
	RAJASTHAN AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX KAR BHAWAN, AMBEDKAR CIRCLE, NEAR RAJASTHAN HIGH COURT JAIPUR – 302005 (RAJASTHAN)	
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ADVANCE RULING NO. RAJ/AAR/2023-24/04

Umesh Kumar Garg Joint Commissioner	:	Member (Central Tax)
Mahesh Kumar Gowla Additional Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/S Mangala Product Private Limited, B-235 Road No. 9, V.K.I. Area Jaipur, 302013 Rajasthan
GSTIN of the applicant	:	08AACCM1206F1Z0
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	(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;
Date of Personal Hearing	:	06.04.2023.
Present for the applicant	:	Adv. Shri Ravi Gupta
Date of Ruling	:	04.05.2023

Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the SGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the SGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / SGST Act would be mentioned as being under the "GST Act".

The issue raised by M/S Mangala Product Private Limited, B-235 Road No. 9, V.K.I. Area Jaipur, 302013 Rajasthan (hereinafter referred to as "applicant"). Applicant is

registered and involve in manufacturing of MS ingots. The issue raised by applicant is not fit to pronounce advance ruling but it falls under the ambit of the Section 97(2) (c), (d) & (e) given as under:

(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

A Submission of The Applicant: (in brief)

The applicant is a manufacturer of MS ingots which falls under HSN 72061090

B Interpretation and understanding of applicant on question rose (in Brief)

The applicant submitted his interpretation which is under-

1. ITC should be eligible on the GST paid on the advertisement expenses mentioned in the question as these expenses are part and parcel of the business. Section 16(1) of the CGST Act, 2017 specifies that every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business.

Whereas, the advertisement expenses is used or intended to be used in the course or furtherance of his business, therefore, ITC should be eligible on GST paid on such expenses.

2. In accordance with the second proviso of rule 28 of the CGST Rules, 2017, it is completely discretion of the directors to charge the consideration as per their choice, to provide personal bank guarantee for sanctioning loan/credit limits to the company.

Rule 28 of the CGST Rules, 2017 specifies that the value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

- (a) be the open market value of such supply;
- (b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;
- (c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order;

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

3. In accordance with proviso of sub section (6) of section 18, the applicant is eligible to pay the tax on the transaction value determined under section 15

of rolling mill metal rolls used in production process of TMT bars. As the expenses of rolling mill metal rolls are revenue in nature and these are not capitalized by the taxpayer being these are consumables for the process and frequently changed in the process of production.

C QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT: -

1. Whether ITC would be eligible on the GST paid on the advertisement expenses like calendars, t-shirts, pens, open bags etc. printed with company name/logo and distributed in business meetings, workshops for advertisement, business promotion, marketing and to build up and maintain public image of the company. The company keeps certain yearly budget for such advertisement expenses.
2. The directors of the company provide personal bank guarantee for sanctioning loan/credit limits to the company. Is there any mandatory minimum percentage of the value of loan that should be charged by the directors from the company in lieu of giving personal bank guarantee for sanctioning loan/credit limits to the company or it is the discretion of the directors to charge the consideration as per their choice, if the recipient is eligible for full input tax credit. Here in the case, whether the consideration charged by the director shall be the value of supply of services?
3. As per sub section (6) of section 18 "in case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:
Provided that where refractory bricks, molds and Dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15. Whereas, the applicant uses rolling mill metal rolls in production process of TMT bars, whether, the applicant is permitted under the proviso of sub section (6) of the section 15 to pay the tax on the transaction value of such goods determined under section 15?

D. PERSONAL HEARING

In the matter personal hearing was granted to the applicant on 06-04.2023. Adv. Shri Ravi Gupta, Authorized Representatives appeared for personal hearing. He reiterated the submission already made in written submission. He also stated for additional written submission. He also stated that he will submit the details of registration, ITC being availed and details of procedure being followed at present by applicant on all three questions since registration. Adv. Shri Ravi Gupta, submitted additional submission vide letter dated 13.04.2023 which are as under-

- 1) As enquired during the personal hearing by your good self we state that effective date of registration of the applicant under GST was 01/07/2017 and return filing status is as per the screenshot attached herewith and marked as ANX-1.
- 2) Whereas, we want to draw attention of your good self on the relevant provisions of the statute as reproduced hereunder:
 - A) Definition of advance ruling given under clause (a) of section 95 of the CGST Act, 2017: "95. Definitions of Advance Ruling- In this Chapter, unless the context otherwise requires,- (a) advance ruling means a decision provided by the Authority or

the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant"; After perusal of above definition it is ample clear that the **activities which are being undertaken is the subject matter of the advance ruling, irrespective of earlier the activity has been undertaken or not.**

B) Section 97(2)(d) reads as "admissibility of input tax credit of tax paid or deemed to have been paid"; As per the golden rule of the interpretation, ITC paid on the activities being undertaken are subject matter of the advance ruling as specified under clause (d) of sub-section (2) of section 97.

C) Further first proviso of sub-section (2) of section 98 specifies as" 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". The above referred proviso specifically confines the scope of advance ruling as when question raised in the advance ruling application is pending or decided in any proceeding, the authority cannot accept the application; simultaneously, it signifies that when the question raised is neither pending nor decided in any proceeding in the case of the applicant for the activities being undertaken or proposed to be undertaken, the advance ruling can be given.

3) That the applicant seeks the advance ruling for the activities being undertaken or proposed to be undertaken by it and the application is not submitted for any past activities, further, the question raised in the application is not already pending or decided in any proceedings in the case of the applicant under any of the provisions of this Act; therefore, your good self may appreciate that the present application is fit to issue ruling on the questions raised.

4) That the definition provided under clause (a) of section 95 signifies that if any activity had already been undertaken in the past by the applicant, that is not the subject matter of advance ruling but if the same activity is being undertaken or proposed to be undertaken that may be very well subject matter of the advance ruling as the law nowhere debars that once the activity is undertaken that can never be subject matter of the advance ruling unless the question raised in the application is already pending or decided in any proceedings in the case of the applicant.

5) That the decision passed in the matter of M/s Shri Vinayak Buildcon – 2022-VIL47-AAAR – Rajasthan and in the matter of M/s Sutherland Mortgage Services INC – 2020-VIL102-KER – High Court of Kerala; also clarifies the scope of advance ruling in consonance to above submission.

6) That as per Constitution of India we are governed by the rule of law and in consonance to the said fundamental principle; the provisions of chapter XVII of the CGST Act, 2017 are framed; which prescribes the specific provision of passing any advance ruling based on the relevant provisions of the law but not on the basis of presumption and assumption. The third limb of the principles of natural justice also prescribes that a judgment/ruling should be speaking in nature and based on the provisions of the law.

7) That with regard to the first question raised in the advance ruling application related to the eligibility of the Input Tax Credit on advertisement expenses, we also want to submit that the term Gift denotes something that is given, especially to show one's affection; while advertisement denotes something that tries to persuade

people to buy a product or service. Here the applicant distributes the printed material to promote its product and to build up market image of the organization. These activities attract the prospective customers and these are not on account of love or affection, therefore, this Hon'ble authority may appreciate that input tax credit on such activity should be eligible.

8) That with regard to the second question raised in the advance ruling application related to the bank guarantee given by director of the company, we want to rely upon the recent judgment passed by Hon'ble Supreme Court of India in the matter of Commissioner of CGST & Central Excise V/s M/s Edelweiss Financial Services Limited, 2023 Taxscan (SC) 142.,

E. COMMENTS OF THE JURISDICTIONAL OFFICER

The Jurisdictional Deputy Commissioner State Tax, Circle-A, Zone-4, Jaipur has given his comments vide his letter 1397 dated 15.11.2022 which is as under-
QUESTION AND ANSWER FOR WHICH THE PRESENT AAR HAS BEEN FILED

1. Whether ITC would be eligible on the GST paid on the advertisement expenses like calendars, t-shirts, pens, open bags etc. printed with company name/logo and distributed in business meetings, workshops for advertisement, business promotion, marketing and to build up and maintain public image of the company. The company keeps certain yearly budget for such advertisement expenses. This question is permissible as per Section 97 (2)(d) of the CGST Act, 2017.

Ans. Yes, As per section 16 and 17 of CGST/SGST Act 2017

2. The directors of the company provides personal bank guarantee for sanctioning loan/credit limits to the company. Is there any mandatory minimum percentage of the value of loan that should be charged by the directors from the company in lieu of giving personal bank guarantee for sanctioning loan/credit limits to the company or it is the discretion of the directors to charge the consideration as per their choice, if the recipient is eligible for full input tax credit.

Here in the case, whether the consideration charged by the director shall be the value of supply of services?

This question is permissible as per Section 97 (2)(c) & (e) of the CGST Act, 2017.

Ans- As per section 9(3) & 9(4) of the Central Goods & Services Tax Act, 2017/ Rajasthan Goods & Services Tax Act, 2017 (CGST/SGST Act) read with S. No. 6 of Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017 prescribed that services supplied by director of a company or a body corporate to the said company or the body corporate located in the taxable territory than the recipient of service shall pay GST on Reverse Charge Mechanism (RCM), As per the provisions of Section 7(1)(c) read with Para-2 of Schedule-1 of the Central Goods & Services Tax Act, 2017/ Rajasthan Goods & Services Tax Act, 2017, supply of services between related persons or between distinct persons as specified in Section 25 shall be treated as supply even if made without consideration hence, the transactions of providing guarantee by the directors to the banks for the Taxpayer's loans is a taxable transaction, For the valuation of transaction of providing guarantee to the banks to the banks for the Taxpayer by the directors, the rates available of various banks in market who also gives bank guarantees to other may be referred under rule 28(b) of Valuation Rules, 2017. This service is classifiable under Financial Services & Related Services-SAC 9971 attracting GST @18%, Sr. No.15(vii) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as amended, Financial guarantee to bank for a loan of company by its directors is a transaction between related persons. It is during business or furtherance of business. Such a transaction is a supply of services in terms of section 7 of the Central Goods & Service Tax Act, 2017 / Rajasthan Goods & Services Tax Act, 2017. It clearly qualifies for the definition of related person in terms of Section 15(5) of the Central Goods & Service Tax Act, 2017 / Rajasthan Goods & Service Tax Act, 2017, wherein

it is stated that Persons shall be deemed to be related if one of them controls the directly or indirectly. Here being major stake holder, directors control the Taxpayer directly or indirectly, so director as well as Taxpayer are related persons. Hence, as per Schedule-I, such service/transaction is taxable service even without consideration.

Further, A bank guarantee refers to a commercial or financial instrument that is provided by a bank in case the actual customer fails to meet his/her obligations. The bank will pay on behalf of the guarantee assures that money will be repaid if the party does not complete a particular project or operation entirely, According to financial guarantee agreement when there is delay in completion of the project, the bank will make the payment."

3. Q-As per sub section (6) of section 18 "in case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:

Provided that where refractory bricks, moulds and Dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

Whereas, the applicant uses rolling mill metal rolls in production process of TMT bars, whether, the applicant is permitted under the proviso of sub section (6) of the section 15 to pay the tax on the transaction value of such goods determined under section 15?

This question is permissible as per Section 97 (2)(e) of the CGST Act, 2017.

Ans. Yes, Applicant is eligible to pay the tax on transaction value determined under section 15 of CGST /RGST Act 2017 of rolling mill metal rolls used in production process of TMT bars.

F. FINDINGS, ANALYSIS & CONCLUSION:

At the outset we would like to make it clear that the provisions of CGST Act and RGST Act are in parimateria and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the RGST Act

1) We have carefully examined the statement of facts, supporting documents filed by the Applicant along with application, oral and written submissions made at the time of hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts. We would like to discuss the submission made by applicant and will take up the above question for discussion one by one.

2)As per written submission made by the applicant i.e M/S Mangala Product Private Limited, B-235 Road No. 9, V.K.I. Area Jaipur, 302013 Rajasthan (hereinafter referred to as "applicant"), a manufacturer of MS ingots which falls under HSN 72061090.

The question of law raised by the Applicant are -

(i) Whether ITC would be eligible on the GST paid on the advertisement expenses like calendars, t-shirts, pens, open bags etc. printed with company name/logo and distributed in business meetings, workshops for advertisement, business promotion, marketing and to build up and maintain public image of the company. The company keeps certain yearly budget for such advertisement expenses.

(ii) The directors of the company provide personal bank guarantee for sanctioning loan/credit limits to the company. Is there any mandatory minimum percentage of

the value of loan that should be charged by the directors from the company in lieu of giving personal bank guarantee for sanctioning loan/credit limits to the company or it is the discretion of the directors to charge the consideration as per their choice, if the recipient is eligible for full input tax credit.

Here in the case, whether the consideration charged by the director shall be the value of supply of services?

(iii) As per sub section (6) of section 18 "in case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:

Provided that where refractory bricks, molds and Dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15. Whereas, the applicant uses rolling mill metal rolls in production process of TMT bars, whether, the applicant is permitted under the proviso of sub section (6) of the section 15 to pay the tax on the transaction value of such goods determined under section 15?

3) Applicant submitted a brief note in respect of fitment of case under advance rulings and tried to justify the fitness of application for advance ruling. It is relevant to mention here that the applicant filed his application for seeking advance ruling on 15.10.2022 and activities of supply, payment of GST and submission of GST returns taken places since long back and to interfere the matter which already taken place is out of preview of Advance Ruling and can only be decided by competent authority under which jurisdiction of GST paid and GST returns has been submitted.

4) we have gone through the additional submission made by applicant on 13.04.2023 and held that applicant has not disclosed the practice already being followed by him in previous period, however at this time of juncture, we held that when there is no misunderstanding of law or no dispute of tax rate, applicant only seek clarification on the practice opted by him in past in relation to matters on which advance ruling is sought.

4.1) we found that the question put before the authority are in vague in nature for example applicant has not specifically mentioned what kind of marketing is done through distribution of goods whereas he is involved in manufacturing of MS Ingot. We observe that T shirt or other items which are distributed do not constitute a part of furtherance of business or used in course of business. Furthermore, these items are distributed free of cost and for personal use so ITC on such items is block ITC under Section 17 (5)(g) & (h). Similarly, the GST is to be paid by applicant under RCM in light of section 9(3) & 9(4) of the Act read with S. No. 6 of Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017 on directors guarantee given to bank for applicant and valuation is to be decided under Rule 28(2) of Rules read with Section 15(4) & 15(5). We observe that applicant claimed that he is involved in manufacturing of MS Ingots than how he will use these mould in manufacturing of the TMT Bar as said in question no 3.

5) We shall now examine the provisions of laws as laid down under the GST Act for the purposes of advance rulings. Chapter XVII of the GST Act comprising of Sections 95 is relevant provisions for advance ruling purposes.

(i) As per Section 95 of CGST Act, 2017; this authority shall decide on matters or on questions specified in sub-section (2) of Section 97, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken, by the applicant and "Authority" means the Authority for Advance Ruling, constituted under Section 96. Thus Section 95 allows this authority only to decide on matters or on questions in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant i.e. in the subject case this application can be entertained only if the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant itself. In this case, we find that the Applicant already taken place the supply in question, GST is being paid since implementation of GST law and monthly GST returns also being filed.

Thus Section 95 allows this authority only to decide on matters or on questions in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant i.e. in the subject case this application can be entertained only if the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant itself. The applicant is not supplier of service in respect of question no 2 wherein director is supplier of service, further valuation of any supply may be determined on the facts produced before authority, here applicant has raised a vague question without submitting details of transaction of an specific supply.

Further, As per Section 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.*

(ii) From the above-mentioned provision, it is seen that this authority is constituted to decide on matters or questions specified in sub-section (2) of Section 97, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

(iii) We observe that purpose of Advance ruling is to provide certainty of tax liability in advance in relation to a future activity to be undertaken by the applicant and help the applicant in planning about GST liability on activities well in advance along with proper interpretation and understanding of tax laws. Advance rulings can be given only for a proposed transaction & matters related to qualify for advance ruling whether it will be undertaken or proposed to be undertaken. We also observe that advance ruling under GST can be obtained for a proposed transaction as well as a transaction already undertaken by the appellant but the transactions on which GST is being paid are out of preview of advance ruling.

(iv) Moreover, on gone through the facts of the case, the applicant has not disclosed the practice already being followed by him in previous period. We observe that applicant filed their application before the Rajasthan Authority for Advance Ruling (RAAR) on 15.10.2022 i.e. much later from the discharging his GST liability. We also find that Section

17(5) (g) & 17(5)(h) on question no one, Section 15 (1) & Section 15(5) on question no 2, and Section 18(6) on question no 3 are very much clear and there is no ambiguity in these section. We observe that the applicant is well aware about the sections and discharging his tax liability in accordance to them.

(v) We observe that applicant motto is to find out whether the mechanism opted by him for payment of GST on said service is right or wrong, which is against the spirit of advance ruling.

(vi) We observe as the ruling given by the AAR is binding on the applicant and the Government authorities, applicant who is registered since beginning in GST and a manufacturer, sought ruling after around 64 months. Applicant has not submitted the practice being followed by them on the question raised before AAR.

(vii) From the above definition, it is very much clear that the scope of the ruling for Authority for Advance Ruling (AAR) is limited to the transactions being undertaken or proposed to be undertaken on the matters which are not sorted out. In the instant case, the application seeking advance ruling was filed on 15.10.2022 before the RAAR with respect to supplies already being undertaken, GST being paid and GST returns has been submitted. Hence, the case is out of the purview of the Advance Ruling.

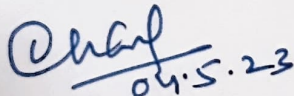
In view of the foregoing, without going into the merits of the case, we rule as under: -

In view of the foregoing, we rule as follows: -

RULING

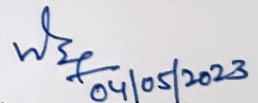
(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Rajasthan Goods and Services Tax Act, 2017)

As the questions posed by the applicant is related to supplies undertaken by them prior to the date of filing of the application for advance ruling before the Authority thus, no ruling is being pronounced on the question under the provisions of the GST Act, 2017


04.5.23

(Umesh Kumar Garg)

MEMBER
CENTRAL TAX


04/05/2023

(Mahesh Kumar Gowla)

MEMBER
STATE TAX

SPEED POST

M/S Mangala Product Private Limited, B-235 Road No. 9, V.K.I. Area Jaipur, 302013
Rajasthan

F. No. AAR/SF/2023-24/29-33

Date: 04/05/2023

Copy to: -

1. The Chief Commissioner, CGST and central Excise, (Jaipur Zone), NCRB, Statue Circle, Jaipur, Rajasthan 302005
2. The Chief Commissioner, State Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
3. The Pr.Commissioner, CGST and Central Excise Commissionerate Jaipur, Rajasthan.
4. The Dy. Commissioner, STATE TAX, Circle-A, Jaipur-IV, Divisional Kar Bhawan.

