



SEZ unit not liable to pay GST under RCM subject to furnishing of LUT

M/s Waaree Energies Limited¹

Recently, the Authority for Advance Ruling, Gujarat ('the Authority') in the case of M/s Waaree Energies Limited ('the applicant') held that Special Economic Zone ('SEZ unit') unit is not liable to pay tax under Reverse Charge Mechanism ('RCM') for the services received from Domestic Tariff Area ('DTA') such as services of an advocate, Goods Transport Agency (GTA Service) etc². provided that it furnishes a Letter of Undertaking ('LUT') or Bond.

Facts of the case

- The applicant, engaged in the business of manufacturing of solar modules and registered as an SEZ unit under GST, sought an advance ruling as to whether it is liable to pay tax under RCM on specified services in accordance with the Service RCM Notification.

Applicant's submission

- An SEZ unit is not liable to pay GST under RCM basis the following:
 - Services received from DTA should also be treated as import of service in terms of Section 2(o) of the SEZ Act 2005 ('SEZ Act'). Further,

the same shall be exempt from tax in terms of the Notification No. 18/2017- IGST (Rate) dated July 5, 2017, which exempts services imported by SEZ unit for authorized operations from the whole of IGST.

- Services procured from DTA suppliers shall be exempt from tax in terms of Section 7 of the SEZ Act read with Rule 5(5)(a) of the SEZ Rules, 2006 (SEZ Rules').
- Rule 30 of the SEZ Rules permits DTA suppliers to supply services to SEZ units without GST as zero-rated supplies in terms of Section 16 of the IGST Act. The appellant contended that input services received by SEZ from DTA should also be regarded as zero-rated supplies.
- Section 51 of the SEZ Act provides that in case of any conflict, the provisions of SEZ Act shall prevail over provisions of any other act and thus Service RCM Notification cannot have any application and hence, tax cannot be made applicable in this specific case.

¹TS-217-AAR(GUJ)-2024-GST

²Specified in Notification No. 10/2017-IGST (Rate) dated June 28, 2017 ('Service RCM Notification')



Discussion and Findings

- The Authority referred to Q.41 of the FAQs on GST, 3rd edition, dated December 15, 2018, which stated that tax shall be payable by SEZ on services received under RCM and in such case, SEZ shall be considered as the deemed supplier.
- Further, reliance was also placed on Notification No. 37/2017-CT, dated October 4, 2017, which provides that a DTA can supply services to SEZ without payment of IGST subject to furnishing of LUT.
- The Authority also borrowed the rationale of a clarification given by TRU, CBIC, New Delhi on a similar issue to a SEZ unit in IFSC Gandhinagar, which stated that SEZ unit can procure RCM services without payment of IGST provided it furnishes LUT, as the actual recipient of services would be considered as the deemed supplier for the purposes of fulfilling the requisite conditions or procedures.

Judgement

The Authority relied on the TRU clarification as well as similar ruling pronounced by ***Maharashtra AAAR in the case of Portescap India Private Limited***³ and held that the applicant, being an SEZ unit, is not required to pay GST under RCM on specified services subject to furnishing of a LUT or Bond.

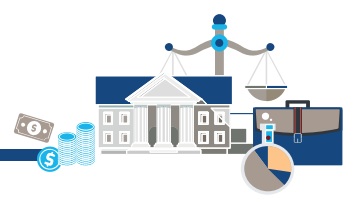
Dhruva Comments

The Ruling reinforces the intention of Government to not impose taxes on SEZ units.

Though, there are judgements under the erstwhile regime wherein Courts have upheld overriding powers of Section 51 of the SEZ Act. The Authority did not rely on the same while pronouncing the current ruling.

Given this, allowing zero-rated status to input RCM services received by SEZ unit will provide much needed relief, subject to following the procedure of furnishing LUT / Bond by SEZ unit as a deemed supplier.

³2023 (1) TMI 1092



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