

AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32,
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI – 600 003.

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.

Members present are:

1. Shri T.G. Venkatesh, I.R.S Member/ Additional Commissioner,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -34
2. Tmt. K. Latha, M.Sc., (Agri.), Member/ Joint Commissioner (ST)/
Authority for Advance Ruling, Tamil Nadu, Chennai-600 003.

ORDER No. 13/AAR/2022 DATED: 31.03.2022

GSTIN Number, if any / User id		33AAFFS6239J1Z0
Legal Name of Applicant		M/s. Sivanthi Joe Coirs
Registered Address/Address provided while obtaining user id	6/107, Theri Road, Servaikaranmadam, Pudukottai, Thoothukudi. 628 103.	
Details of Application		GST ARA- 01 Application Sl:No.01-/2022 ARA dated: 07.01.2022
Concerned Officer		State: Assistant Commissioner(ST) Tuticorin-III Assessment Circle, Centre: Madurai Commissionerate.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Factory / Manufacturing
B	Description (in Brief)	
Issue/s on which advance ruling required		1. Applicability of a notification issued under the provisions of this Act 2. Determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required		1. Whether an EOU can follow the procedure prescribed in "Explanation to Rule 96(10) of CGST Rules, 2017" vide Notification 16/2020 – Central Tax dt. 23rd March

	2020 and effective from 23.10.2017 of paying IGST/Compensation Cess on import of goods? 2. If answer to the above question is affirmative, then whether the applicant can continue to export goods on payment of IGST and claim refund thereof under Rule 96(10) of CGST Rules, 2017 read with Section 16(3) of IGST Act, 2017? 3. Whether it is compulsory for an EOU to procure goods/services without payment of tax from domestic suppliers as contemplated vide Notification No. No. 48/2017-Central Tax dated the 18th of October 2017 read with Section 147 of CGST Act, 2017? 4. Whether it is compulsory for an EOU to apply in FORM RFD-01 and get refund under Rule 89(4) vide Notification No. 75/2017 Dated 29-12-2017 applicable w.e.f. 23.10.2017 read with Section 16 (3) of IGST Act, 2017?
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Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

M/s. Sivanthi Joe Coirs, 6/107, Theri Road, Servaikaranmadam, Pudukottai, Thoothukudi. 628 103. (hereinafter called the Applicant) is registered under the GST Vide GSTIN 33AAFFS6239J1Z0. They have sought Advance Ruling on the following question:

1. Whether an EOU can follow the procedure prescribed in "Explanation to Rule 96(10) of CGST Rules, 2017" vide Notification 16/2020 – Central Tax dt. 23rd March 2020 and effective from 23.10.2017 of paying IGST/Compensation Cess on import of goods?
2. If answer to the above question is affirmative, then whether the applicant can continue to export goods on payment of IGST and claim refund thereof under Rule 96(10) of CGST Rules, 2017 read with Section 16(3) of IGST Act, 2017?
3. Whether it is compulsory for an EOU to procure goods/services without payment of tax from domestic suppliers as contemplated vide Notification No. 48/2017-Central Tax dated the 18th of October 2017 read with Section 147 of CGST Act, 2017?
4. Whether it is compulsory for an EOU to apply in FORM RFD-01 and get refund under Rule 89(4) vide Notification No. 75/2017 Dated 29-12-2017 applicable w.e.f. 23.10.2017 read with Section 16 (3) of IGST Act, 2017?

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The applicant has stated that they are one of the leading manufacturer and exporters of Coir Pith [HSN: 53050040]. They export more than 85% of their production all over the world including the developed countries viz. UK, USA, France, Germany, Australia etc. They have been certified to produce Coco Peat (Coir Pith) base products according to the Regulations of Organic Agriculture certified by IMO-Control, Switzerland and also ISO 9001 - 2008 Certified Organization Controlled by European Certification for Agricultural sector (MPS - ECAS), Netherlands. They have received prestigious award from the year 2000 till 2012 continuously 12 years for highest exporter of Coco Peat (Coir Pith base products) in India from Government of India. They are recognized as 100% EOU (Export Oriented Unit) under Chapter 6 of the Foreign Trade Policy 2015-20 by MEPZ Special Economic Zone, Ministry of Commerce and Industry and having a Green Card No. 2828/MEPZ valid till 21.05.2025. Since they are 100% EOU they are entitled to claim the exemptions

provided in Notification No. 52/03-Cus. dated 31.3.2003 (Exemption to specified goods imported or procured by EOU's, STP Units, EHTP units etc. for specified purposes) latest amended by NOTIFICATION NO. 19/2021-Customs dated 30th March 2021. Earlier, imports by EOUs were exempt from BCD but liable to IGST and compensation cess. However, from 13th October 2017, the goods (capital goods and inputs) imported by EOUs were exempted from BCD, IGST and Compensation cess by virtue of Notification No.78/2017-Customs dated. 13.10.2017 read with Notification No. 52/03-Cus. dated. 31.3.2003. They have stated that being an EOU, they have an option to procure goods from domestic suppliers as deemed exports without payment of taxes as per Section 147 of CGST Act. However, they are procuring goods from domestic suppliers only on proper payment of applicable CGST/SGST/IGST/Cess and not availing the benefit of deemed exports as given in Sec. 147 read with Notification No.48/2017 dt. 18.10.2017.

2.2 They have further stated that as per Section 16 (1) of IGST Act, 2017 "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 to a Special Economic Zone developer or a Special Economic Zone unit.

and 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 supply may be an exempt supply. They have further stated that a registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:

- (a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit;
- or
- (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied,

in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder." RULE 96 (10) OF CGST RULES:

a) The persons claiming refund of integrated tax paid on exports of goods or services should not have -

(a) received supplies on which the benefit of the Government of India, **Ministry of Finance notification No. 48/2017-Central Tax**, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E), dated the 18th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme or notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 has been availed; or

(b) availed the benefit under **notification No. 78/2017-Customs, dated the 13th October, 2017**, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.

Explanation. - For the purpose of this sub-rule, **the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications. (This is applicable from 23.10.2017)**

2.3 They have further stated that initially Rule 96(10) restriction is imposed on EOU vide Notification No. 54/2018 – Central Tax dt. 9th October 2018 not to opt for refund of integrated tax paid on exports of goods or services if they have availed the benefit of Notification No. 78/2017-Customs, dated the 13th of October 2017 (i.e. Importing goods without BCD, IGST or Cess). Later an explanation to Rule 96(10) is added vide Notification No. Notification No. 16/2020 – Central Tax dt. 23rd March 2020 and applicable effective from 23.10.2017 lifting the restriction imposed on EOU

provided that they satisfy the condition of payment of IGST and Cess at the time of imports and claiming exemption only for BCD then EOUs can also opt for getting refund of integrated tax paid on exports of goods or services. Presently, they are opting to pay IGST on imports and domestic procurements but availing exemption on other applicable custom duties as specified in Explanation to Rule 96(10). Thus, they are exporting the goods on payment of IGST and claiming refund thereof under Rule 96(10) of the CGST Rules, 2017 and not under Rule 89(4) of the CGST Rules, 2017 read with section 16(3) of IGST Act, 2017.

3.1 Due to the prevailing PANDEMIC situation and in order not to delay the proceedings, the willingness of the applicant to participate in a virtual Personal Hearing in Digital media was confirmed and hearing was held on 03.02.2022. The Authorised representative, Shri. M. Selvakumar, CA appeared for the hearing virtually and reiterated the submissions. The Members stated that questions 1, 2, 4 are outside the purview of Advance Ruling Authority in as much they pertain to refunds. The Authorised Representative stated that the questions pertain to the applicability of Notification No. 16/2020 – CT (R) dated 23.03.2020 with regard to “Explanation to Rule 96(10) of CGST Rules.

4. The State Jurisdictional Authority, Assistant Commissioner(ST), Tuticorin-3 has stated that there are no proceedings pending in the applicant's case in their jurisdiction as application for refund of IGST paid on export of goods is categorically dealt by Customs authorities. Further, the authority has opined that if IGST exemption is claimed in respect of inputs, the applicant cannot export goods or services on payment of IGST and claim refund of the accumulated credit.; the applicant may be allowed to export goods on payment on IGST and claim refund thereof conditionally, if the applicant does not avail the exemption benefits of IGST and Compensation Cess on inputs but can avail the Basic Customs Duty(BCD).; Section 147 does not impose any statutory obligation on the part of EOU to compulsorily procure goods/services without payment of tax from domestic suppliers.; If the EOU export zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017, refund of input tax credit shall be granted after the receipt of refund application in RFD-01 electronically.

5. The center jurisdictional authority, who has the administrative jurisdiction over the applicant, has stated that there are no pending proceedings' in the applicant's case in their jurisdiction. The authority has not furnished any comments on the questions raised.

6.1 We have carefully examined the submissions of the applicant in the application and during the hearing. The applicant is an EOU under Chapter 6 of the Foreign Trade Policy 2015-20 by MEPZ Special Economic Zone, Ministry of Commerce and Industry and are having a Green Card No. 2828/MEPZ valid till 21.05.2025. They have sought ruling on the following questions:

1. Whether an EOU can follow the procedure prescribed in "Explanation to Rule 96(10) of CGST Rules, 2017" vide Notification 16/2020 – Central Tax dt. 23rd March 2020 and effective from 23.10.2017 of paying IGST/Compensation Cess on import of goods?
2. If answer to the above question is affirmative, then whether the applicant can continue to export goods on payment of IGST and claim refund thereof under Rule 96(10) of CGST Rules, 2017 read with Section 16(3) of IGST Act, 2017?
3. Whether it is compulsory for an EOU to procure goods/services without payment of tax from domestic suppliers as contemplated vide Notification No. 48/2017-Central Tax dated the 18th of October 2017 read with Section 147 of CGST Act, 2017?
4. Whether it is compulsory for an EOU to apply in FORM RFD-01 and get refund under Rule 89(4) vide Notification No. 75/2017 Dated 29-12-2017 applicable w.e.f. 23.10.2017 read with Section 16 (3) of IGST Act, 2017?

The questions i.e., 1, 2 and 4 relates to procedure for claiming of refund under GST Act and Rules thereon. During the Virtual Personal hearing it was pointed out to the authorized representative of the applicant that question Nos.1, 2 and 4 are outside the purview of Advance Ruling Authority for issuing Ruling, the applicant replied that these questions pertains to the applicability of Notification No.16/2020 CT (Rate) dated 23-03.2020 with regard to "Explanation to Rule 96(10) of CGST Rules.

6.2 The submission of the applicant, regarding eligibility for the admission of question Nos.1, 2 and 4 is examined with reference to the relevant provisions of the Act. Section 97(2) of the CGST Act / Tamil Nadu GST Act (TNGST) gives the scope of Advance Ruling Authority, i.e., the question on which the Advance Ruling can be sought. For ease of reference, the section is reproduced as under:

97 (2) The question on which the advance ruling is sought under this Act, shall be in respect of,—

- (a) classification of any goods or services or both;
- (b) applicability of a notification issued under the provisions of this Act;
- (c) determination of time and value of supply of goods or services or both;
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;
- (e) determination of the liability to pay tax on any goods or services or both;
- (f) whether applicant is required to be registered;
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

6.3 From the above, it is seen that the question in respect of applicability of a notification issued under the provisions of the Act is covered under the ambit of this authority. In the case at hand, the applicant has stated that the question pertain to the applicability of Notification No. 16/2020-CT® dated 23.03.2020. On perusal it is seen that there is no notification No. 16/2020-C.T(R) dated 23.03.2020 but there is a notification No.16/2020- Central Tax dt. 23-3-2020. The said Notification No. 16/2020 dt. 23.03.2020, amends the CGST Rules 2017. Among the various amendments proposed to the Rules, in the said Notification, vide Sl. No. 10 of the said Notification, an Explanation was inserted in Rule 96(10)(b), with effective from 23rd October 2017, the related 'amendment' made to Rule 96(10) which is relied on by the applicant is extracted below:

10. In the said rules, in rule 96, in sub-rule (10), in clause (b) with effect from the 23rd October, 2017, the following Explanation shall be inserted, namely,-

“Explanation.- For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.”.

Thus, it is evident that Notification, the applicability of which is raised before us, amends the Rules with the insertion of the explanation is to Rule 96(10)(b). Rule 96(10) of the CGST Rules 2017 restricts the circumstances for a person claiming Integrated Tax paid on exports of goods or services. This authority do not have

jurisdiction to admit questions relating to refund of any tax paid by the applicant as per Section 97(2) of GST Act. Therefore the question numbers, 1, 2 and 4 **are not admissible for ruling** before this authority.

6.4 Question no. 3 raised by the applicant is as below:

“Whether it is compulsory for an EOU to procure goods/services without payment of tax from domestic suppliers as contemplated vide Notification No. 48/2017-Central Tax dated the 18th of October 2017 read with Section 147 of CGST Act, 2017?”

The above question relates to the procurement made by the applicant. Section 95 (a) of CGST and TNGST Act defines ‘Advance Ruling’ as

(a) **“Advance Ruling”** means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of Section 97 or sub-section (1) of section 100, **in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.**

The above states that the Ruling means a decision extended in relation to the supply made or proposed to be made by the applicant. In the case at hand, the question is on the procurement to be made by the applicant and not on the supplies made or proposed to be made by them. The subject issue raised in the question No.3 is related to **‘receipt of supply’** with or without tax for exports. As per section 95(a) only the **‘supplier of goods or services or both’** alone is eligible to seek advance ruling. The applicant being recipient in respect of question No.3, it is noticed that this question is also ‘outside the purview of the Advance Ruling Authority’ under 97(2) of the GST Act.

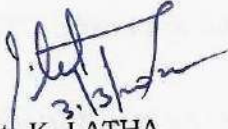
7. In view of the above, we rule as under:

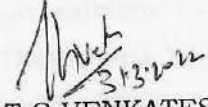
RULING

- (i) The question Nos.1, 2 and 4 raised by the applicant is on the applicability of Explanation inserted to the rules governing the provisions of ‘REFUNDS’ of Integrated tax paid by the applicant and falls outside the purview of Section 97(2) as detailed in Para 6.3 above, therefore not admitted; and

- (ii) The question no. 3 is on the receipt of supply by the applicant and not on the supply made by them as detailed in Para 6.4 above and therefore not admitted before this authority.

In view of the above, the entire application is rejected.


Smt. K. LATHA
Member (SGST)


Shri T.G.VENKATESH
Member (CGST)



To,
M/s. Sivanthi Joe Coirs **/ / BY SPEED POST WITH ACK.DUE / /**
6/107, Theri Road,
Seraikaranmadam,
Pudukottai, Thoothukudi. 628 103.

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Additional Chief Secretary/Commissioner of Commercial Taxes,
IInd Floor, Ezhilagam, Chepauk, Chennai - 600 005.

Copy to:

3. The Commissioner of GST & Central Excise, Madurai Commissionerate
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4. Assistant Commissioner (ST) Tuticorin- III Assessment Circle,
No. 282-A, North Beach Road, Tuticorin-628001.
5. Master File/ Spare - 2.