



**BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH**

**Goods and Service Tax**

D.No.12-468-4, Adjacent to NH-16 Service Road, Kunchanapalli, Guntur-522501

**Present**

1. Sri. K. Ravi Sankar, Commissioner of State Tax (Member)
2. Sri. B. Lakshmi Narayana, IRS, Joint Commissioner of Central Tax (Member)

**AAR No.09/AP/GST/2024 dated: 07.06.2024**

1	Name and address of the applicant	M/s MCM Pacific PTE Ltd
2	GSTIN	372400001584ARP
3	Date of filing of Form GST ARA-01	13.03.2024
4	Personal Hearing	02.04.2024
5	Represented by	Maddukuru Sai Babu
6	Jurisdictional Authority -State	
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	e)determination of the liability to pay tax on any goods or services or both;

**ORDER**

**(Under sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub-section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)**

1. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and APGST Act, 2017 are in parimateria and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the APGST Act.
2. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s. MCM Pacific PTE Ltd (hereinafter referred to as applicant), registered under the AP Goods & Services Tax Act, 2017.

### 3. Brief Facts of the case:

1. M/s. MCM Pacific PTE LTD, (Hereinafter referred to as "applicant") a company is a Singapore based company, duly registered under the local laws and is in the business of power generation and distribution. The Applicant, currently, does not have any place business in India and resultantly is not registered in India under any Act. The Applicant is in the process of procuring certain goods/ assets as per the agreement from M/S Lanco Kondapalli Power Limited ("Lanco") a company which is currently undergoing liquidation in India. The Applicant is acquiring the said goods/ assets for the further transfer of the same to Myanmar after dismantling, as The Applicant does not have any business operations in India. The Applicant 's intention to procure the said assets during the liquidation process is to transfer the same to Myanmar.
2. The Applicant first procures the assets as per the agreement, then dismantle all the assets and then transfer them to Myanmar. Intention of the Applicant is to take the assets out of India to a place outside India.
3. Intention of the Applicant is to take the assets out of India to a place outside India.

### 4. Questions raised before the authority:

The applicant sought advance ruling on the following:

- Whether the outward supply of goods procured by the Applicant from an Indian company undergoing liquidation (M/S Lanco Kondapalli Power Limited) as per the Companies Act, 2013 (These goods are intended to be exported to Myanmar) shall be treated as Zero-Rated Supplies as per Section 16 of IGST Act. Whether the same can be exported under Zero-Rated supplies without payment of tax against Letter of Undertaking ("LUT").

### 5. Applicant's Interpretation of Law:

- **Section 2 of IGST Act-Definitions:-**  
(5) "**export of goods**" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;
- **Section 11 of IGST Act-Place of supply of goods imported into ,or exported from India:-**  
The place of supply of goods:-  
(a) Imported into India shall be the location of the importer;  
(b) Exported from India shall be the location outside India.
- **Section 16 of IGST Act-ZERORATED SUPPLY: -**  
**(1)** "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 for authorized operations to a Special Economic Zone developer or a Special Economic Zone unit.*

**(2) Subject to the provisions of sub-section(5)of section**

*17oftheCentralGoodsandServicesTaxAct,credit of input tax may be availed for making zero-rated supplies, not with standing that such supply may be an exempt supply.*

**(3) 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 bondor Letter of Undertaking, subject to such conditions, safeguard sand procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized 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 Actor the rules made thereunder.*

- Purpose/ intention of the Applicant is to take the goods outside India immediately after procuring the same in compliance to the order of National Company Law Tribunal ("NCLT"). As provided in section 2(5) of the IGST Act, taking goods outside India falls under the definition of export of goods.
- Hence, the current application is being filed to seek Advance Ruling with regard to applicability of provisions of section of 16 of the IGST Act, which allows the transaction of export of goods as "Zero Rated Supply" on which effective tax under GST will be NIL. Further, as per the provisions of section 16 of the IGST Act, Zero Rated supplies of goods can be made without payment of GST subject to fulfilment of certain conditions. In the present case, the Applicant intends to take goods outside India and accordingly is of the view that the supply of such goods may be treated as "Zero Rated Supply" and the same can be made without payment of GST after filing a Letter of Undertaking as provided in the GST law.

## **6. Representation by the Lanco Kondapalli Power Limited:**

- This representation letter is in reference to the Application for Advance Ruling filed by M/s MCM Pacific Pte Limited ("MCM") dated March 8, 2024 for assessing the tax liability on the purchase of certain assets of Lanco Kondapalli Power Limited ('LKPL"/ "Corporate Debtor'). In relation to the said Advance Ruling Application, we wish to

bring certain additional facts to your knowledge which are relevant for determination of tax liability.

- Please note that Corporate Insolvency Resolution Process was commenced against the Corporate Debtor ("CIRP") vide Order of NCLT, Hyderabad Bench dated April 23, 2019. Since no Resolution plan was approved pursuant to the CIRP, Application was filed with NCLT for initiation of liquidation process. By way of Order dated April 16, 2021, Hon'ble NCLT commenced liquidation proceedings of the Corporate Debtor as per Provisions of Insolvency and Bankruptcy Code, 2016 and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, and Mr. Pankaj Dhanuka was appointed as Liquidator ("Liquidator").
- The Liquidator invited Expressions of Interest through public announcement dated February 02, 2022 for sale of Corporate Debtor as a whole on a going concern basis and sale of certain assets of the Corporate Debtor in parcels separately or sale of assets of Corporate Debtor collectively. The sale process was conducted by way of e-auction in terms of the process document dated April 08, 2022 ("Process Document"). MCM emerged as the successful bidder for assets in one of the parcels, namely Parcel 4, comprising of certain assets of Phase III of the Corporate Debtor ("Phase III Assets"). Pursuant to the same, a Letter of Intent dated June 21, 2022 ("LOI" was issued to MCM.
- As per Terms of the Process Document and LOI, MCM being the successful bidder is required to pay the entire sale consideration and is required to bear all applicable taxes and duties as may be applicable. No incidence of tax or other rates will be applicable on or borne by the Corporate Debtor or the Liquidator. The sale certificate will be issued upon payment of such sums.
- In accordance with the Process Document, upon issuance of the sale certificate the ownership, risk and title to the Phase III Assets shall be transferred to MCM. The legal or beneficial interest, right or title over the Phase III Assets shall be issued, vested, transferred to MCM pursuant to issuance of sale certificate on an "as is where is", "as is what is", "as is how is", "whatever there is" and "no recourse basis". The sale process will stand concluded at the existing Plant location of the Corporate Debtor in Vijayawada, Andhra Pradesh, India upon the issuance of the sale certificate.
- The Process Document clarifies that after issuance of Sale Certificate, the successful bidder, in this case MCM, will be required to complete the entire process of taking possession of the assets and removing the same from the premises of the Corporate Debtor. Hence, the sale process will conclude in India upon issuance of Sale Certificate by the Liquidator and MCM will be responsible for dismantling, transporting and exporting the Phase III Assets to Myanmar. In the light of the same, the Liquidator will not be acting in the capacity of an exporter.

- We request your good offices to take the above facts into consideration while your assessment of the Advance Ruling Application in accordance with applicable laws.
- It is pertinent to note that currently, the sale of Phase III Assets is not complete since the Sale Certificate has not been issued to MCM as payment of GST by MCM is pending.
- MCM has filed the Application for Advance Ruling for seeking determination of tax liability pursuant to the same. Considering that liquidation is a time bound process, we solicit your cooperation and request your good offices to consider the Application and issue the ruling at the earliest for the beneficial interest of all parties/stakeholders of the Corporate Debtor.

### **7. Personal Hearing:**

Sir Maddukuru Sai Babu, Chartered Accountant, authorized representatives of the applicant appeared for personal hearing held on 02.04.2024 and reiterated the facts narrated in their application and also the representation submitted by the Lanco Kondapalli Power Limited:.

### **8. Discussion and Findings:**

We have carefully gone through the submissions made by the applicant in the advance ruling application, the additional submissions made during the personal hearing .

The applicant had sought the advance ruling, as to

**“Whether the outward supply of goods procured by the Applicant from an Indian company undergoing liquidation (M/S Lanco Kondapalli Power Limited) as per the Companies Act, 2013 (These goods are intended to be exported to Myanmar) shall be treated as Zero-Rated Supplies as per Section 16 of IGST Act. ”**

**“Whether the same can be exported under Zero-Rated supplies without payment of tax against Letter of Undertaking (“LUT”).”**

The question raised as above appeared to fall within the Provisions U/s 97 (2) (e) of the Central Goods& Services Tax Act, 2017. Hence the application admitted.

From the submissions made at the time of filing the application, it is seen that the applicant M/s. MCM Pacific PTE LTD, is a Singapore based company and is in the business of power generation and distribution. The applicant, currently, does not have any place of business in India and resultantly is not registered in India under GST Act, 2017. The Applicant is in the process of procuring certain goods/ assets as per the agreement from M/S Lanco Kondapalli Power Limited (“Lanco”) a company which is currently undergoing liquidation in India. The Applicant is acquiring the said goods/

assets for further transfer of the same to Myanmar after dismantling, as the applicant does not have any business operations in India. The Applicant 's intention to procure the said assets during the liquidation process is to transfer the same to his own business outside India , in this instant case i.e., Myanmar.

The applicant has further filed the Representation of M/s. Lanco Kondapalli Power Limited, as an Liquidator and submitted that the Corporate Insolvency Resolution Process was commenced against the Corporate Debtor ("CIRP") vide Order of NCLT, Hyderabad Bench dated April 23, 2019. Since no Resolution plan was approved pursuant to the CIRP, Application was filed with NCLT for initiation of liquidation process. By way of Order dated April 16, 2021, Hon'ble NCLT commenced liquidation proceedings of the Corporate Debtor as per Provisions of Insolvency and Bankruptcy Code, 2016 and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, and Mr. Pankaj Dhanuka was appointed as Liquidator ("Liquidator").

As per Terms of the Process Document and LOI, MCM being the successful bidder is required to pay the entire sale consideration and is required to bear all applicable taxes and duties as may be applicable. No incidence of tax or other rates will be applicable on or borne by the Corporate Debtor or the Liquidator. The sale certificate will be issued upon payment of such sums.

As per the representation of M/S Lanco, Kondapalli it is submitted that the successful bidder, in this case the applicant, will be required to complete the entire process of taking possession of the assets and removing the same from the premises of the Corporate Debtor. Hence, the sale process will conclude in India upon issuance of Sale Certificate by the Liquidator and the applicant will be responsible for dismantling, transporting and exporting the Assets to Myanmar. In the light of the same, it is evidently clear neither the Lanco nor the liquidator are not being acting in the capacity of an exporter.

In the instant case, the applicant as successful bidder taking possession of the assets and removing the same from the premises of the Corporate Debtor. Further, the applicant has the responsibility of dismantling, transporting and exporting the Assets to Myanmar . Here it involves two transactions, One is possession of asset and the same asset was in the territory of India. The delivery of goods made in the territory of India to the applicant. It is an undisputed fact that the supply involves movement of goods and therefore the place of supply would be the termination for deliver to the recipient. The applicant purchases from LANCO, Kondapalli and the goods are procured from India and delivered in the territory of India. Hence the place of supply is location of point where

goods delivered to applicant i.e, premises of Lanco Kondapalli Powder Ltd, plant office: IDA, Kondapalli, Ibrahimpatnam Mandal-521 228, Krishna District, A.P, India.

It indicates that in the event the supplier located in India and the place of supply is within the territory of India. It is to mention that for determining the taxability of any transaction is to ascertain whether the transaction tantamount to 'supply' in terms of the provisions of law. The term 'supply' has been defined at Sec.7 of the CGST Act,2017 which reads as under:

(1) For the purposes of this Act, the expression "supply" includes--

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;(b) import of services for a consideration whether or not in the course or furtherance of business; [and](c) the activities specified in Schedule I, made or agreed to be made without a consideration;

Now it is imperative to analyze whether the said transactions satisfy the conditions stipulated under section 2(6) of IGST Act, 2017 to qualify it as export of service.

The export of services has been defined in subsection (6) of the section 2 of the IGST Act, 2017 as extracted below;

"export of services" means the supply of any service when,—

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

Explanation 1 of the Section 8 of the IGST Act provides for the conditions wherein establishments of a person would be treated as establishments of distinct persons, which is reproduced as under:

Explanation 1.-For the purposes of this Act, where a person has,-

- (i) an establishment in India and any other establishment outside India;
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
- (iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.

As per the above Explanation, an establishment of a person in India and another establishment of the said person outside India are considered as establishments of distinct persons.

Further, Ministry of Finance has issued clarification relating to export of services in Circular No.161/17/2021, dated 20.09.2021 and clarifies the issue in succeeding paragraphs.

- Clause (v) of sub-section (6) of section 2 of IGST Act, which defines "export of services", places a condition that the services provided by one establishment of a person to another establishment of the same person, considered as establishments of distinct persons as per Explanation 1 of section 8 of IGST Act, cannot be treated as export. In other words, any supply of services by an establishment of a foreign company in India to any other establishment of the said foreign company outside India will not be covered under definition of export of services.
- Further, perusal of the Explanation 2 to section 8 of the IGST Act suggests that if a foreign company is conducting business in India through a branch or an agency or a representational office, then the said branch or agency or representational office of the foreign company, located in India, shall be treated as establishment of the said foreign company in India. Similarly, if any company incorporated in India, is operating through a branch or an agency or a representational office in any country outside India, then that branch or agency or representational office shall be treated as the establishment of the said company in the said country.
- In view of the above, it can be stated that supply of services made by a branch or an agency or representational office of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, shall be treated as supply between establishments of distinct persons and shall not be considered as "export of services" in view of condition (v) of sub-section (6) of section 2 of IGST Act. Similarly, any supply of service by a company incorporated in India to its branch or agency or representational office, located in any other Country and not incorporated under the laws of the said country, shall also be considered as supply between establishments of distinct persons and cannot be treated as export of services.
- From the perusal of the definition of "person" under sub-section (84) of section 2 of the CGST Act, 2017 and the definitions of "company" and "foreign company" under Section 2 of the Companies Act, 2013, it is observed that a company



incorporated in India and a foreign company incorporated outside India, are separate "person" under the provisions of CGST Act and accordingly, are separate legal entities. Thus, a subsidiary/ sister concern/ group concern of any foreign company which is incorporated in India, then the said company incorporated in India will be considered as a separate "person" under the provisions of CGST Act and accordingly, would be considered as a separate legal entity than the foreign company.

In the instant case, the applicant is not having any GST registration in India. Hence, the transaction done by the applicant does not fall under the definition of export of goods. Hence, the related transactions shall not be considered as ZERO RATED SUPPLY under the provisions of the GST Act, 2017.

### **RULING**

#### **(Under Section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)**

Question: Whether the outward supply of goods procured by the Applicant from an Indian company undergoing liquidation (M/S Lanco Kondapalli Power Limited) as per the Companies Act, 2013 (These goods are intended to be exported to Myanmar) shall be treated as Zero-Rated Supplies as per Section 16 of IGST Act. Whether the same can be exported under Zero-Rated supplies without payment of tax against Letter of Undertaking ("LUT").

Answer : The supply covered under this application subject to the agreement, facts and information furnished by the Applicant is neither exempted nor export of goods/ services. The stated transaction is not treated as Zero rated supplies.

Further the export without payment of tax against Letter of Undertaking ("LUT"), for the said transaction "does not arise".

**Sd/-K. Ravi Sankar**  
**Member**

**Sd/-B. Lakshmi Narayana**  
**Member**

// t.c.f.b.o //

  
Deputy Commissioner (ST)  
Registrar  
Authority for Advance Ruling  
O/o. Chief Commissioner (State Tax)  
Andhra Pradesh, Vijayawada.

To

M/s. MCM Pacific Pte Ltd ,Corporate Suite No-2, Fourth Floor, Ansal Plaza,Sector-1,  
Vaishali, Ghaziabad, UP,201010 **(By Registered Post)**

**Copy submitted to**

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax,  
Kunchanapalli, Guntur District, (A.P)
2. The Principal Chief Commissioner (Central Tax), O/o Principal Chief Commissioner of  
Central Tax & Customs, Visakhapatnam Zone, GST Bhavan, Port  
area,Visakhapatnam-530035. A.P. **(By Registered Post)**

**Note:** Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.

RULING

(Under Section 98 of Central Goods and Services Tax Act, 2017 and the Andhra

Pradesh Goods and Services Tax Act, 2017)

Question: Whether the outward supply of goods produced by the Applicant from an Indian company undergoing liquidation (M/S Lanco Kondapalli Power Limited) as per the Companies Act, 2013 (these goods are intended to be exported to Myanmar) shall be treated as zero-rated supplies as per Section 16 of IGST Act, 2017. Whether the same can be exported under zero-rated supplies without payment of tax under Letter of Undertaking (LUT).

Answer: The supply covered under this application subject to the agreement facts and information furnished by the Applicant is neither exempted nor export of goods services. The said transaction is not treated as zero-rated supplies.

Further the export without payment of tax under Letter of Undertaking (LUT) for the said transaction does not arise.

24-K. Ravi Shankar  
Member

24-K. Ravi Shankar  
Member

U. S. S. S. S.