



TELANGANA STATE AUTHORITY FOR ADVANCE RULING
CT Complex, M.J Road, Nampally, Hyderabad-500001.
(Constituted under Section 96(1) of TGST Act, 2017)

Present:

Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Taxes)
Sri Sahil Inamdar, (I.R.S), Additional Commissioner (Central Taxes)

A.R.Com/20/2022

Date:24.05.2023

TSAAR Order No.12/2023

[ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE TEALANGANA GOODS AND SERVICES TAX ACT, 2017.]

1. M/s. Kaveri Exports, 8-2-293/82/L/158/A, 3rd Floor Near Andhra Bank, MLAs Colony, Road No. 12, Banjara Hills, Hyderabad, Telangana- 500034. (36AAQFK4817M1ZP) has filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules.
2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.
3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- under SGST and Rs. 5,000/- under CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided nor are pending before any authority under any provisions of the CGST/TGST Act'2017. The application is therefore, admitted.
4. **Brief facts of the case and averments of the applicant:**

4.1 M/s. Kaveri Exports deals in the export of cotton lint – fully pressed cotton bales. They have submitted that they are in receipt of duty credit e-scrips under the scheme for remission of duties and taxes on exported products (RoDTEP) from the Department of Foreign Trade. They further submitted that these e-scrips are used for clearing imports and are also freely transferrable if the exporter does not have any corresponding imports.

The applicant further argued that these e-scrips are exempted from tax vide Notification No. 02/2017 dt: 28.06.2017. The applicant is of the opinion that as the e-scrips are in nature an incentive the same should be excluded from the total turnover for the purpose of rule 89(4) and 89(4B) of the CGST Rules, 2017. Therefore that the reversals of input tax credit to be effected under Rule 42 to the extent of exempt supplies, need not be made.

This involves an interpretation of Rule 42, Rule 89(4) and Rule 89(4B) of the CGST Act. Hence this application.

4.2 Company Background

Kaveri Exports is a supplier of Indian Origin raw cotton bales from Telangana, India.

The Applicant company is spinners in Bangladesh, who are extremely pleased with quality. Until 2016, It majorly exported to Bangladesh and Vietnam, this year the company expanded to Indonesia and are looking at venturing into the other markets in the coming year.

Kaveri Exports is now the destination for MCU-5 cotton for many importers in Bangladesh, Vietnam and Indonesia. Till last year it has majorly dealt with selling MCU-5 cotton bales. From this year as part of its expansion efforts, established connections with quality ginners in Maharashtra, Karnataka and Gujarat to provide its customers with wider variety of cotton types such as Shankar -6 and Bunny.

Kaveri Exports has been continuously growing and expanding since its inception under the strong leadership in the cotton industry and currently leads and manages 9 ginning units in various areas in Telangana.

5. Questions raised:

Whether the sale of duty credit e-Scrips is only other income and not form part of Turnover for applying Rule 42, Rule 89(4) and Rule 89(4B) of the CGST Rules, 2017?

6. Personal Hearing:

The Authorized representatives of the unit namely N. Satish Kumar, CA attended the personal hearing held on 15.12.2022. The authorized representatives reiterated their averments in the application submitted and contended as follows:

Opinion expressed by Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Member), on the issues raised by the applicant.

7. Discussion & Findings:

The 'Duty Scrips' given as incentive to exporters is covered under tariff item no. 4907 at Serial No. 128 of Schedule II of the Notification No. 01/2017. However vide Notification No. 35/2017 dt:13.10.2017 the original notification no. 02/2017 dt: 28.06.2017 for exempting goods from GST was amended to improve at Serial No. 122A a new entry of 'Duty Credit Scrips' under the HSN '4907'. Thus the duty credit scrips are exempt from tax vide this notification.

The duty credit scrips being exempted attracted the provisions of Section 17(2) and Rule 42 of the CGST Act i.e., reversal of all common inputs used for supply of exempt goods/services in the proportion value of supply of such exempt goods and services to the total value of supplies.

However vide notification no. 14/2022 dt: 05.07.2022 a new clause (d) was inserted in the Explanation-1 to Rule 43 wherein the scope of the said explanation was expanded to exclude the value of duty credit scrips from the aggregate value of exempt supplies for the purpose of the Rule 42 as follows:

"(d) the value of supply of Duty Credit Scrips specified in the notification of the Government of India, Ministry of Finance, Department of Revenue No. 35/2017-Central Tax (Rate), dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1284(E), dated the 13thOctober, 2017."

After the insertion of this Rule, the value of duty credit scrips will not form part of value of exempt supplies for the purpose of computation of reversal of input tax credit under Rule 42 of the CGST Rules.

8. In view of the foregoing, the ruling is given by state member as under:

In view of the above discussion, the questions raised by the applicant are clarified as below:

Questions	Ruling
Whether the sale of duty credit e-Scrips is only other income and not form part of Turnover for applying Rule 42, Rule 89(4) and Rule 89(4B) of the CGST Rules, 2017?	After the insertion of clause (d) in the Explanation-1 to Rule 43 of the CGST Rules vide Notification No. 14/2022 dt: 05.07.2022, the value of duty credit scrips shall be excluded from the value of exempt supply for the purpose of applying Rule 42 of the CGST Rules.

Opinion expressed by Sri Sahil Inamdar, Additional Commissioner, (Central Member) on the issues raised by the applicant.

9. Discussion & Findings:

(i) We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought. The issues raised are within the purview of the Advance Ruling under Section 97(2) of the GST Act and accordingly, the application is taken up for consideration.

(ii) The applicant is engaged in the supply of Indian Origin raw cotton bales and does exports to Bangladesh and other countries as detailed supra.

(iii) They are in receipt of 'Duty credit scrips' under the scheme for remission of duties and taxes on exported products from the Department of Foreign Trade. These 'e-scrips' are used for clearing imports and transfer the same to others for consideration when the exporter does not have any corresponding imports.

(iv) A 'Duty Credit Scrip' is a certificate (or scrip), is an export promotion benefit, offered by Government of India under the Foreign trade policy, which can be used for the payment of Customs Duty. These scrips, which are issued to both the exporters of goods as well to exporters of services under the various schemes mentioned in the Foreign Trade Policy, can be transferred to others if they cannot be utilised by the taxpayer for various reasons.

The relevant extract from chapter 3 of Foreign Trade Policy (FTP), 2015-2020 is produced below:

3.02 Nature of Rewards

'Duty Credit Scrips' shall be granted as rewards under MEIS and SEIS. The Duty Credit Scrips and goods imported / domestically procured against them shall be freely transferable. The Duty Credit Scrips can be used for :

- (i) Payment of Basic Customs Duty and Additional Customs Duty specified under sections 3 (1), 3 (3) and 3 (5) of the Customs Tariff Act, 1975 for import of inputs or goods, including capital goods, as per DoR Notification, except items listed in Appendix 3A.*
- (ii) Payment of Central excise duties on domestic procurement of inputs or goods,*
- (iii) Deleted*
- (iv) Payment of Basic Customs Duty and Additional Customs Duty specified under Sections 3 (1), 3 (3) and 3 (5) of the Customs Tariff Act, 1975 and fee as per paragraph 3.18 of this Policy*

Transfer of these 'Duty Credit Scrips', for a consideration, becomes a supply under the provisions of CGST/TGST Act'2017.

(v) The Notification no. 02/2017- Central Tax (Rate) dated 28.06.2017 which provided list of goods which were exempted from payment of GST was amended vide Notification No. 35/2017- Central Tax (Rate) dated 13.10.2017 to include a new entry of 'Duty Credit Scrips' under the HSN '4907' at Serial No. 122A. Thus the 'Duty credit scrips', which are classified under the category of goods, are exempted from payment of Goods and Service tax vide the notification No. 35/2017- Central Tax (Rate) dated 13.10.2017.

Notification No. 35/2017-Central Tax (Rate) dated 13/07/2017

G.S.R.(E).-In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue),

No.2/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 674(E), dated the 28th June, 2017, namely:-In the said notification,- (A)in the Schedule,-(i) after S. No. 122 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:

"122A	4907	Duty Credit Scrips'
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(vi) The 'Duty credit scrips' being exempted attracted the provisions of Section 17(2) and Rule 42 of the CGST Act i.e., reversal of all common inputs used for supply of exempt goods/services in the proportion value of supply of such exempt goods and services to the total value of supplies.

(vii) Section 17(2) of CGST/TGST Act'2017 states:

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

Rule 42 of CGST Rules'2017 details the manner of determination of input tax credit in respect of inputs or input services and reversal thereof.

(vii) However vide notification no. 14/2022 dt: 05.07.2022 a new clause (d) was inserted in the Explanation-1 to Rule 43 wherein the scope of the said explanation was expanded to exclude the value of 'Duty credit scrips' from the aggregate value of exempt supplies for the purpose of the Rule 42 as follows:

*"In the said rules, in Explanation 1 to rule 43, after clause (c), the following clause shall be inserted, namely:-
(d) the value of supply of Duty Credit Scrips specified in the notification of the Government of India, Ministry of Finance, Department of Revenue No. 35/2017-Central Tax (Rate), dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1284(E), dated the 13th October, 2017."*

Explanation 1 of Rule 43 of CGST Rules'2017: -

" For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude: -

(a) [the value of supply of services specified in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 42/2017-Integrated Tax (Rate), dated the 27th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1338(E) dated the 27th October, 2017;]

This is omitted vide Notf no. 03/2019-CT dt. 29.01.2019 wef 01.02.2019

(b) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and

(c) the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India"

After the insertion of the above clause in the said Rule, the value of 'Duty credit scrips' will not form part of value of exempt supplies for the purpose of computation of reversal of input tax credit under Rule 42 of the CGST Rules. Therefore sale of 'Duty

credit scrips' does not make the taxpayer liable to reverse the input tax credit under Rule 42 of the CGST Rules .

(viii) Rule 89(4) of CGST Rules'2017 states:

[(4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula –

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

Where, -

(A) "Refund amount" means the maximum refund that is admissible;

(B) "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 refund is claimed under sub-rules (4A) or (4B) or both;

[(C) –Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;

(E) –Adjusted Total Turnover|| means the sum total of the value of-

(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,

excluding-

- (i) the value of exempt supplies other than zero-rated supplies; and*
- (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.']*¹⁸⁵

(F) "Relevant period" means the period for which the claim has been filed

[(4A) In the case of supplies received 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, refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.

[(4B) Where the person claiming refund of unutilised input tax credit on account of zero rated supplies without payment of tax has –

(a) received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, 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

(b) availed the benefit of 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, the refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.]

(ix) Turnover in a State or a Union territory, as defined under clause (112) of section 2 of CGST/TGST Act'2017 is produced below:

“turnover in State” or “turnover in Union territory” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess;”

(x) As per Rule 89(4)(E) of CGST Rules'2017 the exempted supplies other than zero-rated supplies i.e. those exempted supplies which are supplied in Domestic tariff area have to be reduced from the turnover in a State or a Union territory, as defined under clause (112) of section 2 for computing the 'Adjusted Total Turnover.'

The sale of 'Duty credit scrips', which are classified under the category of goods, are exempted from payment of Goods and Service tax vide the Notification No. 35/2017-Central Tax (Rate) dated 13.10.2017 after amendment of the Notification no. 02/2017-Central Tax (Rate) dated 28.06.2017 which provided the list of goods which were exempted from payment of GST. Sale of 'Duty credit scrips' in Domestic tariff area is classified as exempted supply as per the above Notification dated 13.10.2017. Therefore it is pertinent to note that the turnover pertaining to sale of 'Duty credit scrips' should be reduced from the total turnover in the state as defined under clause (112) of section 2 for computation of the 'Adjusted Total Turnover' as per Rule 89(4) of CGST Rules'2017.

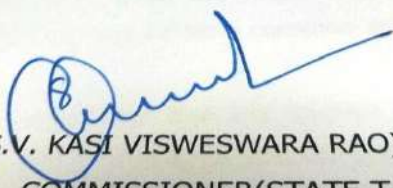
(xi) As per Rule 89(4B) of the CGST Rules'2017 Where the person claiming refund of unutilised input tax credit on account of zero rated supplies without payment of tax has received supplies on which he has availed the benefit of the notification No. 40/2017-Central Tax (Rate) dated 23rd October, 2017 or notification No. 41/2017- Integrated Tax (Rate) dated 23rd October, 2017 or availed the benefit of notification No. 78/2017-Customs, dated 13th October, 2017 the refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted. This mandates to compute the amount of refund of input tax credit pertaining to only those inputs received under the said notifications and other inputs or input services, only, to the extent used in making such export of goods.

Therefore the relevancy of the turnover pertaining to the sale of 'Duty credit scrips' does not arise in the computation of the refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods.

10 From the above, the Authority for Advance Ruling concurred in the Ruling and has discussed it independently.

11 In view of the foregoing discussions by both the members, the ruling is given as under:

Questions	Ruling
1)Whether the sale of 'Duty credit e-Scrips' is only other income and does not form part of Turnover for applying Rule 42 of the CGST Rules, 2017?	After the insertion of clause (d) in the Explanation-1 to Rule 43 of the CGST Rules vide Notification No. 14/2022 dt: 05.07.2022, the value of 'Duty credit scrips' shall be excluded from the value of exempt supply for the purpose of applying Rule 42 of the CGST Rules.
2)Whether the sale of 'Duty credit scrips' is only other income and does not form part of Turnover for applying Rule 89(4) of the CGST Rules, 2017?	The turnover pertaining to sale of 'Duty credit scrips' should be reduced from the total turnover in the state as defined under clause (112) of section 2 for computation of the Adjusted Total Turnover as per Rule 89(4) of CGST Rules'2017.
3)Whether the sale of 'Duty credit scrips' is only other income and does not form part of Turnover for applying Rule Rule 89(4B) of the CGST Rules, 2017?	The relevancy of the turnover pertaining to the sale of 'Duty credit scrips' does not arise in the computation of the refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods by a person who has availed the benefit of the notifications mentioned in Rule 89(4B) of the CGST Rules, 2017 .


 (S.V. KASI VISWESWARA RAO)
 ADDL. COMMISSIONER(STATE TAX)


 (SAHIL INAMDAR)
 ADDL.COMMISSIONER (CENTRAL TAX)

[Under Section 100(1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this Order]

To

M/s. Kaveri Exports, 8-2-293/82/L/158/A,
 3rd Floor Near Andhra Bank, MLAs Colony,
 Road No. 12, Banjara Hills, Hyderabad,
 Telangana- 500034.

Copy submitted to :

1. The Commissioner (State Tax) for information.
2. The Commissioner (Central Tax) Hyderabad Commissionerate, GST Bhavan, Lb Stadium Road, Basheerbagh Hyderabad – 500 004.

Copy to:

3. The Assistant Commissioner (ST) Hyderguda – Ashok Nagar Circle.