

Transfer of the title of goods or multiple transfers within FTWZ are not transactions in a bonded warehouse and hence not exempt from GST: Tamil Nadu AAR

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Summary

The Tamil Nadu Authority for Advance Ruling (AAR) has held that the Free Trade Warehousing Zone (FTWZ) falls under the regulatory framework of the Special Economic Zones Act, 2005 (SEZ Act) and is distinct from warehouses licensed under the Customs Act, 1962 (Customs Act). Therefore, the transfer of title of goods or multiple transfers within an FTWZ would not result in transactions in a bonded warehouse and are not exempt from GST.

Facts of the case

- M/s Haworth India Private Limited (the Applicant), a wholly-owned subsidiary of Haworth, Inc. United States is engaged in the manufacture and sale of office furniture under the brand name 'Haworth'.
- To execute its business activities, the Applicant procures raw materials indigenously as well as from its group entities located outside India. It also imports certain finished goods from its group entities.
- The Applicant desired to operate its import and re-sale transactions from FTWZ for operational convenience and expedited project execution.
- The Applicant sought clarification on whether the transfer of title of goods to customers or multiple transfers within the FTWZ would result in bonded warehouse transactions covered under paragraph 8(a) of Schedule III of the Central Goods and Services Tax Act, 2017 (CGST Act).
- The Applicant has submitted that the FTWZ is a Special Economic Zone (SEZ) wherein storage, trading and other ancillary activities are carried out. Further, it is a deemed foreign territory within the boundaries of India where the goods may be landed, handled,

manufactured, reconfigured and exported without bearing custom duties on them. Custom duties will only be payable when the goods are cleared from the FTWZ to the consumers for home consumption. Additionally, the SEZ Act and Rules governing FTWZ permit multiple transfers of ownership without removal of goods out of the FTWZ, without payment of indirect taxes or compliances.

Tamil Nadu AAR's observations and Ruling (TN/23/AAR/2023; Ruling dated 20 June 2023):

- **Meaning of the term 'warehouse' used in para 8(a) of Schedule III:** Expounding the term 'warehouse' referred to in paragraph 8(a) of Schedule III of the CGST Act, the AAR stated that it covers public warehouses, private warehouses and special warehouses licensed under the Customs Act.
- **FTWZ is distinct from a licensed warehouse:** FTWZ is an SEZ, wherein mainly trading, warehousing and other ancillary activities are undertaken. Notably, the warehousing and clearance of goods for home consumption on payment of requisite custom duties are monitored by customs officials posted in the FTWZ, in consonance with the SEZ

Act and the Customs Act. However, the approval, license and administrative control of FTWZ is carried out as per the SEZ Act and Rules. Accordingly, since paragraph 8(a) of Schedule III of the CGST Act is specific to warehouses licensed under the Customs Act, FTWZ, being governed by the SEZ Act and Rules, cannot be equated with them.

- **Transfer of the title of goods within FTWZ not exempt from GST:** The transfer of the title of goods or multiple transfers within FTWZ would not result in a bonded warehouse transaction as contemplated under paragraph 8(a) of Schedule III of the CGST Act. Therefore, the transfer of the title of goods by the Applicant to its customers or multiple transfers within the FTWZ does not come under Schedule III of the CGST Act r/w CGST Amendment Act, 2018. Further, the rescinded Circular No. 3/1/2018 – Integrated Tax (IGST) is no longer applicable due to subsequent amendments in the CGST Act. Therefore, the present transaction would not be exempt from GST.

Our comments

Pursuant to the recommendations of the GST Council in its 27th GST Council Meeting, it was clarified that IGST shall be levied and collected at the time of final clearance of warehoused goods for human consumption¹. Subsequently, the circular was rescinded and Schedule III of the CGST Act was amended to insert paragraph 8(a), stating that ‘supply of warehoused goods to any person before clearance for home consumption shall neither be supply of goods nor a supply of service.’

On a similar issue earlier, the Tamil Nadu AAR in the case of The Bank of Nova Scotia had held that FTWZ is a custom bonded warehouse, and removal of goods from the FTWZ to DTA for home consumption is a point of deferred levy/payment of Customs Duty. Accordingly, IGST shall not be levied when the goods are bonded but rather when the goods are cleared for home consumption. A similar position was taken in Sadesa Commercial Offshore De Macau Limited.

However, the Tamil Nadu AAR, in the present ruling, has taken a contradictory view and held that FTWZ is not a warehouse licensed under the Customs Act. Accordingly, the transfer of title in goods or multiple transfers within FTWZ would not be tantamount to transactions in bonded warehouses as covered under Schedule III of the CGST Act and would not be exempt under GST.

It will be interesting to note if the contrasting deliberations on this issue will finally square up before the Appellate Authority.

¹ vide Circular No. 3/1/2018-IGST dated 25 May 2018

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