

**AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH**  
**4, Vibhuti Khand, Gomti Nagar, Lucknow**

**PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING U/S.**  
**98 OF THE GOODS AND SERVICES TAX ACT, 2017**

Sub:- GST ACT, 2017 – Advance Ruling U/s 98 – liability to tax under GST Act in respect to application dated 26.06.2019 from M/s Vivo Mobile India Private Limited, GB Nagar, Uttar Pradesh – Order– Reg.

\*\*\*\*\*

1). M/s Vivo Mobile India Private Limited, Plot No. TZ-13 A, Tech Zone, Greater Noida, Gautam Budh Nagar, Uttar Pradesh – 201 308 (here in after referred to as “the applicant”) is a registered assessee under GST having GSTN: 09AAECV8538M1ZJ.

2). The Applicant, in his application dated 26.06.2019 (complete application received by the Authority on 14.08.2019), has submitted that:

- i. The applicant has received manpower services from M/s Harbir Singh Contractor (here in after referred to as “the service provider”).
- ii. The service provider has obtained the GST Registration no. 09AVKPS1666H2Z1 and discharged their Tax liability for the month of July and August 2017.
- iii. At the time of filing of return, the service provider noticed that they have been granted the ISD registration and accordingly unable to file the return. Further, the GST portal also stopped accepting further Tax payment.
- iv. Accordingly, the service provider obtained a new GST registration 09AVKPS1666H1Z0 in October 2017 which was effective from 1<sup>st</sup> July 2017.
- v. However, in the mean time, the service provider has issued bills to the applicant, from old GST Registration No. i.e 09AVKPS1666H2Z1, for the



services provided during the month of July 17, August 17, September 17 and October 17.

vi. As these invoices were not reflected in the GSTR 2A of the applicant, therefore, the service provider issued revised invoices, in terms of Section 31 (3) (a) of the CGST Act, 2017 read with rule 53 (1) of the CGST rules, 2017, for the month of July 17, August 17, September 17 and October 17, from their new GST registration number i.e. 09AVKPS1666H1Z0.

**3).** Now, the applicant in his application has sought Advance Ruling on the following questions:-

- i. Whether the input tax credit is admissible on the basis of original invoices issued by service provider from old GST No. 09AVKPS1666H2Z1, or;
- ii. Whether the input is admissible on the invoices issued from the new GST No. 09AVKPS1666H1Z0 under section 31 (3) (a) of the CGST Act, 2017 read with rule 53 (1) of the CGST rules, 2017;
- iii. If the input is admissible on the basis of invoices issued from new GST No., then from which date does the input is admissible i.e. original date or the revised date.

**4).** The applicant further submitted that:

- i. Section 31 (3) (a) provides mechanism to issue invoice/ revised tax invoice during the interim period i.e. period from which GST liability arises till the time when registration was granted. Accordingly, ITC on the basis of the revised invoice should be admissible to the applicant;
- ii. Further, as per Section 16 (2) of CGST Act, a registered person is eligible to take ITC if the following conditions are satisfied:-
  - a. He is in possession of tax invoice (Tax invoice also includes revised tax invoice);
  - b. He has received the goods or services or both;
  - c. Tax charged in respect of such supply has actually been paid to the Government;
  - d. He has furnished the return





As all the conditions mentioned under Section 16 (2) are fulfilled, the ICT shall be allowed on the basis of the original invoice.

5). The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer his comments/views/verification report on the matter, which was received in this office vide letter C. No. V(30)Tech/D-1/GBN/Misc/04/20/2019 dated 10.12.2019, wherein it has been submitted that:-

i. The Service Provider (GST Registration No. 09AVKPS1666H2Z1 ) was registered with the department as Input Service Distributor. An Input Service Distributor can pass the ITC only in terms of Rule 54 of the CGST Rules. Accordingly the ITC in respect of the Input Service Distributor invoices is not admissible to the applicant.

ii. Further, as the service provider has already claimed the refund of the entire amount deposited under Input Service Distributor registration, ITC of the same cannot be allowed to the applicant.

6). The applicant was granted a personal hearing on 11<sup>th</sup> December 2019. Shri Amit Kumar Aggarwal, CA, authorized representative and Sh. Sudhir Mavi, appeared in the personal hearing, on behalf of the applicant. During the course of personal hearing, the authorized representative reiterated the submissions already made vide their application dated 26.06.2019 (received by the Authority on 14.08.2019) and they have nothing more to add.

#### **DISCUSSION AND FINDING**

7). *At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST 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 provision under the UPGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act' 2017.*





8). We have gone through the submissions made by the applicant and have examined the explanation submitted by them. At the outset, we find that the issue raised in the application is squarely covered under Section 97(2)(d) of the CGST Act 2017, being a matter related to admissibility of input tax credit of tax paid or deemed to have been paid. We therefore, admit the application for consideration on merits.

9). We further observe that the questions on which advance ruling is sought by the applicant are as under-

- i. Whether the input tax credit is admissible on the basis of original invoices issued by service provider from old GST No. 09AVKPS1666H2Z1, or;
- ii. Whether the input is admissible on the invoices issued from the new GST No. 09AVKPS1666H1Z0 under section 31 (3) (a) of the CGST Act, 2017 read with rule 53 (1) of the CGST rules, 2017;
- iii. If the input is admissible on the basis of invoices issued from new GST No., then from which date does the input is admissible i.e. original date or the revised date.

10) With reference to the first question regarding admissibility of input tax credit on the basis of original invoices issued by service provider from old GST No. 09AVKPS1666H2Z1, we observe that initially the service provider was registered with the department under the category of "Input Service Distributor", with the registration number 09AVKPS1666H2Z1. During the month of July 19 to October 19, the service provider has provided the services and issued taxable invoices, to the applicant, from the same firm registered with the department as Input Service Distributor. Later on the service provider took one more registration (09AVKPS1666H3Z0) and revised the invoices, in terms of Section 31(3)(a) of the CGST Act, 2017 read with Rule 53(1) of the CGST Rules, 2017. Further, the service provider has also filed a refund claim for the duty deposited under old registration no. 09AVKPS1666H2Z (Input Service Distributor category) as they were unable to file the prescribed return and the taxable invoices issued

by them, under old registration number, were not reflecting in the GSTR 2A of the applicant. The refund was granted to the service provider on 5<sup>th</sup> April 2019.

**11).** The term Input Service Distributor has been defined under Section 2(61) of the CGST Act, 2017 as:-

*“(61) “Input Service Distributor” means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed documents for the purpose of distributing the credit of central tax, state tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office,”*

Accordingly, in view of above definition, we observe that an Input Service Distributor could pass only the Input Tax Credit accumulated to him and in accordance with Rule 54 of the CGST Rules, 2017. Moreover, in the instant case the service provider has already claimed refund of the tax deposited under the old registration number (Input Tax Distributor category).

**12).** In view of above, we are in unison with the jurisdictional authority that the input tax credit, on the basis of invoices issued by the service provider from old GST No. 09AVKPS1666H2Z1 (Input Service Distributor), could not be admissible to the applicant.

**13).** Now, before proceeding further to answer the second query raised by the applicant, we observe that the following points need to be clarified:-

i. Whether under the CGST Act 2017, two registration certificate issued under the same PAN number, are to be treated as different legal entity or not.

ii. If they are to be treated as different legal entity, whether the invoices issued by one business entity can be revised by the other legal entity.



**14).** We observe that Section 25 of the CGST Act, 2017 deals with the registration. Further, as per Sub Section 4 of Section 25 of the CGST Act, 2017:-

*“4. A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct person for the purpose of this Act.”*

**15).** Section 2(84) of the CGST Act, 2017 defines the term “person” as:-

*(84) “person” includes—*

*(a) an individual;*

*(b) a Hindu Undivided Family;*

*(c) a company;*

*(d) a firm;*

*(e) a Limited Liability Partnership;*

*(f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;*

*(g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;*

*(h) any body corporate incorporated by or under the laws of a country outside India;*

*(i) a co-operative society registered under any law relating to co-operative societies;*

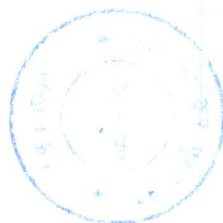
*(j) a local authority;*

*(k) Central Government or a State Government;*

*(l) society as defined under the Societies Registration Act, 1860;*

*(m) trust; and*

*(n) every artificial juridical person, not falling within any of the above;”*



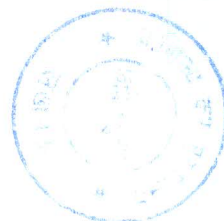
16). Accordingly, we observe that, in the light of above deliberations, even if a person obtains two separate registrations, on the same PAN number, they are to be treated as distinct person under the CGST Act, 2017.

17). As regard to the second point whether the invoices issued by one business entity can be revised by the other legal entity, we observe that as per the Section 31(3)(a):-

*“(a) a registered person may, within one month from the date of issuance of certificate of registration and in such manner as may be prescribed, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him;”*

Reading the aforementioned Section together with Rule 53 of the CGST Rules' 2017, we observe that any person registered under the CGST Act, 2017, can only revise those invoices which were issued by him previously. However, in the instant case, we observe that one legal entity/person (GST No. 09AVKPS1666H2Z1) has provided service and issued original invoices in lieu of providing such service. Whereas, these invoices were revised by another legal entity/person (GST No. 09AVKPS1666H3Z0). This fact has also been confirmed by the Additional Commissioner, CGST (Appeals), Noida, in the Order-in-Appeal No. NOI-CGST-002-APP-01-18-19 dated 25.03.2019, wherein it was observed by the appellate authority that:-

*“7. I find that the adjudicating authority again erred in holding that the duty liability arisen during the period July 17 to August 2017 was not discharged by them. The refund claim was filed by GSTN No. 09AVKPS1666H2Z1 (under ISD category), against whom there is no tax liability. The new registrant (GSTN No. 09AVKPS1666H3Z0) under the same PAN has separate identity. The tax liability of a tax payer cannot be recovered from another tax payer. Hence, the appellant's claim of refund under GSTN No. 09AVKPS1666H2Z1 appears to be legal and proper and to be allowed.”*





Accordingly, we observe that in the light of Section 31(3)(a) of the CGST Act, 2017 read with Rule 53 of the CGST Rules, 2017, it is not permissible to revise the invoices issued by one person/legal entity by another person/legal entity.

**18).** In view of above deliberations, we are of the view that the Input Tax Credit is not admissible to the applicant on the revised invoices issued by the service provider from the new GST No.09AVKPS1666H1Z0 under Section 31 (3) (a) of the CGST Act, 2017 read with Rule 53 (1) of the CGST Rules, 2017.

**19.)** As regard to the third query raised by the applicant regarding "If the input is admissible on the basis of invoices issued from new GST No., then from which date does the input is admissible i.e. original date or the revised date", we observe that as the Input Tax Credit is not admissible to the applicant on the basis of revised invoices issued from new GST No of the service provided, accordingly in this situation the third question raised by the applicant become redundant and needs no reply.

**20).** In view of the above, we, both the members, unanimously rule as under;

#### **RULING**

i. Whether the input tax credit is admissible on the basis of original invoices issued by service provider from old GST No. 09AVKPS1666H2Z1.

Ans: In view of discussions held above, input tax credit is not admissible to the applicant on the basis of original invoices issued by service provider from old GST No. 09AVKPS1666H2Z1.

ii. Whether the input is admissible on the invoices issued from the new GST No.09AVKPS1666H1Z0 under Section 31 (3) (a) of the CGST Act, 2017 read with Rule 53 (1) of the CGST Rules, 2017.

Ans: The question is answered in negative.

iii. If the input is admissible on the basis of invoices issued from new GST No., then from which date does the input is admissible i.e. original date or the revised date.





Ans: As the question at serial number ii is answered in negative, accordingly this question needs no reply.

**20).** This ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104(1) of the CGST Act, 2017.



(Ajay Kumar Misra)

Member of Authority for Advance  
Ruling



(Dinesh Kumar Verma)

Member of Authority for Advance  
Ruling

To,

M/s Vivo Mobile India Private Limited,  
Plot No. TZ-13A, Tech Zone,  
Greater Noida, Gautam Budh Nagar,  
Uttar Pradesh – 201 308.



## **AUTHORITY FOR ADVANCE RULING -UTTAR PRADESH**

Order No. 46

Date: 17-12-19

Copy to -

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.

2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.

3. The Commissioner, CGST & CX, Gautam Budh Nagar, Uttar Pradesh.

4. The Assistant Commissioner, CGST & Central Excise, Division-I, Gautam Budh Nagar, Uttar Pradesh;

5. Through the Additional Commissioner, Commercial Tax, Gautam Budh Nagar, Uttar Pradesh to jurisdictional tax assessing officers.

