


GUJARAT AUTHORITY FOR ADVANCE RULING, GOODS AND SERVICES TAX, A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380009.	
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ADVANCE RULING NO. GUJ/GAAR/R/2022/21

(In Application No. Advance Ruling/SGST&CGST/2022/AR/09)

Dated: 12.04.2022

Name and address of the applicant	:	JK Paper Ltd., P.O., Central Pulp Mill, Fort Sonagadh, Tapi, Sonagadh, Gujarat -394660
GSTIN of the applicant	:	24AAACT6305N2Z9
Date of application	:	14-02-22
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(b), (e)
Date of Personal Hearing	:	22-03-22
Present for the applicant	:	Shri Rajesh Ghai, Taxation Head of JK Paper Ltd. and Shri Rashmin Vaja, CA

Brief Facts:

M/s. JK Paper Limited (hereinafter referred to as 'JKPL') have two integrated Pulp, Paper and packaging board Plants. (I) JK Paper Ltd. Unit: JK Paper Mills, having GSTIN No. 21AAACT6305N1ZG which is situated at Jaykaypur Dist. Rayagada, Odisha and the other is (II) JK Paper Ltd. Unit: CPM (hereinafter referred as 'JKPL CPM') , having GSTIN No. 24AAACT6305N1ZA which is situated at Fort Songadh Dist Tapi Gujarat.

2. The application reads that JKPL CPM has undertaken major Expansion and modernization of its plant, for which it is eligible to avail the benefit of State Incentive Scheme as per the Government of Gujarat (GoG) Resolution INC-102018-522243-I dated 15.11.2018. One of the conditions to avail benefits under such incentive scheme is that the JKPL CPM must obtain new GST Registration number for the purposes of such Expansion of its plant. Hence, the existing unit of the JKPL CPM is registered under CGST Act vide registration no. 24AAACT6305N1ZA and for the Expansion project, JKPL CPM has obtained another GST registration no. 24AAACT6305N2Z9 (hereinafter referred to as 'JK-New Unit'), who is the applicant in the present case.

3. JK-New Unit submitted that for Expansion of the manufacturing facility, they procured plant and machinery as well as goods and services on payment of GST. Further, submitted it availed only eligible input tax credit (ITC) of the GST paid on such procurements and ITC of construction related work was not availed.

4. JK-New Unit submitted that later on in 2020, GoG introduced New Gujarat Industrial Policy, 2020 vide Resolution No: MIS-102020-327024-I dated 01.09.2020, introducing a scheme for giving incentives in the form of Capital Subsidy to new capital investments in the State for the manufacturing sector and that it is eligible to avail this scheme.
5. JK-New Unit submitted that as per the said new Industrial Policy, there is no requirement of obtaining separate registration for the Expansion Project. It cannot avail benefit of both schemes viz. State Incentive Scheme notified vide GOG Resolution INC-102018-522243-I dated 15.11.2018 and Capital Subsidy Scheme notified vide New Gujarat Industrial Policy, 2020 vide Resolution No: MIS-102020-327024-I dated 01.09.2020. It is mandatory for them to choose only one scheme and avail the benefit of such chosen scheme and let go the benefit of another scheme.
6. JK-New Unit submitted that it has chosen to avail the benefits available in capital subsidy incentive under the Gujarat Industrial Policy, 2020 instead of benefit in the form of reimbursement of SGST under the State Incentive Scheme, in respect of the Expansion of plant. To avail the benefit of capital subsidy incentive, there is no requirement to have a separate GST registration for the Expansion Project.
7. JK-New Unit submitted that to bring synergy in the manufacturing activities carried out by JKPL CPM at the same location and considering the administrative challenges involved in having two (2) different registration numbers of the same entity at the same location for the same business and to reduce the burden of an additional compliances, the JK-New Unit desires to surrender the GST registration (New GST No. 24AAACT6305N2Z9) taken for the Expansion Project and merge the same with GST registration of existing unit (Old GST No. 24AAACT6305N1ZA) of JKPL CPM by transferring all business assets and liabilities of the New Unit to the existing unit. Upon merger of both GSTINs, closing balance of ITC available in electronic credit ledger of JK-New Unit (GST No 24AAACT6305N2Z9) is proposed to be transferred to electronic credit ledger of existing GSTIN (24AAACT6305N1ZA), which as on 05.02.2022 is Rs. 185,40,68,928/-.
8. JK-New Unit submits that as per Section 18(3) of CGST Act, 2017 read with Rule 41 of CGST Rules, 2017, it intends to transfer closing balance of ITC lying in electronic credit ledger to existing unit (24AAACT6305N1ZA) by filing Form ITC-02 wherein both are registered in same State while transferring of all business assets and liabilities of the New Unit.
9. JK-New Unit has submitted that in case of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason; unutilized ITC

available in electronic credit ledger of transferor can be transferred to transferee by following specified process stated in GST law.

10. JK-New Unit submitted that it can transfer the balance of ITC available in electronic credit ledger to electronic credit ledger of GSTIN of existing unit in accordance with the provisions of GST law. It submitted that following requirements must get fulfilled for transferring unutilized ITC lying in electronic credit ledger of transferor to the electronic credit ledger of the transferee:

- (i) ITC should be available in the electronic credit ledger of transferor, as on effective date of merger/ acquisition/ amalgamation/ lease/ transfer. – Yes, at the time of transfer of all business assets and liabilities from GSTIN of New Unit to GSTIN of the existing unit; ITC balance will be available in the electronic credit ledger.
- (ii) Both, transferor and transferee should be registered under the GST. – Yes, both are registered under GST law.
- (iii) All returns for the past periods have been filed by transferor. There should be no pending. – All relevant GST returns are duly filed by both GSTIN.
- (iv) The transferor shall also submit a copy of a certificate issued by a practicing CA or cost accountant certifying that the sale, merger, transfer of business has been done with a specific provision for the transfer of liabilities. – The same certificate is required to be provided at the time of filing of ITC-02.
- (v) Thereafter, the transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the un-utilized credit specified in Form GST ITC-02 shall be credited to his electronic credit ledger. – Request for acceptance will be sent on filing of GST ITC-02.
- (vi) Also, the inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account. – Yes, it will be duly accounted for in the books of transferee upon successful filing of GST IT -02.

11. JK-New Unit submitted that it desires to surrender GSTIN taken to avail capital subsidy scheme of GOG and merge it by transferring all business assets and liabilities of the said GSTIN to existing GSTIN registered in Gujarat. It is submitted by JK-New Unit that such merging of GSTIN's by transferring all business assets and liabilities from new GSTIN to existing GSTIN shall very well get covered u/r 41 of CGST Rules, 2017 read with Section 18(3) of CGST Act, 2017. JK-New Unit submits that ITC transfer facility available under GST law vide filing of Form ITC-02 shall be made available to them.

12. JK- New Unit has relied upon the order passed by Andhra Pradesh Authority of Advance Ruling on 24.02.2020 in case of M/s. Shilpa Medicare Limited wherein authority has allowed to transfer unutilized ITC from Vizianagaram, Andhra Pradesh unit to Bengaluru, Karnataka Unit by filing of Form ITC-02 in case of transfer of business as a going concern where both the units of Applicant are in different States.

13. Question on which Advance Ruling sought:

1. Due to change in the Government policy, Applicant desires to surrender the GSTIN (24AAACT6305N2Z9) and merge it with existing GSTIN (24AAACT6305N1ZA) of JKPL CPM by transferring all business assets and liabilities to the said existing GST registration. In view of merger of two GSTIN of JKPL CPM, whether the applicant can transfer closing balance of ITC from its GSTIN (24AAACT6305N2Z9) to existing GSTIN (24AAACT6305N1ZA) of JKPL CPM by filing Form ITC-02?"
2. If answer to the above question is in affirmative, whether any additional liability towards payment of Tax or reversal of ITC will arise on the Applicant on account of merger of its GSTIN with GSTIN of existing unit of JKPL CPM in the form of transfer of all business assets and liabilities and on account of filing of Form ITC-02 for transferring ITC from its GSTIN to GSTIN of existing unit?

Personal Hearing

14. Virtual hearing granted on 22-3-22 was attended by Shri Rajesh Ghai, Taxation Head of JK Paper Ltd. and Shri Rashmin Vaja, CA and they reiterated the submission.

Revenue's submission

15. Central Revenue submitted as follows:

The activity of Merger is a proposed activity and the Comments on 2 questions asked in Para 14 of the advance ruling application of M/s JK Paper Limited is submitted as follows:

“Section 18(3) of CGST Act,2017 and Rule 41 of the CGST Rules 2017 deal with the situation of Transfer of Credit on Sale, Merger, Amalgamation, Lease or Transfer of a Business which reads as:

Section 18(3) of the CGST Act, 2017 :

Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

Rule 41 of the CGST Rule,2017:

- (1) A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in FORM GST

ITC 02, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee.

(2) The transferor shall also submit a copy of a certificate issued by a practicing chartered accountant or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.

(3) The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the un-utilized credit specified in FORM GST ITC 02 shall be credited to his electronic credit ledger.

(4) The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

In the instant case on which the application sought for advance ruling, it appears that the transfer of ITC can be allowed subject to fulfilling the conditions as prescribed under Section 18(3) of CGST Act, 2017 read with Rule 41 of the CGST Rules, 2017”.

Findings

16. We have carefully considered the submissions before us. The Questions before us are raised vide clauses (b) & (e) of Section 97(2), CGST Act.

I. Maintainability of Section 97(2)(b) CGST Act:

During hearing, Shri Rashmin Vaja submitted that since CGST Rules are notified through Notifications therefore the present application is maintainable in terms of Section 97(2)(b) CGST.

We refer to Section 95(a) CGST Act; reads that an ‘Advance Ruling’ means a decision provided by the Authority to an applicant **on matters/ questions specified in Section 97(2), in relation to the supply of goods/ services** or both being undertaken or proposed to be undertaken **by the applicant**.

Section 97(2)(b) CGST Act reads that the question on which the advance ruling is sought under this Act, **shall be** in respect of,

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

17. We have read and re-read the Section 95(a) and Section 97(2)(b) CGST Act. We hold that the applicability of a Notification issued under the provisions of this Act shall be a question on which advance ruling is sought on matters relating to supply of goods or services or both. We hold that Notification referred to in Section 97(2)(b) are Notifications issued by the Government in relation to supply of goods/ services or both; such as:

- i. Notifications issued for effective Rate of Tax and applicability of GST on specified goods/services- for example Notifications No. 1/2017-CT (Rate), 11/2017-CT (Rate), 13/2017-CT (Rate);
- ii. Notifications issued for exemption of GST on supply of goods/ services- for example Notifications No. 2/2017-CT (Rate), 12/2017-CT (Rate);

18. The Gujarat Authority for Advance Ruling is a creature of the statute and is bound to pass Rulings within the confines of the statute. We find it improper and contrary to the statutory provisions of GST Act to replace the word 'Notification' in said section 97(2)(b) with the word 'CGST Rules' as submitted by Shri Vaja. We refer to the case law of JSW Energy vs UoI- 2019 (27) GSTL 198 (Bom.) wherein H'ble High Court at Mumbai held that High Court cannot go into merits of decision given by GST AAAR (Appellate Authority for Advance Ruling). Thus it is all the more imperative, not just imperative on us, but we are statutory bound, to pass Rulings within the functional jurisdiction carved out for the AAR vide the statutory provisions of section 97(2) CGST Act. The word used in section 97(2) CGST Act is 'shall', to explain in detail, the advance ruling question shall be in respect of, as per provisions of section 97(2) CGST Act. We shall not trespass and overreach our functional jurisdiction laid down vide Section 97(2).

19. We note that the duties and responsibilities conferred on this Authority by the Parliamentary Act should be exercised in accordance with law. With the said H'ble High Court Order dated 7-6-19 this Authority finds it legal and proper to pass Rulings, as per section 95(a), on matters as stipulated in section 97(2)(b). We find it overreach and encroachment to Rule on matters beyond our statutory and functional jurisdiction as defined in Section 97(2) CGST Act. For to pass Rulings on those matters pertaining to GST scheme of law, beyond the jurisdiction carved in Section 97(2) CGST Act is not proper and legal. For if the submission of Shri Vaja is to be favoured upon by us, issues such as validity of a Notification/ constitutionality or legality of a Notification etal would also have to be admissible as maintainability of AAR Application before us. We find no reason to substitute the phrase 'CGST Rules' for the word 'Notification' referred to in section 97(2)(b). We find no merit in this submission and hold that AAR has its carved out functional jurisdiction to pass Rulings as per Section 97(2). To accept Shri Vaja's submission is to open almost everything under the Sun pertaining to GST; even to decide on legality or correctness of a Notification. We hold that this is not the intention of the competent Legislature while enacting the GST Act. Legislature enacted section 97(2) CGST Act carving the Authority's functional jurisdiction.

20. We note that Revenue is silent on the issue of maintainability under Section 97 CGST Act.

II. JK- New Unit raised a second Question in its application to pass Ruling if the answer to the first Question is affirmative.

III. i. We note that JK-New Unit has cited an Andhra Pradesh Advance Ruling dated 24-2-20 in case of M/s. Shilpa Medicare Limited. We find this case law of no avail, for the twin reasons as follows:

a. The said AAR Ruling was **set aside** by the Andhra Pradesh Appellate Authority for Advance Ruling vide Ruling dated 10-11-20.

b. We refer to **Section 103 CGST Act**, wherein any Advance Ruling is binding on the Applicant who has sought it and on the concerned jurisdictional officer in respect of the Applicant.

21. In conspectus of aforementioned statutory provisions, discussion and findings and with due attention to said **H'ble High Court order dated 7-6-19**, as discussed, we pass the Ruling,

Ruling

For reasons enunciated at I, II, III of findings, we hold the subject Application non maintainable and hereby rejected.

(ATUL MEHTA)
MEMBER (S)

(ARUN RICHARD)
MEMBER (C)

Place: Ahmedabad
Date: 12.04.2022