

**GST : Supply of goods made to international outbound passengers holding international boarding pass from retail outlet of applicant located in Security Hold Area of IGI International Airport, Terminal-3, may be taking place beyond Customs Frontiers of India as defined under section 2(4) of IGST Act, 2017. However, said outlet is not outside India, as claimed by applicant but same is within territory of India as defined under section 2(56) of the CGST Act, 2017 and section 2(27) of the Customs Act, 1962 and hence applicant is not taking goods out of India and hence their supply cannot be called 'export' under section 2(5) of the IGST Act, 2017 or 'zero rated supply' under section 2(23) and section 16(1) of the IGST Act, 2017. Accordingly, the applicant is required to pay GST at applicable rates**

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**DELHI AUTHORITY FOR ADVANCE RULINGS**  
**Rod Retail (P.) Ltd. *In re.***  
**PANKAJ JAIN AND VINAY KUMAR, MEMBER**  
**ADVANCE RULING NO. 01/DAAR/2018**  
**MARCH 27, 2018**

**Ashok K. Bhardwaj**, Adv. *for the Applicant.* **Raj Kumar** *for the Respondent.*

**RULING**

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**Statement of Facts:**

- 1.** The applicant is in the business of retail sale of sunglasses. The applicant was registered under the Delhi Value Added Tax Act, 2004 and the Central Sales Tax Act, 1956 and now the applicant has migrated to GST regime and its present provisional GST Number is 07AADCR6468R1ZF.
- 2.** The applicant has several retail outlets in Delhi and one such outlet is at Terminal 3 (International Departure), Indira Gandhi International Airport, New Delhi. The present application relates to the question arising from the transaction conducted from the said outlet.
- 3.** As a standard rule, every International Airport has a "Landside" and an "Airside". The Landside area comprises of Check in counters and Baggage Drops and Airside area has aircrafts for boarding. A passenger crosses over from Landside to Airside by passing through Customs & Immigration area and then through security on to the Boarding Gates for departure. The applicant's concerned retail outlet is in the Security Hold Area on crossing the Customs & Immigrations with the address- Shop No. INS-18, SHA Area, International Departure, Terminal 3, IGI Airport, New Delhi-110037. The said outlet is permitted to function beyond the Customs Area and within the Security Hold Area of the IGI Airport vide an arrangement with the Delhi International Airport Private Limited, dated 06.06.2016. The Concept and Category of the applicant under the said agreement being Retail and Sunglasses and the brand- "Sunglass Hut", which is a retail brand of the International group Luxottica.
- 4.** For the purposes of sale from the said outlet, the applicant procures supplies from the Sunglass Hut brand owner M/s Luxottica India Private Limited, Gurgaon, after payment of Integrated Tax (Inter-State Supply form Gurgaon to Delhi) @ 28%

5. The sunglasses procured from the supplier are further supplied by the applicant to the International passengers travelling to outside India against a valid international boarding pass.

6. The applicant supplies goods only to such passengers which have a valid international boarding pass. In few instances, where domestic passengers are travelling to a domestic destination on a transit International flight, no supply to such passengers holding a domestic boarding pass is made by the applicant.

7. Presently, the applicant is charging SGST/CGST on the supply invoice issued to the International passengers. However, the applicant is of the view that, its supply of goods to international passengers is a zero rated transaction, being 'export sale' within the meaning of the same under Section 2(5) of the IGST Act.

8. The issue is whether the location of the retail outlet of the applicant in the Security Hold Area of the International departure is outside India though geographically it is within the territory of India. The said area is after crossing the Customs Frontier of India and is claimed to be situated outside the territory of India.

**Details of Question on which Advance Ruling is requested:**

9. Whether the supply of sunglasses from the retail outlet of the applicant at Terminal 3, IGI Airport (International Departure), New Delhi, to outbound international passengers against the international boarding pass is liable to SGST under the DGST Act, 2017 and CGST under the CGST Act, 2017 or is it a zero rated "export" supply within the meaning of Section 2(23) r/w Section 2(5) of the IGST Act, 2017?

**Views of the Applicant:**

10. Under the Central Sales Tax Act, 1956 (CST Act), as it existed prior to 1<sup>st</sup> July, 2017, the export out of India were defined under Section 5(1) of the CST Act and which read as under:

*5. When is a sale or purchase of goods said to take place in the course of import or export.—*

- (1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.*
- (2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.*
- (3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.*
- (4) The provisions of sub-section (3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority.*

- (5) *Notwithstanding anything contained in sub-section (1), if any designated Indian carrier purchases Aviation Turbine Fuel for the purposes of its international flight, such purchase shall be deemed to take place in the course of the export of goods out of the territory of India.*

*Explanation.—For the purposes of this sub-section, "designated Indian carrier" means any carrier which the Central Government may, by notification in the Official Gazette, specify in this behalf.*

**11.** Under the above provisions of the CST Act, an issue had arisen on the sales made from the Duty Free Shops to the International passengers at the International Airport and the Supreme Court of India in the case of *M/s Hotel Ashoka (Indian Tourism Development Corporation Limited) v. Assistant Commissioner of Commercial Taxes and Another*, decided on 03.02.2012 expressed a view that such sales are constitutionally exempt from tax under Article 286 of the Constitution of India (being sales in the course of export out of India within the meaning of Section 5(1) of the CST Act). The apex Court in the said decision took note of the fact that Duty Free Shops are located in a Zone which is entered by crossing the customs frontier of India, i.e. they are not within the customs frontiers of India and any sales from the said area is duly covered under Section 5(1) of the CST Act. The apex Court further opined, that, submissions with regard to sale not taking effect by transfer of documents of title to the goods is one of the methods whereby delivery of the goods is effected. Delivery may be physical also. In the case of the duty free shops which are outside the customs frontiers of India, the goods have been sold to the customers by giving physical delivery. Hence, the territorial extent of India starts after crossing the Customs limits. The Hon'ble Supreme Court has held that when any transaction takes place outside the Custom Frontiers of India, the transaction would be said to have taken place outside India.

**12.** It is submitted by the applicant that in the case of *Collector of Customs, Calcutta v. Sun Industries*, the Hon'ble Supreme Court has held that taking out to a place outside India would also mean a place in high seas. It is beyond the territorial waters of India. Hence, ratio of supreme court decision is applicable to the present case as the goods have been supplied beyond the customs frontiers of India and the said area is akin to high seas and hence outside India.

**13.** The definition of "export of goods" under Section 2(5) of the IGST Act is reproduced below:

*"export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India.*

**14.** The Section 2(23) of the IGST Act, defines 'zero rated supply' as under:

*"zero-rated-supply" shall have the meaning assigned to it in Section 16.*

**15.** The relevant portion of Section 16 of the IGST Act reads as under:

*Zero rated supply- (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.*

**16.** The Section 2(4) of the IGST Act also defines 'customs frontiers of India' as under:

*"Customs frontiers of India" means the limits of a customs area as defined in Section 2 of the Customs Act, 1962 (52 of 1962)*

**17.** The above definition of 'customs frontiers of India' is on the lines of definition of 'crossing of customs frontiers of India' given in Section 2(ab) of the CST Act, 1956 and which was examined by

Supreme Court of India in case of Hotel Ashoka (Indian Tourism Development Corporation Limited).

**18.** The legal interpretation of the applicant of the above provisions of law vis-a-vis the transaction of the applicant at its retail outlet at Terminal 3 (International Departure) is as under:

*The definition of 'export of goods' under Section 2(5) of the IGST Act, reveals, that, it has two limbs-*

- i. *Taking of goods out of India*
- ii. *To a place outside India*

*The applicant's interpretation, is that, in the present transaction when the goods (sunglasses) are brought into its retail outlet, they do so by crossing the customs frontiers of India (landside of the airport to the airside by crossing the customs and into Security Hold Area – where the outlet is located) and which satisfies the first limb of the definition of the 'export of goods' – taking goods out of India.*

*When the goods are supplied to the International passengers from the retail outlet against the international boarding pass, the second limb of the definition of 'export of goods' is also satisfied as the boarding pass gives the destination of the passengers to a place outside India.*

**19.** The applicant has requested that supply of sunglasses to the international passengers from its retail outlet at Terminal 3 (International Departure), IGI Airport, New Delhi, is an instance of 'export of goods' and is a zero rated supply under Section 16 of the IGST Act and which means that the applicant has no tax (SGST/CGST) liability on the said transaction of supply under the DGST Act, 2017 or CGST Act, 2017.

**Comments of Jurisdictional Officer (SGST):**

**20.** The applicant has paid Rs. 1,94,71,525 as VAT during the year 2016-17. Previously, the sale of sunglasses from the said business place was not exempted under DVAT Act, and now if the same is exempted from paying GST, then there would be financial implications. Therefore, before passing any such orders, it would be appropriate that we should inspect all the shops/ retail outlets/ business places located in the duty free zone of the International departure of IGI Airport, New Delhi to check whether all such retail outlets are exempted from paying GST.

**Relevant Legal Provisions:**

**21.** The relevant provisions of the Constitution of India are as follows:

- (i) **Article 269(1) before amendment on 08.09.2016:** *Taxes on the sale or purchase of goods and taxes on the consignment of goods shall be levied and collected by the Government of India but shall be assigned and shall be deemed to have been assigned to the States on or after the 1st day of April, 1996 in the manner provided in clause (2).*

*Explanation.—For the purposes of this clause,—*

- (a) *the expression "taxes on the sale or purchase of goods" shall mean taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce;*
- (b) *the expression "taxes on the consignment of goods" shall mean taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade*

*or commerce*

**(ii) Article 286(1) before amendment on 08.09.2016:**

Restrictions as to imposition of tax on the sale or purchase of goods

(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—

- (a) *outside the State; or*
- (b) *in the course of the import of the goods into, or export of the goods out of, the territory of India.*

**22. Section 5 of the Central State Tax Act, 1956**

*"When is a sale or purchase of goods said to take place in the course of import or export.—*

- (1) *A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.*
- (2) *A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.*
- (3) *Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.*
- (4) *The provisions of sub-section (3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority.*
- (5) *Notwithstanding anything contained in sub-section (1), if any designated Indian carrier purchases Aviation Turbine Fuel for the purposes of its international flight, such purchase shall be deemed to take place in the course of the export of goods out of the territory of India.*

*Explanation.—For the purposes of this sub-section, "designated Indian carrier" means any carrier which the Central Government may, by notification in the Official Gazette, specify in this behalf.*

**23. Section 2(ab) fo the Central State Tax Act, 1956**

*"crossing the customs frontiers of India" means crossing in the limits of the area of a customs station in which imported goods or export goods are ordinarily kept before clearance by customs authorities. Explanation.—For the purposes of this clause, "customs station" and "customs authorities" shall have the same meanings as in the Customs Act, 1962 (52 of 1962).*

**24.** The relevant provisions of Integrated Goods and Services Tax Act, 2017 are as follows:

- (i) **Section 2(4):** "Customs frontiers of India" means the limits of a customs area as defined in section 2 of the Customs Act, 1962 (52 of 1962);
- (ii) **Section 2(5):** "Export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;
- (iii) **Section 2(23):** "zero-rated supply" shall have the meaning assigned to it in section 16;
- (iv) **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.

25. The relevant provision of the CGST Act, 2017:

- (i) **Section 2(56):** "India" means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters;

26. The relevant provisions of the Customs Act, 1962 are as follows:

- (i) **Section 2(11):** "customs area" means the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities;
- (ii) **Section 2(18):** "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;
- (iii) **Section 2(27):** "India" includes the territorial waters of India;

27. The Section 3 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 read as under:

- (1) The sovereignty of India extends and has always extended to the territorial waters of India (hereinafter referred to as the territorial waters) and to the seabed and subsoil underlying, and the air space over, such waters.
- (2) The limit of the territorial waters is the line every point of which is at a distance of twelve nautical miles from the nearest point of the appropriate baseline.
- (3) Notwithstanding anything contained in sub-Section (2), the Central Government may, whenever it considers necessary so to do having regard to International Law and State practice, alter, by notification in the Official Gazette, the limit of the territorial waters.

## DISCUSSIONS:

28. The issue for decision is whether the supply of goods made to international outbound passengers holding international boarding pass from the retail outlet of the applicant which is located in the Security Hold Area of the IGI International Airport, Terminal-3, and which is claimed to be beyond Customs Frontiers of India, should be considered as zero rated supply, being export of goods, or the same should be subjected to GST @ 28%, being presently paid by the applicant.

**29.** Before the implementation of GST i.e. prior to 01.07.2017, according to the Article 269(1) of the Constitution of India, the tax on sale or purchase of goods in the course of inter-state trade or commerce was levied by Central Government and not by the State Government. Further, under Article 286(1) of the Constitution of India, the State Governments were not authorised to levy tax on sale or purchase of goods in the course of import into, or export of the goods out of, the territory of India. Further, Section 5(1) of Central Sales Tax Act, 1956 defined that a sale or purchase of goods shall be deemed to take place in the course of export of the goods out of territory of India, if the sale or purchase takes place after the goods have crossed the Customs Frontier of India. Since, the sale of goods from duty free shops at International Airports to passengers was taking place beyond customs frontier of India, no State Government was competent to levy VAT on such goods.

**30.** A similar issue was also decided by the Hon'ble Supreme Court in the case of Hotel Ashoka (Indian Tourism Development Corporation Limited). The Hon'ble Supreme Court had examined the issue of levy of VAT on the goods sold from duty free shops. It was observed that under the provisions of Article 286 of the Constitution of India and Section 5 of the CST Act, goods which were sold beyond Customs frontiers of India, the transactions had taken place in the course of import and the State Government was not permitted to levy VAT on such sale or purchase of goods. It was also observed by the Hon'ble Supreme Court that as per Section 2(11) of the Customs Act, the said sale transactions had taken place outside India.

**31.** The abovementioned decision of the Hon'ble Supreme Court does not appear to be applicable in the present case as in the said case, the Hon'ble Supreme Court had interpreted the scope of Section 2(11) of the Customs Act, 1962 under which "Customs area" were defined. No doubt, the duty free shops may be established beyond the Customs Frontiers of India. However, the issue in the present case is whether the said duty free shops are outside India i.e. whether they are "beyond airspace on territorial waters of India".

**32.** In the present case, as per Section 2(5) of the IGST Act 2017, export of goods takes place only when goods are taken out to a place outside India. Further, India is defined under Section 2(27) of the Customs Act, 1962 as "India includes the territorial waters of India". Similarly, under CGST Act 2017, under Section 2(56), India means the territory of India including its territorial waters and the air space above its territory and territorial waters. Hence, the goods can be said to be exported only when they cross the territorial waters of India and the goods cannot be called to be exported, merely on crossing the Customs Frontiers of India.

**33.** However, under GST regime effective from 01.07.2017, the applicant has claimed that no GST is payable on such supply taking place beyond the customs frontiers of India as the same should be considered as exports of goods under Section 2(5) of the IGST Act 2017 and should be zero rated supply under Section 2(23) r/w Section 16(1) of the IGST Act 2017.

**34.** It is observed that "export of goods" has been defined under Section 2(5) of the IGST Act, 2017 as taking goods out of India to a place outside India. The India is defined under Section 2(56) of the CGST Act as "India" means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters". Hence, when goods are exported by Air, the export will be completed only when goods crosses airspace limits of its territory or territorial waters of India.

**35.** It is also observed that Hon'ble Supreme Court of India, in the case of *Collector of Customs, Calcutta v. Sun Industries* decided on 11.04.1988 held that under Section 2(18) of the Customs Act, 1962, the export of goods out of India was completed when the ship had passed beyond the territorial

waters of India. Since, definition of "export" under Section 2(18) of the Customs Act, 1962 and the definition under Section 2(5) of the IGST Act, 2017 are exactly the same, the ratio of judgment of Hon'ble Supreme Court of India in the abovementioned case is squarely applicable in the present case also.

## **RULING**

**36.** It is held that the supply of goods to the International passengers going abroad by the applicant from their retail outlet situated in the Security Hold Area of the Terminal-3 of IGI Airport, New Delhi may be taking place beyond Customs Frontiers of India as defined under Section 2(4) of the IGST Act, 2017. However, the said outlet is not outside India, as claimed by the applicant but the same is within the territory of India as defined under Section 2(56) of the CGST Act, 2017 and Section 2(27) of the Customs Act, 1962 and hence the applicant is not taking goods out of India and hence their supply cannot be called "export" under Section 2(5) of the IGST Act, 2017 or "zero rated supply" under Section 2(23) and Section 16(1) of the IGST Act, 2017. Accordingly, the applicant is required to pay GST at the applicable rates.

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