

No RCM liability on services received by SEZ units from DTA – Gujarat AAR

23 April 2024



Summary

The Gujarat Authority of Advance Ruling (AAR) held that a special economic zone (SEZ) unit is not required to pay the Integrated Goods and Services Tax (IGST) under the reverse charge mechanism (RCM) on the services procured from a domestic tariff area (DTA), subject to the furnishing of a letter of undertaking (LUT) or bond to the Jurisdictional Commissioner. The AAR borrowed the rationale of the CBIC's clarification, which allowed a SEZ unit to procure services covered under the RCM without paying the IGST, subject to the furnishing of a LUT.

Facts of the case

- M/s. Waaree Energies Limited (the applicant) is a SEZ unit manufacturing solar modules.
- The applicant avails services such as a goods transport agency, legal services from an advocate, security services, and bus hiring services from DTA.

Issue before Gujarat AAR:

- Whether the applicant is liable to pay tax under the RCM on specified services procured from the DTA in accordance with the IGST RCM notification?

Applicant's submissions

- In terms of the RCM notification, a recipient is required to pay GST under the RCM. However, regarding the SEZ rules, DTA units can supply the services to the SEZ units without paying IGST under bond or a LUT.
- The applicant relied on the CBIC's circular, which clarified that the SEZ unit can procure services without tax payment, subject to furnishing a LUT in place of a bond.
- The provisions of the SEZ Act have an overriding effect on the provisions of any other laws. Therefore, the RCM notification is not applicable in the present case.

Gujarat AAR's observations and judgement [Order No. GUJ/GAAR/R/2024/09 dated 16 April 2024]

- **No RCM liability on services received by SEZ units from DTA subject to LUT:** The AAR referred to the relevant provisions of the SEZ and GST laws and highlighted that the FAQs on GST suggest that SEZ units are deemed suppliers under RCM and, hence, liable to pay GST. However, considering Notification No. 37/2017-CT, a DTA may supply services to a SEZ unit without tax payment, subject to a LUT or bond furnishing. The AAR drew reference to the CBIC's clarification made to a specific SEZ unit and concluded that a SEZ unit is not required to pay GST under the RCM for specified services, subject to the furnishing of a LUT or bond.

Our comments

Earlier, the Maharashtra AAR, in the case of Portescap India Private Limited, had held that a SEZ unit is required to pay tax on renting an immovable property service under the RCM per the GST RCM notification. However, the AAAR overturned the AAR ruling, stating that the SEZ unit is not required to pay GST on specified services under the RCM, subject to the furnishing of a LUT or bond as a deemed supplier of such services.

The present ruling is in line with the ruling of the Maharashtra AAAR. The Gujarat AAR, in the recent case of Abans Alternative Fund Manager LLP, has also taken the same view.

This is a welcome ruling and in line with the basic objective of creating a hassle-free environment for SEZ units and developers. It is expected to provide relief to SEZ units and developers in procuring services under the RCM without the burden of cash outflow on account of payment of IGST.

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