Dhruva Alert for GST ADVANCE RULINGS – 6th Edition

1. M/s Fairmacs Ship Stores Private Limited and M/s Parsan Brothers – Andhra Pradesh	
Issue for Consideration	• Whether the Company is exempt from paying GST on outward supplies made to ocean-going merchant vessels on foreign run, Indian Naval Ships and Indian Coast Guard Ships. • If they are liable to pay GST on their outward supplies, can they collect the GST from the recipient of the goods?
Discussion & Ruling	**Discussion:** • The Company imported ship stores without payment of duty which were stored in a warehouse licensed under Section 58A of the Customs Act, 1962 for supply to Indian Naval / Coast Guard Ships and ocean-going merchant ships. • The Authority observed that some of the supplies may fall under the definition of export and therefore be regarded as zero-rated supply. However, this was not within the prerogative of this application. • The goods received by the applicants are within the Customs area as defined under Section 2(11) of CGST Act. Further, the goods supplied by the applicant are not exempt supply as they are neither nil rated nor exempt by any notification. • The Authority referred to Circular No. 46/2017-Customs dated November 24, 2017 which states that transaction of sale/transfer of warehoused goods between the importer and any other person falls within the definition of supply. Also, the circular refers to Section 7(2) of IGST Act, which states that supply of imported goods which takes place before they cross the customs frontiers of India should be treated as inter-state supply.

	Ruling: • The applicant is not exempt from tax under GST on their outward supplies made to ocean-going merchant vessels on foreign run, Indian Naval Ships and Indian Coast Guard Ships. • The applicant can collect the applicable GST from their customers, in the case that it is not exports.
Dhruva Comments / Observations	• The question raised in the instant case was whether the goods supplied by the applicant are exempt from GST or not. The applicant did not raise any question on the taxability of said supplies. Hence, the Authority has not discussed whether the supplies would constitute as export of goods or not under GST. • Further, under IGST Act, the definition of 'export of goods' is similar to that under Section 2(18) of the Customs Act, 1962. However, under the Customs Act, 1962, there were specific provisions in relation to stores which provided that supply of goods to any foreign going vessel would constitute export of goods. Similar provisions also existed under the erstwhile Central Excise Act, 1944. • In the absence of any specific provisions under GST, it needs to be examined whether such supplies would qualify as export of goods or not under GST.

2. M/s S S S V K Cold Storage Pvt. Ltd. – Andhra Pradesh	
Issue for Consideration	• Whether the **storage of agricultural produce** falls under SAC 998619 or 996721 or some other SAC and the rate of GST applicable on provision of said services? • Further, whether exemption provided in Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017 ('the Notification') under entry No. 54(e) with regard to support services in relation to agricultural produce by way of storage or warehousing is applicable to both farmers and traders. • Documents to be obtained by cold storage operators to avail the above exemption benefit, if it is applicable exclusively for farmers.
Discussion & Ruling	**Discussion:** • The following submissions were made by the applicant – (i) When a service falls under two different HSN, then the HSN which is more specific to the service provided is applicable. (ii) Services under SAC 998619 (i.e. other support services to agriculture, hunting, forestry and fishing) are more specific to the services provided by them than services falling under SAC 996721 (i.e. support services in transport – refrigerated storage services). (iii) Reliance was placed on Circular No. 16/16/2017 – GST dated November 15, 2017, wherein it was clarified whether certain products like tea, jaggery, pulses, etc., will

	fall under the definition of "agriculture produce" and hence they would be eligible for exemption under the Notification. (iv) Exemption provided under the Notification does not provide exemption to a specific class of persons but to a specific class of services. (v) In relation to documents to be obtained in order to avail the above exemption, the law does not mention any specific documents to be obtained by the service provider. **Ruling:** • Heading 9967 deals with support services in transportation whereas heading 9986 deals with support services related to agriculture, forestry, fishing, and animal husbandry, and accordingly heading 9967 should be ruled out. • Entry No. 54(e) of the Notification provides an exemption to support services in relation to agricultural produce by way of loading, unloading, packing, warehousing or storage. Therefore, as far as the services of storage/warehousing relate to agricultural produce, as per the defined term in the Notification read with Circular No. 16/16/2017 dated November 15, 2017, the exemption should be available. • With respect to applicability of the exemption to farmers and traders, it has been held that the exemption is service specific and not person specific. Thus, the exemption would be available to agricultural produce of both. • With respect to documents to be submitted to avail the above exemption, the advance ruling authority did not comment as it does not fall under their purview.
Dhruva Comments / Observations	• The AAR has held that storage or warehousing services in relation agricultural produce will fall under SAC 998619 and not SAC 996721. This ruling is in line with the Rules of Interpretation, i.e. Specific entry overrides a generic entry for classification. • It is important that prior to availing such exemption one must determine whether the goods to be stored or warehoused qualify as "agricultural produce" or not per the definition provided in the Notification. • The above AAR and Circular would be relevant for cold storage companies determining whether GST should apply considering the classification of products as agricultural produce or not.

3. M/s Sino Resources – Andhra Pradesh	
Issue for Consideration	• Whether Input Tax Credit is available on Clean Environment (Energy) Cess paid at the time of import of coal?
Discussion & Ruling	**Discussion:** • The AAR observed that the applicant has paid Clean Energy Cess on imported coal and has availed transitional credit of the same in TRAN-1. The ruling was sought on the issue whether the transitional credit of the same would be permissible.

	• It was held that the application for advance ruling can be filed for any of the questions falling under Section 97(2) which inter-alia includes admissibility of input tax credit of tax paid or deemed to have been paid under Section 97(2)(d). • Section 2(62) defines 'input tax' as SGST, CGST, UTGST or IGST charged on supply of goods or services. Section 97(2)(d) only refers to admissibility of input tax credit of tax paid under the GST Acts. • The AAR held that the input tax credit on which ruling is sought relates to the transitional relief of cess paid under other Act and not under the GST Acts referred to in the definition of 'input tax'. Thus, it was held that the question does not fall under the ambit of Section 97(2)(d). **Ruling:** • Application not admitted as the question fell outside the scope of Section 97(2) of the CGST Act and therefore, beyond the jurisdiction of AAR.
Dhruva Comments / Observations	• The ruling has held that no application can be sought on issues relating to admissibility of any tax, duty or cess, etc. paid under any Act other than the GST Acts. • The question raised in the application relates to admissibility of transitional credit of Clean Energy Cess which need to be examined in terms of the transitional provisions under Section 140. • It must be mentioned that the Maharashtra AAR in **Kansai Nerolac Paints Limited** had given a ruling[1] on admissibility of Krishi Kalyan Cess charged under Section 161 of Finance Act 2016. The question which now arises for consideration is whether the ruling given in *Kansai Nerolac Paints Limited* would continue to hold good considering the fact that the jurisdiction of AAR to give rulings on transition credits appears debatable.

4. Pon Pure Chemical India Private Limited – Gujarat	
Issue for Consideration	• Whether application on the issue of 'place of supply' falls within the jurisdiction of AAR? • Whether the issue relates to Customs or GST?
Discussion & Ruling	**Discussion:** • The AAR held that taxability on import and high sea sales to be determined on two basic questions of fact: – Where the goods are; and – At what time the goods can be said to be entering into India. • It was held that it is required to examine the above facts in terms of Section 7 of the IGST Act which pertains to 'place of supply'. • Section 97(2) of the CGST Act empowers the AAR to decide only on the issues enumerated therein and not any other issues.

[1] Order No. GST-ARA-18/2017-18/B-25 Mumbai dated April 5, 2018

	• As the determination of 'place of supply' is not covered by Section 97(2) of the Acts, it was held that AAR lacks the jurisdiction to decide on the issues pertaining to high-sea sales. • Further, it was held that determination of taxability of high-sea sales falls in the domain of Customs and not under GST referring the proviso to Section 5(1) of IGST and Customs Circular No. 33/2017-Cus., dated August 01, 2017. **Ruling:** • Application rejected without going into merits on account of lack of jurisdiction under Section 97(2).
Dhruva Comments / Observations	• Recently, an advance ruling[2] was pronounced by the Kerala AAR in the case of **M/s Synthite Industries Ltd.** on the issue of out and out sales. • In the above ruling, the Kerala AAR admitted the application and proceeded to analyse the transaction by referring to Section 7 of the IGST Act and Customs Circular No. 33/2017 and various provisions of Customs Act and concluded that applicant is not liable to GST since there was no import of goods into India. • The question of jurisdiction under Section 97(2) of CGST Act raises a larger issue and questions whether the earlier ruling on this aspect would continue to hold good. • Further, if high seas sales fall under the domain of Customs and not under GST, could it be construed that GST law does not apply? • Also, could the subject issue be classified under sub-clause (e) of Section 97(2) of CGST Act which covers 'determination of the liability to pay tax on any goods or services or both'?

5. M/s Kanj Products Private Limited – Uttarakhand	
Issue for Consideration	• Applicability of Notification dated October 05, 2017 issued by DIPP, Ministry of Commerce and Industry read with CBEC Circular No. 1060/9/2017-Cx. dated November 27, 2017 under the following scenarios: - Assesses takes over an eligible unit covered under area-based exemption notification as a going concern under slump sale arrangement; - The eligible unit is physically shifted to a new location within the area specified under the area-based exemption notification; - The eligible unit adds or modifies plant and machinery or manufactures new products during the residual period of exemption The said notification deals with granting budgetary support to existing eligible manufacturing units operating in Jammu and Kashmir, Uttarakhand, Himachal Pradesh and North Eastern States under erstwhile Industrial Promotion Schemes granting exemption/ refund under Central Excise

[2] Order No. CT/2275/18-C3 dated March 26, 2018

Discussion & Ruling	**Discussion:** • The Joint Commissioner, SGST, has submitted his report stating that the benefit may be extended to the assessee in such cases. • The Authorities observed that the clarification requested by the applicant on the notification and circular are not issued under the provisions of CGST/SGST Act. • Moreover, the issue does not fall under sub-clause (a) to (g) of Section 97(2) of the CGST/SGST Act which provides the list of subjects on which advance ruling can be sought. Therefore, this application is not entertainable under CGST/ SGST Act. **Ruling:** • The questions raised by the applicant are beyond the jurisdiction of the Authorities and therefore are not entertainable.
Dhruva Comments / Observations	• The instant ruling is in line with the Andhra Pradesh AAR dated March 28, 2018 in the case of **M/s Sino Resources**. • As per clause (d) of Section 97(2) of the CGST/ SGST Act, advance ruling can be sought in respect of applicability of a notification issued under the provision of CGST/SGST or IGST Act. Whereas in the instant case, the applicant has sought a ruling in relation to a notification issued by the Department of Industrial Policy & Promotion.

6. Macro Media Digital Imaging Private Limited – Telangana	
Issue for Consideration	• Whether the supply of printed trade advertisement material will be treated as a supply of goods under (HSN 4911) or supply of services
Discussion & Ruling	**Discussion:** • The Applicant is in the business of printing and sale of printed trade advertisement material (i.e. banner flex), which is freely moveable from one place to another. The preparation of such printed material would be undertaken as per the customer's designs and specifications. The clients / customers do not provide any materials and all materials required for the preparation of the advertisement materials are procured by the Applicant. The major cost incurred in the printing is for materials like ink, paper etc. • On perusal of the rate schedules in these notifications, and also the various chapters in the First Schedule to the Customs Tariff Act, 1975, printed advertisement materials are classifiable under chapter 49. Furthermore, Chapter Note 5 to Chapter 49 of the Customs Tariff Act, 1975 inter alia provides that heading 4901 does not cover publications that are essentially devoted to advertising (for example, brochures, pamphlets, leaflets, trade catalogues, year books published by trade associations, tourist propaganda). Such publications are to be classified under heading 4911. • Furthermore, reference has also been drawn to para 5 of TRU Circular No. 11/11/2017-GST dated October 20, 2017 wherein it is stated that the supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. falling under Chapter 48 or

	49, printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that of goods**,** and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods**,** and therefore such supplies would constitute the supply of goods falling under respective headings of Chapter 48 or 49 of the Customs Tariff Act, 1975. **Ruling:** • The Telangana AAR has held that supplying printed advertisement material to customers who only provide the specifications and designs to be printed, involves a transfer of title of goods and is a supply of goods classifiable under HSN 4911**,** which is liable to GST at the rate of 12% per Serial No. 132 of Schedule-II of Notification No. 1/2017 – Central Tax (Rate).
Dhruva Comments / Observations	• Related to this matter pertaining to classification of goods, whether it merits classification under Chapter 49 (pertaining to printing industry) or under Chapter heading of the base material on which printing has been done, has been subject matter of extensive judicial interpretation. The Supreme Court in case of Metagraphs Pvt Ltd vs. Collector of Central Excise, Bombay [1996 (88) ELT 630 (SC)] held that all products on which printing is done are not products of the printing industry. For determining the true character of the transaction, one will have to determine whether printing itself lends predominant character to the product or is merely incidental to its use. • In the present case, printing is used for advertisement i.e. to convey information without which the base material i.e. banner flex would not have any significance. Hence, the product will get classified as a product of printing industry.

7. M/s Guru Cold Storage Private Limited - Gujarat	
Issue for Consideration	• Whether various commodities such as cereals, pulses, spices, copra, jaggery (Gur), groundnuts (with or without shell), groundnut seeds, turmeric dried and ginger dried (soonth), cashew, almond, kismis, jardalu, anjeer (fig), date, ambli foal are covered under the definition of 'agricultural Produce ' as defined under Notification No. 11/2017-Central Tax (Rate) dated June 28, 2017 in order to avail exemption under the category of support service for “loading, unloading, packing, storage or warehousing of agricultural produce”; • If yes, what would be the taxability of storage or warehousing services if the said goods are received in bulk or small or retail packing with or without a brand name?
Discussion & Ruling	**Discussion:** • The following submissions were made by the applicant – (i) Notification No. 11/2017-Central Tax (Rate) dated June 28, 2017 provides NIL rate of tax for services by way of loading, unloading, packing, storage or warehousing of agricultural produce;

	(ii) There is no tax on agricultural produce unless the goods are branded with a registered trademark. Thus, the services related to storage of the agricultural produce either in bulk or small or retail packing with or without a name or brand name, which are not registered under the Trade Mark Act, 1999 shall be charged at NIL rate as the same have not been branded with a registered trademark. **Ruling:** • Entry no. 54(e) of the Notification No. 12/2017 – CGST and Entry No. 24 of Notification No. 11/2017 - CGST provide exemption to support services in relation to agricultural produce by way of loading, unloading, packing, warehousing or storage. • Referred to the explanation of agricultural produce provided under Notification No. 11/2017 – CGST which reads as follows: *means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done, or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.* • With respect to the classification of agricultural produce, relying on Circular No. 16/16/2017-GST dated 15.11.2017 it was held that: (i) Pulses (commonly known as 'Dal') obtained after de-husking or splitting, which is usually undertaken by the pulse millers, are not agricultural produce. However, whole gram such as rajma may be considered as "agricultural produce"; (ii) Jaggery, processed dry fruits such as processed cashew nuts, raisin (kismis), apricot (jardalu), fig (anjeer), date, tamarind (ambali foal), shelled groundnuts / groundnut seeds, and copra are not "agricultural produce"; (iii) Processed spices including processed turmeric and processed ginger (soonth), too, are not "agricultural produce"; (iv) Whole pulse grains, cereal (such as wheat, paddy, maize, barley) spices, groundnuts with shell on which no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market, will fall under the definition of "agricultural produce". • The advance ruling authority did not comment on the second issue raised by the applicant. The GST Commissionerate merely stated that as all the products are not agricultural produce, the reply to second query is not relevant.
Dhruva Comments / Observations	• The term 'agricultural produce' under GST law is *pari materia* to the erstwhile service tax regime post Negative List. Under the service tax regime, there was also a separate entry for the storage or warehousing of rice, cotton, ginned or baled over and above the agricultural produce. However, under GST law, there is a separate entry only for rice.

	• The above AAR and Circular would be relevant for cold storage companies determining whether or not GST should apply considering the classification of products as agricultural produce or not.

8. M/s Bahl Paper Mills Ltd – Uttarakhand	
Issue for Consideration	• Whether IGST should be paid by the importer under RCM on ocean freight in case of CIF basis contract when both the service provider and service recipient are located outside India? If yes, then what will be the supporting document required to take the credit of IGST paid on ocean freight under CIF basis contract. • Whether input tax credit will be available of GST paid on office furniture and fixtures, A.C. plant and sanitary fittings in a newly constructed building?
Discussion & Ruling	**Discussion:** • With regard to IGST liability under RCM on ocean freight, the authority observed that vide Notification no. 08/2017- Integrated Tax (Rate) dated June 28, 2017 and Notification no. 10/2017 – Integrated Tax (Rate) dated June 28, 2017, an importer is required to pay IGST on the ocean freight even if the importer has already paid IGST on CIF value of imported goods. • The applicant submitted a copy of the Writ Petition in the case of **Mohit Minerals Pvt Ltd v. UOI**[3] filed before the High Court of Gujarat challenging the levy of IGST on inward ocean freight vide the above notifications. The authority observed that mere filing of an application before the High court does not render a notification issued by the Central Government *ultra vires* unless the same is turned down by a competent court. • Further, input tax credit of IGST paid under RCM can be taken based on the invoice/challan. • Separately, with respect to input tax credit on sanitary fittings, the authority observed that the sanitary fittings become an integral part of the building or civil structure and hence should not be available in terms of Explanation to Section 17 of the CGST Act 2017. • Further, the authorities allowed input tax credit of furniture and fixtures, and A.C. plant relying upon a Circular[4] and judicial ruling in the case of **M/s Balkrishna Industries Ltd Vs CCE, Jaipur-I**[5] under the erstwhile laws wherein the credit of duty paid on furniture and air conditioner was allowed. **Ruling:** • An importer is required to pay IGST on ocean freight regardless of IGST already paid on CIF value of imported goods. • The credit of IGST can be taken based on the invoice/challan.

[3] [Special Civil Application no. 726/2018]
[4] Circular No. 943/04/2011-CX dated April 29, 2011
[5] [2016 (335) ELT 559 (Tri-Dei)]

	• Input tax credit of GST on sanitary fittings is not available since it becomes an integral part of the building or a civil structure. • The input tax credit of GST charged on the supply of furniture and fixtures, and A.C. plant is admissible subject to the condition that the registered person has not claimed depreciation on the tax component of the cost of the capital goods and plant and machinery under the provisions of the Income-Tax Act, 1961.
Dhruva Comments / Observations	• The matter is pending in the High Court of Gujarat, where the petitioner has challenged both the above notifications considering it as *ultra vires* the Act. However, it is important to note that the High Court of Gujarat has not granted a stay on the leviability of IGST under RCM on ocean freight vide the said notifications. • The ruling has stated that the credit of IGST can be claimed on the basis of invoice/challan issued. It could be fairly assumed that the reference to the invoice referred in the ruling is to the self-invoice required to be issued as per Section 31(3)(f) of the CGST Act 2017 for claiming input tax credit.

ADDRESS

Mumbai
1101, One IndiaBulls Centre,
11th Floor, Tower 2B,
841, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai 400 013
Tel:+91 22 6108 1000 / 1900

Ahmedabad
B3, 3rd Floor, Safal Profitaire,
Near Auda Garden,
Prahladnagar, Corporate Road,
Ahmedabad - 380 015
Tel: +91-79-6134 3434

Bengaluru
Prestige Terraces, 2nd Floor
Union Street, Infantry Road,
Bengaluru 560 001
Tel: +91-80-4660 2500

Delhi / NCR
101 & 102, 1st Floor, Tower 4B
DLF Corporate Park
M G Road, Gurgaon
Haryana - 122 002
Tel: +91-124-668 7000

Pune
305, Pride Gateway,
Near D-Mart, Baner,
Pune - 411 045
Tel: +91-20-6730 1000

Singapore
Dhruva Advisors (Singapore) Pte. Ltd.
20 Collyer Quay, #23 01
Singapore 049319

Dubai
WTS Dhruva Consultants
U-Bora Tower 2,
11th Floor, Office 1101
Business Bay P.O. Box 127165
Dubai, UAE
Tel:+ 971 56 900 5849

Bahrain
WTS Dhruva Consultants
Bahrain Financial Harbour, East Tower - Floor 23,
Office 2301, Building 1398, Road 4626, Block 346. Manama, Kingdom of Bahrain
Tel: 973 1663 1921

New York
Dhruva Advisors USA, Inc.
340 Madison Avenue, 19th Floor, New York,
New York 10173 USA
Tel: +1-212-220-9494

Silicon Valley, USA
Dhruva Advisors USA, Inc.
5201 Great America Parkway,
Santa Clara, California 95054
Tel: +1 408 930 5063

KEY CONTACTS

Dinesh Kanabar (Mumbai)
Chief Executive Officer
dinesh.kanabar@dhruvaadvisors.com

Ritesh Kanodia (Mumbai)
ritesh.kanodia@dhruvaadvisors.com

Niraj Bagri (Mumbai)
niraj.bagri@dhruvaadvisors.com

S Srinath (Bangalore)
srinath.s@dhruvaadvisors.com

Pratik Shah (Dubai)
pratik.shah@dhruvaadvisors.com

Dhruva Advisors has been named **"India Tax Firm of the Year"** for 2017 and 2018 by International Tax Review

Dhruva Advisors has been named **"India Disputes and Litigation Firm of the Year 2018"** by International Tax Review