

This Appeal has been filed by M/s Indian Oil Corporation Ltd. (hereinafter referred to as “the Appellant”) on 10.12.2018 against Advance Ruling No. 17/WBAAR/2018-19 dated 18.09.2018, pronounced by the West Bengal Authority for Advance Ruling (hereinafter referred to as ‘the WBAAR’) in the matter of M/s Indian Oil Corporation Ltd.

2. M/s Indian Oil Corporation Ltd. holding GSTIN Number 19AAACI1681G1ZM, sought an advance ruling under the West Bengal Goods and Services Tax Act, 2017/ the Central Goods and Services Tax Act, 2017 (hereinafter collectively referred to as “the GST Act”) on the following question:

“Whether or not GST paid on the railway freight for transportation of the refining crude petroleum oil, inter alia, High Speed Diesel (HSD), Motor Spirit (petrol) and Aviation Turbine Fuel (ATF) from its Haldia Refinery to its export warehouse at Raxaul can be availed as Input Tax Credit.”

3. The WBAAR by order number 17/WBAAR/2018-19 dated 18.09.2018 pronounced that-

“ATF and other non-taxable supplies from the Applicant’s Haldia Refinery to the export warehouse of Indian Oil Corporation Ltd. at Raxual are not Zero rated supplies. They are non-taxable supplies from the Applicant to the Bihar Unit of Indian Oil Corporation Ltd, who are distinct persons in terms of Section 25(4) of the GST Act. The Applicant cannot claim credit of the GST paid on the railway freight for transportation of ATF and other non-taxable supplies from West Bengal to the Bihar Unit.”

4. The Appellant has filed an Appeal against the above Advance Ruling with the prayer to set aside/modify the impugned Advance Ruling passed by the WBAAR or pass any such further or other orders as may be deemed fit and proper in the facts and circumstances of the case on the following grounds:

- (A) The Hon’ble WBAAR has erred in holding the supply from Haldia to Raxual are not ‘Zero rated supplies’ under Section 16(1)(a) of the IGST Act and also erred in holding that the said supplies are non-taxable supplies under Section 2(78) of the CGST Act and the supply is not inextricably linked to the ultimate export to Nepal.
- (B) The Hon’ble WBAAR has erred in holding the movement of goods from Haldia refinery to its export warehouse at Raxaul is not inextricably linked to the ultimate export to Nepal.
- (C) The Hon’ble WBAAR failed to appreciate that as per agreement, IOCL (Indian Oil Corporation Limited) shall not supply the POL (Petroleum, Oil and Lubricants) Products covered under the agreement to parties other than NOC (Nepal Oil Corporation Ltd.) in Nepal. As per the agreement, the IOCL shall sell POL Products to NOC at a price on bond, that is free of all Indian duties and taxes.
- (D) As per Clauses 4.0 (g, h & i) of the Agreement which clearly indicates that the relevant products need to be dispatched from Haldia and the final prices would include prices for delivery ex-depo/ supply location.
- (E) The storage location at Raxual is an Export warehouse that executed a B-3 general bond for obtaining goods without payment of Excise duty meant for export from the specified manufacturing unit (Haldia Refinery is in the instant case)
- (F) Subsequent to issue of B-3 bond, the department issues certificate in Form CT-2 for procurement of excisable goods. On receipt of CT-2, the refinery unit prepares ARE-3 form which is a form for clearance of goods for Export Warehousing.
- (G) The Refinery unit is to receive the duly re-warehoused ARE-3 form within 90 days. This clearly indicates that the movement of goods from Haldia Refinery to Export Warehouse at Raxual is inextricably linked to the ultimate export to Nepal.
- (H) The WBAAR erred in holding that the Product Delivery Orders (PDO) are actual export orders. Actually PDO issued by the NOC is just the upliftment of part of its monthly requirement from the Raxual warehouse. As per Clause 5(c) of the

agreement NOC is bound to furnish to the Appellant its requirement at least 30 days before the commencement of each quarter.

- (I) The WBAAR erred in holding the supply is not 'zero rated supplies' because the Raxual Warehouse is a distinct person under Section 25(4) of the CGST Act. The Raxual Warehouse is only a branch of the appellant and is not a distinct undertaking. It is regarded as a distinct undertaking or person for the purposes of compliance of the provisions of the GST Act.
- (J) If the effect of sale is to have the movement of goods from one State to another, an inter-State sale would ensue under Section 3(a) of the Central Sales Tax Act. The said Section 3(a) and its principals are clearly applicable also to sale in the course of export under Section 5(1) of the Central Sales Tax act as has been held by the Hon'ble Supreme Court.
- (K) The WBAAR erred in holding that the relevant goods cleared from the Halidia Refinery may be diverted for home consumption. The Appellant has submitted that the movement of goods from Haldia Refinery to its Raxual warehouse is only for the purposes of exportation to NOC, Nepal. The agreement and its covenants have resulted in such movement of goods and is therefore to be regarded as sale in the course of export.

5. During the course of the hearing the Appellant reiterated the points as stated in Grounds in Appeal. The Appellant further referred the following and also submitted the summarized written submission on dated 05.03.2019:

- (a) The Appellant drew attention to the sub-section 2 of Section 16 of the Integrated Goods and Services Tax Act, 2017, which states that "*Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such a supply may be an exempt supply.*" The Appellant also drew attention to the definitions of 'exempt supply' and 'non-taxable supply' as laid down under sub-section (47) and sub-section (78) of section 2 of the GST Act, respectively.
- (b) The Appellant further pointed out that sub-clause (8) of Clause 2 of minutes of Agreement which state that "The Nepalese side expressed the desire to take products in bond i.e. free of all Indian taxes. They would levy such customs duties on these products as they may determine from time to time. For this purpose the Indian side has agreed that effective from a date to be mutually agreed upon, the facility for storage, receipt and despatch of products in bond will be extended to the depots from which POL supplies are normally made to Nepal."
- (c) The Appellant drew the attention to the definitions of "PDO" as per agreement between IOCL and NOCL where it stated that 'PDO' means Product Delivery Order issued by NOC to the concerned IOC Supply Point for the loading of POL Products into the registered or advised Tank Trucks, Bullets or any other uplifting vessel or other means of transport nominated by NOC. The term 'PDO' shall also refer to

indents placed on a Supply Point for loading on any day by and large in line with prorata projected agreed allocation from that Supply Point in respect of the specific product for the given month.”

- (d) The appellant referred the following Supreme Court case laws
- (i) Hyderabad Engineering Industries Vs. State of Andhra Pradesh (civil appeal No 3781 of 2003, decided on March 4, 2011)
 - (ii) Oil India Ltd v. Supdt of Taxes (SCC p.737, Para 9)
 - (iii) English Electric Co. Of India Ltd v. CTO (SSC p. 464. Para 16)
 - (iv) South India Viscose Ltd v. State of T.N etc.

The judgment in the case of “Oil India Ltd v. Supdt. of Taxes” the Supreme Court held that “... *No matter in which State the property in the goods passes, a sale which occasions ‘movement of goods from one state to another is a sale in the course of inter-state trade.’ The inter-State movement must be the result of a covenant, express or implied, in the contract of sale or an incident of the contract, it is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. It is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter – State movement must be specified in the contract itself. It would be enough if the movement was in pursuance of and incidental to the contract of sale.*”

6. During the course of the hearing, the Respondent opposed the appeal and submitted a point wise rebuttal of submissions made by the Appellant:

- (a) The Respondent denied that the relevant product needed to be dispatched only from Haldia. In the clause 4.0 (g, h and i), the names of Haldia/Mumbai Refineries are mentioned.
- (b) The Respondent also denied that the agreement entails movement of goods only from Haldia. In the clause 4.0 (g, h and i), the names of Haldia/Mumbai Refineries are mentioned.
- (c) With reference to submissions made by the Appellant that Raxaul unit was simply a branch, it was stated that the fact of Raxaul being branch of the appellant is of no consequence in the present case. The West Bengal Unit of IOCL and IOCL’s Raxaul warehouse happen to be distinct persons in terms of section 25(4) of the GST Act.
- (d) The submission made by the appellant in paragraph related to the maintenance of sufficient stock at Raxaul was also disputed and the Respondent submitted that the Hon’ble West Bengal Authority for Advance Ruling (WBAAR) discussed in details in para 12 to 18 of the order No. 17/WBAAR/2018-19 dated 18.09.18 the reasons and rightly came to the conclusion that movement from the appellant’s factory at Haldia to the export warehouse at Raxaul was not, ‘inextricably linked’ to ultimate export to Nepal.

- (e) The Respondent submitted that the transfer of ATF and other non-taxable supplies from Haldia Refinery to Raxaul Depot were not “Zero rated supplies” under section 16(1)(a) of the IGST Act but were exempted supplies from the West Bengal Unit to the Bihar Unit of the Appellant. Movement from the appellant’s factory at Haldia to the export warehouse at Raxaul was not, ‘inextricably linked’ to ultimate export to Nepal. The reasons are discussed in details in para 9 19 of the order no 17/WBAAR/2018-19 dated 18.09.18 passed by the Hon’ble West Bengal Authority for Advance Ruling (WBAAR).
- (f) The Respondent submitted that Hon’ble West Bengal authority for Advance Ruling (WBAAR) discussed in details in para 9 to 19 of the order no 17/WBAAR/2018-19 dated 18.09.18 the reasons and rightly came to the conclusion that transfer of ATF and other non-taxable supplies from Haldia Refinery to Raxaul Depot were not “Zero rated supplies” under section 16(1)(a) of the IGST Act but were exempted supplies from the West Bengal Unit to the Bihar Unit of the Appellant, being distinct persons in terms of section 25 (4) of the GST Act.
- (g) The Respondent further submitted as per clause 5.7 of the agreement, NOC can depute an independent surveyor at the supply point to cross check, verify, inspect the quality and quantity of the goods. Obviously if something negative is found on inspection, the goods will not be exported, but it may be diverted for purpose other than export. So movement from the appellant’s factory at Haldia to the export warehouse at Raxaul was not, ‘inextricably linked’ to ultimate export to Nepal.
- (h) The Responded added that the Hon’ble WBAAR, rightly held that appellant, i.e. the West Bengal Unit of IOCL and IOCL’s Raxaul Warehouse are distinct persons in terms of section 25 (4) of the GST Act.
- (i) It was submitted further that the Hon’ble WBAAR, rightly held in para 13 of the order no 17/WBAAR/2018-19 dated 19.09.18 that the agreement with NOC was not an export order. It is, according to clause 3(a), an umbrella agreement between the parties for a period of five years with effect from 01/04/2017. The Hon’ble WBAAR, rightly held that according to the agreement, specific Product Delivery Orders (PDO) raised by NOC (Nepal Oil Corporation), were the actual export orders or indents placed on a supply point.
- (j) It was explained in details in the order no 17/WBAAR/2018-19 dated 18.09.18 as to why transfer of ATF and other non-taxable supplies from Haldia Refinery to Raxaul Depot were not “Zero rated supplies” under section 16(1)(a) of the IGST Act but were exempted supplies from the West Bengal Unit to the Bihar Unit of the Applicant.

7. The matter is examined and written and oral submissions made before us are considered.

8. Sub-section (1) of section 5 of the Central Sales Tax Act, 1956 provides for as under:
“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.”

In the instant case place of supply as referred to in the IGST Act is also required to be examined.

In terms of section 10(1)(a) of Chapter V [Place of supply of goods or services or both] of the IGST Act, 2017:

“ the place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,-

(a) Where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.”

Further, as per Section 25(4) of the GST Act,- “A person who has obtained or is required to obtain more than one registration, whether in one state or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purpose of this Act.”

9. Section 2(5) of the IGST Act states that ‘export of goods’ with its grammatical variations and cognate expression, means taking goods out of India to a place outside India.
10. The defining character of an export transaction both under section 5(1) of the CST Act and section 2(5) of the IGST Act is that it occasions movement of the goods to a place outside India.
11. The goods are supplied to the recipient (in this case the Bihar Unit) in India as the movement terminates at Raxaul. In such cases it will be an inter-state supply to a distinct person as defined under section 25(4) of the GST Act, and the place of supply shall be determined under section 10(1)(a) of the IGST Act.
12. The IOCL, Haldia issued ARE-3 against CT-2 for stock transfer of said goods to their Raxaul Depot. It is IOCL, Raxaul Depot who prepares the ARE-1 for export of the said goods to the NOC, Nepal. Hence, the movement of goods through ARE-3 terminates for delivery to the recipient IOCL, Raxaul Depot, who is a distinct person as per GST Act. The final clearance being made from the export warehouse at Raxaul, it is the Bihar Unit that is responsible for export on preparing ARE-1. Removal of goods without paying duty (under Bond) from Haldia Refinery to the export warehouse at Raxaul, therefore, cannot be termed as “export of goods” within the meaning of section 2(5) of IGST Act and cannot be termed as zero rated supply under Section 16(1)(a) of the IGST Act.
13. Movement from the Applicant’s factory at Haldia to the export warehouse at Raxaul is not, therefore, “inextricably linked” to ultimate export to Nepal.

14. The judgments cited by the Appellant in course of hearing are very much distinct from the issue in the present case. The cited judgments dealt with question of sale or stock transfer/branch transfer when transfer of goods from manufacturing unit in one State to seller's godowns/ branch outside that State for delivery to buyer pursuant to agreement to sell. The present issue relates to availability of Input Tax Credit paid on transportation cost under GST regime on the goods which are transported from the refinery of IOCL at Haldia to its Export Warehouse at Raxaul, Bihar.
15. The Appellant has admitted that the NOC issued PDO (Product Delivery Order) on Raxaul Depot of the IOCL which is actually the supply point of the products. And the Appellant's Raxaul unit prepared and submitted ARE-1 (Application for Export) to the Customs Authority for endorsement. Hence, the final clearance of goods for export has taken place from the Raxaul unit, the export warehouse of the Appellant and not from the Appellant's Haldia unit. Therefore, endorsement copies of ARE-3 cannot be treated as final proof of export.
16. In view of the above discussions, we find no infirmity in the ruling rendered by the West Bengal Authority for Advance Ruling.

The appeal thus fails and stands disposed of accordingly.

Send a copy of this order to the Appellant and the Respondent for information.

sd/—

(Smaraki Mahapatra)
Member
West Bengal Appellate Authority
for Advance Ruling

sd/—

(A.P.S Suri)
Member
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