

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH**Goods and Service Tax****O/o THE COMMISSIONER, COMMERCIAL TAX,****MOTI BUNGALOW,****MAHATMA GANDHI MARG, INDORE (M.P.) - 452007****e-mail :advance.ruling @mptax.mp.gov.in****Phone : 0731- 2437315****PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING**
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017**Members Present**

1. ShriManoj Kumar Choubey
Joint Commissioner

Office of the Commissioner of Commercial Tax, Indore Division-1

2. ShriVirendra Kumar Jain
Joint Commissioner

Office of the Commissioner CGST and Central Excise, Indore

GSTIN Number. If any/User-id	23AAAAB0221D1ZW
Name and address of the applicant	M/S BHOPAL DUGDH SANGH SAHAKARI MARYADIT BHOPAL DAIRY PLANT, HABIBGANJ, BHOPALMADHYA PRADESH(462024)
Point on which advance ruling sought	e. Determination of the liability to pay tax on any goods or services or both
Present on behalf of applicant	CA Aditya Shrivastav
Case Number01../2021
Order dated	17.06 .2021
Order Number	05/2021

PROCEEDINGS

Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)

1. M/s BHOPAL DUGDH SANGH SAHAKARI MARYADIT(hereinafter referred to as the Applicant) is the company that owns and operates BhopalDugdh Sangh Sahkari MaryaditDairy Plant, located at Habibganj in the Bhopal district of the state of Madhya Pradesh (462024). The Applicant is having a GST registration with GSTIN 23AAAAB0221D1ZW.



2. The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

3. BRIEF FACTS OF THE CASE –

3.1. Bhopal Sahakari Dugdh Sangh (referred to as “BSDS” hereafter) is a co-operative society registered under MP Co-operative Societies Act, 1960. It is affiliated to MP State Cooperative Dairy Federation, Bhopal and is in existence since 1977.

3.2. Its major businesses include supply of milk and various milk products like ghee, lassi, butter, buttermilk, sweets, etc. It also supplies fodder for cattle. It covers 11 districts and deals with 22 Milk Chilling Centres in its area of operation. The main Dairy plant of 4.00 lakh liters per day capacity is located at Habibganj, Bhopal.

4. QUESTION RAISED BEFORE THE AUTHORITY –

- 4.1. Will the tax paid by service provider under forward charge absolve the recipient from payment of tax?

5. DEPARTMENT'S VIEW POINT– The jurisdictional officer's view on the question asked by the Applicant is that when notification number 29/2018 dated 31.12.2018 specifically specifies that the liability to pay tax under RCM then payment should be made under RCM. Moreover the jurisdiction officer is of view that the question asked does not come under purview of 97(2) of GST Act.

6. RECORD OF PERSONAL HEARING -

6.1 Mr. Aditya Srivastav, Chartered Accountant and the jurisdictional officer (SGST) appeared for personal hearing through virtual hearing. Mr. Aditya reiterated the submissions already made in the application, and attached additional submissions as follows:

6.2. Government of India, vide notification no. 29/2018 Central Tax (Rate) dated 31.12.2018 has notified “security services provided to a registered person” to be taxable under Reverse Charge Mechanism with effect from 01.01.2019.

6.3 BSDS is an organization with government setup and the top officials are generally appointed by the Govt on deputation. These top officials are not experts in taxation and accounting fields. To overcome this handicap, BSDS had appointed tax consultants and internal auditors for its operations. None of the appointed agencies conveyed the applicability of the amendment to BSDS management.

6.4 The security service providers also did not convey the change regarding the applicability of Reverse Charge on services provided by them and kept on issuing tax invoice for the



same instead of bill of Supply and displaying CGST and SGST on the invoice by contravening Section 31 of the CGST Act, 2017. We paid for the taxes amount charged by the supplier.

6.5 BSDS also has a mechanism of internal control wherein the bill of the security agency was paid only after submission of challans of payment of GST to the government. This had been the practice of BSDS since the beginning so as to ensure revenue collection to the govt. The security agency has also produced all the challans regarding payment of tax amount to the Government.

6.6 The discrepancy that Payment of GST on Security Services was paid Under Forward Charge instead of Reverse Charge Applicability for the Period From January 2019 to August 2020 was noticed in the month of September 2020 and thereafter Subsequent GST Payments were Correctly paid under Reverse Charge.

6.7 We would like to seek an Advance Ruling on the Matter that when the Supplier has paid tax under Forward Charge which was under the purview of Reverse Charge, what is the Relief Available to the Recipient, since the Supplier of Services has already paid the Tax Due on such services on time and at applicable rates.

6.8 The principle of revenue Neutrality is applicable in the case since there has been no loss to the Government and also it is just a procedural flaw causing no impact to the Treasury. Our humble submission in this case is that since there is no loss to government exchequer, our view on the above question is that the Recipient should be absolved from the liability to pay tax under reverse charge.

In connection with our opinion, reliance is placed on the decision in the case of *Lilason Breweries v. CCE* [(2010) 24 STT 279 (CESTAT SMB)], service tax was paid by transporters themselves though the tax was required to be paid under RCM by the recipient. It was held that demand of tax again on the same service is not sustainable. A similar view was taken in *CCE v. Om Tea Company* (2012) 36 STT 91 (CESTAT) and *Umasons Auto Compo Pvt. Ltd. v. CCE* 2017 (47) S.T.R. 377 (Tri. - Mumbai). Similarly, in *Sanjivani SSK Ltd. v. CCE* [(2009) 241 ELT 431 (CESTAT)], excise duty on molasses was paid by the manufacturer (though it was payable by procurer). It was held that the duty cannot be demanded from the procurer as it would lead to double taxation on the same goods. Applying the rationale of the above decisions, a view may be taken that where the tax is already paid by the supplier, though the same was required to be paid by the recipient, there should not be a demand of tax on the recipient. Similar view has been affirmed in Income tax Act, 1961 also vide proviso to section 201 where payer shall not be treated as Assessee in default in case for not deducting tax, if payee has furnished return of income taking into account such sum for computing income in such return of income and has paid the tax due on the income declared by him in such return of income. Thus, the requirement of payment of tax by the recipient when the tax was paid by the supplier (though it was required to be paid by the recipient) for bona fide reasons, liability



should not arise on the Recipient. This must not cast additional liability on the recipient of services and the recipient should also be entitled to take credit of such tax. In cases where the service provider himself charges tax and remits the same to the Government, then service receiver is not liable to pay tax again to prevent double taxation.

At the time of hearing this authority asked to clarify how the application comes under purview of section 97(2) of GST Act. In response the Application replied that the Application comes under section 97(2) (e) i.e. determination of the liability to pay tax on any goods or services or both. The Application also stress the point that once tax has been paid under forward charge then paying that tax again could amount to double taxation.

7. DISCUSSIONS AND FINDINGS – We went through the argument presented by the Applicant and department's view.

The arguments and assertions made by the applicant along with supporting case laws and documents in support of such claims are examined and the following are noted:

1. As per Section 97 of the Central Goods and Services Tax Act, 2017 (CGST Act) and the Madhya Pradesh Goods and Services Tax Act, 2017 (SGST Act), hereinafter referred to as the GST Acts, an application for advance ruling can be made only if the question is in respect of any of the following:

- 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.

2. The applicant in the Advance Ruling has submitted that the present application is in respect of a question about determination of the liability to pay tax on any goods or services or both, meaning that the question is whether the applicant is liable to pay tax on any goods or services or not, within the purview of the GST Acts.

3. In their application, the principal assertion of the applicant is that levying GST on the recipient under reverse charge basis after tax has already been paid by the supplier even though the said supplier was not liable to do so, shall amount to double taxation and therefore it is not sustainable. Before entertaining this advance ruling application, it needs to be considered whether this question can be legally proposed before the Advance Ruling Authority in terms of the law?

4. It becomes important to address this question first since that is the basis on which all the other findings assume their significance. The applicant is proposing a question under the category of 'determination of liability to pay tax'. This category is not specifically defined, and neither is it clearly mentioned anywhere in the Act as to what constitutes a valid question within the meaning of this category. It is therefore pertinent to establish that if the question is to determine the liability to pay tax, it is



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appropriate to first judge if the question proposed before the Advance Ruling Authority is in fact falling under the said category in terms of common parlance.

5. From the principal assertions put forth by the applicant in their application, it appears that the levy of GST on reverse charge basis on security services is being challenged on the grounds that doing so would tantamount to double taxation.

6. While the question proposed before the Authority is whether the liability to pay tax exists or not, the applicant himself is not denying the existence of such a liability. The only assertion is whether the existence of such a liability creates irregularities in respect of tax laws outside the limited applicability of the GST Acts. In other words, the existence of such a liability is not being challenged by the applicant in the current application, rather this is an appeal to merit about the relevance or logic of levying the tax after the same has already been paid by the supplier. In other words, the applicant himself admits that the liability to pay tax exists, and is saying that the liability 'should not' exist since it is against the fundamental principles established by various Hon'ble Courts based on their interpretations of the various statutes. Therefore, the question proposed before the Advance Ruling Authority is not whether the liability exists or not, but whether such a liability is valid/sustainable or not. That is not within the purview of Advance Ruling Authority to decide.

7. Furthermore, this question is proposed in respect of transactions that have already taken place before the question was raised before the Advance Ruling Authority. Hence, it is not a question of whether the tax is payable on reverse charge basis or not, based on understanding or interpretation of the applicability of the notification, but rather it is in respect of a transaction the tax on which has already been paid whether by applicant or by a third party. However, it is an established law that the very essence of Advance Ruling is that the question should be in respect of future transactions and not in respect of transactions that have already taken place.

8. The applicant asserts that the liability should not be payable by the recipient because the same has already been paid by the supplier, even when the applicant himself admits that the principal liability in respect of the said transaction was solely with the applicant being the recipient.

9. Based on the above discussion, this Authority is of the view that based within the meaning of Section 97 of the GST Acts, an application for Advance Ruling can only be made to determine the "liability to pay tax" on any goods or services or both. The Applicant himself accepts that the liability as per the notification comes under RCM, but the Tax has been paid on forward charge. The main stress is on the point of double taxation. Therefore, no application can be made to determine whether the liability is justified / valid or not or whether it shall amount to double taxation or not.

10. Therefore, the current application is not covered within the scope of Section 97 of the CGST Act and thus, the Advance Ruling Authority cannot comment upon the question put forth before them under the said provisions. The application is therefore disposed of as such.



8. Ruling

8.1. In respect to Question, We are of view that the current application is not covered within the scope of Section 97 of the CGST Act and thus, the Advance Ruling Authority cannot comment upon the question put forth before them under the said provisions. The application is therefore disposed of as such.

8.2 The ruling is valid subject to the provisions under section 103 (2) until and unless declared void under Section 104 (1) of the GST Act.

SK
(Manoj Kumar Choubey)
(Member)

SK
(Virendra Kumar Jain)
(Member)

Copy to:- 01/2021/A.A.R/R-28/10

INDORE dated 17/06/2021

1. Applicant
2. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore
4. The Commissioner, CGST & Central Excise, Indore / BHOPL
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

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