

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH
4, Vibhuti Khand, Gomti Nagar, Lucknow

PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING U/S. 98 OF
THE GOODS AND SERVICES TAX ACT, 2017

Sub:- GST ACT, 2017 – Advance Ruling U/s 98 – liability to tax under GST Act in respect to application dated 02.07.2018 received on 09.07.2018 from M/s. Varun Beverages Limited, Greater Noida, Uttar Pradesh – Order– Reg.

M/s. Varun Beverages Limited, Plot No.2, Udyog Vihar, Surajpur By Pass, Greater Noida, Uttar Pradesh 201306 (here in after called the applicant) is a registered assessee under GST having GSTN : 09AAACV2678L1ZS.

The Applicant intends to manufacture and sell carbonated soft drinks (CSDs) and non-carbonated beverages (NCBs) sold under trademarks owned by Pepsico.

The Applicant has submitted application for Advance Ruling dated 02.07.2018 enclosing duly filled Form ARA-01(the application form for Advance Ruling) along with annexure and attachment.

The Applicant in his application sought following question for determination by the Authority –

- a) How to transfer the portion of input tax credit as belonging to Sandila unit (covered by the Infrastructure & Industrial Investment Policy 2012 of the State of Uttar Pradesh for claiming refund of UP GST component paid in cash in the prescribed percentage of the Policy), lying in common electronic credit ledger of one common UP registration opted for 7 units including Sandila unit while migrating to the GST regime with effect from July 2017?



The applicant was granted a personal hearing on 07.09.2018. Shri Rajeev Kumar Rai, Assistant Vice President and Shri Bimal Jain, Authorized representative appeared for hearing. During the personal hearing party submitted/intended:-

- a. They seek clarification regarding provisions/procedures for transferring portion of Input Tax Credit belonging to Sandila Unit.
- b. During application they have attached Annexure on relating facts and legal provisions relating to issue.
- c. They intended to clarify the procedure mentioned by them by this Advance Ruling Authority.

On the basis of the facts disclosed in the application, the oral and written submission made at the time of personal hearing and the documents produced during the personal hearing, it was decided to admit application.

The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report.

The Applicant submitted that the applicant is a Public Limited Company incorporated under the erstwhile Companies Act, 1956, situated at Plot No. 31, Institutional Area, Sector - 44, Gurgaon - 122002, Haryana.

The Applicant also submitted that they are the second largest franchisee in the world (outside US) of carbonated soft drinks ("CSDs") and non-carbonated beverages ("NCBs") sold under trademarks owned by PepsiCo and a key player in the beverage industry. PepsiCo CSD brands sold by the Company include Pepsi, Diet Pepsi, Seven-Up, Mirinda Orange, Mirinda Lemon, Mountain Dew etc. PepsiCo NCB brands sold by the Company include Tropicana (100%, Essentials & Delight), Tropicana Slice, Tropicana Frutz, Seven-Up Nimbooz and Quaker Oat Milk as well as packaged drinking water under the brand Aquafina.

It was submitted that as on March 2018, VBL has 20 manufacturing plants in India, out of which 7 manufacturing plants are in the State of Uttar Pradesh.



Prior to the year 2017, the Company was operating 6 manufacturing plants in Uttar Pradesh viz., Gr. Noida 1, Gr. Noida 2, Kosi, Sathariya 1, Sathariya 2, & Jainpur ("**other UP units**"). The Company had taken Central Excise registration separately for all the 6 units in Uttar Pradesh and a single UP VAT registration for all the units.

It was submitted that in the year 2017, that the Company installed a new plant in Sandila, dist. Hardoi, Uttar Pradesh ("**Sandila unit**") under the **Infrastructure & Industrial Investment Policy - 2012 of the State of Uttar Pradesh** ("**the UP Industrial Investment Policy**") for Mega Projects, thus, totaling to 7 nos. of manufacturing plants in Uttar Pradesh.

They submitted that the commercial production in Sandila unit commenced on May 3, 2017 and in pre-GST era, the Company had taken Central Excise registration separately for Sandila unit and included Sandila unit in then existing VAT registration of the State.

They submitted that with the implementation of GST in country India w.e.f. July 1, 2017, VBL migrated to GST and Sandila unit was registered with all other units in the State of Uttar Pradesh with GSTN 09AAACV2678L1ZS.

The Applicant submitted that at the end of the financial year 2017-18, the Company decided to have a separate business vertical registration for Sandila unit out of its all other UP units as new plant was installed under the UP Industrial Investment Policy. VBL has taken the registration for Sandila unit vide GSTN 09AAACV2678L3ZQ w.e.f. April 28, 2018 but not yet started operations in this registration till the time, and requested to pronounce the order in this regard.

UP Industrial Investment Policy for Mega Project:

It is submitted that to establish Uttar Pradesh as the most preferred destination for investment by attracting investors, thereby accelerating the economic growth and creating vast employment opportunities, resulting in qualitative improvement in the living standard of people, the UP Industrial



Investment Policy was introduced in the year 2012 encouraging investment both in Infrastructure and Industry.

Mega Projects under the UP Industrial Investment Policy means private or joint sector (in which the equity of government or any public sector enterprise is less than or equal to 49%), industrial units with proposed investment of Rs. 200 Crore or more, which act as anchor units in their respective fields, provide employment on large scale and promote micro and small sector industrial units of their field extensively. A huge capital investment is made by such units which brings indirect benefits to the State.

In order to attract capital investment and to transform the State of Uttar Pradesh into most competitive investment destination globally, UP State Government promoted setting up of Mega Projects by offering taxation and other investment benefits to the Companies keen to make investment in the specified areas of the State.

The Applicant submitted that following Benefits/Reliefs granted to VBL in respect of Sandila unit under the UP Industrial Investment Policy for Mega Project:-

Vide letter C. No. PICUP/Mega Projects/Varun/2072 dated February 2, 2017, VBL was issued "Letter of comfort under Infrastructure & Industrial Investment Policy-2012 for Mega Projects (Investment Category — Rs. 200 crore to Rs. 500 crore)" by the Pradeshia Industrial & Investment Corporation of U.P. Ltd. ("PICUP"), allowing the application of the Company for granting facilities/reliefs for their green field project for manufacturing Pepsi brand soft drinks, packaged drinking water, PER packaging products with a capital investment of Rs. 437.96 crores at UPSIDC Industrial Area, Sandila, Distt. Hardoi (Central Region) in the State of Uttar Pradesh.

The project of the Company was allowed to avail benefits under the Mega Project category applicable for capital investment from Rs. 200



crore to Rs. 500 crore in accordance with G.O. No. 2563/77-6-16-L.C.66/2016 dated December 21, 2016 ("G.O."), subject to the conditions mentioned therein.

The G.O., *inter alia*, entitles VBL for refund of 80% of the total taxes i.e. VAT/CST and GST, which have become due and have been deposited into the State Government exchequer (i.e. paid in cash), along with other benefits as to stamp duty etc.

Accordingly, in pre-GST era, the Company was availing benefit of 80% of the VAT and CST paid on account of the following:

- (a) Sales made within the State (VAT); and
- (b) Sales in the course of Inter-State trade and commerce (CST).

Since, the facilities/reliefs were granted to the Company for a period of 15 years, the benefits still accrue to the Company in GST regime in respect of Sandila unit in the State of Uttar Pradesh. However, in terms of condition no. 10 of the G.O., w.e.f. July 1, 2017, the Company is entitled to get refund of 80% of the amount of UP Goods and Services Tax ("UP GST") paid in cash to Uttar Pradesh State Government exchequer, quantum of which was quite low due to high amount of Integrated Goods and Services Tax ("IGST") credit available in all the units taken together, which can be used for payment of UP GST liability.

The applicant submitted that with separate registration taken for Sandila unit, now the Company is facing the problem of transferring input tax credit pertaining to Sandila unit lying in the common E-credit ledger of the UP registration.

DISCUSSION AND FINDING

We have heard the Case, gone through the grounds of the appeal as well as the submissions made during the personal hearing.

We observe that the applicant sought question **to determine liability to pay tax on common input tax credit** to unit registered as a separate



business vertical that “how to transfer the portion of input tax credit as belonging to their Sandila unit (covered by the infrastructure & industrial Investment policy 2012 of the State of Uttar Pradesh for claiming refund of UP GST component paid in cash in the prescribed percentage of the Policy), lying in common electronic credit ledger of one common UP registration opted for 7 units including Sanila unit while migrating to the GST regime with effect from July 1, 2017.”

We observe that the Section 97(2) of the GST Act specifies the question on which Advance Ruling is sought, shall be in respect 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.

We observe that the question for determination under the advance ruling does not come under the ambit of the specification as provided by the Section 97(2) of the GST Act on which Advance Ruling is being sought.

In view of the above, we find that the clarification as required by the party do not falls within the specification as provided by Section 97(2) of the GST Act.

In view of the above, we rule as under;




RULING


The point wise clarifications are as under:-

How to transfer the portion of input tax credit as belonging to Sandila unit (covered by the Infrastructure & Industrial Investment Policy 2012 of the State of Uttar Pradesh for claiming refund of UP GST component paid in cash in the prescribed percentage of the Policy), lying in common electronic credit ledger of one common UP registration opted for 7 units including Sandila unit while migrating to the GST regime with effect from July 2017?

Ans. – The question for determination under the advance ruling does not come under the ambit of the specification as provided by the Section 97(2) of the GST Act.


24/9/18

Dinesh Kumar
Member of Authority for Advance
Ruling


24/9/18
R K Khandelwal
Member of Authority for Advance
Ruling

