

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560009**

Advance Ruling No. KAR ADRG 52/2019

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 Toyota Tsusho India Private Ltd., Plot No.33 & 34, Bidadi Industrial Area, Ramanagara District PIN: 562 109
2.	GSTIN or User ID	29AADCS6230N1ZY
3.	Date of filing of Form GST ARA-01	20.09.2018
4.	Represented by	Sri Shivakumar H. Chartered Accountant
5.	Jurisdictional Authority - Centre	Pr Commissioner of Central Tax, Bengaluru-West, BMTC Building, Banashankari, Bengaluru.
6.	Jurisdictional Authority - State	The Asst. Commissioner of Commercial Taxes, LGSTO-155, Ramanagara
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of 1. Rs.5,000-00 under CGST Act vide CIN SBIN18092900265651 dated 20.09.2018 2. Rs.5,000-00 under KGST Act vide CIN SBIN18092900082840 dated 17.09.2018

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

1. M/s Toyota Tsusho India Private Limited, (called as the 'applicant' hereinafter), having GSTIN number 29AADCS6230N1ZY, has filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of the CGST Rules, 2017 and under Section 97 of the KGST Act, 2017 read with Rule 104 of the KGST Rules 2017, in FORM GST ARA-

01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The Applicant is a Private Limited Company incorporated under the Companies Act, 1956 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 restriction introduced by Notification No. 3/2018 – Central tax (later substituted by Notification No.39/2018- Central Tax dated 04.09.2018 retrospectively from 23.10.2017) on claiming refund of IGST paid on export of goods by inserting Rule 96(10) is applicable only on such export of goods for which corresponding inward supplies were procured at a concessional rate of 0.10% GST under Notification No. 40/2017- Central Tax (Rate), thereby holding that such restriction on IGST refund does not apply on export of goods which were procured on full payment of GST?
- b) Alternatively, whether the above restriction prohibits refund of IGST paid in its entirety even on such exports where the goods have been procured on payment of full rate of GST by the person who procures only a small quantity of goods at concessional rate of 0.10% GST under Merchant Export Scheme as provided under Notification No. 40/2017- Central Tax (Rate)?

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

- a. The applicant states that he is engaged in the purchase and resale of various goods falling under Harmonised System of Nomenclature ('HSN') 8703, 8708, 8706 and 8466 to buyers located outside the country.
- b. The applicant is at present purchasing goods such as Motor Cars, Automobile Parts, Chassis fitted with engines and parts and accessories from registered domestic suppliers on which full GST at applicable rates is being charged, and exporting the same under Legal Undertaking ("LUT") without payment of IGST. The applicant is availing input tax credit (ITC) on such purchases along with input services and capital goods.
- c. The applicant now proposes to undertake both the following activities
 - i. Export on payment of applicable IGST
The applicant wants to export on payment of IGST without LUT a portion of the above goods on which full GST paid at the time of procurement. Since, such exports are treated as

zero-rated supplies under Section 16 of the Integrated Goods and Services Tax Act, 2017, the applicant is eligible for refund of output GST paid on such supplies as per Rule 96 of the Central GST Rules, 2017, subject to fulfillment of other conditions.

- ii. Procurement at concessional rate of GST @ 0.10% under merchant export scheme

In addition to the above, the applicant also wishes to procure some goods being Motor Cars covered under HSN 8703 from domestic supplies at concessional GST rate of 0.10% as notified vide 40/2017- CT and similar notifications issued under the Integrated GST Act, 2017 and Karnataka State GST Act, 2017 and to export such goods under LUT without payment of IGST. In essence, the applicant is acting as a merchant exporter. The applicant states that they would be fulfilling the conditions prescribed under the aforesaid notification to procure the goods at a concessional rate.

- d. The applicant states that Rule 96 of the Central GST Rules, 2017, which provides the mechanism and criteria for claiming refund of IGST paid on export of goods, was amended retrospectively with effect from 23.10.2017, vide Notification No.03/2018- Central Tax dated 23.01.2018, by insertion of a new sub-rule (10) (later substituted by Notification No.39/2018-CT dated 04.09.2018 retrospectively w.e.f. 23.10.2017). Rule 96(10) imposes an additional condition for being eligible for refund of IGST paid on export of goods and/or services that such person should not have received, inter-alia, supplies on which the supplier has claimed the benefit of concessional rate of tax under Notification No.40/2017- Central Tax (Rate) and similar notifications issued under the IGST and respective State GST i.e., the supplier should have levied full GST at the applicable rates instead of concessional rate of 0.10% on the supply to the exporter. Rule 96(10) is reproduced herein below for ease of reference:

"(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, Notification



No.48/2017 – Central Tax dated the 18th October 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1305 (E) dated the 18th October, 2017 or **notification No.40/2017 – Central Tax (Rate) dated the 23rd October, 2017** published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1320 (E) dated the 23rd October, 2017 or notification no. 41/2017- Integrated Tax (Rate) dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1321 (E) dated the 23rd October, 2017 or notification No. 78/2017 – Customs dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1272 (E) dated the 13th October or notification No. 79/2017-Customs dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1299 (E) dated the 13th October, 2017.”

(emphasis supplied)

- e. The above Rule has been substituted vide notification No.39/2018- Central Tax dated 04.09.2018 retrospectively with effect from 23.10.2017 as below:

“(10) The persons claiming refund of integrated tax paid on exports of goods or services shall not have

(a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017 – Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number, G.S.R. 1305 (E), dated the 18th October, 2017 or **notification No. 40/2017- Central Tax (Rate) dated the 23rd October, 2017** published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number, G.S.R. 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017- Integrated Tax (Rate) dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number, G.S.R. 1321 (E), dated the 23rd October, 2017 has been availed; or

(b) availed the benefit under notification No. 78/2017 – Customs, dated the 13th October, 2017 published in the

Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1272(E), dated the 13th October, 2017, or notification No. 79/2017 – Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1299 (E), dated the 13th October, 2017.”

(emphasis supplied)

- f. The applicant states that in light of the aforesaid and considering the fact that the applicant is proposing to procure goods both at full payment of tax and also at concessional rate of tax under the Merchant Export Scheme in the same tax period, and export the goods on payment of IGST (those goods which have suffered full GST) and also under LUT without payment of tax (those goods which have suffered concessional rate of GST), they wish to understand the Government's interpretation to the following questions of law:
- (i) Whether the restriction as provided in Rule 96(10) introduced by Notification No.3/2018 – Central Tax (later substituted by Notification No.39/2018- Central Tax dated 04.09.2018 retrospectively with effect from 23.10.2017) on claiming refund of IGST paid on export of goods is applicable only to such exports of goods for which corresponding inward supplies were procured at a concessional rate of 0.10% GST under Notification No.40/2017 – Central Tax (Rate), thereby holding that such restriction on IGST refund does not apply on export of goods which were procured on full payment of GST?
 - (ii) Whether the above restriction prohibits claim of refund of IGST paid in its entirety even on exports where the goods have been procured on payment of full rate of GST by the person who procures only a small quantity of goods at concessional rate of 0.10% GST under Merchant Export Scheme as provided under Notification No.40/2017 – Central Tax (Rate)?
 - (iii) In case of (ii) above is held as the restriction as applicable under Notification 3/2018 – Central Tax amending Rule 96(10) of the Central GST Rules 2017 (later substituted by Notification 39/2018 – Central Tax dated 04.09.2018 retrospectively with effect from 23.10.2017), what is the period for which such restriction shall apply?

4. The applicant has submitted that the intent behind the introduction of Rule 96(10) of the Central GST Rules, 2017 is to ensure that the exporter does not utilize the input tax credit availed on other domestic supplies received for making the payment of IGST on export of goods. The implication of the said sub-rule has also been clarified by the Government in paragraph 7 of Circular No.45/19/2018- GST dated 30.05.2018 issued by the Central Board of Indirect Taxes and Customs. He has reproduced the relevant extracts which reads as under:

“7.1 Sub-rule (10) of rule 96 of the CGST Rules seeks to prevent an exporter, who is receiving goods from suppliers availing the benefit of certain specified notifications under which they supply goods without payment of tax or at reduced rate of tax, from exporting goods under payment of integrated tax. This is to ensure that the exporter does not utilise the input tax credit availed on other domestic supplies received for making the payment of integrated tax on export of goods.”

7.2 However, the said restriction is not applicable to an exporter who has procured goods from suppliers who have not availed the benefits of the specified notifications for making their outward supplies. Further, the said restriction is also not applicable to an exporter who has procured goods from suppliers who have, in turn, received goods from registered persons availing the benefits of these notifications since the exporter did not directly procure these goods without payment of tax or at reduced rate of tax.”

(Emphasis Supplied)

4.1 The applicant claims that from the above circular, it is clear that the intention of the law maker while inserting sub-rule (10) of Rule 96 through Notification No. 03/2018 – Central Tax dated 23.01.2018 (later substituted by Notification No. 39/2018 – Central Tax dated 04.09.2018 retrospectively with effect from 23.10.2017), is to restrict claims being made by exporters for refund of IGST paid only on such exports which have been procured availing the benefit of exemption from tax or concessional rate of tax under various notifications issued under the GST law or Customs law, including Notification No. 40/2017 – Central Tax (Rate). In view of the above, the applicant submits that in case any exporter receiving supplies at concessional rate under Notification No.40/2017 – Central Tax (Rate) has also received some supplies of goods on which none of the exemptions or concessions have been availed under any Notifications specified in Rule

96(10), it shall be permissible for him to pay IGST on export of such goods procured without exemption or concession and claim refund of the same.

4.2 In the instant case, the applicant states that he receives goods from suppliers, who have not availed benefits under any of the notifications specified in sub-rule (10) of Rule 96 of the Central GST Rules, 2017 and has been exporting goods under LUT without payment of tax. Now the applicant proposes to export those goods on payment of IGST which have been procured without any concessions or exemptions as aforesaid. The payment of IGST is proposed to be made by utilising the available input tax credit or in cash, as the case may be. Thereafter, the applicant proposes to claim refund of such IGST paid, in accordance with the provisions of Section 16 of the IGST Act, 2017 and the CGST Rules, 2017. Further, the applicant additionally wishes to procure some of its goods at concessional rate of GST @ 0.10% complying with procedures as prescribed vide Notification No. 40/2017 – Central Tax (Rate) and export such goods under LUT without payment of IGST. Hence, in the same tax period, the applicant would be:

- (a) procuring goods at concessional rate of GST under Notification No. 40/2017 – Central Tax (Rate) which are exported under LUT without payment of IGST, and
- (b) also procuring of other goods on which no concession or exemption are availed which are exported on payment of IGST.

4.3 The applicant further submits that the restriction on claim of refund of IGST paid on export of goods introduced under sub-rule (10) of rule 96 inserted vide Notification No. 03/2018 – Central Tax dated 23.01.2018 (later substituted by Notification No.39/2018 – Central Tax dated 04.09.2018 retrospectively with effect from 23.10.2017), should apply solely to the extent of those goods exported by the applicant which were procured at concessional rate of tax under Notification No.40/2017 – Central Tax (Rate), and not to any of the other goods procured and exported by the applicant. In any case, the applicant would be claiming refund of IGST paid only on such export of goods which have been received from suppliers on full payment of applicable tax and hence there is no question of utilisation of input tax credit for payment of tax on other supplies for payment of output. The applicant would fulfill all the conditions stipulated in Rule 96 of the CGST Rules and also Circular 45/19/2018-GST (supra) to be eligible for refund on such exports. The applicant submits that the restriction under sub-rule (10) of Rule 96 should apply only to the extent the exports have been made of such goods which have been received at a concessional rate of tax in the same or different tax period.

4.4 The applicant contends that if they are able to clearly establish through accounting records and documentary evidence that they are claiming refund of IGST paid on export of only those goods which have in turn been procured from suppliers who have not used any of the exemptions/ concessions provided in various notifications, issued under GST as well as Customs Law, specified in rule 96(10) of the CGST Rules, the refund of IGST ought to be legally eligible to the applicant. The condition laid down in rule 96(10) would not be applicable at all in this case and hence the applicant shall be entitled to refund of IGST paid, which also appears to be the intent of the legislature. In the instant case, the applicant wishes to claim refund only to the extent the concerned goods have been received without using the concessional rate of tax for merchant exports, but on full payment of applicable taxes.

4.5 The applicant states that denying refund of IGST paid on all exports made by him merely because they have received a part of supplies on which reduced rate of tax has been charged in terms of Notification No.40/2017 – Central Tax (Rate) would be a grossly narrow and erroneous interpretation of the law, which is against the principles of justice. Such an interpretation would be against the very basic and settled principle that exports must be zero-rated and taxes should not be exported since the goods or services are consumed outside the country. GST being a consumption based tax, the goods exported by the applicant would be consumed outside the country and hence should not be taxed and denial of refund on all exports would be against the very basic essence of GST and as such unconstitutional.

4.6 Further, the applicant argues that even assuming but not admitting that the law maker intends to restrict the option of exporting goods on payment of IGST immediately upon procuring even a small portion of goods at concessional rate under Notification No.40/2017 – Central Tax (Rate), the fact that the law does not provide for a time limit upto which such restriction on the option to export on payment of IGST applies makes implementing such an interpretation absolutely unviable and impractical. Hence it corroborates the interpretation as aforesaid that the restriction on export with payment of IGST applies only to those goods which have procured at concessional rate.

4.7 Personal Hearing- Shri Shivkumar, CA, appeared for the hearing on and reiterated the submissions made in the application.

5. FINDINGS & DISCUSSION:

We have considered the submissions made by the applicant in their

application for advance ruling as well as the submissions made by Sri. Shri Shivkumar, Chartered Accountant during the personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts. At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the KGST Act.

5.1 The issue involved is examined and found that the issue is related to the applicability of Rule 96(10) of the CGST Rules. The rule 96(10) of the CGST Rules as amended vide Notification No. 54/2018-Central Tax dated 09.10.2018 reads as under:

"(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have -

(a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E), dated the 18th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme or **notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017**, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 has been availed; or

(b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme."

It is very clear from the above that the restriction is on the persons



claiming refund of IGST paid that he must not have received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017 has been availed, and not related to the individual transactions. If the person has utilized the benefit of the said notification on his inward supplies, then he would not be eligible to the scheme of paying IGST on the export of goods and then claiming the entire amount of IGST paid as refund on such goods being exported. But this does not amount to denial of refund of input tax credit and he can always avail the benefit of zero-rated supplies on the basis of LUT.

5.2 The scheme of Merchant Exports was brought into effect by Notification No. 40/2017 – Central Tax (Rate) dated 23.10.2017 and also other allied GST Notifications of State, which together allowed a registered exporter to procure goods at a concessional rate of 0.10 % GST. The applicant is intending to utilize the benefit of this notification to procure goods for exports. The Rule 96 of the CGST Rules was amended by insertion of sub-rule (9) by Notification No. 75/2017-Central Tax dt 29.12.2017, which read as under:

“(9) The persons claiming refund of integrated tax paid on export of goods or services should not have received supplies on which the supplier has availed the benefit of notification No. 48/2017-Central Tax dated 18th October, 2017 or notification No. 40/2017Central Tax (Rate) dated 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate) dated 23rd October, 2017.”

5.3 Rule 96 was amended with effect from 23rd October, 2017 vide Notification No. 03/2018 – Central Tax dated wherein the sub-rule (9) was substituted and sub-rule (10) was inserted. The same read as under:

“(d) for sub-rule (9), the following sub-rules shall be substituted, namely:-

“(9) The application for refund of integrated tax paid on the services exported out of India shall be filed in FORM GST RFD-01 and shall be dealt with in accordance with the provisions of rule 89”.

“(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No.

48/2017 Central Tax dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E) dated the 18th October, 2017 or notification No. 40/2017-Central Tax (Rate) 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E) dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate) dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E) dated the 23rd October, 2017 or notification No. 78/2017-Customs dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E) dated the 13th October, 2017 or notification No. 79/2017-Customs dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E) dated the 13th October, 2017.”;

5.4 Hence sub-rule (10) of rule 96 has come into effect from 23.10.2017 which is also the date of effect of Notification No. 40/2017 – Central Tax (Rate) dated 23.10.2017. Hence there is an alignment of the Merchant Export scheme and the refund of IGST paid on exports.

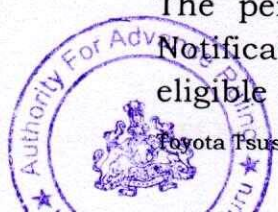
5.5 Hence it is clear that the persons who have procured goods utilising the benefits of the Notification No. 40/2017 – Central Tax (Rate) dated 23.10.2017 are not eligible to claim refund of the IGST paid on the export of such goods by virtue of the Rule 96(10).

5.6 Regarding the interpretation of the legality of the provision, this authority does not have such powers and hence the same is not discussed.


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

R U L I N G

The persons who have procured goods by utilising the benefit of Notification No. 40/2017 – Central Tax (Rate) dated 23.10.2017 are not eligible to claim refund of the IGST paid on exports as per Rule 96(10)



of the CGST Rules 2017 right from 23.10.2017, irrespective of the other transactions made by such person.


(Harish Dharnia)
Member


(Dr. Ravi Prasad.M.P.)
Member


Place : Bengaluru,
Date : 18.09.2019

To,
The Applicant

Copy to :

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Principal Commissioner of Central Tax, West Commissionerate, BMTc Bus Stand Building, Banashankari, Bengaluru
4. The Asst. Commissioner of Commercial Taxes, LGSTO-155, Ramanagara
5. Office Folder

of the CGST Rules 2017 right from 23.10.2017, irrespective of the other transactions made by such person.


(Harish Dharnia)
Member


(Dr. Ravi Prasad.M.P.)
Member

Place : Bengaluru,
Date : 18.09.2019

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