

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

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PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING

U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017

Members Present

1. Shri Manoj Kumar Choubey

Joint Commissioner

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

2. Shri Virendra Kumar Jain

Joint Commissioner

Office of the Commissioner CGST and Central Excise, Indore

GSTIN Number. If any/User-id	23ACXFS6393R2ZR
Name and address of the applicant	M/s SUMERU INFRA SOLUTION, Survey No.14/1/2, Sai Petroleum, Khandwa-Baroda Road, Alirajpur, Jhabua(MP)
Point on which advance ruling sought	97(2)(d)admissibility of input tax credit of tax paid or deemed to have been paid.
Present on behalf of applicant	Shri Akash Pladiya, Authorised Representative
Case Number	..12 /2020
Order dated	18/12/2020
Order Number	22/2020

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. The Applicant M/s Sumeru Infra Solution, Survey No.14/1/2, Sai Petroleum, Khandwa-Baroda Road, Alirajpur, Jhabua(MP) is having GSTN number 23ACXFS6393R2ZR and engaged in providing Engineering and Works contract service.

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 The Applicant is providing Engineering /Works contract services in respect of Construction of Fuel pumps, Gas line Installation & Distributions, Installation of Telecom Tower and Prepare Retail outlets for companies.
- 3.2 The Applicant have filed GSTR-1 & GSTR-3B for FY 2018-19 and tax was also paid for all tax periods within the time limits provided in section 16(4) of the CGST Act, 2017. But in the above GSTR-1, in some sales invoices, Wrong Tax Invoice Numbers were uploaded as compared to the invoice number printed on the original invoices issued by the firm.
- 3.3 The applicant stated that the Service Receiver informed in the month of October 2019 that he could not avail ITC due to differences in Invoice Numbers issued by the Applicant. Thereafter, the Applicant amended those invoices (only Invoice Numbers) while filing the GSTR-1 for the month of Oct-2019, There was no amendment made in GST Number, Party Name, Date of Invoice, Taxable Value and Tax thereon. But the Service Receiver could not avail/take ITC for the above amended Invoices, because they were amended in the GSTR-1 of Oct-2019 (i.e. after the time limit specified under section 16(4) of the CGST Act, 2017).

4 QUESTION RAISED BEFORE THE AUTHORITY –

- (i) Can the service receiver take GST credit if the service provider has filed GSTR-1 within the time limit of section 39, but he has amended only invoice number after time limit provided under section 39 of the CGST Act, 2017 ?
- (ii) Is the above ITC restricted in Section 16(4) of the CGST Act, 2017 ?
- (iii) If the Service receiver can not avail ITC on these invoices, then can we get refund of the tax paid on these from the government or issue credit notes against these amended invoices to the service receiver and claim the credit back?

5 DEPARTMENT VIEW POINT :-

The Asstt. Commissioner(Technical) CGST, HQRS. Ujjain vide letter F.No.IV(16)19-95/GST/Tech/Misc.Corres-II/2019-20 dated 22.12.2020 submitted the comments on the question raised by the Applicant, the gist of the comments are as under :-

- (i) Amendment can be made in the later tax period also but the date of revised amended invoice date must be the last date of the original invoice tax period. For example , if an original invoice dated 12.7.2018 is being amended in August then the amended invoice date cannot be later than 31.07.2018.



- (ii) The last date for availing input tax credit relating to invoice issued during the financial year 2018-19, is the last date of filing of Sept.2019 GSTR-3B return i.e. 20.10.2019.
- (iii) Refund is admissible only on the cases as mentioned in under Section 54 of CGST Act, 2017.

6. RECORD OF PERSONAL HEARING –

Shri Akash Paladiya, Authorised Representative appeared on behalf of the Applicant for personal hearing on electronic mode and he reiterated the submissions already made in the application and also reiterated that the questions raised before the Authority is covered under the Section 97(2)(d) of CGST Act, 2017.

7. DISCUSSIONS AND FINDINGS –

7.1 We have carefully gone through the application, provisions and submission of the Applicant, we proceed to decide the case as under :-

7.2 The questions raised by the Applicant are as under:-

- (i) Can the service receiver take GST credit if the service provider has filed GSTR-1 within the time limit of section 39, but he has amended only invoice number after time limit provided under section 39 of the CGST Act, 2017 ?
- (ii) Is the above ITC restricted in Section 16(4) of the CGST Act, 2017 ?
- (iii) If the Service receiver can not avail ITC on these invoices, then can we get refund of the tax paid on these from the government or issue credit notes against these amended invoices to the service receiver and claim the credit back?

7.3. As per Section 20 of the Integrated Goods and Services Tax Act, 2017 (IGST Act) read with Section 97 of the Central Goods and Services Tax Act, 2017 (CGST Act), 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.



7.4. The applicant has submitted that the present application is in respect of a question about admissibility of input tax credit of tax paid or deemed to have been paid, thus the question is covered under the Section 97(2)(d) of the CGST Act, 2017. Before entertaining this advance ruling application, it needs to be considered whether this questions can be legally proposed before the Advance Ruling Authority in terms of the law?

7.5. 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 'admissibility of input tax credit of tax paid or deemed to have been paid'. 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.

7.6 As per the submission of the Applicant and arguments made during the hearing, it observed that the issue on the above question is related to the availment of cenvat credit on the invoices which are to be amended after time limit provided under provisions of CGST Act, 2017 is a procedural issue. Further, it is observed that the question (iii) raised in respect of refund of ITC is also not covered under the Section 97(2)(d) of the CGST Act, 2017 or any other provisions of Section 97(2) of the CGST Act, 2017.

7.7 During the hearing, the Applicant stated that their case is covered under the Section 97(2)(d) of the CGST Act, 2017 but we find that the question raised about the rectification of invoices, filing of returns and refunds of amended invoices . The procedure to prepare invoices and for filing of returns is mentioned in the Section 31 and Section 39 of the CGST Act, 2017. Further in respect of refund of ITC, the circumstances under which the refund is to be claimed has been mentioned under the provision of Section 54/55 of CGST Act, 1944. Hence, we find that the question raised before this authority is purely a procedural and not covered under any of the provisions of Section 97(2) of the CGST Act.

7.8. It is observed that the question (i) and (ii) raised for admissibility of itc to service receiver by the applicant before the authority is not for the applicant but is related to service receiver who receive the services from the Applicant. As per the Section 103 of the CGST Act, 2017, the applicability of advance ruling should be binding only on applicant whereas in this case applicant wants reply for the problem raised/faced by the service receiver not applicant.

7.9 This Authority is of the view that based on the detailed reading and understanding of Section 97 of the CGST Act, an application for Advance Ruling can only be made to

determine the "admissibility of input tax credit" on any goods or services or both. Therefore, no application can be made to admissibility of Input tax credit on the procedural issue.

7.10. Accordingly ruling is being passed.

8. Ruling

8.1. Therefore, this Authority is of opinion 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.

(Signature)

(Virendra Kumar Jain)
(Member)

(Signature)

(Manoj Kumar Choubey)
(Member)

Copy to:- NO.13/2020/A.A.R/R-28/47

INDORE Dated 18/12/2020

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
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

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(Signature)

