AUTHORITY FOR ADVANCE RULING, TAMILNADU
ROOM NO.206, 2ND FLOOR, PAPJM BUILDING, NO.1, GREAMS ROAD, CHENNAI-600006

RULING 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(CGST), Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600 034.	Smt. A. Valli, M.Sc., Joint Commissioner/Member(SGST), Office of the Commissioner of Commercial Taxes, Chennai-600 006.

Advance Ruling No.17/ARA/2024 Dated: 25.07.2024

1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai as under Sub-Section (1) of Section 100 of CGST Act / 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.

GSTIN Number, if any / User id	33AAECA2190C2Z9
Legal Name of Applicant	M/s. Panasonic Life Solutions India Private Limited
Registered Address / Address provided while obtaining user id	6th Floor, No. 86, Polyhose Towers, Anna Salai, Guindy, Chennai, Tamilnadu – 600 032
Details of Application	GST ARA – 01 Application Sl. No. 01/2024/ARA, dated 12-01-2024.

Jurisdictional Officer Concerned Officer		State: Alandur Assessment Circle Chennai (South) Division Center: Chennai Outer Commissionerate
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Warehouse/ Depot
B	Description (in brief)	As part of their trading business in the State of Tamil Nadu, the Applicant has executed an agreement with a Logistics Service Provider for clearance /handling of goods from customs and for storage of imported goods in the warehousing unit of the logistics service provider (hereinafter referred to as 'LSP') situated in a Free Trade warehousing zone (hereinafter referred to as 'FTWZ') unit at Chennai, India. Upon finalization of customer, Panasonic India would transfer the title of goods to the customer. The goods are then either cleared by such customer from the FTWZ unit or transfer further without clearing the same. The Government of India vide the Finance Act, 2023, has amended section 17(3) of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'the CGST Act') and as per the amended section, common input tax credit on account of supplies covered under paragraph 8(a) of Schedule III (i.e. Supply of warehoused goods to any person before clearance for home consumption) of the CGST Act is required to be reversed. Given the above, this Applicant seeks to beseech the Hon'ble AAR as regards the applicability of GST on the above supply and implications on reversal of input tax credit.
Issue/s on which advance ruling required		1. Admissibility of Input Tax Credit of Tax paid or deemed to have been paid. 2. Determination of the liability to pay tax on any goods or services or both
Question(s) on which advance rulin required		a. **Query** 1 - In the facts and circumstances of the case, whether the transfer of title of goods stored in FTWZ Unit by the Applicant to its customers in Domestic Tariff Area (DTA) or multiple transfers within the FTWZ followed by a subsequent removal from FTWZ Unit would get covered under para 8(a) of Schedule III of the CGST Act or Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as 'the TNGST Act') and the rules made there under?

	b. **Query 2** - If answer of the above query is No, whether Integrated Goods and Services Tax ('IGST') is payable by the Applicant on goods stored in FTWZ unit and supplied to its customers in DTA unit, in addition to the customs duty payable [i.e. Basic Customs Duty (BCD) + IGST] by the customer in DTA on removal of goods from the FTWZ unit in accordance with Section 30 of Special Economic Zone ('SEZ)' Act, 2005 and read with the Customs laws? c. **Query 3** – Irrespective of whether supply of goods lying in FTWZ unit to DTA customers is covered under Schedule III of the CGST Act or not, whether any reversal of input tax credit of common inputs/ input services/ Capital goods is required at the hands of the Applicant in terms of recent amended Section 17(3) of the CGST Act?

1. At the outset, we would like to make it clear that the provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services Tax Act are in *parimateria* and have the same provisions in like matters and differ from each other only on few specific provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Services Tax Act, 2017 would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act, 2017.

2. M/s Panasonic Life Solutions India Private Limited (hereinafter **'the Applicant'**) submitted a copy of challan CPIN RBI23113300453176 dated 30-11-2023 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. The online application form for advance ruling dated 09-01-2024 was physically received on 12-01-2024 as mandated under Rule 107A.

3. The applicant in their application has narrated the Statement of relevant facts as follows:

- M/s Panasonic Life Solutions India Private Limited (hereinafter **'the Applicant'**) is a wholly owned subsidiary of Panasonic Corporation and is engaged in the business of manufacturing and supplying of various categories of products such as Consumer durables, Industrial Devices, Energy Systems, etc.
- In India, the Applicant has manufacturing facilities as well as sales offices in various states including Tamil Nadu.
- The Applicant is registered under the GST regime in various states including Tamil Nadu. The Applicant's GSTIN of Tamil Nadu is 33AAECA2190C2Z9.
- The Applicant has stated that they had executed an agreement with a LSP named 'Kerry Indev Logistics Private Limited' (hereinafter referred to as 'KILPL') for clearance/handling of goods from customs and for storage of imported goods in the FTWZ unit (located in Tamil Nadu, Chennai) of the said LSP and in this

regard they have filed a copy of agreement entered into by the Applicant with KILPL for providing the clearing/handling & storage services.

- Further they have stated that M/S KILPL is a FTWZ Unit located in the J. Matadee Free Trade Zone. KILPL has obtained requisite FTWZ licenses from the relevant authorities and a copy of the licenses obtained by KILPL are also enclosed with the application.

Flow of transaction as submitted by the applicant is as detailed below:

- The Applicant secures space in the FTWZ unit (viz. of KILPL with whom the Applicant has entered into an agreement) for a fee to *inter alia* store the imported goods (viz. cleared without payment of applicable Customs duty) of the Applicant in the FTWZ unit. The Applicant has added the said place as Additional place of business in GST registration of Tamil Nadu.
- The goods are cleared from the port by KILPL (viz. FTWZ unit) by filing Bill of Entry (BOE) on behalf of the Applicant. KILPL uses their IEC registration for the purposes of import of goods into India. The BOE filed by KILPL clearly mentions the name of the Applicant as the client on behalf of whom the goods are being imported by KILPL.
- As per the arrangement with the Applicant, the FTWZ unit (viz. KILPL) merely clears and warehouses the goods imported and in consideration, the FTWZ unit collects warehousing charges from the Applicant.
- To import goods into India, the Applicant places an order to the foreign suppliers. Based on the purchase order, overseas entities export goods to Panasonic India by mentioning name of consignee as M/s. KILPL (i.e. LSP), FTWZ unit on A/C of the Applicant with shipping address of LSP in all the export documents including export invoices.
- Prior to arrival of goods in the customs port, the Applicant would intimate KILPL in Chennai and provides copy of the purchase order and other documents for clearance of goods from the port and storage of the same in FTWZ unit.
- On arrival of goods, the FTWZ unit of KILPL files BOE in quintuplicate (5 copies) with the SEZ authorities, in their name i.e. M/s. KILPL, on account of M/s. Panasonic India. The trans-shipment permission is stamped on the fifth copy of the BOE, along with other relevant documents and goods are cleared without payment of customs duty. Post importation, KILPL hands over the import invoice and other necessary documents to the Applicant.
- The said imported goods are stored in the FTWZ unit on behalf of the Applicant. The title to the goods stored in FTWZ unit would remain with the Applicant during the storage.
- In the warehousing facility of KILPL, no manufacture or processing activities is being carried out by the Applicant. On identification of the customers, goods would be sold by the applicant from the FTWZ unit to the customers across India.

- Further, upon finalization of customer, the Applicant would raise a tax invoice (without tax) on the DTA customer in foreign currency. In case of supply to overseas entity, the Company issues an export invoice as export of goods without payment of tax under Letter of undertaking or Bond. The said invoices also refers the fact that the goods are being supplied from FTWZ unit (viz. of KILPL) and mentions the 'On Account' supply by the Applicant.
- The Applicant reports the said transaction in their GST return as Non-GST supply in case of supply to DTA customer. Whereas in case of exports, the Company reports the transaction as export of goods without payment of tax.
- The customer shall either clear goods from the FTWZ or shall make further transfer of such goods to other customers.
- The applicant has also brought to the notice that every transfer of title of goods may or may not result in physical movement of goods. In such cases where physical movement does not happen post transfer of title of goods, the customer of the Applicant makes suitable arrangement with KILPL or another FTWZ unit to store the goods. The final customer (who decides to clear the goods) files the BOE and clears goods from the FTWZ unit.
- The final customer clears the goods from the FTWZ by making the payment of the applicable customs duty including IGST duly computed on the value as under the customs provisions under section 30 of Special Economic Zone ('SEZ)' Act, 2005 and read with the Customs laws. At this juncture goods are removed from the warehouse and is taken to the premises of the Customer.

4. With the above facts of the case the applicant has filed an application seeking for advance ruling on the following queries

Query 1 *- In the facts and circumstances of the case, whether the transfer of title of goods stored in FTWZ Unit by the Applicant to its customers in Domestic Tariff Area (DTA) or multiple transfers within the FTWZ followed by a subsequent removal from FTWZ Unit would result in bonded warehouse transaction covered under para 8(a) of Schedule III of the CGST Act or Tamil Nadu GST and Service Act, 2017 (hereinafter referred to as 'the TNGST Act') and the rules made there under?*

Query 2 *- If answer of the above query is No, whether Integrated Goods and Services Tax ('IGST') is payable by the Applicant on goods stored in FTWZ unit and supplied to its customers in DTA unit, in addition to the customs duty payable [i.e. Basic Customs Duty (BCD) + IGST] by the customer in DTA on removal of goods from the FTWZ unit in accordance with Section 30 of Special Economic Zone ('SEZ)' Act, 2005 and read with the Customs laws?*

Query 3 *- If the supply of goods lying in FTWZ unit is not covered under para 8(a) of Schedule III of the CGST Act, whether any reversal of input tax credit of common inputs/input services/Capital goods is required at the hands of the Applicant in terms of recent amended Section 17(3) of the CGST Act?*

5. For interpretation of law with reference to the facts in respect of the aforesaid questions, the applicant has quoted connected provisions of the CGST Act and Rules made thereunder, the Integrated Goods and Services Tax Act, 2017 and Rules made thereunder, the SEZ Act and Rules made thereunder, the Customs Act, 1962 and the Customs Tariff Act, 1975, which have been taken note of.

6. **Interpretation of law by the Applicant on the questions raised by them.**

6.1. Query 1 - **In the facts and circumstances of the case, whether the transfer of title of goods stored in FTWZ Unit by the Applicant to its customers in Domestic Tariff Area (DTA) or multiple transfers within the FTWZ followed by a subsequent removal from FTWZ Unit would result in bonded warehouse transaction covered under para 8(a) of Schedule III of the CGST Act or the TNGST Act and the rules made there under?**

6.1.1 In terms of Section 7 of the CGST Act, the term 'Supply' *inter-alia* includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. However, as per sub-section 2 of Section 7 of the CGST Act, activities or transactions specified in Schedule III shall be treated neither as supply of goods nor a supply of services.

6.1.2 In terms of para 8(a) of Schedule III of the CGST Act, "*Supply of warehoused goods to any person before clearance for home consumption*" shall neither be treated as a supply of goods nor a supply of services. Further as per Explanation-2 of Schedule III of the CGST Act, for the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962.

6.1.3 In the instant case, the Applicant is transferring the title of the goods stored in the premises of FTWZ unit of LSP. Therefore, it is pertinent to analyze if goods stored in FTWZ qualify as "warehoused goods" for the purpose of the paragraph 8(a) of Schedule III of the CGST Act. As per the explanation of Schedule III, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act. Further, as per the Customs Act, 'warehoused goods' means goods deposited in a warehouse. Further, in terms of section 2(43) and 2(44) of Customs Act, "warehouse" means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 or a special warehouse licensed under section 58A. the relevant provisions of the Customs Act, reads as below:

> ***57. Licensing of public warehouses*** *–The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a public warehouse wherein dutiable goods may be deposited.*
>
> ***58. Licensing of private warehouses*** *—The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited.*

58A. Licensing of special warehouses *— (1) The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods there from without the permission of the proper officer.* In terms of Section 57 of Customs Act, the Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a public warehouse wherein dutiable goods may be deposited.

(2) The Board may, by notification in the Official Gazette, specify the class of goods which shall be deposited in the special warehouse licensed under sub-section (1)

6.1.4 The Applicant is of the view that in order to qualify as a 'warehouse' in terms of the Customs Act, a license is required to be obtained in terms of the above sections. It is only when a particular area is licensed in terms of the above sections, said area qualify as 'warehouse' and it is only then goods deposited in such area, qualify as 'warehoused goods'. The applicant has also stated that, as the KILPL (viz. the FTWZ unit) has not been licensed as warehouse under section 57, 58 or 58A of the Customs Act and It is registered as an SEZ unit, the KILPL is a SEZ unit and not a warehouse in terms of the Customs Act.

6.1.5 Further, the Applicant has stated that in terms of Section 2(n) of the SEZ Act, FTWZ is a SEZ wherein mainly trading and warehousing and other activities related thereto are carried on and has reproduced Section 2(n) of the SEZ Act for ease of reference:

> *"Section 2(n) of the SEZ Act - "Free Trade and Warehousing Zone" means a Special Economic Zone wherein mainly trading and warehousing and other activities related thereto are carried on"*

The applicant has submitted that in terms of Section 53 of the SEZ Act, FTWZ is a deemed foreign territory for the purpose of tariff and trade. Section 53 is reproduced below for easy reference:

> *"53. (1)A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations.*
>
> *(2) A Special Economic Zone shall, with effect from such date as Central Government may notify, be deemed to be a port, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962:"*

From the conjoint reading of the above provisions, the applicant has stated that the SEZ Act and the SEZ Rules are the legal framework for FTWZ. Accordingly, FTWZ should be classified as a SEZ for authorized operations rather a 'warehouse'.

6.1.6 The applicant has stated that by virtue of Instruction no. 60 dated 6 July 2010, the FTWZ unit is allowed to store goods on behalf of the DTA supplier and buyer and the same will be considered as an authorized operations as per Rule 18(5) of the SEZ Rules. They are also of the view that even though the day-to-day activities like warehousing and clearing of goods for home consumption on payment of applicable customs duties are supervised /monitored by Customs officials posted in the FTWZ in accordance with SEZ Act 2005, read with Customs

Act, the approval/license/administrative control for FTWZ are fully governed under the provisions of SEZ Act. Therefore, they have submitted that irrespective of the administrative framework to monitor the functioning, it is clear that FTWZ unit is a SEZ unit.

6.1.7 Taking inference from all the above arguments, the applicant is of the view that FTWZ unit can neither be termed as 'warehouse' nor goods stored in a FTWZ unit said to be 'warehoused goods' as defined under the Customs Act. In this regard, they have placed reliance on the case of **M/s Haworth India Private Limited (2023 (8) TMI 1299)** in which the Advance Ruling Authority ('AAR'), Tamil Nadu have ruled that the transactions narrated in the application are in FTWZ and are governed under the provisions of SEZ Act and not licensed under Customs Act and claimed that supply of goods stored in the FTWZ unit (viz. by KILPL on account of the Applicant) should not fall under paragraph 8(a) of schedule III of the CGST Act. Additionally, they have also contended that the fact that the subject goods could be transferred multiple times within FTWZ or to a FTWZ in different SEZ or different SEZs, the same should not change the non-applicability of provisions of para 8(a) of Schedule III of the CGST Act.

6.2. <u>Query 2</u> - **If answer of the above query is No, whether IGST is payable by the Applicant on Goods warehoused in FTWZ and supplied to its customers in DTA unit, in addition to the customs duty payable [i.e. Basic Customs Duty (BCD) + IGST] by the customer in DTA on removal of goods from the FTWZ unit in accordance with Section 30 of Special Economic Zone ('SEZ)' Act, 2005 and read with the Customs laws?**

6.2.1 With regard to the above query, the applicant stated that FTWZ can hold the goods on behalf of inter alia DTA suppliers subject to prescribed conditions including carrying out transaction in convertible foreign currency. The said fact has been mentioned in SEZ Instruction No 60 dated 6th July 2010.

6.2.2 In the instant case, KILPL is holding the goods in the FTWZ unit on account of the Applicant. Hence, when the goods are deposited into the FTWZ unit, BOE is filed for moving the goods to the FTWZ unit and accordingly, the customs duty is not being paid. They have also stated that the customs duty is being paid at the time of DTA clearance by the customers purchasing such goods from the Applicant. Further, the applicant has stated that removal of goods from the FTWZ unit are akin to import of goods and therefore, subject to custom duty in terms of proviso to Section 5(1) of the IGST Act. In terms of section 7(2) of the IGST Act, "Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-state trade or commerce and in terms of proviso to Section 5(1) of the IGST Act, goods imported to India are subject to Customs duty in accordance with the provision of Section 3 of the Customs Tariff Act.

6.2.3 The applicant further stated that on perusal of definitions of 'imports' given in the IGST Act and the Customs Act vis-à-vis definition of 'imports' as per the SEZ Act, it can be inferred that bringing of goods from an SEZ to the DTA is not a 'import'. Therefore, technically no Customs duty should be applicable on such removal. In respect of the fact that customs duty is levied only when goods cross

frontiers of India and not when goods land into India, there are plethora of judgements. Some of them are discussed below:

- In the case of *Kiran Spinning Mills vs Collector Of Customs on 5 August, 1999 (1999 (113) ELT 753 SC)*, it was held that the taxable event occurs when the Customs barrier is crossed. In the case of goods which are in the warehouse, the Customs barriers would be crossed when they are sought to be taken out of the Customs and brought to the mass of goods in the country.
- *In the case of* State Trading Corporation of India Ltd. Vs State of Tamil Nadu [2003] 129 STC 294], it was held that sale of goods shall be treated as sale in the course of imports if the same happens before clearance of goods for home consumption under **Section 47** or the clearance of warehoused goods under **Section 68** of the Customs Act.

6.2.4 In line with the said principles, by virtue of Section 30 of the SEZ Act, removal of goods from the SEZ/FTWZ unit has been subjected to Customs duty (including IGST) where applicable on such goods when imported. Further, by virtue of Section 53 of the SEZ Act read with Section 3(7) of Customs Tariff Act, SEZ/FTWZ shall be deemed to be a place outside India for undertaking authorized operations, hence, articles moved from SEZ/FTWZ unit to DTA shall be regarded as 'imports', and thus chargeable to integrated tax at applicable rates. Furthermore, the DTA customer is required to file the BOE in terms of Rule 48 of the SEZ rule and discharge applicable Customs duty (including IGST).

6.2.5 It is important to note that customs duty that is applicable on such goods movement is the customs duty as leviable on such goods when imported. This means that the rates and valuation as is applicable on imported goods equally apply on clearance of goods from an SEZ to the DTA. Similarly, as regards IGST, Section 3(8) read with Section 3(12) of the Customs Tariff Act clarifies that IGST shall be payable on the transaction value of goods at the time of importation i.e. clearance from SEZ to DTA. In the instant case also, it is submitted that IGST is discharged by the DTA buyer on the transaction value of goods at the time of clearance of goods from the FTWZ unit. In light of the above discussion, removal of goods from FTWZ unit to DTA unit is treated at par with import of goods and accordingly, Custom duty is discharged by the end customer in accordance with Section 30 of the SEZ Act read with the proviso to Section 5(1) of the IGST Act read and Section 3 of the Customs Tariff Act.

6.2.6 The applicant stated that the provision of SEZ Act shall have overriding effect on the provisions of any other law in case of inconsistent provisions. In terms of Section 51 of the SEZ Act, the provisions of the SEZ Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. The applicant has submitted that despite clear provisions as discussed above as regards taxability on supply of goods stored in the FTWZ unit, even if there is an ambiguity, Section 51 of the SEZ Act very well clarifies the same by overriding anything contrary written under the GST law.

6.2.7 As discussed above, by virtue of Section 30 of the SEZ Act read with Section 5(1) of the IGST Act read and Section 3 of the Customs Tariff Act, supply of goods from SEZ to DTA shall be subject to customs duty as applicable on import of goods. However, Section 7(5) of the IGST Act, supply of goods or service by a SEZ unit shall be treated as inter-state supply. To such extent, one can argue that there is an inconsistency between GST provision and SEZ provisions. Therefore, by virtue of Section 51 of the SEZ Act, the SEZ law should prevail over the GST law and therefore, IGST on supply of goods from SEZ/FTWZ to DTA should be discharged as applicable on import of goods, and there cannot be tax levy in terms of Section 7(5) of the IGST Act.

6.2.8 Further, the applicant from drawing reference to the paragraph 8(b) of the Schedule III of the CGST Act, would like to reiterate that on transfer of title of goods by Panasonic India, goods shall be either cleared from the FTWZ unit by the customer or further transfer of title can happen while goods are lying in FTWZ. The applicant has stated that the delivery of goods by Panasonic India gets completed within the FTWZ unit itself. Further, in case of clearance of goods to the DTA unit (as the case may be), the end customer shall file the BOE for home consumption (SEZ to DTA unit) and pay the applicable customs duty on the value at which such goods are being procured by such DTA unit (as the case may be).

6.2.9 In this regard, the applicant has referred Para 8(b) of Schedule III of the CGST Act, which provides that supply of goods by the consignee to any other person, by **endorsement of documents of title to the goods**, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption shall not be treated as a supply of goods. Further, the applicant are of the view that para 8(b) is squarely applicable in the instant case, as Panasonic India transfers the title of the goods to the customer while the goods are lying within the FTWZ unit i.e. before final clearance for home consumption by the end customer. In this regard, the applicant has stated that, Rule 38 of SEZ Rules, which provides for transfer of ownership of goods admitted into SEZ unit to a unit within the same SEZ or in another SEZ without payment of duty.

6.2.10 Even otherwise, transfers within a bonded customs warehouse before clearance are not liable to GST. The liability arises only at the time of clearance for home consumption. Reference in this respect is drawn to following para of **Circular No. 3/1/2018-IGST dated 25th May 2018**:

> *"4. It may be noted that as per sub-section (2) of section 7 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act"), the supply of goods imported into the territory of India, till they cross the customs frontiers of India, is treated as a supply of goods in the course of inter-State trade or commerce. Further, the proviso to subsection (1) of section 5 of the IGST Act provides that the integrated tax on goods imported into India would be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (hereinafter referred to as the "CTA"). Thus, in case of supply of the warehoused goods, the point of levy would be the point at which the duty is collected under section 12 of the Customs Act, 1962 (hereinafter referred to as the "Customs Act") which is at the time of clearance of such goods under section 68 of the Customs Act.*

....

6. It is therefore, clarified that integrated tax shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e., at the time of filing the ex-bond bill of entry and the value addition accruing at each stage of supply shall form part of the value on which the integrated tax would be payable at the time of clearance of the warehoused goods for home consumption. ***In other words, the supply of goods before their clearance from the warehouse would not be subject to the levy of integrated tax and the same would be levied and collected only when the warehoused goods are cleared for home consumption from the customs bonded warehouse."***

6.2.11 With the above analysis, the applicant has submitted that there shall not be any additional IGST liability at the hands of Panasonic India on account of transfer of title of goods lying in the FTWZ unit since such supply qualifies as supply in the course of import. In this regard, the applicant placed reliance on following rulings by Authority of Advance Ruling in the State of Tamil Nadu:

i. **M/S. SADESA COMMERCIAL OFFSHORE DE MACAU LIMITED [Order No. 24/AAR/2018 dated 31 December 2018]** – In the said ruling, the authority has held that it is evident that removal from the FTWZ to DTA is the point of deferred levy/payment of Customs Duty, i.e., at the time of clearance for home consumption from FTWZ and the applicant is not liable to pay IGST at the time of removal of goods from the FTWZ to DTA under the provisions of IGST Act in addition to the duties payable under Customs Tariff Act, 1975 on removal of goods from the FTWZ unit. Relevant extract of the ruling is reproduced below for your ease of reference:

".....

4.3. From the foregoing, it is evident that removal from the FTWZ to DTA is the point of deferred levy/payment of Customs Duty, i.e., at the time of clearance for home consumption from FTWZ. Further, as explained in the Circular referred above, the goods are not to be subjected to IGST when bonded and the payment of integrated tax is to be effected when the goods are removed for home consumption from the bonded warehouse, under the Provisions of Customs Tariff Act. Therefore, there is no requirement to pay IGST under the provisions of GST law at the time of clearance from the FTWZ. In the case at hand, the Applicant proposes to effect sale when the goods are bonded and then DTA customer files Bill of Entry for Home Consumption and clears the goods from the FTWZ on payment of appropriate Custom duties (BCD & IGST).Therefore, as clarified in the Circular No.3/ 1/2018-IGST dated 25th May 2018, the payment of IGST again at the point of clearance from the FTWZ to DTA do not arise for supply of warehoused goods, while being deposited in a customs bonded warehouse/FTWZ on or after 01.04.2018. In the event the Applicant is exclusively conducting the activity described in their Application of exporting goods to FTWZ and which are subsequently sold to Indian customers who clear the same on payment of appropriate customs duties, they are not liable to registration under Section 23(1) of CGST Act and TNGST Act.

....."

ii. Similar ruling was pronounced in the case of **M/S. THE BANK OF NOVA SCOTIA [Order No. 23/AAR/2018 dated 31 December 2018].**

6.2.12 The applicant has drawn reference to proviso to Section 5(1) of the IGST Act and submitted that levy of IGST on imports (including clearance from SEZ/FTWZ) is a countervailing measure to levy tax as is leviable under the IGST Act on a like article on its supply in India and submitted that where the transaction of supply of goods is subject to Customs duty under the Customs Act there cannot be any additional taxable event in terms of Section 7(5) of the IGST Act. Moreover, levying of IGST twice in such a situation would completely defeat the purpose of introduction of GST and is completely unwarranted and in this regard, the applicant placed reliance on the judgement of the Hon'ble Supreme Court in the case of Union of India & Anr. Vs M/s Mohit Minerals Pvt. Ltd. [Civil Appeal No. 1390 of 2022] which has upheld the judgement of Hon'ble Gujarat High Court wherein it was held that to the extent value of supply of a service, which has already been included by the legislation as a tax on the import of goods, separate tax on said supply of services cannot be allowed. The High Court in the impugned judgment has observed that:

> *"What has led to the present day problems in the implementation of the GST:*
>
> *132. The GST is implemented by subsuming various indirect taxes. The difficulty which is being experienced today in proper implementation of the GST is because of the erroneous misconception of law, or rather, erroneous assumption on the part of the delegated legislation that service tax is an independent levy as it was prior to the GST and it go vivisect the transaction of supply to levy more taxes on certain components completely overlooking or forgetting the basic concept of composite supply introduced in the GST legislation and the very idea of levying the GST. Prima facie, it appears that while issuing the impugned notification, the delegated legislature had in mind the provision of the Finance Act, 1994, rather than keeping in mind the object of bringing the GST by making the Constitutional (101st) Amendment Act, 2016 to merge all taxes levied on the goods and services to one tax known as the GST.*
>
> *133. **It appears that despite having levied and collected the integrated tax under the IGST Act, 2017, on import of goods on the entire value which includes the Ocean Freight through the impugned notifications, once again the integrated tax is being** levied under an erroneous misconception of law that separate **tax can be levied on the services components (freight), which is otherwise impermissible under the scheme of the GST legislation made under the CA Act, 2016.***
>
> *134. All the learned senior counsel are right in their submission that if such an erroneous impression is not corrected and if such a trend continues, then in future even the other components of supply of goods, such as, insurance, packaging, loading/unloading, labour, etc. may also be artificially vivisected by the delegated legislation to once again levy the GST on the supply on which the tax is already collected. [...]*

6.2.13 In light of the above discussions, the Applicant reiterated that supply of goods lying in FTWZ unit by Panasonic India shall be subject to tax at the time of removal of goods by the end customer in terms with Section 30 of the SEZ Act read with the proviso to Section 5(1) of the IGST Act read and Section 3 of the Customs Tariff Act. Additionally, the applicant is of the view that the supply made by Panasonic India shall deemed not to be a 'supply' by virtue of para 8(b) of Schedule III of CGST Act.

6.3 **Query 3 - If the supply of goods lying in FTWZ unit is not covered under para 8(a) of Schedule III of the CGST Act, whether any reversal of input tax credit of common inputs/input services/Capital goods is required at the hands of the Applicant in terms of recent amended Section 17(3) of the CGST Act?**

6.3.1 In terms of Section 17(2) of the CGST Act, where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies. Further, Section 2(47) of the CGST Act defines 'exempt supply' as 'supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply. Section 2(78) of the CGST Act defines 'non-taxable supply' as 'a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act'.

6.3.2 Furthermore, in terms of amended Section 17(3), value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except, inter-alia, **the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule** i.e. *"Supply of warehouse goods to any person before clearance for home consumption"*. The applicant has claimed that in the instant case, supply of goods stored in the FTWZ unit should not fall under paragraph 8(a) of schedule III (specifically where goods are cleared for home consumption).

6.3.3 Furthermore, the applicant by highlighting the Explanation 3 of Rule 43 of the CGST Rules, in terms of which the value of activities or transactions mentioned in sub-paragraph (a) of paragraph 8 of Schedule III of the Act which is required to be included in the value of exempt supplies under clause (b) of the Explanation to sub-section (3) of section 17 of the Act shall be the value of supply of goods from Duty Free Shops (DFS) at arrival terminal in international airports to the incoming passengers. Therefore, on a combined reading of the explanation to section 17(3) of the CGST Act, read with rules 42 and 43 of the CGST Rules, it appears that as per the said amendment 'exempt supplies', as prescribed in respect of paragraph 8(a) of Schedule III, would only include supply of goods from DFS at arrival terminals.

6.3.4 The above understanding also finds support from the agenda notes of 47th GST council meeting which also clarifies that the intention of the amendment is to disallow ITC to DFS located at the arrival terminal and by doing so, consequently, to eliminate the question of allowing refund of ITC to DFS located at the arrival terminal. The applicant has reproduced the relevant extract of the agenda meeting for reference as below:

> *".....In view of this, in order to deny benefit of refund of input tax credit in respect of supplies made from Arrival DFS, the input tax credit in respect of Arrival DFS may be required to be reversed under sub-section (2) of section 17, read with sub-section (3) of the said section, by including transactions under para 8(a) of Schedule III in the value of exempt supply by substituting*

Explanation to sub-section (3) of section 17 of CGST Act,2017 as proposed below:...."

From the above submissions the applicant is of the view that, irrespective of whether or not the FTWZ or the SEZ is covered under paragraph 8(a) of Schedule III, the Applicant would not be required to reverse ITC.

7. It is seen that the applicant submitted the following documents in support of their contentions, viz.,

(i) Agreement made on 25th Oct, 2017 with M/s. Kerry Indev Logistics Private Limited for storage and warehousing services along with related Annexures to the agreement.

(ii) Addendum to Free Trade Zone Warehousing Services agreement effective from 25th Oct, 2021 to 24th Jan, 2022.

(iii) Addendum to Free Trade Zone Warehousing Services agreement dated 25th Oct, 2017 effective from 25th Jan, 2022 to 24th Jan, 2023.

(iv) Addendum to Free Trade Zone Warehousing Services agreement effective from 25th Jan, 2023 to 24th Jan, 2025.

(v) Renewal of Free Trade Zone Warehousing Services agreement on 24th October, 2018 with M/s. Kerry Indev Logistics Private Limited.

(vi) Renewal of Free Trade Zone Warehousing Services agreement on 10th September, 2019 with M/s. Kerry Indev Logistics Private Limited.

(vii) Letter of approval in Lr. No. 8/5/2012/J. Matadee/SEZ dated 06-08-2012, issued by the Development Commissioner, MEPZ to M/s. Kery Indev Logistics Private Limited for the service activity of "Warehousing" valid for a period of one year.

(viii) Additional submissions dated 01-07-2024 along with

(a) Sample GSTR-1
(b) Sample GSTR-9C
(c) Tweet FAQs from CBIC
(d) Sample GSTR-9
(e) Technical guidance on Annual return and GST Audit.

(ix) Copies of Relevant provisions of Customs Act, SEZ Act, GST Act and Case laws relation to the instant issue.

(x) Application for modification of query-3 is submitted vide letter dated 25th Jun, 2024.

8. The applicant is under the administrative control of State Tax Authorities. The concerned authorities of the Centre and State were addressed to report if there are any pending proceedings against the applicant on the issue raised by the applicant in the ARA application and for comments on the issues raised.

9. The concerned Central authority vide letter GEXCOM/TECH/MISC/2300/2024-TECH dated 07-06-2024 have stated that there are no such proceedings neither decided nor pending with their office covering the above said issues related to the applicant.

10. The State jurisdiction Officer viz. the Assistant Commissioner (ST), Alandur Assessment Circle, quoting the provisions of FTWZ Act, 2004, Section 17(2) and 17(3) of CGST Act, 2017 has stated that the 'transfer of title of goods to one or multiple transfers to customers within the FTWZ falls within the ambit of entry 8(a) of Schedule-III of the CGST/TNGST Act. Regarding the second query, it was stated that IGST is payable by the applicant on the value of goods as per the Customs tariff which were stored in FTWZ and supplied to its customers in DTA unit after clearance for home consumption. As regards the third query, it was stated that the goods lying in FTWZ unit is considered as goods within the Customs jurisdiction. Once the goods crosses the customs jurisdiction after clearance for home consumption, the provisions of the Act applies and the Joint Commissioner (ST), Intelligence, Chengalpet has also remarked that no proceeding relating to the question raised by the applicant is pending in their jurisdiction.

11. PERSONAL HEARING

11.1 Shri. K. Sivarajan, CA, Shri. Kailash Gera, CA, Ms. Usha Kumar, CA and Aashish Chadha, Indirect Tax Department, M/s. Panasonic Life Solutions India (P) Ltd., appeared as authorised representatives (AR) for the Personal Hearing held on 26.06.2024. The AR explained that the applicant has executed an agreement with M/s. Kerry Indev Logistics (P) Ltd., a logistics service provider for clearance / handling of goods from Customs and for storage of imported goods in the warehousing unit of the logistics service provider situated in a Free Trade Warehousing Zone (FTWZ) at Chennai, India. Upon finalization of the customer, the applicant would transfer the title of goods to the customer. The goods are then either cleared by such customer from FTWZ unit, or, are transferred further without clearing the same.

11.2 The AR reiterated the submissions made originally by the applicant along with the application for advance ruling filed by them. The AR also discussed various case laws, rulings in support of their defence, but reiterated that FTWZ are to be considered as customs ports and not as warehouses, as per the extant legal provisions.

11.3 When the members enquired as to whether the imported goods are moved to any other warehouse or, whether the applicant transfers only the title of goods to customer, the AR explained that the applicant transfers only the title of goods to customer, and it is for the customer to make further transfers, or to clear the same in DTA.

11.4 In this regard, the AR furnished additional submissions in the form of two booklets, one containing the discussions about the factual background of the case, along with extracts of relevant legal provisions and the other containing sample copies of form GSTR-1, 9C, 9 etc., along with extract of 'Technical guidance on Annual return and GST audit'. They also furnished a letter dated 25.06.2024 of the applicant, which in effect was an application for modification of Query No. 3 of the advance ruling application field originally and requested the authorities to take the said modification into consideration.

The AR further stated that they wish to furnish certain additional submissions within a weeks' time.

11.5 The modification to Query No. 3 of the advance ruling application filed originally, as proposed by the applicant in their letter dated 25.06.2024 as below, is perused and taken on record, i.e.,

Query 3 in the Application	Revised Query
If the supply of goods lying in FTWZ unit is not covered under para 8(a) of Schedule III of the CGST Act, whether any reversal of input tax credit of common inputs/ input services /Capital goods is required at the hands of the Applicant in terms of recent amended Section 17(3) of the CGST Act?	Irrespective of whether supply of goods lying in FTWZ unit to DTA customers is covered under Schedule III of the CGST Act or not, whether any reversal of input tax credit of common inputs/ input services/ Capital goods is required at the hands of the Applicant in terms of recent amended Section 17(3) of the CGST Act?

12. The applicant made additional submissions as discussed during the personal hearing, vide their letter 01.07.2024, wherein the applicant submitted their additional submission in relation to Query Number 2. The applicant vide para 4.24 to 4.33 of their original application dated 9 January 2024, have stated that removal of goods from the FTWZ unit are akin to import of goods and therefore, subject to custom duty in terms of proviso to Section 5(1) of the IGST Act. In this regard, they have filed additional submissions as follows:

- In terms of Section 2(10) of IGST Act as well as Section 2(23) of Customs Act, "import of goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India.
- As per Section 2(4) of the IGST Act, "customs frontiers of India" means the limits of a **customs area** as defined in section 2 of the Customs Act, 1962.
- Further, as per Section 2(11) of Customs Act read with Section 2(12) and 2(13) of Customs Act, customs area would include any port appointed under Section 7(a) of Customs Act. Moreover, in terms of Section 53(2) of SEZ Act, SEZ (including FTWZ) is deemed to be considered as port under Section 7 of Customs Act.
- From the above, it becomes clear that FTWZs are deemed to be considered as ports under Section 7 of the Customs Act and thereby, the same should be treated as customs frontiers of India/ customs area.
- Further, by virtue of Section 30 of the SEZ Act, removal of goods from the SEZ/FTWZ unit has been subjected to Customs duty (including IGST) where applicable on such goods when imported.
- Moreover, in terms of proviso to Section 5(1), goods imported to India are subject to Customs duty in accordance with the provision of Section 3 of the Customs Tariff Act.
- On co-joint reading of above provisions, it is established that removal of goods from SEZ to DTA shall be treated as imports at the hands of DTA unit and accordingly,

Customs duty shall be levied in accordance with the proviso to Section 5(1) of the IGST Act read with Section 3 of the Customs Tariff Act.

13.1 Additionally, in support of their view, the applicant wish to highlight the instructions issued for respective GST returns as well as FAQs issued by CBIC wherein, it has been clarified that supply of goods by SEZ unit to DTA unit should be treated as imports in the hands of DTA unit as discussed below:

- Vide point no. 9 of the instructions to GSTR-1, it is clarified that supply by SEZ unit to DTA unit shall be reported as imports in GSTR-2 by DTA. Relevant para is reproduced below for your reference –

  "The supplies made by SEZ on cover of a bill of entry shall be reported by DTA unit in its GSTR-2 as imports in GSTR-2."

- Table 8G of the GSTR-9 requires a DTA unit to provide details of IGST paid on import of goods (including imports from SEZ) which in a way clarifies that supply by SEZ unit shall be considered as imports.

- Table 5K of the GSTR-9C requires a SEZ unit to reduce the supplies made to DTA units for which bill of entries have been filed by DTA units from the total turnover for the purpose of revenue reconciliation with GST returns. From the same, it can be inferred that supply by SEZ unit to DTA unit is treated as imports only.

- As per FAQ 56, it has been clarified that supplies by SEZs to DTA are treated as imports. Relevant extract is given below:

56	How would the sale and purchase of goods to and from SEZ will be treated? Will it be export/import?	Supply to SEZs is zero rated supplies and supplies by SEZs to DTA are treated as imports

13.2 The applicant has drawn reference to the **Guidance Note issued by ICAI on GSTR-9 and 9C**, in which it has been clarified that supplies from SEZ to DTA is treated as import of goods and accordingly, GST shall be levied in accordance with proviso to Section 5(1) of the IGST Act, 2017. Relevant extract is as follows:

> *"Customs territory of India is nothing but Customs area as per Section 2(11) of the Customs Act, 1962. As per Section 51, the provisions of SEZ Act, 2005 shall have effect notwithstanding anything inconsistent therewith contained under any other law. Thus, any supplies made from SEZ to DTA ought to be treated as import of goods into India, irrespective of who has filed the Bill of Entry. Since supplies from SEZ to DTA is treated as import of goods due to the aforesaid provisions, the said transaction shall attract the trappings of the proviso to Section 5(1) of the IGST Act, 2017. The said tax shall be paid by the DTA under reverse charge as import of goods and hence find a mention under this clause."*

The applicant in this regard, has enclosed Copies of GST return instructions, CBIC FAQ, ICAI guidance note and copy of notifications in respect of amendment in Section 17(3) of CGST Act and the connected Rule amendment in Rule 43 of CGST Rules.

13.3 Declaration with respect to enquiries under the Customs law - The applicant has also confirmed that there is no enquiry initiated or observation raised by the Customs/SEZ authorities on the Company with respect to transactions in question.

14. DISCUSSION AND FINDINGS:

14.1 We have carefully considered the submissions made by the Applicant in their application, submissions made during the personal hearing, and the comments furnished by the jurisdictional tax officers.

14.2 From the submissions made at the time of filing the application, it is seen that the applicant had sought an advance ruling, on the following aspect, viz.,

> *"(i) Whether the transfer of title of goods stored in FTWZ Unit by the applicant to its customers in Domestic Tariff Area (DTA) or multiple transfer within the FTWZ followed by a subsequent removal from FTWZ Unit would get covered under para 8(a) of Schedule-III of the CGST Act or Tamil Nadu GST and Service Tax Act, 2017(TNGST Act) and the rules made thereunder?*
>
> *(ii) If the answer to the above at (i) is no, whether Integrated Goods and Service Tax(IGST) is payable by the applicant on the goods stored in FTWZ unit and supplied to its customers in DTA unit, in addition to the Customs Duty payable (i.e. Basic Customs Duty(BCD) +IGST)) by the customer in DTA on removal of goods from FTWZ unit in accordance with Section 30 of Special Economic Zone (SEZ) Act, 2005 read with the Customs laws?*
>
> *(iii) If the supply of goods lying in FTWZ unit is nor covered under para 8(a) of Schedule-III of the CGST Act, whether any reversal of input tax credit of common inputs/ Capital goods is required at the hand of the applicant in terms of recent amended Section 17(3) of the CGST Act?*

However by filing a modification application, the applicant had modified the query at Sl.No. (iii) as below,

> *(iii) Irrespective of whether supply of goods lying in FTWZ unit to DTA customers is covered under Schedule-III of the CGST Act or not, whether any reversal of input tax credit of common inputs/ Capital goods is required at the hand of the applicant in terms of recent amended Section 17(3) of the CGST Act?*

It is seen that the above queries relates to two situations namely, sale of goods from FTWZ to a customer in the DTA and multiple sale of goods within the FTWZ followed by subsequent removal from FTWZ. If it is not covered under para-8(a) of Schedule-III, whether IGST is payable on the goods stored in the FTWZ and supplied to its customers in DTA in addition to Customs duty payable. Further, irrespective of said supplies covered under Schedule-III of the CGST Act or not, whether any reversal of input tax credit of common inputs/input services/Capital goods is required in terms of Section 17(3) of the CGST Act, 2017.

14.3 As per the fact submitted, the applicant have entered into an agreement with M/s. Kerry Indev Logistics Private Limited a unit of FTWZ (KILPL), located at J Matadee Free Trade Zone, Mannur Village, Sriperumbudur Taluk, Kancheepuram

Dist – 602 105 for providing the service as required by the applicant such as, storage space of 50 pallets or as required, store the products delivered at the facility, re-deliver the products from FTWZ as directed by the applicant etc. As per the agreement, KILPL is engaged by the applicant for all purpose including the provision of services of clearance of goods from Customs (CHA Services), storage and warehousing services at FTWZ, clearing and forwarding services within the FTWZ or from FTWZ to DTA, transportation and other ancillary services as required by the applicant from time to time.

14.4 In order to answer the queries raised by the applicant, the following definitions on some of the nomenclature as contained in the statute needs to be analysed and understood as defined in Customs Act, 1962, Special Economic Zones Act, 2005 (SEZ Act in short) and the GST provisions. It is seen that as per Section 2(n) of the Special Economic Zones Act, 2005 (SEZ Act in short),

> *"(n) **"Free Trade and Warehousing Zone"** means a Special Economic Zone wherein mainly trading and **warehousing** and other activities related thereto are carried on;"*

And as per Section 2(za) of the SEZ Act,

> *"(za) **"Special Economic Zone"** means each Special Economic Zone notified under the proviso to sub-section (4) of section 3 and sub-section (1) of section 4 (including Free Trade and Warehousing Zone) and includes an existing Special Economic Zone;"*

It is clear from the above that a Free Trade Warehousing Zone (FTWZ) gets covered as a Special Economic Zone (SEZ), within the meaning of the term. Further, as per Rule 8(5) of the SEZ Rules, 2006,

> *"(5) The Units in Free Trade and Warehousing Zones or units in Free Trade and Warehousing Zone set up in other Special Economic Zone, shall be allowed to hold the goods on account of the foreign supplier for dispatches as per the owner's instructions and shall be allowed for trading with or without labelling, packing or repacking without any processing."*

The above clause confirms the fact that FTWZ is a licensed place inside SEZ, where the following activities are normally allowed to be carried out, viz.,

(a) Warehousing of goods on behalf of foreign or domestic clients
(b) Trading with or without labelling
(c) Packaging and re-packing
(d) Re-sale, re-invoice or re-export of goods
(e) Assembly of complete and semi-knocked down goods
(f) Knitting and various value optimisation services on the goods/cargo.

As per the nature of services being provided to the applicant by M/s. Kerry Indev Logistics Private Limited, which is a unit of FTWZ, it is clear that the basic activity of a FTWZ unit is **warehousing** of the goods belonging to its client. Further, the definition of FTWZ as per Section 2(n) of the Special Economic Zones Act, 2005, carries the phrase "*wherein mainly trading and **warehousing** and other activities related thereto are carried on.*", confirms the fact that warehousing is one of the

most important activity undertaken by an unit in FTWZ. Further, in such cases where the goods are imported and warehoused by the LSP (M/s.Kerry Indev Logistics), on behalf of the client (the applicant), it is observed that the LSP normally files a 'Bill of Entry for **warehousing'**, in which the details of both the SEZ entity (LSP) and the Indian client would be mentioned.

14.5 The SEZ link to Customs Act, is established under Section 53 of the SEZ Act, which runs as below,

> *"**53. Special Economic Zones to be ports, airports, inland container depots, land stations, etc., in certain cases.**—A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations.*
>
> *(2) A Special Economic Zone shall, with effect from such date as the Central Government may notify, be deemed to be a port, airport, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962 (52 of 1962)."*

From the above, it becomes clear that Special Economic Zones are deemed to be considered as ports, airports, inland container depots, land stations, outside the Customs territory of India, under Section 7 of the Customs Act, 1962, which deals with the appointment of ports, airports, etc. Hence, it is a deemed territory outside the Customs territory of India.

14.6 Further, as per Section 51 of the SEZ Act, the provisions of this Act, shall have an overriding effect over any other law, which is reproduced below :-

> *"**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."*

14.7 A combined reading of the above provisions shows that Free Trade Warehousing Zone (FTWZ) is part of SEZ scheme and it is a Customs bonded warehouse. Warehousing of goods that are imported without payment of appropriate Customs duties are carried out in these zones. SEZ is a specifically delineated duty free enclave which is deemed to be a foreign territory for the purposes of trade operations and duties and tariffs. Normally, the applicant imports goods and stores them in FTWZ till he finds a local customer who will purchase the goods and such purchaser clears the goods under the provisions of the Customs Act. In other words, the goods would become exigible to tax under the domestic enactments only when they are cleared and supplied from FTWZ for home consumption to DTA.

14.8 This fact was reiterated in the CBIC Circular No.3/1/2018-IGST dated 25.05.2018, the excerpts of which are reproduced below :-

> *"3. It is seen that the "transfer/sale of goods while being deposited in a customs bonded warehouse" is a common trade practice whereby the importer files an into-bond bill of entry and stores the goods in a customs bonded*

warehouse and thereafter, supplies such goods to another person who then files an ex-bond bill of entry for clearing the said goods from the customs bonded warehouse for home consumption.

4. It may be noted that as per sub-section (2) of section 7 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act"), the supply of goods imported into the territory of India, till they cross the customs frontiers of India, is treated as a supply of goods in the course of inter-State trade or commerce. Further, the proviso to sub-section (1) of section 5 of the IGST Act provides that the integrated tax on goods imported into India would be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (hereinafter referred to as the "CTA"). Thus, in case of supply of the warehoused goods, the point of levy would be the point at which the duty is collected under section 12 of the Customs Act, 1962 (hereinafter referred to as the "Customs Act") which is at the time of clearance of such goods under section 68 of the Customs Act.

5. It may also be noted that sub-section (8A) has been inserted in section 3 of the CTA vide section 102 of the Finance Act, 2018, with effect from 31st March, 2018, so as to provide that the valuation for the purpose of levy of integrated tax on warehoused imported goods at the time of clearance for home consumption would be either the transaction value or the value as per sub-section (8) of section 3 of the CTA (i.e. valuation done at the time of filing the into-bond bill of entry), whichever is higher.

6. It is therefore, clarified that integrated tax shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e., at the time of filing the ex-bond bill of entry and the value addition accruing at each stage of supply shall form part of the value on which the integrated tax would be payable at the time of clearance of the warehoused goods for home consumption. In other words, the supply of goods before their clearance from the warehouse would not be subject to the levy of integrated tax and the same would be levied and collected only when the warehoused goods are cleared for home consumption from the customs bonded warehouse.

7. This Circular would be applicable for supply of warehoused goods, while being deposited in a customs bonded warehouse, on or after the 1st of April, 2018."

14.9 However, from 01.02.2019 onwards, when an amendment to Schedule III of the CGST Act, 2017 took place to the effect that 'supply of warehoused goods to any person before clearance for home consumption shall be neither a supply of goods nor a supply of services.', the aforesaid Circular became redundant, and so the same stood rescinded by way of another Circular No.04/01/2019-GST dated 01.02.2019, which read as below:-

"The provisions of the CGST (Amendment) Act, 2018 and SGST Amendment Acts of the respective States have been brought into force w.e.f. 01.02.2019. Schedule III of the CGST Act, 2017 has been amended vide section 32 of the CGST (Amendment) Act, 2018 so as to provide that the "supply of warehoused goods to any person before clearance for home consumption" shall be neither a supply of goods nor a supply of services.

2. Accordingly, Circular No. 03/01/2019-IGST dated 25th May, 2018 is hereby rescinded."

15. It may be noted that though the IGST Act, 2017 has self-containing provisions relating to 'Levy and collection of Tax', it does not contain the provisions relating to 'Scope of supply', 'time and value of supply', 'input tax credit', 'demand and recovery', etc. The provisions of Central Goods and Services Tax Act, 2017 applies mutatis mutandis in relation to integrated tax in respect of such provisions, as provided under Section 20 of the IGST Act, 2017. Therefore, with the amendment to Schedule III of the CGST Act, 2017 with effect from 01.02.2019, with regard to 'scope of supply', the integrated tax also stands impacted to that extent.

16. From the legal provisions referred above, it becomes clear that even before the amendment to Schedule III of the CGST Act, 2017, the legal position was that the supply of goods before their clearance from the warehouse would not be subject to the levy of Customs duty or integrated tax and that the same would be levied and collected only when the warehoused goods are cleared for home consumption from the customs bonded warehouse. It was made all the more conspicuous, post the amendment carried out through para 32 of the Central Goods and Services Tax (Amendment) Act, 2018 (No.31 of 2018), whereby clauses 7 and 8 were added to Schedule III of the CGST Act, 2017, along with Explanation 2, as follows:-

32. In Schedule III of the principal Act, —

(i) after paragraph 6, the following paragraphs shall be inserted, namely:—

"7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

8. (a) Supply of warehoused goods to any person before clearance for home consumption;

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.";

(ii) the Explanation shall be numbered as Explanation 1 and after Explanation 1 as so numbered, the following Explanation shall be inserted, namely:—

*'**Explanation** 2.—For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962.'*

In this regard, it may be seen that though the terms 'warehouse' and 'warehoused goods' have not been defined under the SEZ Act, 2005, the same have been defined under Section 2(43) and 2(44) of the Customs Act, 1962, as

*"(43) **"Warehouse"** means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 or a special warehouse licensed under section 58A."*

*"(44) **"Warehoused goods"** means goods deposited in a warehouse"*

17. It may be seen that the SEZ Act does not carry such definitions, but that the same is due to the fact that apart from the definitions in-built under the SEZ Act, the definitions under other Acts are also borrowed, as the case may be, as specified under Section 2(zd) of the SEZ Act, which reads as,

> *"(zd) all other words and expressions used and not defined in this Act but defined in the Central Excise Act, 1944 (1 of 1944), the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Income-tax Act, 1961 (43 of 1961), the Customs Act, 1962 (52 of 1962) and the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) shall have the meanings respectively assigned to them in those Acts."*

Therefore, the 'warehoused goods', as specified in clause 8(a) of the Schedule III, covers the warehouses/warehoused goods in respect of the FTWZ/SEZ, being discussed in the instant case, as well.

18. As stated by the applicant in Exhibit-1, the brief of the activity and movement of goods are explained.

- KILPL, a Logistic Service Provider (LSP) of the applicant provides space for storage of applicant's imported goods, cleared without payment of applicable Customs duty, for a fee in the FTWZ unit, which was included as additional place of business in their GST Registration.
- The imported goods are cleared from the port by LSP using his IEC registration on behalf of the applicant and **warehouses** the goods in the FTWZ. As the applicant places order with the foreign suppliers, the overseas entity exports goods to the applicant with LSP as consignee on account of applicant with shipping address of LSP in all the export documents including export invoices.
- On arrival of goods, LSP files BOE with the SEZ authorities in the name of LSP on account of the applicant. After transhipment permission by the SEZ authorities, the goods are cleared without payment of Customs duty.
- The said imported goods are **stored** in the FTWZ unit on behalf of the applicant. However, the title of the goods stored in FTWZ unit would remain with the applicant during the storage.
- During the period of **warehousing**, no manufacture or processing activity are carried out on the goods and the same would be sold from FTWZ to the customers across India.
- On finalisation of customers, applicant would raise a tax invoice on DTA customer in foreign currency.
- For supply to overseas entity, goods are cleared without payment of tax under 'Letter of Undertaking' or bond. The customer either clears the goods from FTWZ or shall make further transfer of such goods to other customers.
- For every transfer of title of goods, there may or may not be physical movement of goods. If there is no physical movement of goods post transfer of title, the customer makes suitable arrangement with the LSP or another FTWZ to store the goods.

- The final customer files the Bill of Entry and clears the goods from FTWZ by making the payment of applicable Customs duty including IGST duly computed on the value under Customs provision and under Section 30 of SEZ Act, 2005.

19. It therefore becomes clear from the above that the basic activity of a FTWZ unit is warehousing of the goods belonging to the client. Accordingly, the impugned activities of the applicant get covered under clause (a) of Para 8 of the Schedule III to the CGST Act, 2018, and not under clause (b) of Para 8 as claimed by the applicant, as clause (b) relates to activities in the nature of 'High Sea sales'. It is further seen that the applicant has referred to the Advance ruling No.23/ARA/2023 dated 20.06.2023 passed by the Authority for Advance Ruling, Tamilnadu in the case of M/s.Haworth India (P) Ltd., wherein it has been stated that a FTWZ is not a warehouse licenced under the Customs Act, 1962. However, it is brought to notice that aggrieved over the said ruling, M/s.Haworth India (P) Ltd., have preferred an appeal to the Appellate Authority for Advance Ruling, Tamilnadu, who vide their Order-in-Appeal No.AAAR/06/2023 (AR) dated 20.12.2023 have pointed out the lacunae in the impugned ruling and remanded the matter back to the lower authority for passing appropriate orders, after following the principles of natural justice. Therefore, the reliance placed by the applicant in this case is of no avail to them.

20. Under the facts and circumstances of the case as enumerated above, and in line with the legal provisions governing the procedure for storage, warehousing, transfer and supply of imported goods, we intend to take the queries one by one for analysis and decision.

QUERY- Sl.No.(i)

> *"(i) Whether the transfer of title of goods stored in FTWZ Unit by the applicant to its customers in Domestic Tariff Area (DTA) or multiple transfer within the FTWZ followed by a subsequent removal from FTWZ Unit would get covered under para 8(a) of Schedule-III of the CGST Act or Tamil Nadu GST and Service Tax Act, 2017 (TNGST Act) and the rules made thereunder?*

It is seen that the above query talks about three aspects, viz., (i) transfer of title of goods by the applicant to customers in DTA, (ii) multiple transfers within the FTWZ and (iii) followed by a subsequent removal from FTWZ unit. And the query is as to whether the above said activities would get covered under para-8(a) of Schedule-III of the CGST Act or TNGST Act, 2017 and the rules made thereunder.

In the instant case, we observe that the goods imported by KILPL belonging to the applicant are reported to have been deposited and warehoused in FTWZ unit for further modes of transfer as stated above. As far as the activities relating to 'transfer of title of goods by the applicant to customers in DTA', and 'multiple transfers within the FTWZ' are concerned, as discussed in detail above, we are of the opinion that both these activities get squarely covered under para 8(a) of Schedule-III of the CGST Act, 2017. In respect of the activity relating to 'followed by

a subsequent removal from FTWZ unit', we observe that the same relates to the customer in whose name the title of goods has been transferred, as it is connected through the phrase "followed by a" to the other two main queries referred above. In this regard, it is to be stated that when the removal of goods is made by a customer in DTA from FTWZ, the same can be made only on payment of applicable duties of Customs including BCD and IGST by the DTA unit concerned, in terms of Section 30 of Special Economic Zone (SEZ) Act, 2005. However, since the said activity does not concern the applicant, the same need not be considered for answering in terms of Section 95 of the CGST Act, 2017. Accordingly, we hold that the transfer of title of goods stored in FTWZ Unit by the applicant to its customers in Domestic Tariff Area (DTA) or multiple transfer within the FTWZ, gets covered under para 8(a) of Schedule-III of the CGST Act, 2017.

QUERY-Sl.No.(ii).

(ii) If the answer to the above at (i) is no, whether Integrated Goods and Service Tax(IGST) is payable by the applicant on the goods stored in FTWZ unit and supplied to its customers in DTA unit, in addition to the Customs Duty payable (i.e. Basic Customs Duty(BCD) + IGST)) by the customer in DTA on removal of goods from FTWZ unit in accordance with Section 30 of Special Economic Zone (SEZ) Act, 2005 read with the Customs laws?

As already explained in the answer to Query-Sl. No. (i), the applicant is not liable to pay duties of Customs including BCD and IGST, as long as the goods remain warehoused. On the other hand, when the customer in DTA removes the goods from FTWZ, the same can be made only on payment of applicable duties of Customs including BCD and IGST by the DTA unit concerned. However, since the above query starts with the phrase, *'If the answer to the above at (i) is no"*, we are of the opinion that this query need not be answered, as the answer to query at Sl. No.(i) is answered in the affirmative.

QUERY-Sl.No.(iii). – As amended

(iii) Irrespective of whether supply of goods lying in FTWZ unit to DTA customers is covered under Schedule-III of the CGST Act or not, whether any reversal of input tax credit of common inputs/Capital goods is required at the hand of the applicant in terms of recent amended Section 17(3) of the CGST Act?

Prior to amendment of Section 17 of CGST Act, 2017, carried out under the Finance Act, 2023 (8 of 2023), the explanation to Section 17(3) of the CGST Act, 2017, did not include the activities listed in Schedule-III as 'exempt supply'. Hence, all the activities listed in Schedule-III were excluded for the purpose of apportionment of credit. With the amendment to Explanation of Section 17(3) of the CGST Act, 2017, apart from paragraph 5 of Schedule-III to the Act, clause (a) to paragraph 8 of the said schedule have been mentioned as an exception to Section 17(3) of the Act. Accordingly, proportionate reversal of ITC of common inputs/capital goods/services availed, if any, is required to be made by the applicant in terms of the amended Section 17(3) of the CGST Act, 2017, and the rules made thereunder.

21. Based on the above discussion, we rule as under :-

RULING

(i) Yes. The activity of the transfer of title of goods stored in FTWZ Unit by the applicant to its customers in Domestic Tariff Area (DTA) or multiple transfer within the FTWZ, will get covered under para 8(a) of Schedule-III of the CGST/TNGST Acts, 2017.

(ii) This query is not answerable, since the query at Sl.No.(i) is answered in the affirmative.

(iii) In terms of the amended Section 17(3) of the CGST Act, 2017, and the rules made thereunder, the applicant becomes liable to reverse the proportionate ITC of common inputs/capital goods/services availed, if any.

25/07/2024

(A.VALLI)
Member (SGST)

AUTHORITY FOR ADVANCE RULING ★ GOODS AND SERVICE TAX ★ TAMILNADU

25/07/2024

(D.JAYAPRIYA)
Member (CGST)

To

M/s. Panasonic Life Solutions India Private Limited
6th Floor, No. 86, Polyhose Towers,
Anna Salai, Guindy,
Chennai, Tamil Nadu, 600032 **//by RPAD//**

Copy submitted to:

1. The Principal Chief Commissioner of GST & Central Excise, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Commissioner of Commercial Taxes, 2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.
3. The Commissioner of GST & Central Excise, Chennai Outer Commissionerate.

Copy to:

1. The Assistant Commissioner (TNGST), Alandur Assessment Circle, Chennai – 600 035.
2. Master File/ Spare – 2.