



BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax

D. No. 5-56, Block-B, R.K. Spring Valley Apartments, Eedupugallu, Vijayawada-521151

Present

1. Sri. D. Ramesh, Commissioner of State Tax (Member)
2. Sri. A.Syam Sundar, Additional Commissioner of Central Tax (Member)

AAR No.21/AP/GST/2021 dated: 20.07.2021

1	Name and address of the applicant	M/s. Vishnu Chemicals Limited Plot No 29, JN Pharma City, IOCL Road, Visakhapatnam-531019, Andhra Pradesh.
2	GSTIN	37AACC1903A3ZU
3	Date of filing of Form GST ARA-01	12.03.2021
4	Hearing (Virtual)	29.06.2021
5	Represented by	Sri Narsi Reddy, DGM Accounts and Taxation
6	Jurisdictional Authority - Centre	Superintendent of Central CGST Parawada Range, Visakhapatnam South CGST Division.
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	(d) admissibility of input tax credit of tax paid or deemed to have been paid.

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 SGST Act, 2017 are in parimateriaand 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. Vishnu Chemicals Limited (hereinafter referred to as applicant), registered under the AP Goods & Services Tax Act, 2017.

3. Brief Facts of the case:

The applicant, M/s. Vishnu Chemicals Limited is engaged in manufacture of Basic Chromium Sulphate, Sodium Sulphate and Chromic Acid falling under HSN 28332990, 28331100 and 28191000. For the purpose of storing the raw material as well as finished goods, the applicant needed some additional storage space and

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therefore, entered into lease agreements with M/s. Usha Tubes and Pipes Pvt. Ltd., Visakhapatnam (GSTIN:37AAACU7175R1ZG) (referred to as "UTPL") for leasing of godowns situated at UTPL Campus, Mindi, Gajuwaka, Visakhapatnam.

The applicant submitted that monthly rental bills were received from M/s UTPL regularly till March 2018. But for the months from April 2018 to March 2019, M/s UTPL issued a single tax invoice bearing No. UTPL0919117KVC dated 01.04.2020 mentioning in the description as Rental charges for the months from April 2018 to March 2019 by showing rent month-wise for 12 months. The invoice mentioned CGST as 26,64,090/- and SGST of Rs. 26,64,090/- on total taxable value of Rs. 2,96,01,000. The applicant has approached this authority seeking a ruling whether the invoice dated 01.04.2020 is eligible for input tax credit if claimed before filing GST return for September 2021 or Annual return for 20-21 in terms of Sec 16(4).

The applicant had filed an application in form GST ARA-01 dated 12.03.2021 by paying required amount of fee for seeking Advance Ruling on the following issues, as mentioned below:

4. Questions raised before the Authority:

The applicant seeks advance ruling on the following:

- (1) Whether the tax invoice dated 01.04.2020 issued by the supplier of service for the rental service supplied for the period 01.04.2018 to 31.03.2019 is hit by the limitation for claiming ITC under sub-section (4) of Section 16 of the CGST/SGST Act, 2017.
- (2) If the applicant avails ITC on such invoice after 01.04.2020 and before filing GST return for September 2021/Annual Return for 2020-2021, whether it amounts to violation of condition stipulated under sub-section (4).

On Verification of basic information of the applicant, it is observed that the applicant is under Centre jurisdiction, i.e., Superintendent, CGST Parawada Range, Visakhapatnam South Division. Accordingly, the application has been forwarded to the jurisdictional officer and a copy marked to the State Tax authorities to offer their remarks as per Sec. 98(1) of CGST /APGST Act 2017. No remarks were received from the jurisdictional officer concerned on the issue, for which the Advance Ruling was sought by the applicant.

5. Applicant's Interpretation of Law:

The applicant is of the view that the bar under Sec 16(4) is not applicable to the invoice under consideration for the following reasons:

The provisions of Sec 16(4) are extracted as under:

"(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, which ever is earlier."

Sec 16(4) prohibits taking credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of "financial year to which such

invoice or debit note pertains" or "furnishing of the relevant annual return", which ever is earlier."

The phrase "financial year to which such invoice or debit note pertains" in the above sub-section implies that the "date of invoice or debit note" should be of that financial year. Credit is not allowed after filing the return for the month of September of the following financial year on any invoice issued between 1st April to 31st March of a financial year. The sub-section does not bar availing credit on invoices issued in subsequent financial year in respect of "supplies made in previous financial year".

To give an illustration, in respect of supplies made in financial year 2018-2019, if the invoice is issued in April 2019, the late date for availing credit on such invoice under Sec 16(4) would be Sept 2020, but not Sept 2019.

To give another example, if supplies are made in financial year 2018-2019 and due to price escalation if a debit note is issued in the month of October 2019, for supplies made in financial year 2018-2019, then limitation under Sec 16(4) in respect of such debit note for claiming ITC would be Sept 2020 (based on debit note date), but not Sept 2019 (based on original supply date).

Hence, the applicant is of the view that they are entitled to avail ITC on the invoice dated 01.04.2020 on or before filing the GSTR 3B for September 2021 or date of filing of Annual Return for financial year 2020-2021 whichever is earlier. In other words, restriction under Sec 16(4) is not applicable to the invoice dated 01.04.2020 issued in the instant case for renting / leasing services supplied in the year 2018-2019.

6. Virtual Hearing:

The proceedings of Hearing were conducted through video conference on 29th June, 2021, for which the authorized representative, Sri Narsi Reddy, DGM Accounts and Taxation attended and reiterated the submissions already made.

7. Discussion and Findings:

We have examined the records of the case and considered the submissions made by the applicant.

The issue at hand is whether the tax invoice dated 01.04.2020 issued by the supplier of service for the rental service supplied for the period 01.04.2018 to 31.03.2019 is hit by the limitation for claiming ITC under Section 16(4) of the CGST/SGST Act, 2017 or not.

In the instant case the 'tax invoice' is issued by the lessor on 01.04.2020 for the services supplied in the financial year 2018-2019. For any transaction, the tax invoice is the primary document evidencing the supply and vital for availing input tax credit. Now we look into the aspect of the 'issuance of tax invoice' as per the provisions of the Act.

"Section 31 (2) A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed."

The Act prescribes certain conditions for the issuance of tax invoice in case of supply of services, among which Rule 47 prescribes the time limit for issuing of tax invoice.

"Rule 47. The invoice referred to in rule 46, in the case of the taxable supply of services, shall be issued within a period of thirty days from the date of the supply of services."

If we look into the present case, it is evident that the invoice has not been issued within the stipulated time as prescribed by the act.

The second part of the question is that whether the invoice mentioned above is hit by the limitation for claiming ITC under sub-section (4) of Section 16 of the CGST/SGST Act, 2017.

Section 16 lays down the eligibility and conditions for taking input tax credit which reads as under.

*"16 (4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of **financial year to which such invoice or debit note pertains** or furnishing of the relevant annual return, whichever is earlier."*

In view of the above, in the instant case, the invoice which was raised on 01.04.2020 **does not pertain to that financial year of 2020-2021**, but pertains to the financial year of 2018-2019 in which the services were received. Moreover, as per section 16(4) the applicant was mandated to claim input tax credit before the due date of furnishing of the return under section 39 for the month of September 2019 following the end of financial year 2018-2019 to which such invoice pertains or furnishing of the relevant annual return for the year 2018-2019, whichever is earlier. In such a context, we are of the opinion that the applicant is not entitled to take credit of input tax under section 16(4) as it does not fulfill the basic condition that the invoice should pertain to the financial year 2018-2019 where in the supplies are made and for which the tax invoices are supposed to be raised as prescribed by the act. Thus, Act necessitates the applicant to claim input tax credit as per the conditions prescribed under the act.

With the foregoing, we rule as under.

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 tax invoice dated 01.04.2020 issued by the supplier of service for the rental service supplied for the period 01.04.2018 to 31.03.2019 is hit by the limitation for claiming ITC under Section 16(4) of the CGST/SGST Act, 2017.

Answer: The invoice referred pertains to the services rendered in the financial year 2018-2019 and hence it is 'hit by the limitation for claiming ITC' under Section 16(4).

Question: If the applicant avails ITC on such invoice after 01.04.2020 and before filing GST return for September 2021/Annual Return for 2020-2021, whether it amounts to violation of condition stipulated under sub-section(4).


Answer: Affirmative.

Sd/- D. Ramesh
Member



Sd/-A. Syam Sundar
Member

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


Deputy Commissioner (ST)
DEPUTY COMMISSIONER (ST)
O/o. Chief Commissioner of State Tax,
Government of A.P., Vijayawada

To

1. M/s. Vishnu chemicals limited, (GSTIN 37AACCV1903A3ZU) Flat No. 29, JN Pharma City, IOCL Road, Visakhapatnam, Andhra Pradesh-531019 **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, Steel Plant Circle, Visakhapatnam Division. **(By Registered Post)**
2. The Superintendent, Central Tax, CGST Parawada Range, Visakhapatnam South Division. **(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada, (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.