



ADVANCE RULING NO. GUJ/GAAR/R/45/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/54)

Date: 30.07.2020

Name and address of the applicant	:	M/s. Shree Sagar Stevedores Pvt. Ltd., Plot No.2107/D, Office No.102, D and I, Excelus, First Floor, Waghawadi road, Bhavnagar-364002.
GSTIN of the applicant	:	24AAKCS1498M1ZR.
Date of application	:	10.09.2018.
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(b) Applicability of a notification issued under the provisions of the Act. (e) Determination of the liability to pay tax on any goods or services or both.
Date of Personal Hearing	:	09.07.2020 (through Video Conferencing)
Present for the applicant	:	Shri Rajanikant Paragata.

BRIEF FACTS

The applicant M/s. Shree Sagar Stevedores Pvt. Ltd. has submitted that they are in the business of providing services in relation to transportation of goods from Magdalla Port to the General Lighterage Area (Anchoring Point of Mother Vessel) or vice versa.

2. The applicant has submitted that Entry No.18 of the Notification No.12/2017-Central Tax (Rate) dated 28th June, 2017 inter alia exempts the Services by way of transportation of goods by inland waterways. Inland waterways have been defined in the same notification to mean as “*national waterways as defined in clause(h) of section 2 of Inland Water Ways Authority of India Act, 1985 (82 of 1985) or other waterway on any inland water, as defined in clause (b) of Section 2 of the Inland Vessels Act, 1917.*”

2.1. The applicant has further submitted that **National waterways** is as defined in clause (h) of section 2 of the Inland Water Ways Authority of India Act, 1985 or (the inland waterway declared by section 2 of the National Waterway (Allahabad-Haldias Stretch of the Ganga-Bhagirathi-Hooghli River) Act,1982).

2.2 Other waterway or any inland water, as defined in clause(b) of section 2 of the Inland Vessels Act, 1917 means:

[“**inland water**” means-

- i. any canal, river, lake or other navigable water **within a state**,
- ii. any area of any tidal water deemed to be the inland water as defined by the Central Government under section 70;

iii. *water declared by the Central Government to be smooth and partially smooth waters under clause (41) of Section 3 of the Merchant Shipping Act, 1958*];

3. The applicant further submitted that accordingly, the transportation of goods by inland water ways i.e. (i) national waterways or (ii) other waterways on any inland water is exempted from GST. For the purpose of other waterway on any inland water, the term inland water means one category as “*any canal, river, lake or other navigable water within a state.*” The applicant has also stated that in their case the service of transportation of goods is being provided between Magdalla Port and its General Lighterage Area (Anchoring Point of Mother Vessel) or vice versa, which falls within the state (Gujarat) and, therefore, transportation services provided within the aforesaid meaning of inland waterway should be exempt from the levy of GST in terms of aforesaid notification.

4. The applicant also submitted that since Magdalla Port and its General Lighterage Area (Anchoring Point of Mother Vessel), between which service relating to transportation of goods are provided, are the areas falling within the State (Gujarat), and, therefore, are considered as inland waterways for the purpose of 2nd part of definition prescribed in clause (zi) of para 2 of the Notification No.9/2017-Integrated (Tax (Rate) dated 28.06.2017 read with Clause (b)(i) of Section 2 in the Inland Vessels Act, 1917 and consequently, the services provided for transportation of goods between Magdalla Port and Anchoring point of Mother Vessel are exempt from GST as per the Notification No. 09/2017-Integrated Tax (Rate).

5. In view of the above, the applicant has put forward the following questions on which advance ruling is required:

1. *“Whether service of transportation of goods from Magdalla Port, Surat to its General Lighterage Area of Magdalla Port (where the Mother Vessels are anchored) or vice versa, falls within the state of Gujarat so as to qualify for exemption from GST considering it as transportation of goods on other waterway of any inland water defined in clause(b) of Section 2 of the Inland Vessels Act, 1917?”*
2. *“Whether the service of above transportation fall within area as defined in ‘Inland waterways’?”*

DISCUSSION & FINDINGS:

6. We have considered the submissions made by the applicant in their application for advance ruling as well as the arguments/discussions made by their representative Shri Rajnikant Paragata at the time of personal hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

7. At the outset, we would like to state that the provisions of both the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 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 similar provisions of the GGST Act.

8. In this case, the moot point to be decided is as to whether service of transportation of goods from Magdalla Port, Surat to its General Lighterage Area of Magdalla Port (where the Mother Vessels are anchored) or vice versa, is

covered under exemption contained at Sr. No. 18 of Notification No. 12/2017-Central Tax (Rate) and as to whether the service of above transportation falls in the definition of 'Inland waterways'? We find that Clause (b) of Entry No.18 of the Notification No.12/2017-Central Tax (Rate) dated 28th June, 2017 inter alia exempts the Services by way of transportation of goods by **inland waterways**.

Further, clause **(zi)** of said Notification defines the "inland waterways" as under:

*“**inland waterways**” means national waterways as defined in clause (h) of section 2 of the Inland Water Ways Authority of India Act, 1985 (82 of 1985) or other waterway on any inland water, as defined in clause (b) of Section 2 of the Inland Vessels Act, 1917 (1 of 1917);”*

8.1 Thus, from the above, it can be derived that the "inland waterways" comprises of:

(i) national waterways, as defined in Clause (h) of section 2 of the Inland Water Ways Authority of India Act, 1985; and

(ii) other waterway on any inland water, as defined under Clause (b) of Section 2 of the Inland Vessels Act, 1917.

9. Now, we need to examine the definitions of **(i) national waterways**; and **(ii) other waterway on any inland water**, provided under the respective Laws. Clause (h) of section 2 of the Inland Water Ways Authority of India Act, 1985, defines the "**National waterways**" as under:

*(h) "**national waterways**" means the inland waterway declared by section 2 of the National Waterway (Allahabad-Haldia Stretch of the Ganga-Bhagirathi-Hooghli River) Act, 1982 (49 of 1982), to be a national waterway.*

Explanation.-If Parliament declares by law any other waterway to be a national waterway, then from the date on which such declaration takes effect, such other waterway-(i) shall be deemed also to be a national waterway within the meaning of this clause; and (ii) the provisions of this Act shall with necessary modifications (including modification for construing any reference to the commencement of this Act as a reference to the date aforesaid), apply to such national waterway;

9.1 We find that the Government of India has also enacted the National Waterways Act, 2016. Section 2(h) of the Inland Waterways Authority of India Act, 1985 has been amended by Section 4 of the National Waterways Act, 2016. Accordingly, Section 2(h) of the Inland Waterways Authority of India Act, 1985, now reads as under:

*(h) "**national waterways**" means the inland waterway declared by section 2 of the National Waterways Act, 2016, to be a national waterway.*

Explanation.-If Parliament declares by law any other waterway to be a national waterway, then from the date on which such declaration takes effect, such other waterway-

(i) shall also be deemed to be a national waterway within the meaning of this clause; and

- (ii) *the provisions of this Act shall, with necessary modifications (including modification for construing any reference to the commencement of this Act as a reference to the date aforesaid), apply to such national waterway;'*

Section 2 of the National Waterways Act, 2016 reads as under:

2.

- 1) *The existing national waterway specified at serial numbers 1 to 5 in the Schedule along with their limits given in column (3) thereof, which have been declared as such under the Acts referred to in sub-section (1) of section 5, shall, subject to the modifications made under this Act, continue to be national waterways for the purposes of shipping and navigation under this Act.*
2. *The regulation and development of the waterways referred to in sub-section (1) which have been under the control of the Central Government shall continue, as if the said waterways are declared as national waterways under the provisions of this Act.*
3. *The inland waterways specified at serial numbers 6 to 111 in the Schedule along with their limits given in column (3) thereof are hereby declared to be national waterways for the purposes of shipping and navigation.*

9.2 In the Schedule to the National Waterways Act, 2016, National Waterway 100 (appearing at Sr.No.100), has been, *interalia*, declared to be inland waterway. It reads as under:

Sr. No.	National Waterway	
100	National Waterway 100	<i>Tapi River:</i> <i>Hatnur Dam Near Mangalwadi Lat 21° 04'22"N, Lon75° 56'45" E to Gulf of Khambhat (Arbian Sea) at Lat 21° 02'16"N, Lon72° 39'30"E.</i>

9.3 It is worthwhile to mention here that as per the *Google Earth Map*, the General Lighterage Area of Magdalla Port (where the Mother Vessels are anchored), **does not fall within the limit of the National Waterway 100-Tapi River as declared vide the National Waterways Act, 2016.**

9.4 Now, we come to the definition of the **“Other waterway on any inland water”**. Clause (b) of Section 2 of the Inland Vessels Act, 1917, defines **“Other waterway on any inland water”**, as below:

(b) **“inland water”** means-

- i. *any canal, river, lake or **other navigable water within a State,***
- ii. *any area of any tidal water deemed to be the inland water as defined by the Central Government under section 70;*
- iii. *waters declared by the Central Government to be smooth and partially smooth waters under clause (41) of Section 3 of the Merchant Shipping Act, 1958 (44 of 1958);*

9.5 The 1st category of the term **“inland water”** comprises of **“any canal, river, lake or other navigable water within a state”**, as mentioned herein above. According to this, waterways on any canal, river, lake or other navigable water within a state, will be a part of **“Other waterway on any inland water”**.

9.6 In this regard, we find that the applicant is providing service relating to transportation of goods in the water way, i.e. from Magdalla Port to its General Lighterage Area (Anchoring Point of Mother Vessel) or vice versa. ***This waterway is a part of the Arabian Sea.*** Whereas, the term “Other waterway on any inland water” covers any canal, river, lake or other navigable water within a State only. The length of the waterway, between which the service of transport is performed by the applicant, is the part of the “Arabian Sea” and not a part of any canal, river, lake or other navigable water within a State. Thus, their contention, that the transportation is being done on the inland waterway falling within the state, appears to be incorrect.

9.7 As regards the contention that the entire activity is being done by them under territorial water only, it is worthwhile to mention that the Arabian Sea is not a part of the State of Gujarat and, hence, not covered under the term “Other waterway on any inland water” so as to be eligible for exemption of the Services by way of transportation of goods by **inland waterways**.

9.8 Thus, we find that the service of transportation of goods in barrages from mother vessel to daughter vessel from Magdalla Port, Surat to its General Lighterage Area of Magdalla Port does not get covered in the definition of ‘*other waterway on any inland water*’, as defined under Clause (b) of Section 2 of the Inland Vessels Act, 1917.

10. In view of the above, we conclude that the service of transportation of goods in barrages from mother vessel to daughter vessel from Magdalla Port, Surat to its General Lighterage Area of Magdalla Port is neither covered in the definition of ‘*national waterways*’, as defined in Clause (h) of section 2 of the Inland Water Ways Authority of India Act, 1985 nor covered in the definition of ‘*other waterway on any inland water*’, as defined under Clause (b) of Section 2 of the Inland Vessels Act, 1917. Consequently, the same does not qualify for exemption contained at Sr. No.18 of the Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017.

11. In light of the foregoing, we rule as under –

R U L I N G

1. The service of transportation of goods carried out by M/s.Shree Sagar Stevedoors pvt.ltd. from Magdalla Port, Surat to its General Lighterage Area of Magdalla Port (from where the Mother Vessel are anchored) or vice versa, does not fall within the state of Gujarat and does not qualify for exemption as contained at Sr.No.18 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017.
2. The service of above transportation does not fall within the area as defined in ‘Inland waterways’.

(SANJAY SAXENA)

MEMBER

(MOHIT AGRAWAL)

MEMBER

Place: Ahmedabad

Date: .30.07.2020.