

AUTHORITY FOR ADVANCE RULING - CHHATTISGARH
3rd & 4th Floor, Vanijyikar GST Bhawan, North Block Sector-19,
Atal Nagar, District-Raipur (C.G.) 492002

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

Members Present are

Smt. Sonal K. Mishra
Joint Commissioner
O/o Commissioner, State Tax
(CGGST), Raipur, Chhattisgarh.

Shri Rajesh Kumar Singh,
Additional Commissioner,
O/o Principal Commissioner,
CGST & Central Excise, Raipur (C.G)

Subject :- Chhattisgarh GST Act, 2017 – Advance Ruling U/s 98 Chhattisgarh GST Act, 2017

Advance Ruling U/s 98 sought by M/s. Shree Laxmi Exports, 154, Devendra Nagar, Raipur, Chhattisgarh, the applicant, a registered Service provider, GSTIN-22AAOPA5369A1Z5, regarding GST refund of 0.1% IGST on purchase of molasses under HSN 17031000 exported to Bangladesh; GST liability on reverse charge basis on transportation charges paid to a goods transport agency for export purpose; GST refund on above transportation charges paid and GST refund of other ancillary export services availed from the registered service providers in India.

Read :- Application dated 21-09-2021 from M/s. Shree Laxmi Exports, 154, Devendra Nagar, Raipur, Chhattisgarh, the applicant, GSTIN-22AAOPA5369A1Z5.

PROCEEDINGS

[U/s 98 of the Chhattisgarh Goods & Services Tax Act, 2017 (herein- after referred to as CGGST Act, 2017)]

No.STC/AAR/06/2021 Raipur Dated: 17/12/2021
M/s. Shree Laxmi Exports, Raipur Chhattisgarh, the applicant, GSTIN-22AAOPA5369A1Z5, [hereinafter also referred to as the applicant] has filed an application U/s 97 of the Chhattisgarh Goods & Services Tax Act, 2017 seeking advance ruling as to GST refund of 0.1% IGST on purchase of molasses under HSN 17031000 exported to Bangladesh; GST liability on reverse charge basis on transportation charges paid to a goods transport agency for export purpose; GST refund on above transportation charges paid and GST refund of other ancillary export services availed from the registered service providers in India.

2. Facts of the case:- The applicant has taken registration as an exporter under GST Act and is engaged in export of molasses under HSN 17031000 to Bangladesh under LUT without payment of IGST. They have purchased the same from the registered taxpayers



of Haryana & Punjab after payment of GST @0.1% on goods value. They have taken benefit of Duty Drawback Scheme from custom.

They have taken transportation services from the goods transport agency of India for the transportation of molasses from the source of lifting to the custom house located at the Hilli Border of West Bengal. They have also received other ancillary services i.e. bank charges, documentation charges, brokerage charges, other charges etc. for the export of molasses from the registered tax payers of India.

The applicant seeks advance ruling on the following questions:-

- a. that they have purchased goods from registered tax payers in India after payment of GST@ 0.1% on goods value , whether they will get GST refund against the same or not.
- b. Whether they will be liable to pay GST on Reverse Charge Basis on transportation charges paid to a Goods Transport Agency in India. for transportation of goods for Export purpose.
- c. If the answer to the Question No.2 is yes, then whether they will get GST refund against the same or not.
- d. that they have purchased other ancillary services for export purpose from the registered service providers of India , whether they will get GST refund against the same or not.

3. Contentions of the applicant:- Apart from furnishing the nature of activities in which the applicant is engaged in, no other interpretation of law and /or facts in respect of the questions on which ruling has been sought is forthcoming from the applicant in the ARA01 filed.

4. Personal Hearing:-

Keeping with the established principles of natural justice, personal hearing in the matter was extended to the applicant, as requested by them and accordingly, Shri Alok Chandra Das, Senior Accountant & authorized representative of the applicant appeared before us for hearing on 27.09.2021 in person. The applicant has also submitted sample copies of shipping bills, invoice cum packing list.

5. The legal position, analysis and discussion:-At the very outset, we would like to make it clear that the provisions for implementing the CGST Act and the Chhattisgarh GST Act, 2017 [hereinafter referred to as "the CGST Act and the CGGST Act"] are similar and thus, 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 CGGST Act, 2017. Now we sequentially proceed to discuss the issues involved in the ruling so sought by the applicant and the law as applicable in the present case.

5.1 Section 96 of CGST Act, 2017, Authority for advance ruling, stipulates as under:-

Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory.

Section 97(2) of CGST Act, 2017 stipulates that:-



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.

Further Section 103 of CGST Act, 2017 stipulates about the ruling pronounced as under:—The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only -

- a. On the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;
- b. On the concerned officer or the jurisdictional officer in respect of the applicant.

Thus in view of the above section 103 of CGST Act, 2017, the ruling so sought by the Applicant would be binding only on the Applicant and on the concerned officer or the jurisdictional officer as stipulated above.

5.2 Section 54 of the CGST Act, 2017 stipulates as under:

Section 54. Refund of tax.-

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed.

Provided that a registered person claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.

(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may



make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than-

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council;

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty;

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

(4) The application shall be accompanied by-

Therefore, from the above stated provisions it gets abundantly clear that Refund of Unutilised Input Tax Credit can be claimed on Zero Rated Outward Supply, Exports, of Exempted Goods if:-

- i. Export Duty is not levied on Exported goods.
- ii. Duty Draw back is not availed by the exporter.
- iii. Refund of the IGST paid on such supplies is not claimed.

5.3 The relevant portion of Section 16(3)(a) of the IGST Act, 2017 reads as under :

A registered person making zero-rated supply shall be eligible to claim refund under either of the following options, namely:-

(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied.



in accordance with the provisions of Section 54 of the Central Goods and Services Tax Act, or the rules made there under.

In view of cited provisions of Section 54(3)(a) of the IGST Act, 2017, an exporter who has exported goods or services under bond or LUT without payment of IGST is entitled to claim refund of unutilized input tax credit in accordance with the provisions of Section 54 of the Central Goods and Services Tax Act or the rules made there under.

Section 54(3) of the Central Goods and Services Tax Act, 2017 supra prescribes that a registered person may claim refund of any unutilized input tax credit at the end of any tax period on account of "zero-rated supplies". In other words refund claim of unutilized input tax credit under Section 54(3)(i) of the Central Goods and Services Tax Act, 2017, is allowed to an exporter who exported goods as zero-rated supplies means without payment of tax i.e. under LUT procedure/Bond, he may file claim of refund of any unutilized input tax credit at the end of any tax period.

Section 2(106) of the Central Goods and Services Tax Act, 2017 defines "tax period" means the period for which the return is required to be furnished. Thus an exporter may file claim of refund of any unutilized input tax credit after filing of monthly returns namely GSTR-1 and GSTR-3B.

5.4 Further, as per Para 2 of Circular No.23/2017-Customs dated 30th June 2017,

The input tax incidence of taxes covered in GST regime are to be neutralized through the refund mechanism provided through the GST laws. At the same time, a transition period of three months from date of introduction of GST has been provided i.e. from 1.7.2017 to 30.9.2017 by continuing the extant Duty Drawback scheme and amending the Drawback Rules, 1995 vide Notification No. 58/2017-Cus (N.T.) dated 29.6.2017. For exports made during this transition period, the exporter can claim All Industry Rate (AIR) or Brand rate of drawback for Customs, Central Excise Duties and Service Tax subject to certain additional conditions. These conditions aim to ensure that the exporter simultaneously does not avail input tax credit of Central Goods and Services Tax (CGST) or Integrated Goods and Services Tax (IGST) on the export goods or on inputs and input services used in manufacture of export goods or claim refund of IGST paid on export goods. Further, an exporter claiming drawback during transition period as per extant duty drawback provisions shall also be barred to carry forward Cenvat credit in terms of the CGST Act, 2017 on the export goods or on inputs or input services used in manufacture of export goods. The exporter also has to give the prescribed declaration and certificates (similar to declaration and certificate prescribed in Notification No. 59/2017-Cus (N.T.) dated 29.6.2017 for claiming Brand rate of drawback. At the same time, the exporter has the option of claiming the Brand rate of Customs duties and remnant Central Excise duties (in respect of goods given in Fourth Schedule to Central Excise Act, 1944) and avail input tax credit of CGST or IGST or refund of IGST paid on exports.

5.5 Circular No. 125/44/2019 - GST Dated the 18th November, 2019 issued from F.No. CBEC-20/16/04/18-GST (amended by circular 135/05/2020-GST dated 31-03-2020 and circular 147/03/2021-GST dated 12-03-2021) issued by Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs GST Policy Wing, New Delhi at para 40 clarifies as under:-



Signature

40. The third proviso to sub-section (3) of section 54 of the CGST Act, 2017 supra states that no refund of input tax credit shall be allowed in cases where the supplier of goods or services or both avails of drawback in respect of Central tax. It is clarified that if a supplier avails of drawback in respect of duties rebated under the Customs and Central Excise Duties Drawback Rules, 2017, he shall be eligible for refund of unutilized input tax credit of Central tax/ State tax/ Union Territory tax / Integrated tax/ Compensation cess. It is also clarified that refund of eligible credit on account of State tax shall be available if the supplier of goods or services or both has availed of drawback in respect of Central tax.

5.6 As discussed above, sub-section (3) of Section 54 of CGST Act, 2017 read with Section 16(3)(a) of the IGST Act, 2017 prescribes regarding claim of refund of any unutilized input tax credit at the end of any tax period. Thus only eligible input tax credit which remains unutilized is entitled for refund. Further, this authority would like to refer here that eligibility to input tax credit is governed by the provisions as stipulated under Section 16 of the CGST Act, 2017, which provides that every registered person shall, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business. For ease of reference the provisions of Section 16 *ibid* is reproduced hereunder: -

SECTION 16. Eligibility and conditions for taking input tax credit. — (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless —

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]

(b) he has received the goods or services or both.

[**Explanation.** — For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services —

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;



(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]

(c) subject to the provisions of [section 41 or section 43A], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39 :

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment :

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed :

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

(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 :

[**Provided** that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]



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5.7 However, for the availment of Input tax credit (ITC), as provided supra, there are exceptions / exclusions prescribed under Section 17(5) of the CGST Act, 2017

5.8 It would not be out of place to mention here that eligibility to refund of unutilized Input tax credit is only for valid input tax credit governed by the provisions as contained under Chapter V relating to Input Tax credit vide section 16 and section 17 of the CGST Act, 2017 and this eligibility to ITC has nothing to do with refund, whereas refund supra is entitled only for valid input tax credit which remains unutilized on account of export, as discussed in the preceding para.

6. Thus in view of the above statutory provisions discussed supra, we come to the considered conclusion that a supplier/exporter including the applicant, can file a refund claim with the jurisdictional authority claiming refund of unutilized eligible input tax credit of Central tax/ State tax/ Union Territory tax / integrated tax/ Compensation cess, subject to the fulfillment of the conditions as stipulated under CGST Act, 2017/ IGST Act, 2017 as discussed above. The procedure for filing such fully electronic refund process through FORM GST RFD-01 has been detailed in Circular No. 125/44/2019 - GST Dated the 18th November, 2019 amended by circular 135/05/2020-GST dated 31-03-2020 and circular 147/03/2021-GST dated 12-03-2021.

Having regard to the facts and circumstances of the case and discussions as above, we pass the following order:-

ORDER

(Under section 98 of the Chhattisgarh Goods and Services Tax Act, 2017)

No.STC/AAR/06/2021

Raipur Dated ...13...12.2021

The ruling so sought by the Applicant is accordingly answered as under:

RULING

- a. Section 54(3) of the CGST Act, 2017 read with Section 16(3)(a) of the IGST Act, 2017 stipulates the provisions for claiming refund of any unutilized eligible input tax credit at the end of any tax period. The applicant is eligible for such refund of unutilized input tax credit including the payment of GST@ 0.1% on goods value, subject to the adherence and fulfillment of the procedures / provisions/ conditions as prescribed under Circular No. 125/44/2019 - GST Dated the 18th November, 2019 issued from F.No. CBEC-20/16/04/18-GST amended by circular 135/05/2020-GST dated 31-03-2020 and circular 147/03/2021-GST dated 12-03-2021 for filing such fully electronic refund process through FORM GST RFD-01, issued by Ministry of Finance Department of Revenue Central Board of Indirect Taxes and Customs GST Policy Wing New Delhi. Application for claiming such refund is to be filed before the Jurisdictional Officer.
- b. The applicant is liable to pay GST under Reverse Charge Basis on transportation charges paid to a Goods Transport Agency in India, for transportation of goods for Export purpose.



c.

Section 54(3) of the CGST Act, 2017 read with Section 16(3)(a) of the IGST Act, 2017 stipulates the provisions for claiming refund of any unutilized eligible input tax credit at the end of any tax period. The applicant is eligible for refund of unutilized input tax credit of such GST paid under reverse charge on transportation charges paid to a Goods Transport Agency in India for transportation of goods for Export purpose and on GST paid on other ancillary services for export purpose from the registered service providers of India subject to the adherence and fulfillment of the procedures / provisions as prescribed under Circular No. 125/44/2019 - GST Dated the 18th November, 2019 issued from F.No. CBEC-20/16/04/18-GST amended by circular 135/05/2020-GST dated 31-03-2020 and circular 147/03/2021-GST dated 12-03-2021 for filing such fully electronic refund process through FORM GST RFD-01, issued by Ministry of Finance Department of Revenue Central Board of Indirect Taxes and Customs GST Policy Wing New Delhi. Application for claiming such refund is to be filed before the Jurisdictional Officer.



sd -
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(Member)

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Rajesh Kumar Singh
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