

AUTHORITY FOR ADVANCE RULING, TAMIL NADU
NO.206, 2ND FLOOR, PAPJM BUILDING, NO.1, GREAMS ROAD,
CHENNAI - 600 006

ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND UNDER
SECTION 98(4) OF THE TNGST ACT, 2017

Members present:

Smt. D. Jayapriya, I.R.S., Additional Commissioner / Member, Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600 034	Smt. N. Usha, Joint Commissioner (ST)/ Member, Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600 006
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Advance Ruling No.106/AAR/2023 Dated:05.09.2023

1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-Section (1) of Section 100 of CGST Act 2017/ TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed, is communicated.
2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act 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.
3. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.
4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.
5. The provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act (herein referred to as an Act) are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

GSTIN Number, if any / User id		33AAIFV5002F1ZK
Legal Name of Applicant		Vijay Flexi Packaging Industries
Registered Address / Address provided while obtaining user id		726A, Anuppankulam, Sivakasi, Virudhunagar - 626189
Details of Application		GST ARA – 01 Application Sl.No.44/2022 dated 04.08.2022
Jurisdictional Officer		State: Sattur-2 Circle, Virudhunagar Division.
Concerned Officer		Centre : Madurai Commissionerate;
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Manufacturer
B	Description (in brief)	The Applicant have imported certain machinery under EPCG Scheme and have availed concessional duty benefit under EPCG Scheme for import of capital goods under Authorisation letter issued by Asst. Director General of Foreign Trade, Madurai. However due to unforeseen circumstances, they could not fulfill the export obligation and have remitted duty amount along with interest.
Issue/s on which advance ruling required		Admissibility of input tax credit of tax paid or deemed to have been paid.
Question(s) on which advance ruling is required		Whether payment of Basic Customs Duty (BCD), Countervailing Duty (CVD), Special Additional Duty (SAD) made on non-fulfillment of EPCG obligation can be taken as Input tax credit under GST.

M/s Vijay Flexi packaging Industries, 726A, Anuppankulam, Sivakasi, Virudhunagar District (herein after referred to as 'the Applicant' herein after) are registered tax payers under GST Act with GSTIN: 33AAIFV5002F1ZK.

2.1. The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017.

2.2 The Applicant has stated that they are partnership concern engaged in the manufacture of printed poly packing materials. During 2011 they have imported certain machinery under EPCG Scheme and have availed concessional duty benefit under EPCG Scheme for import of capital goods under Authorisation letter issued by

Asst. Director General of Foreign Trade, Madurai for a period of 8 years ending 2019. Due to unforeseen circumstances, they could not fulfill the export obligation under EPCG scheme. Therefore, they have remitted duty amount along with interest.

2.3 It is observed from letter addressed by 'the Applicant' to Assistant Commissioner, Custom House, Tuticorin dt.25.09.2020 (submitted with GST ARA-01) that under EPCG License No.3530004648 dt.12.09.2011 'the Applicant' has claimed duty based exemption, however, they were not able to fulfill the export obligation and have paid the duty amount along with interest on 25.09.2020, towards non- fulfillment of export obligation. This payment of duty and interest has been acknowledged by O/o The Commissioner of Customs, Custom House, Tuticorin in letter C.No.VIII/48/605/2015-EPCG Vol III dt.29.09.2020.

3. Now, they have filed an application before the Authority for Advance Ruling seeking ruling whether the Payment of Basic Customs Duty (BCD), Special Additional Duty (SAD) made on non-fulfillment of EPCG obligation could be taken as Input tax credit under GST.

4.1 The concerned State Jurisdiction Officer has submitted following remarks on the issue;

(a) As the Tax Payer has not specified whether they had filed any revised return within the time limit as stipulated under Section 142(9)(2) of CGST with regard to the payment of any amount of Basic Customs Duty (BCD), Countervailing Duty (CVD), Special Additional Duty (SAD) paid on non-fulfilment of EPCG Obligation to be taken as input Credit under CGST Act, the issue cannot be decided by their office. It is further that details such as the status (whether in Use/Sold, details of depreciation claimed if any) has not been mentioned in the application, without which the eligibility as ITC as per CENVAT credit Rules cannot be decided.

(b) With regard to question regarding admissibility of input tax credit under the CGST Act, the details of the machinery imported, such as the nature, type and its usage in manufacturing taxable goods, need to be analysed. However, the taxpayer has neither provided any such details in their application to the AAR, nor submitted to their office and therefore it is not possible to decide the admissibility of the CENVAT credit of the said Machinery.

(c) The State Jurisdiction Officer has further stated that there is no pending proceeding on question raised in the application.

4.2 The concerned Central Tax Authority has not informed about any pending proceeding against the applicant on the question raised. Therefore, it is presumed that there is no proceeding pending against the applicant with the concerned authority on the question raised.

5. The Applicants were offered personal hearing on 16.08.2023, wherein Shri D. Vijayakumar, Accounts Officer and Shri R. Vaishaga Priyan, Authorised Signatory, have appeared for hearing and reiterated the submissions made in the application. On being asked about the details regarding items imported, the representatives replied that they are into the business of printing covers for products like Atta and Masalas and are importing items related to the same from different countries. They were asked about the details of DGFT obligation and whether the same has been completed, to which they replied that the same will be made available at the earliest. They were asked for sample Bill of Entry or any document from Customs. As the same was not readily available with the representatives they asked for time for the submission of the same The representatives under took to submit the following documents viz.

1. Document issued by DGFT
2. Bill of Entry for each country from where goods were imported
3. Detailed write-up of the activity undertaken

However, no documents have been submitted by the Applicant.

DISCUSSION AND FINDINGS:

6. The applicant has filed advance ruling application for admissibility of input tax credit of tax paid or deemed to have been paid which falls within the scope of Section 97(2)(d) of GST Act, 2017, and therefore the application is admissible.

6.1 The question which needs to be answered is whether of Basic Customs Duty (BCD), Countervailing Duty (CVD), Special Additional Duty (SAD) made on non-fulfillment of EPCG obligation can be taken as Input tax credit under GST.

6.2 We have carefully considered the submissions made by the applicant in the advance ruling application and submissions made during the personal hearing and

the comments of the State Jurisdictional Authorities. As the question raised is on the issue of admissibility of input tax credit of tax paid, it is pertinent to discuss the terms 'input tax' and 'input Tax Credit' under the provisions of GST Act. The definition of Input tax and input tax credit is covered under Section 2 of the GST Act, 2017, which is reproduced as under:

(62) **"input tax"** in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—

- (a) the integrated goods and services tax charged on import of goods;
 - (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
 - (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
 - (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
 - (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,
- but does not include the tax paid under the composition levy;

(63) **"input tax credit"** means the credit of input tax;

6.3 The Applicant who is engaged in the manufacture of printed poly packing materials have imported certain machinery under EPCG Scheme during 2011 and have availed concessional duty benefit under EPCG Scheme for import of capital goods under EPCG authorisation No.3530004648 dt.12.09.2011. As per foreign trade policy, when the export obligations are not fulfilled against a particular authorisation, the applicant is required to pay forgone customs duty alongwith interest. As stated by the Applicant, they have failed to fulfil their export obligations within the prescribed time limit, therefore have paid the duty amount along with interest on 25.09.2020.

6.4 Rule 3 of Cenvat Credit Rules allows credit of additional duties of CVD and SAD paid under Section 3 of the Customs Tariff Act, 1975. However, upon the

introduction of Goods and Service Tax Laws w.e.f. 01.07.2017, the levy of CVD and SAD of Customs were subsumed into GST.

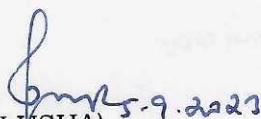
6.5 In the present case the imports relate to a period prior 01.07.2017 and duties as applicable on the date of import was paid by the Applicant. However, in the GST regime, with respect to imported goods, the definition of Input tax and input tax credit as per Section 2 of the GST Act, 2017, (reproduced at para 6.2), includes only IGST charged on imports of goods. There is no provision under the GST Law for availing credit of CVD and SAD.

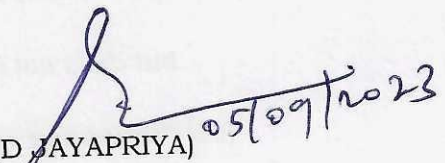
6.6 In case of the Applicant, Basic Customs Duty (BCD), Countervailing Duty (CVD), Special Additional Duty (SAD) along with interest has been paid towards non-fulfilment of prescribed export obligation on import of capital goods under EPCG scheme, which commenced before the implementation of GST and concluded post the implementation of GST.

In view of the above, we pass the ruling as under;

RULING

Payment of Basic Customs Duty (BCD), Countervailing Duty (CVD), Special Additional Duty (SAD) made on non-fulfilment of export obligation under EPCG scheme, cannot be claimed as Input Tax Credit under GST Act, 2017.


(N. USHA)
Member (SGST)


(D. JAYAPRIYA)
Member (CGST)

To

M/s Vijay Flexi packaging Industries,
726A, Anuppangulam, Sivakasi, Virudhunagar - 626189

//BY RPAD//

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Principal Secretary/Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

1. The Commissioner of GST & Central Excise, Madurai Commissionerate,
2. The Assistant Commissioner(ST),
Sattur-2 Circle @ Sivakasi, Commercial Taxes Building, NGO Colony,
Satchiyapuram 626 124.
3. Master File/ Spare – 2.