

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015
(Constituted under section 96 of the West Bengal Goods and Services Act, 2017)

BENCH

Ms Susmita Bhattacharya, Joint Commissioner, CGST & CX
Mr Parthasarathi Dey, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Act, 2017 or West Bengal Goods and Services Act, 2017 (hereinafter collectively called 'the GST Act'), read with section 20(xviii) of the Integrated Goods and Services Act, 2017 (hereinafter the IGST Act), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	Sai Fertilizers Pvt Ltd
Address	21 Princep Street, 2 nd Floor, Kolkata- 700072
GSTIN	19AAECS0325B1ZV
Case Number	27 of 2019
ARN	AD190619002518T
Date of application	01/07/2019
Order number and date	20/WBAAR/2019-20 dated 26/08/2019
Applicant's representative heard	Sri Vikas Dhanania, FCA Sri Amber Gopalika, FCA

1. Admissibility of the Application

1.1 The Applicant is stated to be a manufacturer of chemical fertiliser, namely 'single super phosphate' (hereinafter called SSP), classified under HSN 3103. SSP is used both in agriculture and industry. The Applicant intends to export SSP and pay IGST at the applicable rate in terms of section 16(3)(b) of the IGST Act. It seeks a ruling on what the applicable rate of IGST should be in terms of Notification No. 1/2017 – IT (Rate) dated 28/06/2017, as amended from time to time (hereinafter the Rate Notification), in the light of Circular No. 54/28/2018-GST dated 09/08/2018.

1.2 The question raised is admissible for advance ruling under section 97(2)(b) of the GST Act read with section 20(xviii) of the IGST Act.

1.3 The Applicant declares that the issues raised in the Application are not pending nor decided in any proceedings under any provisions of the GST Act. The officer concerned from the revenue has not objected to the admission of the application. The Application is, therefore, admitted.

2. Observations and findings of the Authority

2.1 IGST payable on SSP is 18% under SI No. 43 of Schedule III the Rate Notification, provided it is 'clearly not to be used as fertiliser'. Otherwise, it is taxable @ 5% under SI No. 182B of Schedule I of the Rate Notification. Circular No. 54/28/2018-GST dated 09/08/2018 clarifies the phrase 'to be used as fertiliser'. It says that the intention has been to provide the concessional rate of tax to the fertilisers which are used directly as fertiliser or which are used in the manufacturing of other complex fertilisers for agricultural use. Otherwise, SSP shall be taxable @18% under SI No. 43 of Schedule III the Rate Notification.

2.2 Export is a zero rated supply. The Applicant intending to export SSP may opt for a refund of the unutilized input tax credit under section 16(3)(a) of the IGST Act or may pay the applicable IGST and claim a refund under section 16(3)(b) of the IGST Act.

2.3 While determining the applicable IGST rate, the question arises whether the benefit of concessional rate is available when the goods are not to be consumed in India. No provisions of the Act, beneficial or otherwise, are applicable beyond the taxable territory defined under section 2(22) of the IGST Act. Therefore, tax under the Act can be imposed on supplies, other than the zero rated ones, only when the goods or services are consumed within the taxable territory, which extends to India under section 1(2) of the IGST Act. Reference to the consumption of SSP as fertilizer in the Rate Notification, therefore, is limited to consumption in India only.

2.4 Clearly, the SSP being exported is not to be used as fertiliser in India, as the place of supply, according to section 11(b) of the IGST Act, will be the location outside India. The applicable rate of IGST is, therefore, 18% under SI No. 43 of Schedule III of the Rate Notification.

Based on the above discussion, we rule as under

RULING

The Applicant, while exporting 'single super phosphate', shall pay IGST @ 18% under SI No. 43 of Schedule III of Notification No. 1/2017 – IT (Rate) dated 28/06/2017, as amended from time to time, if it opts for refund in terms of section 16(3)(b) of the IGST Act.

This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.


(SUSMITA BHATTACHARYA)

Member

West Bengal Authority for Advance Ruling


(PARTHASARATHI DEY)

Member

West Bengal Authority for Advance Ruling