

GIB/GJ/MANOJ BHAGWAN/27.01.2021/AAR-459

Advance Ruling Category : SUPPLY OF SERVICES

State : Gujarat

Order No.: GIB/GJ/MANOJ BHAGWAN/27.01.2021/AAR-459

Name of Entry :

M/S. MANOJ BHAGWAN MANSUKHANI

Date : 27-01-2021

Breif Issue :

FACTS OF THE CASE:

In this case the applicant M/s Manoj Bhagwan Mansukhani is a service provider operating in Kandla port and handling imported fertilizer from abroad on behalf of Indian fertilizer companies.

The applicant has submitted that the foreign supplier cannot afford to pay GST on their service charges as their services are rendered on foreign goods in custom bonded warehouses; that the cargo will go directly from vessel to custom bonded warehouses and these goods never cross the customs barrier and mix-up with the indigenous goods; that these goods were temporarily imported to India for export purpose and stored in customs bonded warehouses and exported from there to outside India. The applicant has stated that they as the service providers do stevedoring, transportation, storage, bagging, stuffing and again transportation of the goods which are temporarily imported

ISSUE OF THE CASE:

Whether the services such as stevedoring, transportation, storage, bagging, stuffing and again transportation of the goods (which are temporarily imported) provided by the Applicant can be considered as 'Export of services'?

Whether the Applicant is eligible for 'Zero rated Supply' under Section 16 of IGST Act?

Decision of Advance Ruling Authority :

DECISION:

The service recipients (the clients of the applicant located outside India in the instant case) **neither** have a place of business in India for which registration has been

obtained **nor** do they have any place of business other than the place of business for which registration has been obtained, in India. In view of the above, we find that the conditions (a) and (b) are not applicable in the instant case. Further, since condition (c) above is also linked to (a) and (b), the said condition can also not be made applicable to the instant case. We, therefore, conclude that only condition (d) which states that in absence of such places as mentioned at (a), (b) and (c) above, the location of the usual place of residence of the recipient, is applicable in the instant case - thus the place of supply of services, in the instant case, will be the location of the recipient of services i.e. out of India. We therefore find that condition (ii) of Section 2(6) of the IGST Act, 2017 is also fulfilled.

As per Sub-section (2) of Section 13, the place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services, provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services. However, since the location of the recipient of services is available in the instant case i.e. outside India, we will have to find out under which sub-section of Section-13 the services provided by the applicant falls - the services such as stevedoring, transportation, storage, bagging, stuffing and again transportation of the goods (which have been temporarily imported into India as discussed earlier) would fall under sub-section(3) of Section 13, since the goods are required to be made physically available by the recipient of services to the supplier of services in order to enable the supplier to supply the aforementioned services.

Condition(iii) of Section 2(6) of the IGST Act, 2017 has not been fulfilled in the instant case since the location of supply of service is not located outside India but in India and therefore the services rendered by the applicant will not be covered under 'export of services' - the services rendered by the applicant are not covered under 'Export of services' as envisaged in Section 2(16) of the IGST Act, 2017 - the aforementioned services of stevedoring, transportation, storage, bagging, stuffing and again transportation of the goods which are temporarily imported, would not be considered as 'Export of service' for the period prior to 01.02.2019 but would be considered as 'Export of service' w.e.f. 01.02.2019 onwards.

Since it has determined that the services provided by the applicant are covered under 'export of service' w.e.f. 01.02.2019, they will be covered under the provisions of Section 16(1)(a) as export of services w.e.f. 01.02.2019. As regards the eligibility of the applicant for 'Zero rated supply' under Section 16 of the IGST Act, 2017, we find that the applicant shall not be eligible for 'Zero rated supply' as per the provisions of the said section up to 31.01.2019. However, they will be eligible for 'Zero rated supply' as per the provisions of Section 16(1)(a) of the IGST Act, 2017 w.e.f. 01.02.2019.