THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009

Advance Ruling No. KAR ADRG 50/ 2019
Dated: 18th September, 2019

Present:

1. Sri. Harish Dharnia,
   Additional Commissioner of Central Tax, ... Member (Central Tax)

2. Dr. Ravi Prasad M.P.
   Joint Commissioner of Commercial Taxes . . . . Member (State Tax)

1.	Name and address of the applicant	M/s N Ranga Rao & Sons Pvt Ltd, 1553, Vani Vilas Road, Mysore - 570004
2.	GSTIN or User ID	29AAECN8103G1ZH
3.	Date of filing of Form GST ARA-01	29.06.2018
4.	Represented by	Sri Shivarajan,Charted Accountant
5.	Jurisdictional Authority – Centre	Pr Commissioner of Central Tax,Mysuru Commissionerate, Siddartha Nagar, Mysuru.
6.	Jurisdictional Authority – State	LGSTO 195-Mysuru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000-00 under CGST Act & Rs.5,000-00 under KGST Act vide CIN IBKL 18062900367862 dated 29.06.2018

ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE KARNATAKA GOODS AND SERVICES TAX ACT, 2017

1. M/s N Ranga Rao & Sons Pvt Ltd, (called as the 'Applicant' hereinafter), having GSTIN number 29AAECN8103G1ZH, has filed an application for Advance Ruling under Section 97 of CGST Act, 2017, KGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs.5,000-00 each under the CGST Act and the KGST Act.

2. The Applicant is a Partnership firm and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:

(a) Whether the applicant is eligible to claim refund of accumulated input tax credit on both inputs and input services where a scenario of inverted duty structure exists?

(b) Whether the provisions of Notification No. 21/2018-Central Tax dated April 18, 2018 and Notification No. 26/2018-Central Tax dated June 13, 2018 are applicable to the applicant?

3. The applicant furnishes some facts relevant to the stated activity:

a. The applicant company states that the company is engaged in the manufacturing of incense sticks, Dhoops, Air fresheners, Pooja kits. He is using raw materials such as raw agarbathis, aroma materials, packing materials like plastic granules, paper and paper board as inputs and services such as marketing and distribution service, manpower service, job work service and rental services, freight and forwarding services as input service for said activity.

b. The applicant company stated that his product is mainly agarbathis i.e. incense sticks falling under the HSN code of 33074100 taxable at the rate of five percent only and this invariably resulted in inverted rate duty structure, wherein ITC available on inputs and input service is more than output tax payable of the finished products.

c. As per provisions of section 54(3)(ii) of the GST Act, the applicant company is eligible to claim refund of unutilized ITC at the end of any tax period where the credit has accumulated on account of on account of rate of tax on inputs being higher than the rate of tax on the output supplies, except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

d. Accordingly, Rule 89 of the CGST Rules prescribes the method and manner of seeking refund on account of inverted tax

structure. As per provisions of rule 89(5) read with section 54(3)(ii) of the GST Act 2017, the formula is as under.

Maximum Refund Amount = {(Turnover of inverted rated supply of goods) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods

Explanation.- For the purposes of this sub-rule, the expressions "Net ITC" and "Adjusted Total turnover" shall have the same meaning as assigned to them in sub-rule (4).

The applicant states that Net ITC means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which the refund is claimed under sub-rules (4A) or (4B) or both.

From the above, the applicant claims that in terms of Rule 89(5) of the CGST Rules, as it was introduced w.e.f. July 1st, 2017, it was provided that while calculating net input tax credit, the same would mean input tax credit availed on inputs and input services. Accordingly, the applicant, it is stated, had in line with the above provision was claiming refund of accumulated input tax credits on inputs and input services.

e. However, the applicant states, in the month of April 2018, vide Notification No.21/2018 – Central Tax dated April 18, 2018, the definition of "Net ITC" was provided specifically under Rule 89(5) and the same was defined as follows:

"(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC / Adjusted Total Turnover} – tax payable on such inverted rated supply of goods and services.

Explanation:- For the purposes of this sub-rule, the expressions –

(a) Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

(b) Adjusted Total turnover shall have the same meaning as assigned to it in sub-rule (4)."

Therefore, the net ITC as defined under Rule 89(5) after amendment included only those input tax related to inputs availed by the assessee and did not include those related to input services.

Yet again, there was another notification bearing Notification No. 26/2018- Central Tax dated June 13, 2018 issued in this regard which specified that the amendment made under Rule 89(5) of the CGST Rules vide Notification dated April 18th. 2018 is retrospective in nature and the same shall have retrospective effect from July 1st, 2017.

4. The applicant submits that CGST Act contemplates refund of unutilized input tax credits and the term unutilized input tax credit is not defined under Section 2(62) of the CGST Act. However the term input tax credit has been defined under section 2(62) of the CGST Act to mean, amongst others, the central tax, state tax, integrated tax or Union territory tax, charged on any supply of goods or services or both made to a registered person and a logical interpretation could be adopted that unutilized input tax credits means the central tax, state tax, integrated tax or union territory tax charged on any supply of goods or services or both made to a registered person and which is as not utilized. Thus, it is clear that the provision of section 54(3) contemplates refund of unutilized input tax credit of both inputs and input services.

5. The applicant claims that this view is further supported by Section 54(8)(b) of the CGST Act which provides that

"Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to –

(a) . . . . . .

(b) Refund of unutilized input tax credit under sub-section (3)"

On a plain reading of the above provision, it is evident that the Act does not prescribe any embargo on the refund of input tax credits, be it inputs or input services.

6. The applicant claims that Rule 89(5) of the CGST Rules, as amended, places an unreasonable restriction on claiming of refund of unutilized input tax credit, to the extent it relates to input services which was never the intention of the law makers as evident from the framing of Section 54(3) of the CGST Act. It has been held in various fora that the Rules operate within the body of the Act and can never overrule the Act. Accordingly, the

applicant claims that the Rule 89(5) of the CGST Rules is ultra-vires the provisions of Section 54(3) of the CGST Act.

7. In view of the above analysis, the applicant claims that it is evident that the Notifications substituting Rule 89(5) and making it effectively retrospectively i.e. Notification No.21/2018-Central Tax read with Notification No.26/2018 – Central Tax is violative of the provisions of the CGST Act and accordingly the same cannot be applied in the case of the applicant.

8. He has also argued that since the applicant does not have any taxable supplies, he cannot utilize the input tax credit accumulated on account of inverted tax structure and has put him into a loss and cause prejudice to the applicant and also would indirectly increase the cost of the final product.

9. In view of the above, the applicant seeks a clarification as to whether he can claim refund of the input tax credits on services or not in light of notification no. 21/2018- Central Tax dated April 18, 2018 read with Notification No.26/2018 –Central tax dated June 13, 2018.

10. Hearing was granted and in the Hearing, the applicant was given to know that the issue raised before the Advance Ruling Authority is not maintainable as it questioned the vires of the Notification amending the Rules and it was not within the scope of section 98 of the CGST Act or section 98 of the Karnataka Goods and Services Tax Act. The applicant was provided opportunity to provide sufficient support to whether the application is maintainable or not.

11. In light of the above, the applicant filed additional submissions stating that the applicant had filed application before the appropriate jurisdictional authority seeking refund of taxes paid on both inputs and input services and the appropriate authority had rejected the claim of refund of taxes paid on input services for the period October 2017 to January 2018 by relying on Notification No.21/2018-Central Tax prohibiting grant of refund of taxes paid on input services. He stated that nowhere in the rejection orders passed by the authorities, has a reference been made to the applicability or non-applicability of Notification No.26/2018- Central Tax and accordingly a reasonable conclusion may be drawn that the matter has not been adjudicated in light of Notification No.26/2018-Central Tax and therefore the present application filed by the applicant is admissible.

12. The applicant argues that an application for advance ruling may be filed only if the matter has not already been adjudicated upon and in the instant case, since no reference has been made to Notification No.26/2018-Central Tax in any of refund proceeding pertaining to the applicant, the appellant seeks clarification regarding the applicability of the said notification.

13. He also argued that Section 97 of the CGST Act prescribes a list of the questions which can be considered by an authority of advance rulings. Section 97(2)(b) mentions that the questions on which an advance ruling can be sought is on the "applicability of a notification issued under the provisions of the Act". Section 97(2)(b) provides for seeking clarification on the applicability of a notification. He also submits that the clarification to be sought under this sub-clause (b) shall cover two fold aspects:
(a) situations / Circumstances determining the applicability of a Notification; and
(b) the manner of application of the Notification.

Since the expression used under section 97(b) "applicability of a Notification" is very wide, it includes within its ambit the manner of application of a particular notification within its spectrum as well. The applicant by way of the present application therefore wishes to understand the manner of applicability of the Notification in the facts and circumstances of their case where the applicant has accumulated credit on account of both input and input services which are used in the manufacture of final product and is taxable at a lower rate.

14. He also argued that the term "inputs" included all input and input services. By restricting refunds only to the extent of inputs, Notification No.26/2018 –CGST seeks to curtail the operation of Section 54(3) which is not the intention of the Legislature. Had the intention of the Legislature been not to allow the credit on input services, section 54(3) would have in unequivocal terms denied it. However, Section 54(3) allows refund of all "inputs" including input and input services.

He also claimed that Section 54(3)(ii) is a self contained provision and no mention about any rules or notifications to be prescribed is mentioned and hence it was not the intention of the law makers to curtail the refund of tax paid on input services in a case of inverted tax structure.

15. The applicant argues that he cross utilizes both inputs and input services for making outward supplies and section 54(3)(ii) is applicable to the instant case and the provisions of the Notification is not applicable in the facts and circumstances of the present case because, Section 54(3)(ii)

grants refund of both input and input services whereas Notification No.26/2018 Central Tax envisages refund in scenarios where only input is used for making outward supply of goods and input services are used for making outward supply of services. Accordingly, Notification No.26/2018 is not applicable in the applicant's case.

16. The applicant also argues that the expression used in the Notification "Inverted Duty Structure" is not defined anywhere in the Act and the Rules and hence in the absence of the same, the applicant seeks clarity as whether the formula which is as prescribed for inverted duty structure under the Notification will be applicable in the case of the applicant.

17. The applicant also submits that the word "inputs" which is used in Section 54(3) and the Notification includes both input and input services. As the term "input" is only defined and not the word "inputs" the terms "inputs" as used under Section 54(3) and the Notification should not be understood as a plural of input, but as a genre of the term for all goods and services which are not capital goods.

18. The applicant also draws the attention of the authority to the Statement 1-A prescribed in the Notification wherein he questions why details of input services are sought when no refund of the same is going to be granted. He also states that even in the erstwhile laws the assessees were granted refund of entire CENVAT credit where it was not possible to utilize such accumulated credit especially in situations where there is a closure of unit, factory, etc.

19. The applicant has also questioned whether the retrospective amendment made is applicable to his case where the right for refund had already accrued to him before the amendment and whether the notification can be applied to the supplies made before the amendment.

20. FINDINGS & DISCUSSION:

20.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the additional submissions made by Sri. Sri Shivarajan, Charted Accountant, during the personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts.

20.2 As per provisions of Section 2(59) of CGST Act "input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. input tax defines under section

2(62) of the GST act is any tax charged on supply of goods and service made to registered person under the head of SGST/CGST/IGST/UTGST Act.

20.3 The entire application is related to the application of the Notification and hence the same are noted. Notification No. 26/2018 – Central Tax dated 13-06-2018 is a Notification which amends the Rules and is called the "Central Goods and Services Tax (Fifth Amendment) Rules, 2018". Further these "rules" are made by the Central Government to amend the "Central Goods and Services Tax Rules, 2017".

The Rule 2(iii) of the above amendment rules states as under:

"(iii) with effect from 01st July, 2017, in rule 89, for sub-rule (5), the following shall be substituted, namely:-
"(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Explanation:- For the purposes of this sub-rule, the expressions –
(a) Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and
(b) Adjusted Total turnover shall have the same meaning as assigned to it in sub-rule (4).""

This clearly states that by these amendment rules, Rule 89(5) is substituted and regarding the applicability of these rules, it is clear that there is no mention of any exclusions in these amending rules and the above rules are made effective from July 1st, 2017 and hence the same are applicable to the applicant also.

20.3 Regarding the admissibility of the application for advance ruling, Section 97(2) which governs the same reads as under:

" (2) The question on which the advance ruling is sought under this Act, shall be in respect of,—

(a) classification of any goods or services or both;
(b) applicability of a notification issued under the provisions of this Act;
(c) determination of time and value of supply of goods or services or both;
(d) admissibility of input tax credit of tax paid or deemed to have been paid;
(e) determination of the liability to pay tax on any goods or services or both;
(f) whether applicant is required to be registered;
(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term."

As far as the applicability of a notification, this is already stated in the above paragraph itself.

20.4 Regarding the issue of refund, the applicant himself has already stated that his application for refund of unutilized input tax credit relatable to services is rejected by the jurisdictional authority.

Section 107 which deals with the Appeals to the appellate authority reads as under:

*107. (1) Any person aggrieved by **any decision** or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act **by an adjudicating authority** may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.*

Clause (4) of section 2 of the CGST Act defines the "adjudicating authority" and the same reads as under:
(4) "adjudicating authority" means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Excise and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority and the Appellate Tribunal;

Since the jurisdictional refunding authority is an adjudicating authority and any decision by him is appealable under the Act before the concerned appellate authority and advance ruling authority is not the forum before such issue can be raised and in view of the above, the application is not maintainable on this account itself. Further, it is seen during the

arguments, the vires of the rules are questioned and it is not within the scope of this authority for advance ruling.

21. In view of the foregoing, we rule as follows

RULING

The application is rejected for the reason it is not maintainable for the reasons cited in the order.

18/9/2019

(Harish Dharnia)
Member

(Dr. Ravi Prasad M.P.)
Member

Place : Bengaluru,

Date : .18.09.2019

To,

The Applicant

Copy to:

(a) The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

(b) The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

(c) Pr Commissioner of Central Tax,Mysuru Commissionerate, Siddartha Nagar, Mysuru.

(d) The Asst. Commissioner, LGSTO-195, Mysuru

(e) Offie Folder