THE MADHYA PRADESH APPELLATE AUTHORITY FOR ADVANCE RULING

OFFICE OF THE COMMISSIONER, COMMERCIAL TAX, MOTI BUNGLOW, MAHATMA GANDHI MARG, INDORE (M.P.) - 452007

BEFORE THE BENCH OF

(1) Shri NAVNEET GOEL, MEMBER
(2) Shri RAGHWENDRA KUMAR SINGH, MEMBER

ORDER NO. MP/AAAR/01/2021 DATE. 26-07-2021

Name and address of the appellant	M/S JAIDEEP ISPAT AND ALLOYS PVT LTD. 808-C, FACTORY BUILDING, GROUND FLOOR INDUSTRIAL AREA SECTOR-III, PITHAMPUR DHAR MADHYA PRADESH (454774)
GSTIN or User ID	23AABCJ4896R4ZQ
Order of AAR under Appeal before AAAR	01/2021 dated 18.01.2021

PROCEEDINGS

(Under section 101 of the Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)

1) At the outset, we would like to make it clear that the provisions of both the CGST Act and the MPGST Act are mirror images of each other except for certain specific provisions. Therefore, unless a specific mention is made to such dissimilar provisions, a reference to the CGST Act would mean a reference to the similar provisions under the MPGST Act and vice-versa. At places we may refer it as GST Act.

2) The present appeal has been filed under section 100 of the Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017 [hereinafter also referred to as "the CGST Act and MPGST Act"] by M/s Jaideep Ispat And Alloys Pvt. Ltd. (hereinafter also referred to as the "appellant") against the order of Authority for Advance Ruling No. 01/2021 dated 18.01.2021.

सत्य-प्रतिलिपि

EKTA SONI
C.T.O. (HO)

3. BRIEF FACTS OF THE CASE

i) The appellant M/s Jaideep Ispat And Alloys Pvt. Ltd, a company registered under the Companies Act (hereinafter referred to as 'the appellant') is registered under the Central Goods and Services Tax Act, 2017 and the Madhya Pradesh State Goods and Services Tax Act, 2017 (hereinafter referred to as the "GST Act") having the registration number23AABCJ4896R4ZQ.

ii) The appellant manufactures M.S. billets in its factory located at Pithampur. For the purpose of manufacture, the appellant procures various scrap iron and sponge iron which is melted in their factory and converted to M.S. billets which are supplied by the appellant to various customers on payment of applicable GST thereon.

iii) As a standard operating procedure for procurement of such scrap and sponge iron (hereinafter referred to as "the concerned inputs"), the appellant maintain various documents, the details of which are given herein below. That, the appellant maintains an ERP system whereby the same procedure is followed for all procurements of the concerned inputs and related entries are made in their accounting software.

Applicant is filling Appeal against the order of Authority for Advance ruling Madhya Pradesh Goods and Service Tax bearing order number 01/2021 dated 18.01.2021

4. QUESTIONS RAISED BEFORE AUTHORITY FOR ADVANCE RULING (AAR)

The original advance ruling was sought for the following question:

Whether the procedure adopted and the documents/records maintained by the appellant (as elaborated below) can be deemed to be a sufficient compliance of the conditions and restrictions for the admissibility of input tax credit of the tax paid on inward supply of local scrap and sponge iron used by the appellant for manufacture of M.S. billets as per Section 16 of GST Act and Rule 36 of GST Rules?

The procedure followed by the appellant is detailed below:

i) A contract is executed with the vendor detailing the quantity and price.

ii) Purchase order (PO) is released to the vendor as per requirement at the time.

iii) Vendor generates invoice on the basis of such PO and dispatches the goods.

iv) The goods are received at the factory of the appellant.

v) Details of the vehicle are recorded in the gate register in the factory.

vi) A photograph of the vehicle along with the driver thereof is taken for records.

vii) Weighment of the vehicle is undertaken and a weighment slip is generated.

viii) Goods are unloaded at the factory and a Goods Receipt Note is generated.

ix) Quality inspection of the goods is carried out and approval is given thereafter.

x) Invoice is recorded in the accounting software of the appellant.

xi) Along with invoices, the consignment note (bilty) and e-way bill are kept in records.

xii) GST compliance status of the vendor is verified (i.e. whether GSTR-1 and GSTR-3B returns are properly filed by the vendor).

xiii) Input tax credit is availed by the appellant in GSTR-3B return filed by the appellant. Payment is made to the vendor (in some cases advance payment is made).

5. RULING PRONOUNCED BY AUTHORITY FOR ADVANCE RULING (AAR)

It is ruled that the applicant's question, therefore, is technical/procedural in nature and is not covered by any of the clauses of Section 97(2) of the CGST Act, 2017, and it is outside the purview of Advance Ruling application and rejected as "inadmissible", in terms of first provision to Section 98(2) of the CGST Act, 2017.

6. QUESTIONS RAISED BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)

The following question, which is the very same as posed before AAR, have been posed before the Appellate Authority: -

Whether the procedure adopted and the documents/records maintained by the appellant (as elaborated below) can be deemed to be a sufficient compliance of the conditions and

restrictions for the admissibility of input tax credit of the tax paid on inward supply of local scrap and sponge iron used by the appellant for manufacture of M.S. billets as per Section 16 of GST Act and Rule 36 of GST Rules?

7. GROUNDS OF APPEAL

Aggrieved by the rejection of the application for advance ruling, the appellant has filed this appeal dated 19-02-2021 under Section 100 of the CGST Act, 2017 and MPGST Act, 2017, on the following grounds:-

i) Appellant submits that, the Advance Ruling Authority erred in ruling that this issue is procedural in nature.

ii) That, the Advance Ruling Authority failed to see that the question is not about the procedure to be followed, but rather about whether the procedure adopted and documents and records kept is sufficient compliance of the conditions required for availment of input tax credit.

iii. That, the question posed before the Advance Ruling Authority was whether Input Tax Credit is admissible on procurement of the concerned inputs if the procedure mentioned in the application of advance ruling is adopted by the appellant in respect of inward supply of scrap and sponge iron used by the appellant for manufacture of M.S. billets? Hence, the issue involved is actually the admissibility of input tax credit.

iv) The appellant submits that, in their opinion, the procedure adopted by the appellant and the documents/records maintained by the appellant is sufficient compliance of the conditions and restrictions for input tax credit as given under the GST Acts, and therefore the Input Tax Credit should be admissible on the concerned inputs based on the procedure adopted. That their opinion is based on the following assertions.

Input tax credit admissibility

v) That the admissibility of input tax credit of the input tax paid on the concerned inputs is principally based on two important aspects as noted below –

सत्य-प्रतिलिपि

EKTA SONI
C.T.O. (HO)

a. Whether input tax credit on concerned inputs is admissible (and not specifically excluded)

b. Whether the prescribed conditions for claim of input tax credit are met

vi) Appellant submit that, as far as the generally admissibility of the concerned inputs is concerned, there is no question about the admissibility of the same. This is because the concerned inputs are directly used for the purpose of business. Further, the concerned inputs are not specifically included in the list of blocked credit as specified in Section 17 of the GST Acts. Therefore, subject to the fact that the procedural conditions for the claim of input tax credit are met, the input tax credit is generally admissible in respect of the concerned inputs. Hence, the eligibility of input tax credit is dependent on whether or not the procedural conditions are being complied with or not.

vii) In this respect, appellant submits that the procedural conditions for the admissibility of input tax credit under Section 16(2) can be simply listed as follows:

a. The appellant should be in possession of tax paying documents
b. The appellant should have received the goods.
c. The tax charged in respect of such supply should be paid.
d. The appellant should have filed a return under Section 39.

viii) The appellant submits that, if it can be established that sufficient compliance and documentary records are maintained, and all the procedural requirements are followed with as detailed below, then the input tax credit in respect of the concerned inputs should be deemed to be admissible. Thus the compliance can be deemed "sufficient" if the prescribed conditions are complied with. The appellant would like to make the following submissions in respect of the above.

Possession of tax paying documents

ix) As per Rule 36 of the GST Rules, input tax credit shall be availed by a registered person on the basis of any of the following documents –

a. An invoice issued by the supplier in accordance with Section 31
b. An invoice issued under the provisions of Section 31(3)(f)

c. A debit note issued by the supplier in accordance with Section 34
d. A bill of entry or any similar document for integrated tax on imports
e. Any Input Service Distributor invoice or any such document

x) Appellant submit that, in respect of the concerned inputs, as per the established procedure, the appellant shall be in possession of the tax invoice as described in Section 31 of the GST Acts on the basis of which the input tax credit shall be availed.

xi) For further substantiating the details mentioned on the invoice, the appellant shall also be in possession of a valid contract with the vendors for procurement of the concerned inputs and shall place a purchase order specifying the quantity and the agreed price of the same. The details of the invoice shall match with the details mentioned on the valid purchase/requisition order.

xii) The invoice shall be entered in the ERP accounting system implemented by the appellant which shall mention the date of receipt, the quantity and the value of the goods along with the taxable value and the input tax credit availed thereon. Appellant further submit that all the accounts and records as specified in Section 31 of the GST Acts read with Rule 56 of the GST Rules.

xiii) Appellant submits that the first requirement for admissibility of input tax credit, i.e. the possession of a valid tax paying document, is being fulfilled by the appellant along with proper accounts and records as required by various provisions in the GST Acts.

Records showing actual receipt of goods

xiv) Appellant submits that in respect of the second requirement, i.e. actual receipt of goods, they are keeping various records to ensure that the receipt of such goods is properly accounted for, and that the input tax credit is availed on the basis of actual receipt of the concerned inputs.

xv) The appellant is keeping the following records for this purpose:

a. Firstly, as soon as the truck enters the premises of the appellant, a gate entry inward slip is generated by the system which shows the gate pass number, the

date, vehicle number, invoice number, invoice date, lorry receipt (LR) number and date, as well as the details of the vendor, the description and the quantity of the concerned inputs in the consignment. The same is signed by the security guard and is generated in presence of the truck driver.

b. Further, a photograph of the truck along with the driver thereof, clearly showing the vehicle number, is also clicked and kept in the records by the appellant as a further documentary evidence of actual receipt of the goods in the same vehicle as is mentioned on the documents.

c. Immediately after the arrival of the vehicle in the premises, a weighment of the truck is conducted which shows the total gross weight and net weight, along with the date of weighment and the time of weighment. This slip serves as a corroborative document in addition to various other documents issued by the supplier showing the quantitative details of the concerned inputs.

d. Further, after the weighment of the material upon arrival, a Goods Receipt Note (GRN) is also generated. This GRN is generated at the time of making an entry in the ERP accounting system of the appellant. Hence, the records of the goods showing the concerned inputs are also updated in the accounting system and the related quantitative details are automatically updated in the stock register of the appellant recording receipt of the goods.

e. After this, a quality inspection report is generated wherein the quality of the material is verified, and it is ensured that the quality is in accordance with the agreed norms as agreed between the appellant and the vendor. When the quality is also termed satisfactory, a requisite entry is entered in the ledger account of the vendor wherein a liability is recorded in the accounting system and the vendor's account is credited showing the purchase.

f. As mentioned previously, the purchase entry is supported on the basis of these documents – (a) purchase invoice generated by the vendor; (b) LR or consignment note showing the details of the vehicle through which the material was transported; and (c) an e-way bill in accordance with the GST Rules mentioning the requisite invoice, consignment and vehicle details.

Tax charged in respect of the supply having been paid to the Government

xvi) Another condition for admissibility of the input tax credit under Section 16(2) is that the tax charged in respect of the said supply should have been paid to the Government. In this respect, appellant submit that they are taking all precautions to ensure the same.

xvii) Appellant submits that as per Section 49 of the GST Acts, it is clarified that "payment" of tax can be made by utilising the amount in electronic cash ledger or electronic credit ledger of the taxpayer. The relevant portion (sub-sections (3) and (4) of the said section) is reproduced below for ease of understanding –

(3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.

xviii) Appellant submits, that the payment of tax can be made by the vendor either by utilising the amount in electronic cash ledger or the amount available in the electronic credit ledger of the vendor.

xix) Appellant submits, that on the electronic common GST portal, payment of tax is usually done on a self-assessment basis by way of filing return in form GSTR-3B. This is in accordance with Section 59 of the GST Acts which states that each taxpayer shall self-assess his own taxes and pay them in a return filed under Section 39. The said return is form GSTR-3B. Hence, it can be said that payment of taxes shall be done by the vendor by way of filing GSTR-3B return.

xx) Appellant submits, that, in accordance with Rule 36(4), a condition is prescribed for availing the input tax credit, i.e. the total input tax credit to be availed by a registered person in respect of those supplies for which details have not been uploaded in a return filed under Section 37 by the supplier, shall not exceed 5 per cent of the eligible credit available in respect of those invoices/debit notes the details of which have been uploaded by the supplier in a return filed under Section 37 by the supplier.

EKTA SONI
C.T.O. (HO)

xxi) Appellant submits, that the availability of input tax credit is largely dependent on whether the supplier has uploaded the details of the supplies in a return filed under Section 37, i.e. GSTR-1 return of the supplier/vendor. Hence, the appellant submit that, it is important to ensure that the vendor has in fact uploaded the details of the supplies made to the appellant in their GSTR-1 return.

xxii) The appellant claims that these conditions are fulfilled in the following manner:

a. The appellant is taking all the precautions to ensure that the vendor have uploaded their own GSTR-1 and GSTR-3B return. This can be verified on the electronic GST Portal. The GST Portal allows all the persons to verify whether any person registered in GST has filed their returns or not. This can be done through the "search taxpayer" option on the portal which allows anybody to see the filing schedule of any registered person.

b. On the basis of this, it can be seen that the vendors of the concerned inputs are filing their GSTR-1 and GSTR-3B return. Further, it is also made sure that the details of the supplies from these vendors have actually been reflected in their GSTR-1 return by cross-tallying the details as appearing in the GSTR-2A statement appearing on the GST Portal of the appellant, which is auto-populated on the basis of various inward supplies uploaded by various vendors of the appellant.

c. This shows that the compliance of both the above mentioned conditions is ensured by the appellant, i.e. that the tax charged in respect of the supply is paid to the government (which is done by way of filing GSTR-3B return as mentioned in Section 59 of the GST Acts), as well as that Rule 36(4) is also complied with (which is done by way of filing GSTR-1 return). A copy of the report generated from the portal is enclosed herewith for your perusal.

xxiii) Further Appellant submits, that it is not possible to take any further precautions to make sure that the tax has in fact been paid by the vendor. That, merely the fact that GSTR-3B return has been filed shows that tax has been self-assessed by the vendor and accordingly he has paid the tax due from his end. This would of course also include the tax charged in respect of the supplies made to the appellant. If the supplies made by the vendor to the appellant have been disclosed in the vendor's GSTR-1 and the vendor has also filed their GSTR-3B, it stands to reason that the

vendor would have self-assessed their taxes and would have paid the same to the Government. Appellant claims that the condition for admissibility of input tax credit as mentioned in Section 16 of the GST Acts is clearly being fulfilled.

xxiv) The appellant further submits that in this context, **for a similar provision in the erstwhile VAT law, the Hon'ble High Court of Delhi had even said that input credit shall be admissible even if the supplier had not fulfilled his obligation under law.** That, as per the decision of the Hon'ble High Court, the only obligation of the recipient is to produce an invoice which is generated by the supplier who is registered under the tax law and to check whether such supplier is properly registered under law. To expect the recipient to do anything more would be futile because it is not practically possible for any person engaged in business to carry out the responsibility of checking the compliance of each and every supplier.

xxv) An extract from the above mentioned decision of Hon'ble High Court is reproduced below:–

Extract from decision of the High Court in W.P. (C) 2106/2015

At the outset, it requires to be understood that Section 2 (1) (r) of the DVAT Act implicitly recognizes that when the buyer pays the seller the price for the purchase of goods, such price is inclusive of the DVAT for which the seller is "liable" to pay to the Government. Which is why it talks of payment by the buyer of the liability that is essentially that of the seller. VAT is an indirect tax, the incidence of which can be passed on and is in fact passed on by the seller to the purchaser.

To be eligible for ITC, the purchasing dealer who, apart from being registered under the DVAT Act, has to take care to verify that the selling dealer is also a registered dealer and has a valid registration under the DVAT Act. The second condition is that such registered selling dealer has to issue to the purchasing dealer a "tax invoice" in terms of Section 50 of the DVAT Act. Such tax invoice would obviously set out the TIN number of the selling dealer. The purchasing dealer can check on the web portal of the Department if the selling dealer is a fictitious person or a person whose registration stands cancelled. As long as the purchasing dealer has taken all these steps, he cannot be expected to keep track of whether the selling dealer has in fact deposited the tax collected with the Government or has lawfully adjusted it against his output tax liability. The purchasing dealer can, of course,

ascertain if there is any mismatch of Annexures 2A and 2B but, assuming it is on account of the seller's default, there is little he can do about it.

Another difficulty that the purchasing dealer would face is that he would have no access to the return filed by the selling dealer particularly since under Section 98 (1) of the DVAT Act those particulars are meant to be confidential. Under Section 98 (3) (j) of the DVAT Act, it is possible for the Commissioner, where he considers it desirable in the public interest, to publish such information. That hinges on the Commissioner placing those details in public domain. If the Commissioner has not placed such information in the public domain, then it is next to impossible for the purchasing dealer to ascertain the failure of the selling dealer to make a correct disclosure of the sales made in his return.

Again, it is not as if the Department is helpless if the selling dealer commits a default in either depositing or lawfully adjusting the VAT collected from the purchasing dealer. There are provisions in the DVAT Act, referred to hereinbefore, which empower the Department to proceed to recover the tax in arrears from the selling dealer. There is also Section 40A, in terms of which, a purchasing dealer acting in connivance with a selling dealer can be proceeded against.

Applying the law explained in the [above decisions], it can be concluded in the case that there is a singular failure by the legislature to make a distinction between purchasing dealers who have bona fide transacted with the selling dealer by taking all precautions as required by the DVAT Act and those that have not. Therefore, there was need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not punish bona fide purchasing dealers. The latter cannot be expected to do the impossible. It is trite that a law that is not capable of honest compliance will fail in achieving its objective.

xxvi) Appellant further submit that the departmental appeal against the above order of the High Court in the Hon'ble Supreme Court was dismissed by the Hon'ble Apex Court of India. Therefore, even the Supreme Court upheld the principles laid in the above decision by the Hon'ble High Court of Delhi. Thus, it should be deemed that the recipient has fulfilled their obligation under law to check that the supplier was registered under law, and have made payment to such supplier on a bona-fide

basis Therefore, input tax credit should not be denied to the appellant after such nece sary ac on has been taken by the appellant.

xxvii) App lant s omits, that, reliance is also further placed on the following decisions –

1. COMMISSIONER OF C. EX., RAIGAD Versus JAY IRON & STEEL INDUSTRIES LTD. 2015 (325) E.L.T. 130 (Tri. - Mumbai) wherein it is held that Cenvat credit - Inputs - Onus on assessee under Rule 9(2), 9(3), 9(4) and 9(7) of Cenvat Credit Rules, 2004 to take reasonable steps to ensure that appropriate excise duty paid on inputs on which credit is taken - Explanation to sub-rule provides that assessee shall be deemed to have taken reasonable step if they satisfied themselves about identity/address of input manufactures/supplier either from their personal knowledge or certificate issued by Excise Department - Since, suppliers are registered with Department, assessee discharged their onus under Cenvat Credit Rules, 2004. *[paras 5.3, 5.4]*

2. VIKRAM KNITTEX PVT. LTD. Versus COMMISSIONER OF CENTRAL EXCISE, SURAT-I 2008 (230) E.L.T. 190 (Tri. - Ahmd.) wherein it is held that Cenvat/Modvat - Documents for availing credit - Address and identity of manufacturer found to be fake and fictitious - Appellants taken sufficient precautions as they received goods from a registered dealer who happened to be a manufacturer - Certificate from Bank of Baroda also produced which furnished details about collection of an amount paid by supplier - Credit taken by appellants is in order in terms of Rule 7(2) of Cenvat Credit Rules, 2002 - Rule 9 of Cenvat Credit Rules, 2004. *[paras 2, 3]*

3. BHUWALKA STEEL INDUSTRIES LTD. Versus COMMISSIONER OF C. EX., THANE-I 2007 (212) E.L.T. 63 (Tri. - Mumbai) wherein it is held that Cenvat/Modvat - Default in payment of duty by input manufacturer - Credit availed by appellant sought to be reversed as duty - Precedents and C.B.E. & C. Circular holding credit not deniable on default in duty payment by input manufacturer - Reasonable precautions taken by appellant before availing credit, invoices containing all particulars as prescribed in rules - Credit taken on bona fide belief of duty payment - Documents evidencing payment of excise duty amount to supplier by appellant - Precedents and C.B.E. & C. Circular applicable - Cenvat credit admissible - Rules 3 and 4 of Cenvat Credit Rules, 2004. *[paras 3, 4]*

सत्य-प्रतिलिपि

EKTA SONI
C.T.O. (HO)

Other conditions for claim of input tax credit

xxviii) Appellant further submit that another condition for availing the input tax credit under Section 16(2) is that return under Section 39 is filed by the recipient. Appellant submit that, the return under Section 39 is GSTR-3B return, and that the input tax credit is claimed by them in the said return itself. Therefore, this condition is definitely being fulfilled for admissibility of input tax credit.

xxix) Further, as per the second proviso to Section 16(2) –

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:

xxx) Appellant submits, that it can be inferred from above, that if payment of the consideration along with applicable tax thereon is not made to the supplier within 180 days from the date of invoice, then the entire amount of input tax credit shall be added to the output tax liability of the recipient. In other words, the input tax credit claim has to be reversed if the payment of consideration is not made to the supplier.

xxxi) Appellant submits that, they are making sure that the payment is made to the supplier within 180 days from the date of invoice. For this purpose, whenever the payment is made, a payment voucher is issued from the system and kept in the records with the appellant evidencing the due payment. In some cases, advance payment is made to the vendor for the concerned inputs and therefore this situation is not applicable in those cases.

xxxii) Appellant claims that all the conditions and restrictions prescribed for admissibility of input tax credit have been fulfilled by the appellant. Appellant therefore submit that since as per section 97(2) of the act the advance ruling can be sought in respect admissibility of input tax credit and admissibility of input tax

credit is dependen on fulfillment of conditions and restrictions prescribed in section 16 of the ac read w h rule 36 of the rules.

The question involved is ot pro edural is nature

xxxiii) Appellant further s bmits at the Authority for Advance Ruling has said that it is not a competent authority to give a ruling on a question that is procedural in nature. However, appellant submit that, here, the question is not procedural, but rather one of an interpretation of the condition subject to which input tax credit admissibility is to be determined.

xxxiv) For an apt comparison, Rule 36 enlists various conditions subject to which input tax credit is admissible. Hence, the appellant's question should be viewed as one asking for an interpretation of the said conditions, and to check whether the conditions as prescribed are being fulfilled or not.

xxxv) That the Advance Ruling Authority should have observed that the fulfillment or otherwise of the condition is the very basis on which input tax credit becomes "admissible" hence it cannot be said that the question is procedural in nature. The question has only two possible answers – either "the conditions for admissibility of input tax credit are fulfilled" or "the conditions for admissibility of input tax credit are not fulfilled."

xxxvi) Appellant submits that the question would be termed as procedural if it was asking for the right procedure to be adopted in any given situation. That, such a question is not posed before the authority, only their opinion about the fulfillment of mentioned conditions was asked.

8. PERSONAL HEARING

The appellant was given an opportunity of personal hearing on 20.07.2021 through virtual mode. The appellant was heard through Shri Pradeep Asawa, Chartered Accountant. After hearing the appellant has expressed his satisfaction through a letter and asked for decision.

9. DISCUSSION AND FINDINGS

We have carefully gone through the submissions made by the appellant in his application as well as the submission made at the time of personal hearing and the

सत्य-प्रतिलिपि

EKTA SONI
C.T.O. (HO)

s ibmission made by circle in charge of Circle-3, Commercial Tax Department (SGST), dore.

). We nd that the appellant has contended that the Advance Ruling Authority erred in ruling that this issue is procedural in nature. The appellant further contended that the question raised before the Advance Ruling Authority is not procedural in nature and is specifically asking whether the conditions for availment and admissibility of input tax credit are being fulfilled or not. We find that Section 97(2) of the CGST Act, 2017 governs the questions on which advance ruling can be sought under the Act. Here we will look into Section 97(2) of the CGST, Act, 2017 which is reproduced below:

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.

We find that the question raised by the appellant before the Advance Ruling Authority does not find any place in any clause of Section 97(2) of CGST Act, 2017. We find that the Advance Ruling Authority rejected the application on valid ground because as per provisions of Section 97, advance ruling can be sought on a particular question which must be case specific, supported by facts. Advance Ruling Authority cannot validate any procedure or documents/records related with various transactions of any registered person for the admissibility of Input Tax Credit.

ii). We also find that the Advance Ruling Authority in its Order No.01/2021, rejected the appellant's application as "inadmissible", in terms of first proviso to Section 98(2) of the CGST Act, 2017. At the time of personal hearing, the authorized representative on behalf of the appellant argued that no investigation is pending against M/s Jaideep Ispat and

सत्य-प्रतिलिपि

EKTA SONI
C.T.O. (HO)

Alloys Pvt Ltd (GSTIN: 23AABCJ4896R4ZQ). Rathi Iron and Steel's old GSTIN is 23AACCR2011B2ZD which was merged due to amalgamation with Jaideep Ispat and Alloys Pvt Ltd. On going through the records available before us, we find that according to the submission made by circle in-charge of Circle-3 Commercial Tax Department SGST Indore, vide letter dated 6-1-2021 and dated 8-1-2021, that the advance ruling application was made by GSTIN-23AABCJ4896R4ZQ having legal name- Jaideep Ispat And Alloys Pvt. Ltd and the same company is having another unit namely M/S Jaideep Ispat And Alloys Pvt. Ltd., Unit-II having another GSTIN Number- 23AABCJ4896R2ZS. It was also informed that an adjudication has been made in respect of M/S Jaideep Ispat And Alloys Pvt. Ltd., Unit-II GSTIN Number- 23AABCJ4896R2ZS and demand has also been raised against the appellant. That many points raised by the appellant in the application before the Advance Ruling Authority were considered during the adjudication proceedings.

Now it is imperative to ascertain who can be the applicant.

As per Section 95(c), "applicant" means any person registered or desirous of obtaining registration under this Act.

As per clause 84 of section 2 of CGST Act a "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 person 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;

We find that both GST Numbers belongs to same company and company in its entirety is a person as defined in Section 2(84) of CGST Act. We find that, even though M/S Jaideep Ispat And Alloys Pvt. Ltd has got a new registration for Unit-II, however it is still the same unit which was investigated under section 67 by SGST, Indore.

Now, we will look into Section 98(2) of the CGST, Act, 2017 which is reproduced below:

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

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:

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

We find that the first proviso to section 98(2) of CGST Act, 2017 is very clear, that the authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in case of an applicant under any of provisions of this Act. The question raised by the appellant before us was investigated and adjudicated upon by the Circle-3, Commercial Tax Department (SGST), Indore. We find that Advance Ruling Authority has rightly rejected the appellant's application as per the first proviso to section 98(2) of CGST Act, 2017.

iii). Now, we will look into Section 100(1) of the CGST, Act, 2017 which is reproduced below:

सत्य-प्रतिलिपि

EKTA SONI
C.T.O. (HO)

(1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.

Here we find that section 100(1) mandates that only a ruling pronounced under sub-section (4) of section 98 of CGST, Act, 2017 can be appealed before the Appellate Authority for Advance Ruling. We find that the Advance Ruling Authority in its Order No.01/2021 has rejected the application of the appellant under section 98(2) of CGST, Act, 2017, and it cannot be said to be any advance ruling pronounced under sub-section (4) of section 98 of CGST, Act, 2017, therefore the appellants appeal fails on this count also.

iv). In view of the above, we have no hesitation in concluding that the instant application is not maintainable because it is covered in the first proviso to section 98(2) of the Act. Accordingly, without going into the merits of the case, the appeal deserves to be rejected as it is not admissible in terms of first proviso to section 98(2) of the Act.

ORDER

We uphold the Order No. 01/2021 dated 18.01.2021 passed by Advance Ruling Authority, Madhya Pradesh and the appeal filed by the appellant M/s Jaideep Ispat And Alloys Pvt. Ltd stands dismissed on all accounts.

NAVNEET GOEL
(Member)
Madhya Pradesh Appellate Authority

RAGHWENDRA KUMAR SINGH
(Member)
Madhya Pradesh Appellate Authority

No. 01../2021/A.A.A.R./02

Indore, dated -

Copy to:-

1. The Appellant
2. The AAR, Madhya Pradesh
3. The Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
4. The Commissioner of State Tax, Madhya Pradesh
5. Office Copy

सत्य-प्रतिलिपि

EKTA SONI
C.T.O. (HO)