

**AUTHORITY FOR ADVANCE RULING, TAMIL NADU
NO.206, 2ND FLOOR, PAPJM BUILDING, NO.1, GREAMS ROAD,
CHENNAI -600 006.**

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND UNDER
SECTION 98(4) OF THE TNGST ACT, 2017.**

Members present:

Smt. D. Jayapriya, I.R.S., Additional Commissioner / Member, Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600 034.	Smt. N. Usha, Joint Commissioner (ST)/ Member, Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600 006.
--	--

Advance Ruling No.109/AAR/2023 Dated:08.09.2023

1. *Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-Section (1) of Section 100 of CGST Act 2017/ TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed, is communicated.*
2. *In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-*
 - (a) *on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling.*
 - (b) *on the concerned officer or the jurisdictional officer in respect of the applicant.*
3. *In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.*
4. *Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.*
5. *The provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act (herein referred to as an 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.*

GSTIN Number, if any / User id		33AAACC9862F1ZP
Legal Name of Applicant		M/s. HP INDIA SALES PRIVATE LIMITED
Registered Address / Address provided while obtaining user id		A11, Echoor and Mettupalayam Villlage, Aarush Logistics Part Pvt. Ltd, Vallam Panruti, Echoor, Tamil Nadu, Kancheepuram, 631604.
Details of Application		Form GST ARA - 01 Application Sl.No.52/2022/ARA, dated 27.10.2022
Jurisdictional Authority		Center: Chennai Outer Commissionerate State : LTU DC4
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for-		
A	Category	Warehouse/Depot/Wholesale business
B	Description (in brief)	Import and sale of IT products, mainly Personal computers and printers
Issue/s on which advance ruling required		i. Admissibility of input tax credit of tax paid or deemed to have paid ii. Determination of liability to pay tax on any goods or services or both.
Question(s) on which advance ruling is required		Whether supply of goods from FTWZ facilities by the Applicant to the Resellers located within the same FTWZ or different FTWZ would be subjected to IGST? If there is no liability to tax under IGST, then whether they are eligible to avail input tax credit on inputs, input services and capital goods used in furtherance of business of such supply of goods from FTWZ to the said Resellers?

M/s. HP Sales Private Limited, A11, Echoor and Mettupalayam Villlage, Aarush Logistics Part Pvt. Ltd, Vallam Panruti, Echoor, Tamil Nadu, Kancheepuram, 631604 (herein after referred to as 'The Applicant'), are registered with GST and hold GSTIN 33AAACC9862F1ZP. The Applicant is engaged in the import and sale of IT products primarily personal computers(i.e. desktops and laptops) and printers in India.

2.1 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.

2.2 The Applicant is proposing to import goods into FTWZ located in Chennai from HP Singapore Pte. Ltd(hereinafter referred to as HP Singapore) or procure from domestic supplier and store the same at FTWZ facilities located at Chennai provided by the Logistic Service Provider(LSP) after filing 'Bill of Entry for warehousing i.e. into-Bond bill of Entry disclosing the GSTIN obtained by the Applicant for their office in Chennai, Tamil Nadu. Subsequently, the Applicant would sell the said goods stored in the FTWZ facilities to the Reseller located in Bangladesh, Sri Lanka or India(located within a FTWZ), as the case may be under Bill to Reseller and ship to LSP, FTWZ as designated by the Reseller. The Applicant would raise the commercial invoice for sale of goods under the above arrangements to the Reseller and the Reseller would take the delivery of such goods in the same LSP FTWZ where Applicant's goods are stored or different LST FTWZ.

2.3. In their interpretation of law/facts in respect of the questions raised, the Applicant submitted that –

- FTWZ is a special category of Special Economic Zone(SEZ) as per Section 2(za) read with Section 2(n) of the SEZ Act and set-up mainly for carrying out trading and warehousing related activities
- Section 26 of the SEZ Act, 2005 provides exemption from payment of customs duty on the goods imported into the SEZ unit. Rule 30 of the SEZ Rules, 2006 permits sale/procurement of goods from warehouse to another SEZ unit or from one SEZ unit to another without payment of duty.
- In case of goods imported by the Applicant and stored at the FTWZ facilities by filing into-bond BOE, the levy of customs duty would stand deferred till clearance of such goods to the DTA customers on account of sale or otherwise of the said goods
- In the present case, the goods stored in FTWZ are supplied to the Resellers located in Bangladesh, Sri Lanka or India(located within a FTWZ), as the case may be, with ship designated as LSP FTWZ. Therefore, the subject transaction between the Applicant and the Reseller is with respect to goods before the final clearance for home consumption and shall not be subject to levy of IGST in the hands of the Applicant.

- In terms of Entry 8(a) to the Schedule III of the CGST Act, 2017, effective from 01.02.2019. 'Supply of warehoused goods to any person before clearance for home consumption' shall not qualify as a supply of goods nor supply of services; Therefore, supply of goods from FTWZ to the Resellers as the same would get covered within the ambit of the said entry to the Schedule III.
- Reliance is placed on the clarifications given by the Government of India, Ministry of Finance vide Circular NO.3/1/2018-IGST dated 25.05.2018, wherein it was clarified that IGST would be levied and collected only at the time of final clearance of warehoused goods for home consumption.
- Reliance is placed on the ruling issued by TN AAR in the following cases with similar facts:
 - M/s The Bank of Nova Scotia [2019(2) TMI 195]
 - M/s Sadesa Commercial Offshore De Macau Limited [2019(2) TMI 194]
- Thus they are not liable to pay IGST on the sale of goods from FTWZ to Resellers located in Bangladesh, Sri Lanka or India (located within a FTWZ).
- Regarding eligibility to avail input tax credit on inputs, inputs services and capital goods used in furtherance of such supply of goods from FTWZ to the said Resellers, a combined reading of the provisions of Section 17(2), 17(3) of the CGST Act and Rule 42 of the CGST Rules, 2017, indicates that they are not liable to reverse any credit, whether directly related to such supplies or common, used in connection with the activities in the FTWZ leading to sale from FTWZ facilities to the resellers on which no GST is to be paid by them.
- They are entitled to avail input tax credit on all the inputs, input services and capital goods received at the FTWZ and used for effecting such sales from FTWZ.

4.1. The Applicant's jurisdictional Central Authority has submitted their remarks on the questions raised as under:

- Supply of goods from FTWZ facilities by the Applicant to the reseller within the same FTWZ or different FTWZ would not be subjected to IGST in terms of Circular No.04/01/2019-IGST dated 01.02.2019 with the amendment to Schedule III of the CGST Act, 2017 vide Section 32 of the CGST (Amendment) Act, 2018, to provide that supply of warehouse goods to any person before clearance for home consumption shall be neither a supply of goods nor a supply of services.

- Regarding eligibility to avail input tax credit, as per clause 8(a) of Schedule III of the CGST Act, 2017, supply of warehoused goods to any person before clearance for home consumption shall be neither a supply of goods nor a supply of service, which means an exempt supply. As it is exempted supplies, the provisions of Sec 17 of the CGST Act, 2017 is applicable and proportionate ITC need to be reversed.
- Explanation to Section 17(3) of the said Act, defines the 'value of exempt supply' which should not include the activities specified under Schedule III except para 5 of the schedule, which means that exclusion of value of exempted supply is available to the taxpayer only for calculating the amount of ITC attributable towards exempt supplies as per clause (i) of Rule 42 of the CGST Rules, 2017, where the aggregate value of exempt supply shall not include the value of supply categorized under clause 8(a) of Schedule III. Thus they are not eligible for any ITC which are exclusively related to the activities of FTWZ leading to sale from the facilities to the resellers on which no GST is to be paid and proportionate credit need to be reversed as envisaged under Section 17(2) of the CGST Act, 2017 read with Rule 42 of the CGST Rules, 2017.
- No proceeding is pending against the taxpayer on the subject issue.

4.2. The Applicant's jurisdictional State Authority has not submitted any remarks and hence it is presumed that there are no pending proceedings in the Applicant's case on the issue raised in the application.

5.1 After the consent of the Applicant, a personal hearing was fixed on 12.09.2023. However, the Applicant did not attend the personal hearing but submitted a letter dated 12.09.2023, wherein it was stated that they intend to withdraw the Advance Ruling Application filed by them on 27.10.2022. They requested that their letter may be treated as formal request for the withdrawal of their advance ruling application and to accept the request for withdrawal of application unconditionally.

DISCUSSION AND FINDINGS:

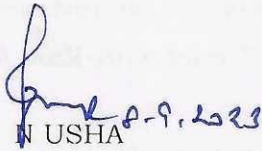
6. After due consideration, we take on record, the letter dated 12.09.2023 of the Applicant wherein they have stated that they have decided to withdraw the ARA application filed by them. As the Applicant has requested for withdrawal of their

Advance Ruling Application, their request is considered and the application is treated as withdrawn without going into the merits or detailed facts of the case.

In view of the above, we rule as under:

RULING

The ARA Application Sl.No.52/2022/ARA dated 27.10.2022 filed by the Applicant seeking Advance Ruling is disposed as withdrawn as per the request of the Applicant.


N USHA

(MEMBER SGST)




D JAYAPRIYA

(MEMBER CGST)

To

M/s. HP Sales Private Limited,
A11, Echoor and Mettupalayam Villlage,
Aarush Logistics Part Pvt. Ltd, Vallam Panruti,
Echoor, Tamil Nadu, Kancheepuram, 631604.

(by RPAD)

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,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.

Copy to:

3. The Commissioner of GST & Central Excise,
Chennai Outer Commissionerate,
Chennai-600035.
4. The Assistant Commissioner (ST),
Adyar Assessment circle,
Chennai North Division
5. Master File/ Spare-2