



**RAJASTHAN
AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX**

**KAR BHAWAN, AMBEDKAR CIRCLE, NEAR
RAJASTHAN HIGH COURT
JAIPUR – 302005 (RAJASTHAN)**



ADVANCE RULING NO. RAJ/AAR/2023-24/05

Umesh Kumar Garg Joint Commissioner	:	Member (Central Tax)
Mahesh Kumar Gowla Additional Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/S Uvee Glass Private Limited, 26-A, Akar Tower B, First Floor Old RTO Road, Bhilwara, 311001 Rajasthan
GSTIN of the applicant	:	08AACCU9875A1Z3
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	(b) applicability of a notification issued under the provisions of this Act; (d) admissibility of input tax credit of tax paid or deemed to have been paid;
Date of Personal Hearing	:	06.04.2023.
Present for the applicant	:	Adv. Shri Ravi Gupta
Date of Ruling	:	30.06.2023

Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

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

The issue raised by M/S Uvee Glass Private Limited, 26-A, Akar Tower B, First Floor Old RTO Road, Bhilwara, 311001 Rajasthan (hereinafter referred to as "applicant"). Applicant is registered and going to start process to make the glasses, toughened/reflective/laminated/secured/low e glass etc., in the name of

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M/sUveeGlass Private Limited.The two issues raised by applicant is fit to pronounce advance ruling & it falls under the ambit of the Section 97(2) (b), & (d) given as under:

(b) applicability of a notification issued under the provisions of this Act;

(d) admissibility of input tax credit of tax paid or deemed to have been paid;

A Submission of The Applicant: (in brief)

The applicant is going to start process to make the glasses, toughened/reflective/laminated/secured/low e glass etc., in the name of M/s Uvee Glass Private Limited.

B Interpretation and understanding of applicant on question rose (in Brief)

The applicant submitted his interpretation which is under-

ITC should be eligible on the GST paid on the inward supply of structural support of the plant and machinery that is used for making outward supply of the goods/services as the same is admissible in accordance with the section 16(1) read with section 17 (5)(d) of the CGST Act, 2017 read with the explanations.

As the plant and machinery is intended to be used by the taxpayer for manufacturing of glasses and for such manufacturing activity **structural support** is must otherwise machine cannot run, therefore, the subject ITC should be eligible.

A common head office can be used for more than one taxpayer under GST having separate factory addresses and each applicant is not required to be registered at separate head office, because in GST law it is nowhere specified that every applicant of GST registration is required to have separate head office.

For an instance 'X' has 2 separate businesses 'A' & 'B' which are running under a proprietorship and company and he is the proprietor in 'A' and director under 'B'. Factories of business 'A' and 'B' are situated at different locations but head office of both the businesses is common where from 'X' operates, in this case, as per the GST law 'X' is not supposed to keep 2 separate head offices, rather he can get the GST registration of both the businesses from the same premises/head office while simultaneously adding factory addresses additionally for each business in registrations.

As per Notification No.13/2017-Central Tax, dated June 28, 2017; time period of 60 days provided under section 56 of the CGST Act, 2017 is for the period from the date of filing application for refund to the date of credit of the refund amount in taxpayer's bank account.

Because, section 56 of the CGST Act, 2017 specifies as to Interest on delayed refunds, which mentions that 'If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six percent as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax.

Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not

exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund

C QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT: -

(i) Whether, ITC is eligible on the GST paid on the inward supply of structural support of the plant and machinery that is used for making outward supply of the goods/services?

(ii) Whether, a common head office can be used for more than one taxpayer under GST having separate factory addresses or each applicant is required to be registered with separate head office?

(iii) Whether, as per Notification No.13/2017-Central Tax, dated June 28, 2017; time period of 60 days provided under section 56 of the CGST Act, 2017 is for the period from the date of filing application for refund to the date of credit of the refund amount in taxpayer's bank account?

D. PERSONAL HEARING

In the matter personal hearing was granted to the applicant on 06-04.2023. Adv. Shri Ravi Gupta, Authorized Representatives appeared for personal hearing. He reiterated the submission already made in written submission. He also stated for additional written submission. He also stated that he will submit the details of registration, ITC being availed and details of procedure being followed at present by applicant on all three questions since registration. Adv. Shri Ravi Gupta, submitted additional submission vide letter dated 13.04.2023 which are as under-

As enquired during the personal hearing by your good self we state that effective date of registration of the applicant under GST was 01/03/2022 and return filing status is as per the screenshot attached herewith and marked as ANX-1.

Whereas, we want to draw attention of your good self on the relevant provisions of the statute as reproduced hereunder:

Definition of advance ruling given under clause (a) of section 95 of the CGST Act, 2017:

"95. Definitions of Advance Ruling- In this Chapter, unless the context otherwise requires,-

(a) advance ruling means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant";

After perusal of above definition it is ample clear that the activities which are being undertaken is the subject matter of the advance ruling, irrespective of earlier the activity has been undertaken or not.

Section 97(2)(d) reads as "admissibility of input tax credit of tax paid or deemed to have been paid";

As per the golden rule of the interpretation, ITC paid on the activities being undertaken are subject matter of the advance ruling as specified under clause (d) of sub section (2) of section 97.

Further first proviso of sub section (2) of section 98 specifies as "Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act".

The above referred proviso specifically confines the scope of advance ruling as when question raised in the advance ruling application is pending or decided in any proceeding, the authority cannot accept the application; simultaneously, it signifies that when the question raised is neither pending nor decided in any proceeding in the case of the applicant for the activities being undertaken or proposed to be undertaken, the advance ruling can be given.

That the applicant seeks the advance ruling for the activities being undertaken or proposed to be undertaken by it and the application is not submitted for any past activities, further, the question raised in the application is not already pending or decided in any proceedings in the case of the applicant under any of the provisions of this Act; therefore your good self may appreciate that the present application is fit to issue ruling on the questions raised.

That the definition provided under clause (a) of section 95 signifies that if any activity had already been undertaken in the past by the applicant, that is not the subject matter of advance ruling but if the same activity is being undertaken or proposed to be undertaken that may be very well subject matter of the advance ruling as the law nowhere debars that once the activity is undertaken that can never be subject matter of the advance ruling unless the question raised in the application is already pending or decided in any proceedings in the case of the applicant.

That the decision passed in the matter of M/s Shri Vinayak Buildcon – 2022-VIL-47-AAAR – Rajasthan and in the matter of M/s Sutherland Mortgage Services INC – 2020-VIL102-KER – High Court of Kerala; also clarifies the scope of advance ruling in consonance to above submission.

That as per Constitution of India we are governed by the rule of law and in consonance to the same fundamental principle; the provisions of chapter XVII of the CGST Act, 2017 are framed; which prescribes the specific provision of passing any advance ruling based on the relevant provisions of the law but not on the basis of presumption and assumption.

The third limb of the principles of natural justice also prescribes that a judgment/ruling should be speaking in nature and based on the particular provisions of the law.

That with regard to the first question raised in the advance ruling application related to the eligibility of the Input Tax Credit on structural support of the plant and machinery, we want to specify that our question is regarding the necessary structural support for running the plant and machinery **such as foundation for the machinery and support structure to keep the plant and machinery intact.**

That with regard to the second question raised in the advance ruling application related to the common head office, we submit that many times two members of the family like two brothers have the separate business factories which

are on rent and both the brothers have the common premises/head office/principal place of business, wherefrom they operate their businesses, like issuance of the invoice, maintenance of the accounts, meeting with suppliers/buyers etc.

In this situation it is not practicable to take on rent one more head office and pay monthly rent thereto, only for the purpose of GST registration as much as when the GST law nowhere mandates separate principal place of business for more than one registration, unless there is leakage of revenue.

E. COMMENTS OF THE JURISDICTIONAL OFFICER

The Jurisdictional Deputy Commissioner, 11, Ajad Nagar, Bhilwar,311001, Rajasthan, has given his comments vide his letter V(Mise)05/corrs/GST/BHI-E/22-23/1227 dated 13.12.2022 which is as under-

QUESTION AND ANSWER FOR WHICH THE PRESENT AAR HAS BEEN FILED

Whether, ITC is eligible on the GST paid on the inward supply of structural support of the plant and machinery that is used for making outward supply of the goods/services?

ANS.- The eligibility and conditions for taking Input Tax Credit under GST has been mentioned in Section 16 and 17 of the Central Goods and Service Tax Act, 2017. Further, Input Tax Credit shall be available in respect of goods and services or both received by a taxable person for construction of "Plant and machinery" on his own account including when such goods and services or both used in the course of furtherance of business. The expression "Plant and machinery" has been defined under Explanation which means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural support but does not include - (i) land, building or any other civil structure; (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises.

Thus, as questioned by the applicant, Input Tax Credit of GST paid on the inward supply of structural support of plant and machinery which is used for making outward supply of goods/ services is admissible to the extent of provisions/ conditions laid down in Section 16 and 17 of the CGST Act, 2017.

Whether, a common head office can be used for more than one taxpayer under GST having separate factory addresses or each applicant is required to be registered with separate head office?

Ans--The Chapter VI of the Central Goods and Services Tax Act, 2017 deals with provisions related to registration which includes Section 22 to 30 thereunder. As per the said provisions, every person liable to be registered under Section 22 or section 24 of the Act ibid shall apply for GST registration. The expression 'person' is defined under Section 2(84) of the act ibid which include-

an individual;

a Hindu undivided Family;

a company;

a firm;

a Limited Liability Partnership;

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

any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) section 2 of the Companies Act,2013 (18 of 2013);

anybody corporate incorporated by or under the laws of a country outside India;

a co-operative society registered under any law relating to co-operative societies;

a local authority;

Central Government or a State Government;

Society as defined under the Societies Registration Act, 1860 (21 of 1860)

Trust; and

Every artificial juridical person, not falling within any of the above;

Further, as per Section 25(2) of the CGST Act, 2017, a person seeking registration under this act shall be granted a single registration in a State or Union territory, provided that a person having multiple places of business in a state or Union territory may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed.

The expressions 'place of business' is defined under Section 2(85) of the CGST Act,2017 which includes-

a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or

a place where a taxable person maintains his books of account; or

a place where a taxable person is engaged in business through an agent, by whatever name called;

Thus, in view of above GST provisions, registration in GST is based on constitution of a person applying for registration and given for any place which satisfies the definition of place of 'business'.

The applicant put an instance in para 16.2 of application that 'A' and 'B' are two separate businesses running under the proprietorship and directorship respectively of one person named 'X'. Factories of business 'A' and 'B' are situated at different locations but head office of the both the businesses is common where firm 'X' operates. It may be seen here that both 'A' and 'B' are different persons here with reference to GST registration. And it has not been specified as to whether the head office from where 'X' operates, satisfy conditions specified for 'place of business' or not. On the basis of available facts, it is stated that a place which qualifies conditions enumerated in definition of 'place of business' can be used in obtaining GST registration by any person.

Whether, as per Notification No.13/2017-Central Tax, dated June 28, 2017; time period of 60 days provided under section 56 of the CGST Act, 2017 is for the period from the date of filing application for refund to the date of credit of the refund amount in taxpayer's bank account?

Ans- The Section 56 deals with the provisions related to interest on delayed refunds which is re-produced as detailed below:

*Section 56. Interest on delayed refunds-

if any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application

under sub-section(1) of that section, interest at such rate not exceeding six per cent. As may be specified in the notification issued by the Government of the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:

Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendation of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.

Explanation.-For the purposes of this section where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5).

Further, para no. 34 of the Circular No. 125/44/2019-GST dated 18.11.2019 clarifies as detailed below:

"34. Section 56 of the CGST Act clearly states that if any tax ordered to be refunded is not refunded within 60 days of the date of receipt of application, interest at the rate of 6 percent (notified vide notification No. 13/4-017-Central Tax dated 28.06.2017) on the refund amount starting from the date immediately after the expiry of sixty days from the date of receipt of application (ARN) till the date of refund of such tax shall have to be paid to the applicant. It may be noted that any tax shall be considered to have been refunded only when the amount has been credited to the bank account of the applicant. Therefore, interest will be calculated starting from the date immediately after the expiry of sixty days from the date of receipt of the application till the date on which the amount is credited to the bank account of the applicant."

Thus, the time period of 60 days provided under Section 56 of the CGST Act, 2017 is from the date of filing of application for refund to the date of credit of the refund amount in taxpayer's bank account.

F. FINDINGS, ANALYSIS & CONCLUSION:

At the outset we would like to make it clear that the provisions of CGST Act and RGST Act are in parimateria and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the RGST Act

1) We have carefully examined the statement of facts, supporting documents filed by the Applicant along with application, oral and written submissions made at the time of hearing. We have also considered the issues involved, on which advance ruling is

sought by the applicant, and relevant facts. We would like to discuss the submission made by applicant and will take up the above question for discussion one by one.

2)As per written submission made by the applicant M/S Uvee Glass Private Limited, 26-A, Akar Tower B, First Floor Old RTO Road, Bhilwara, 311001 Rajasthan(hereinafter referred to as "applicant"), The applicant is intended to start process to make the glasses, toughened/reflective/laminated/secured/low e glass etc.. The question of law raised by the Applicant are -

(i)Whether, ITC is eligible on the GST paid on the inward supply of structural support of the plant and machinery that is used for making outward supply of the goods/services?

(ii)Whether, a common head office can be used for more than one taxpayer under GST having separate factory addresses or each applicant is required to be registered with separate head office?

(iii) Whether, as per Notification No.13/2017-Central Tax, dated June 28, 2017; time period of 60 days provided under section 56 of the CGST Act, 2017 is for the period from the date of filing application for refund to the date of credit of the refund amount in taxpayer's bank account?

3) Applicant submitted a brief note in respect of fitment of case under advance rulings and tried to justify the fitness of application for advance ruling. We observe that purpose of Advance ruling is to provide certainty of tax liability in advance in relation to a future activity to be undertaken by the applicant and help the applicant in planning about GST liability on activities well in advance along with proper interpretation and understanding of tax laws thus the question no. 2 which is related with procedure is out of scope of the ruling for Authority for Advance Ruling (AAR) which also not covered in Sec 97(2) .As per Section 97 (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.

4) Now, we would like to discuss remaining two questions.

4.1) As per sec 16 (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" applicant is eligible to take ITC on the inward supply used in the course or furtherance of his business but there is certain restrictions under Sec 17 of Act, which

are as under:-(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business. *Explanation.*—For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property. *Explanation.*—For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—
(i) land, building or any other civil structures;
(ii) telecommunication towers; and
(iii) pipelines laid outside the factory premises.

Thus Input Tax Credit of GST paid on the inward supply for fixing of plant and machinery to earth by foundation or structural support which is used for making outward supply of goods/ services is admissible up to this extent only.

4.2) We observe that Section 56 is related to Interest on delayed refunds. The matter is clarified vide entry no 34 of Circular No. 125/44/2019-GST dated 18.11.2019 which is as under- “34. Section 56 of the CGST Act clearly states that if any tax ordered to be refunded is not refunded within 60 days of the date of receipt of application, interest at the rate of 6 per cent (notified vide notification No. 13/2017-Central Tax dated 28.06.2017) on the refund amount starting from the date immediately after the expiry of sixty days from the date of receipt of application (ARN) till the date of refund of such tax shall have to be paid to the applicant. It may be noted that any tax shall be considered to have been refunded only when the amount has been credited to the bank account of the applicant. Therefore, interest will be calculated starting from the date immediately after the expiry of sixty days from the date of receipt of the application till the date on which the amount is credited to the bank account of the applicant. Accordingly, all tax authorities are advised to issue the final sanction order in FORM GST RFD-06 and the payment order in FORM GST RFD-05 within 45 days of the date of generation of ARN, so that the disbursement is completed within 60 days.”

Thus, the time period of 60 days provided under Section 56 of the CGST Act, 2017 is from the date of filing of application for refund to the date of credit of the refund amount in taxpayer's bank account

In view of the foregoing, without going into the merits of the case, we rule as under: -

In view of the foregoing, we rule as follows: -

RULING

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Rajasthan Goods and Services Tax Act, 2017)

Question.1 Whether, ITC is eligible on the GST paid on the inward supply of structural support of the plant and machinery that is used for making outward supply of the goods/services?

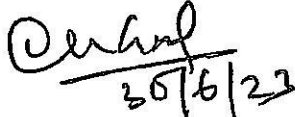
Ans.1 Input Tax Credit of GST paid on the inward supply for fixing of plant and machinery to earth by foundation or structural support which is used for making outward supply of goods/ services is admissible up to this extent only.

Question. 2 Whether, a common head office can be used for more than one taxpayer under GST having separate factory addresses or each applicant is required to be registered with separate head office?

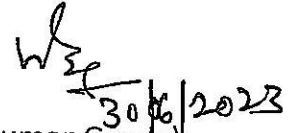
Ans.2 This question related with procedure is out of scope of the ruling for Authority for Advance Ruling (AAR)

Question. 23 Whether, as per Notification No.13/2017-Central Tax, dated June 28, 2017; time period of 60 days provided under section 56 of the CGST Act, 2017 is for the period from the date of filing application for refund to the date of credit of the refund amount in taxpayer's bank account?

Ans.3 The time period of 60 days provided under Section 56 of the CGST Act, 2017 is from the date of filing of application for refund to the date of credit of the refund amount in taxpayer's bank account


(Umesh Kumar Garg)
MEMBER
CENTRAL TAX




(Mahesh Kumar Gowla)
MEMBER
STATE TAX

SPEED POST

M/S Uvee Glass Private Limited, 26-A, Akar Tower B, First Floor Old RTO Road, Bhilwara, 311001 Rajasthan

F. No. AAR/SF/2023-24/46-50

Date: 30/06/2023

Copy to: -

1. The Chief Commissioner, CGST and central Excise, (Jaipur Zone), NCRB, Statue Circle, Jaipur, Rajasthan 302005
2. The Chief Commissioner, State Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
3. The Pr. Commissioner, CGST and Central Excise Commissionerate Jaipur, Rajasthan.
4. The Deputy Commissioner, 11, Ajad Nagar, Bhilwar, 311001, Rajasthan

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