

**GUJARAT AUTHORITY FOR ADVANCE RULING  
GOODS AND SERVICES TAX  
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,  
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/2024/09  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2023/AR/21)

Date: -16.04.2024

|                                                                                                |   |                                                                                         |
|------------------------------------------------------------------------------------------------|---|-----------------------------------------------------------------------------------------|
| Name and address of the applicant                                                              | : | M/s Waaree Energies Limited,<br>231-236, Diamond Park,<br>SEZ, Sachin,<br>Surat-394230, |
| GSTIN of the applicant                                                                         | : | 24AAACA4043J1Z2                                                                         |
| Jurisdiction Office                                                                            | : | Center Commissionerate - Surat<br>Division - IV Surat<br>Range -III                     |
| Date of application                                                                            | : | 14.06.2023                                                                              |
| Clause(s) of Section 97(2) of CGST /<br>GGST Act, 2017, under which the<br>question(s) raised. | : | (b), (e)                                                                                |
| Date of Personal Hearing                                                                       | : | 27.2.2024                                                                               |
| Present for the applicant                                                                      | : | Shri Anish Goyal, CA                                                                    |

**Brief facts**

M/s Waaree Energies Limited (for short –‘applicant’), 231-236, Diamond Park, SEZ, Sachin, Surat-394230, is engaged in the manufacture of solar modules. They are registered under the category of taxpayer as an "SEZ Unit" & their registration number is 24AAACA4043J1Z2.

2. The Applicant avails services such as Goods Transport Agency (GTA), Legal services from Advocate, Security Services, Bus Hiring for employees (specified services) from Domestic Tariff Area for their SEZ Unit.

3. Briefly, the facts leading to the applicant seeking a ruling is as under:

- that the applicant in terms of notification No. 10/2017-IT(Rate) dated 28.06.2017, as a service recipient of the above mentioned specified services is liable to pay GST under reverse charge mechanism[RCM];
- the applicant is of the belief that being an SEZ Unit, they are not liable for GST under RCM;
- that section 7 of SEZ Act 2005, provides for exemption to all services procured from a DTA (Domestic Tariff Area) or foreign suppliers specified in first schedule.
- that in terms of section 51 of the SEZ Act, 2005, the provisions of SEZ Act would have overriding effect on provisions of any other act including taxation laws;
- TRU, CBIC, vide letter F.No. 334/335/2017-TRU dated 18.12.2017, has issued a clarification in the context of RCM on procurement of service by International Financial Services Centre, SEZ to the effect that a unit in SEZ can procure services where they are required to pay GST under RCM, without payment of Integrated Tax provided the SEZ unit, furnishes a Letter of Undertaking in place of a bond as specified in condition no. (i) in Para 1 of notification no. 37/2017-CT.



- that in terms of CBIC Circular No 48/22/2018-GST dated 14.06.2018 any supply made to SEZ developers/SEZ unit for authorized operation, endorsed by the specified officer of SEZ, will be treated as interstate supply even if the supplier of goods or services or both, and the place of supply are in the same state /union territory.
- that rule (5)(5)(a) of SEZ Rules, 2006, provides exemption to SEZ unit from payment of SGST;
- Rule 30 of the SEZ Rules, 2006, provides that the DTA supplier supplying goods or services to a unit shall clear the services, as in the case of zero-rated supply as per section 16 of the IGST Act, 2017 either under bond or legal undertaking or under any refund procedure permitted under GST;
- that on a combined reading of the SEZ Act and the SEZ Rules, the 'reverse charge' notifications cannot have any application in this case;
- that as an alternate plea, even if it is assumed that RCM notifications are applicable, then also in terms of Section 16 of the IGST Act, 2017 the applicant can exercise the option to provide LUT, in respect of supplies made from DTA to an SEZ unit in terms of section 16(3), *ibid*;
- that even in the erstwhile regime, CBIC vide its circular No. 142/11/2011-ST dated 18.05.2011, had clarified that there is no difference in treatment of service tax paid under forward charge or reverse charge;
- that they would like to rely on the case of
  - M/s GMR Aerospace Engineering Limited [2019 (31) GSTL 593 (AP)];
  - M/s Portescap India Pvt Ltd.[Order No. MAH/AAAR/DS-RM/15/2022-23 dt. 13.01.2023 & reported in 2023(1) TMI 1092];
  - M/s Darshan Bordlam Ltd [2013 (287) E.L.T 401 (Guj.)];
  - Interglobe Aviation Ltd [2022 (379) E.L.T 200 (Del.)];
  - Damodar J. Malpani [2002 (146) ELT 483 (SC)];
  - Steel Authority of India [2000 (115) ELT 42 (SC)];

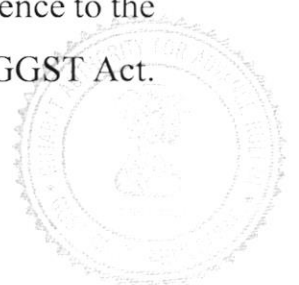
4. In view of the foregoing, the applicant is before us seeking a ruling on the below mentioned question viz

1. Whether the applicant being an SEZ unit is required to pay tax under reverse charge mechanism on specified services in accordance with notification No. 10/2017-IT(Rate) dated 28.6.2017 as amended from time to time.

5. Personal hearing in the matter was held on 27.2.2024 wherein Shri Anish Goyal, CA appeared on behalf of the applicant and reiterated the facts as stated in the application.

### **Discussion and findings**

6. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.



7. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

8. Before advertng to the submissions, we would like to reproduce the relevant provisions/notifications for ease of reference:

➤ **Integrated Goods and Services Act 2017**

○ **Section 5. Levy and collection.-**

(3) *The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.*

○ **Section 7. Inter-State supply.-**

(5) Supply of goods or services or both,-

- (a) when the supplier is located in India and the place of supply is outside India;
- (b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or
- (c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,

shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

○ **Section 16. 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 <sup>1</sup>[for authorised operations] to a Special Economic Zone developer or a Special Economic Zone unit.

(2) .....

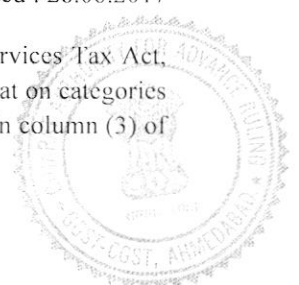
<sup>2</sup>[(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

**Provided** that the registered person making zero rated supply of goods shall, in case of non- realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (42 of 1999.) for receipt of foreign exchange remittances, in such manner as may be prescribed.

➤ **Notification No. 10/2017-Integrated Tax (Rate)**[as amended]  
[relevant extracts]

dated : 28.06.2017

-In exercise of the powers conferred by sub-section (3) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government on the recommendations of the Council hereby notifies that on categories of supply of services mentioned in column (2) of the Table below, supplied by a person as specified in column (3) of



the said Table, the whole of integrated tax leviable under section 5 of the said Integrated Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services as specified in column (4) of the said Table:-

**Table**

| Sl. No. | Category of Supply of Services                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Supplier of service                                                      | Recipient of Service                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|---------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1)     | (2)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | (3)                                                                      | (4)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 2       | <p>Supply of Services by a goods transport agency (GTA) [***] in respect of transportation of goods by road to-</p> <p>(a) any factory registered under or governed by the Factories Act, 1948(63 of 1948);or</p> <p>(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or</p> <p>(c) any co-operative society established by or under any law; or</p> <p>(d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or</p> <p>(e) any body corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person.</p> <p>[Provided that nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to, -</p> <p>(a) a Department or Establishment of the Central Government or State Government or Union territory; or</p> <p>(b) local authority; or</p> <p>(c) Governmental agencies, which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.]</p> <p>[Provided further that nothing contained in this entry shall apply where, -</p> <p>i. the supplier has taken registration under the CGST Act, 2017 and exercised the option to pay tax on the services of GTA in relation to transport of goods supplied by him under forward charge ;and</p> <p>ii. the supplier has issued a tax invoice to the recipient charging Central Tax at the applicable rates and has made a declaration as prescribed in Annexure III on such invoice issued by him.]</p> | Goods Transport Agency (GTA)                                             | <p>(a) Any factory registered under or governed by the Factories Act, 1948(63 of 1948); or</p> <p>(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or</p> <p>(c) any co-operative society established by or under any law; or</p> <p>(d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or</p> <p>(e) any body corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person; located in the taxable territory.</p> |
| 3       | [Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly. Explanation.- “legal service” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | An individual advocate including a senior advocate or firm of advocates. | Any business entity located in the taxable territory.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 16      | <p>Security services (services provided by way of supply of security personnel) provided to a registered person: Provided that nothing contained in this entry shall apply to, -</p> <p>(i)(a) a Department or Establishment of the Central Government or State Government or Union territory; or</p> <p>(b) local authority; or</p> <p>(c) Governmental agencies; which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or</p> <p>(i) a registered person paying tax under section 10 of the said Act</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Any person other than a body corporate                                   | A registered person, located in the taxable territory.]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 17      | Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Any person,                                                              | Any body corporate located in the taxable territory.]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

|  |                                                                                                 |                                                                                                                                                                                     |  |
|--|-------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
|  | included in the consideration charged from the service recipient, provided to a body corporate. | other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging integrated tax at the rate of 12 per cent. To the service recipient |  |
|--|-------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|

➤ **Notification No. 18/2017-Integrated Tax (Rate)** dated 5.7.2017

In exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Service Tax Act, 2017 (13 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do and on the recommendations of the Council, hereby exempts services imported by a unit or a developer in the Special Economic Zone for authorised operations, from the whole of the integrated tax leviable thereon under section 5 of the Integrated Goods and Service Tax Act, 2017 (13 of 2017).

➤ **Special Economic Zones Act, 2005**

○ **Section 2 :Definitions.**

(o) "import" means--

(i) bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or

(ii) receiving goods, or services by a Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone;

○ **Section 7 :Exemption from taxes, duties or cess.**

Any goods or services exported out of, or imported into, or procured from the Domestic Tariff Area by,--

(i) a Unit in a Special Economic Zone; or

(ii) a Developer,

shall, subject to such terms, conditions and limitations, as may be prescribed, be exempt from the payment of taxes, duties or cess under all enactments specified in the First Schedule.

○ **Section 51 : Act to have overriding effect.**

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

➤ **Special Economic Zones Rules, 2006**



○ **Rule 5. Requirements for establishment of a Special Economic Zone. -**

(5) Before recommending any proposal for setting up of a Special Economic Zone, the State Government shall endeavor that the following are made available in the State to the proposed Special Economic Zone Units and Developer, namely: -

(a) exemption from the State and local taxes, [State Goods and Services Tax,] levies and duties, including stamp duty, and taxes levied by local bodies on goods required for authorized operations by a Unit or Developer, and the goods sold by a Unit in the Domestic Tariff Area except the goods procured from domestic tariff area and sold as it is;

○ **30. Procedure for procurements from the Domestic Tariff Area.-**

[(1) The Domestic Tariff Area supplier supplying goods or services to a Unit or Developer shall clear the goods or services, as in the case of zero-rated supply as per provisions of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) either under bond or legal undertaking or under any other refund procedure permitted under Goods and Services Tax laws or Central Excise law, or as duty or tax paid goods under claim of rebate, on the cover of documents laid down under the relevant Central Excise law for the purpose of export by a manufacturer or supplier.]

9. The applicant's case is that in respect of the four services that they avail from DTA viz GTA, legal services from advocate, security services, bus hiring for employees, a recipient of service is required to pay GST under RCM in terms of notification No. 10/2017-IT (Rate), reproduced *supra*. However, the applicant further states that being an SEZ unit, Rule 5(5)(a) of the SEZ Rules, 2006, provides exemption from SGST; that Rule 30(1), *ibid*, enables a DTA supplier to clear services to an SEZ unit as in the case of zero rated supply in terms of section 16 of IGST Act, 2017, either under bond or under legal undertaking or under any other refund procedure permitted under the GST law; that notification No. 18/2017-IT (Rate) exempts service imported by unit in SEZ for authorized operation from the whole of IGST leviable u/s 5, *ibid*; that in terms of section 2(o) of SEZ Act, 2005, receipt of services by a SEZ unit from DTA is also to be treated as imports; that even otherwise, section 51 of the SEZ Act, 2005, which is a non obstante clause, clearly states that the provisions of the SEZ Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. In view of the foregoing, the applicant's averment that a combined reading clearly shows that the 'reverse charge' notifications cannot have any application in this case.

10. The applicant has also raised an alternative plea that even assuming that RCM notification *ie* notification No. 10/2017-IT (Rate), is applicable then also they could exercise the option of supply of services under LUT etc. without payment of



IGST as provided in respect of supplies made from DTA to an SEZ unit specifically u/s 16(3) of the IGST Act, 2017.

11. We find that the FAQs on GST, 3<sup>rd</sup> edition, dated 15.12.2018, on the question of payment of IGST under RCM, when received by an SEZ unit has clarified as under:

*Q 41. Whether SEZ unit or developer needs to pay IGST when it received supplies which are under reverse charge mechanism?*

*Ans. All supplies to SEZs are zero rated. However, the suppliers are given two options. In this case, the supplier is not liable to pay GST as the supply is under reverse charge mechanism. The recipient is considered as deemed supplier. Therefore, SEZ has to pay GST in this case.*

12. However, we also find that under notification No. 37/2017-CT, a unit in DTA can supply services to a unit in SEZ without payment of IGST subject to furnishing of LUT to the jurisdictional Commissioner. The relevant extracts of the notification are reproduced below for ease of understanding viz [relevant extracts]

#### Notification No. 37/2017 –Central Tax dated 4.10.2017

*G.S.R....(E).-In exercise of the powers conferred by section 54 of the Central Goods and Services Tax Act, 2017, and section 20 of the Integrated Goods and Services Tax Act, 2017, sub-rule (5) of rule 96A of the Central Goods and Services Tax Rules, 2017, and in supersession of notification No. 16/2017-Central Tax, dated the 7th July, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 848(E), dated the 7th July, 2017 except as respects things done or omitted to be done before such supersession, the Central Board of Excise and Customs hereby specifies conditions and safeguards for furnishing a Letter of Undertaking in place of a Bond by a registered person who intends to supply goods or services for export without payment of integrated tax –*

*(i) all registered persons who intend to supply goods or services for export without payment of integrated tax shall be eligible to furnish a Letter of Undertaking in place of a bond except those who have been prosecuted for any offence under the Central Goods and Services Tax Act, 2017 (12 of 2017) or the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or any of the existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees;*

On a similar issue, wherein clarification was sought, as to whether the SEZ unit is liable to pay GST in respect of legal services, sponsorship services etc received by an SEZ unit in IFSC, Gandhinagar, from a unit in DTA, which are chargeable to GST under RCM, Tax Research Unit, CBIC, New Delhi, clarified as under:

*“3. Since the intention of the Legislature is not to tax supplies to a unit in SEZ or a SEZ Developer which have been zero rated under clause (b) of section 16(1) of the IGST Act, by virtue of deeming provision under section 5(3) of the IGST Act, 2017, levy for procurement of input services specified under notification No. 13/2017-CT (Rate) falls upon the unit in SEZ or the SEZ developer. It is, therefore clarified that a unit in SEZ or the SEZ developer can procure such services, where they are required to pay GST under reverse charge, without payment of integrated tax provided the actual recipient, i.e. unit in SEZ or SEZ developer, furnishes a Letter of Undertaking in place of a bond as specified in condition no. (i) in para 1 of notification No. 37/2017-CT. The actual recipient of service*

*is the deemed supplier/registered person for the purpose of fulfilling other conditions in para 1 of the notification ibid including the manner of furnishing of Letter of Undertaking."*

13. There is no denying the fact that the aforementioned clarification was given to a specific SEZ unit and is not a circular. However, we find that there is no bar in borrowing the rationale of the aforementioned clarification. Hence, we find that the applicant, an SEZ unit, can procure the services mentioned *supra*, for use in authorized operations without payment of IGST provided the applicant, furnishes a LUT or bond as specified in condition (i) of para 1 of notification No. 37/2017-CT.

14. Our above view stands substantiated vide the order no. MAH/AAAR/DS-RM/15/2022-23 dated 13.1.2023 of the Maharashtra Appellate Authority for Advance Ruling in the case of M/s. Portescap India P Ltd.

15. In view of the foregoing, we rule as under:

### **R U L I N G**

The applicant, an SEZ unit, is not required to pay GST under RCM on specified services in accordance with notification No. 10/2017-IT(Rate) dated 28.6.2017 as amended from time to time, subject to furnishing a LUT or bond as specified in condition (i) of para 1 of notification No. 37/2017-CT.

  
(MILIND KAVATKAR)  
MEMBER (SGST)

  
(AMIT KUMAR MISHRA)  
MEMBER (CGST)

Place: Ahmedabad

Date: 16.04.2024

