to comply even with the statutory requirements of the provisions of the relevant sections and rules of the CGST Act, 2017/CGST Rule, 2017 as well as the GGST Act, 2017/GGST Rules, 2017 with regard to filing the application of Advance Ruling before the Advance Ruling Authority, thus rendering it an invalid application for Advance Ruling under Section 97(1) of the CGST Act, 2017 read with Rule 104 of the CGST Rules, 2017.

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

R U L I N G

Instant application filed by M/s. Khaitan Chemicals and Fertilizers Ltd., Bharuch is hereby rejected under Section 98(2) of the CGST/GGST Act, 2017 being non-maintainable in view of the above discussion.

(SANJAY SAXENA)
MEMBER

(MOHIT AGRAWAL)
MEMBER

Place: Ahmedabad

Date: 30.12.2020.