

Supply by an outlet located in the Security Hold Area of the airport to outbound international passengers is taxable under GST, eligible for a refund- Delhi AAAR

30 August 2022



Summary

The appellant contended that the sale of goods from an outlet located in the Security Hold Area (SHA) of the airport should be treated as an export of sale and accordingly be considered a zero-rated supply. In this respect, the Delhi Appellate Authority for Advance Ruling (AAAR) stated that the outlet located in SHA cannot be said to be outside India. The AAAR upheld the order passed by the Authority of Advance Ruling (AAR) and held that the supply of goods to outbound international travellers qualifies as supply and therefore, is liable to Goods and Service Tax (GST). Further, the AAAR stated that the provision of the Integrated Goods and Service Tax (IGST) Act, 2017 is applicable to tourists leaving India and hence, the payment of IGST on such supply shall be refunded in the prescribed manner.

Facts of the case

- The appellant¹ is engaged in the business of retail sale of sunglasses through various outlets in Delhi including one outlet at Terminal-3.
- The said outlet is permitted to function beyond the Customs Area and within the SHA of the IGI Airport.
- The appellant procures sunglasses from Gurgaon after payment of IGST @28%, which are further supplied to the international passengers having a valid international boarding pass. The appellant charges SGST/CGST on the invoices issued to the International passengers. However, the appellant is of a view that such transaction is a zero-rated transaction, being “export sale”.
- The appellant approached the Delhi AAR to understand implications of GST on its transaction. The AAR passed an order² that even though the shop is located beyond Custom Frontiers of India, the same is within the territory of India. Therefore, it shall not be treated

as export and applicable GST is to be discharged.

- The appellant placed reliance on the decision of the Supreme Court (SC) in case of M/s. Hotel Ashoka (India Tourism Development Corp Limited)³ and contended that when any transaction takes place outside the custom frontiers of India, the transaction would be said to have taken place outside India.
- Thus, the aggrieved appellant filed the present appeal challenging the order passed by the AAR.

AAAR observations and ruling⁴

- **Shop located in SHA is in India:** As per the facts on record, the shop of the appellant is in the SHA. Further, as per the provisions, the shop located in SHA cannot be said to be outside India. Thus, since the shop of appellant is in SHA, the same shall be considered in India. Therefore, the sales made by the appellant to the outbound international

¹ M/s ROD Retail Private Limited

² AR No. 01/DAAR/2018 (In Application No: 01/DAAR/2017) dated 27 March 2018

³ Civil Appeal Nos. 10404-10412 of 2010 dated 3 Feb 2012

⁴ Order No./03/DAAAR/ 2022-23/1999-2004 dated 23 May 2022

travellers cannot be treated as 'exports of goods'⁵.

- **Refund to tourists leaving India:** The provision of the IGST Act, 2017 is applicable to tourists leaving India. Thus, the payment of IGST on the supply of goods taken out of India by him shall be refunded in the prescribed manner.
- **GST is applicable on supply of goods:** The supply of goods to outbound international travellers falls within the definition of "taxable territory" and forms "supply". It will attract the applicable GST on the date of supply of the goods.

⁵ under section 2(5) of the IGST Act, 2017 read with section 2(19) of the Customs Act, 1962

⁶ Madras HC (2021)- Flemingo Duty-Free Shops Pvt. Ltd vs UOI, Allahabad HC (2019)- Atin Krishna vs UOI

Our comments

Earlier, the Delhi AAR in case of M/s the ROD Retail Private Limited had held that the goods can be said to be exported only when they cross the territorial waters of India and not merely on crossing the Customs Frontiers of India. The Delhi AAAR has also upheld the above ruling.

However, contrary to this, the Hon'ble High Courts in many cases⁶ had taken a view that the goods supplied by duty-free shops located at the departure area are taken and consumed outside India by the passenger himself, thus, such transaction would qualify as export of goods⁷ and can be treated as zero-rated supply.

Recently, the CBIC has retrospectively withdrawn Rule 95A w.e.f. 1 July 2019⁸ which prescribed the manner of refund of taxes to retail outlets established in the departure area of an international airport beyond immigration counters making tax free supply to an outgoing international tourist.

⁷ as per the IGST Act

⁸ vide notification No. 14/2022-Central Tax, dated 5 July 2022

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