

**THE AUTHORITY FOR ADVANCE RULING IN HIMACHAL PRADESH**

(Constituted under Section 96 of CGST Act, 2017/ HPGST Act, 2017)

**BEFORE THE BENCH OF**

1. Sh. Rakesh Sharma, Additional Commissioner of State Taxes and Excise (Member- State Tax)
2. Sh. Abhay Gupta, IRS, Joint Commissioner of Central Tax (Member- Central tax)

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| <b>Name &amp; Address of the Party</b>   |                               | <b>M/s Aditya Industries, Trilok Pur Road Industrial road, Kala Amb, District Sirmour (H.P.)</b>   |
| <b>GSTIN of the Applicant</b>  |                               | <b>02AAKFA1378H1ZP</b>   |
| <b>Date of filing of Application in Form GST ARA-01</b>                                    |                               | <b>30.11.2019</b>  |
| <b>Nature of activity(s) (proposed/ present) in respect of which advance Ruling sought</b> |                               |  |
| <b>A</b>   | <b>Category</b>               | <b>Factory/ Manufacturing</b>  |
| <b>B</b>   | <b>Description (in brief)</b> | <b>M/s Aditya Industries is a partnership duly registered under CGST/SGST &amp; IGST Act bearing registration no. 02AAKFA1378H1ZP having its registered office at Trilok Pur Road Industrial road, Kala Amb, District Sirmour (H.P.) and engaged in the manufacture of various iron and steel items namely TMT Bars under HSN 7214, M.S. Ingots under HSN 7207, Girder under HSN 7207 etc., all chargeable to GST @ 18%, whereas the major raw materials is MS Scrap (HSN 7204), Sponge Iron (HSN 7203) and Silicomanganese (HSN 7202), all attracting GST @ 18%. The raw material is melted in the furnace and then the output in the melted form is further processed to achieve the finished product.</b> |

| Issues on which Advance Ruling is required                            | Admissibility of input tax credit of tax paid or deemed to have been paid   |
|---|---|
| Questions on which Advance Ruling is required                         | <p><b>Q1:</b> Whether the input tax credit availed by the applicant is subject to rejection solely on the ground that the tax collected by the supplier of the raw material from the applicant is not paid to the government in cash</p> <p><b>Q2:</b> Whether the input tax credit availed by the applicant is subject to rejection solely on the ground that the tax collected by the supplier of the raw material from the applicant is paid to the government through utilization of ineligible input tax credit.</p> |
| Whether the payment of fee discharged, if yes then the amount and CIN | <b>SBIN191102000053128 Dated 30.11.2019</b>   |

### PROCEEDINGS

(Under Section 98 of the Central Goods and Service Tax Act, 2017 and the Himachal Pradesh Goods and Service Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Himachal Pradesh Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and HPGST Act” respectively] by **M/s., Aditya Industries, Trilok Pur Road Industrial road, Kala Amb, District Sirmour (H.P.)** the applicant, seeking an advance ruling in respect of the following questions.

**Q1: Whether the input tax credit availed by the applicant is subject to rejection solely on the ground that the tax collected by the supplier of the raw material from the applicant is not paid to the government in cash**

**Q2: Whether the input tax credit availed by the applicant is subject to rejection solely on the ground that the tax collected by the supplier of the raw material from the applicant is paid to the government through utilization of ineligible input tax credit.**

At the outset, we would like to make it clear that the provisions of both the

CGST Act and the HPGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the HPGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and HPGST Act.

## **2. FACTS AND CONTENTION – AS PER THE APPLICANT**

The submissions of the applicant are as under: -

- 2.1 That the applicant is a partnership firm running under the name and style of M/s Aditya Industries situated at Industrial Area, Trilokpur road, Kala Amb, Tehsil Nahan, Distt. Sirmour, Himachal Pradesh originally registered under the provisions of Himachal Pradesh Value Added Tax Act, 2005 ('HP VAT Act') and under Central Sales Tax Act, 1956 vide TIN No. 02040400174 and migrated into GST vide GSTIN 02AAKFA1378H1ZP.
- 2.2 That the applicant, is engaged in the manufacture of various iron and steel items namely TMT Bars under HSN 7214, Ingots under HSN 7207 etc, all chargeable to GST @ 18%, whereas the major raw materials is MS Scrap (HSN 7204), Sponge Iron (HSN 7203) and Silicomanganese (HSN 7202), all attracting GST @ 18%.
- 2.3 That the major raw material i.e. MS Scrap (HSN 7204) procurement is made from the registered scrap dealers, who while making the outward supply charges goods and service tax (hereinafter referred as "tax") at prescribed rate in the Tax Invoice from the applicant in compliance with the Central Goods and Service Tax Act, 2017 (hereinafter referred as "CGST Act, 2017")
- 2.4 That in order to safeguard any wrong trade practices from the scrap dealers, which is an unorganized sector, the applicant has adopted a policy where the payment in relation to tax component charged by the scrap dealer on Tax Invoice (i.e supplier of raw material) is made upon matching the details of inward supplies made by the applicant from the respective supplier with the details as appearing GSTR 2A of the applicant, which is a self-generated return on the basis of the

data reported by the respective supplier in their return of outward supply i.e. GSTR 1 for the respective month.

- 2.5 That the applicant makes the payment in relation to tax component only after ensuring that the supplier of raw material (i.e. Scrap dealer) has filed his return of outward supply i.e. GSTR 1 and the relevant Tax Invoices against the outward supply from the supplier, is reported by the supplier in his GSTR 1 by matching the Tax Invoices with GSTR 2A appearing on the applicant's portal against the inward supplies made by the applicant.
- 2.6 That the applicant makes all the remittances against consideration for raw material procured or freight charges for transportation by road through banking channel which can be linked through bank statements.
- 2.7 That the applicant takes all the bona fide steps and measures to ensure that all the relevant conditions as provided under Section 16(2) of the CGST Act, 2017 is fulfilled. The extract of the relevant provision is as under:

*"S.16(2): Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services of both to him unless, -*

*(a) He is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;*

*(b) He has received the goods or services or both*

*(c) Subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and*

*(d) He has furnished the return under section 39:*

*Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his outward tax liability, along with interest thereon, in such manner as may be prescribed"*

2.8 That to sum up the conditions as given in Section 16(2) read with Section 17(5) to decide the eligibility of Input tax credit and position of the applicant on fulfilment of such conditions are as follows:

| S.No. | Conditions as provided under Section 16(2) read with Section 17(5)             | Condition fulfilled by the applicant   |
|-------|--|--|
| 1.    | Possession of Tax Invoice issued by the registered Supplier                    | Applicant is in possession of all the Tax Invoices in original with supporting documents namely Consignment note issued by the transporter; Copy of E Way Bill; Weighing slip (kanta parchi); Toll slips etc |
| 2.    | Receipt of Goods by the Receiver   | Applicant has received the goods which is duly recorded in the inward register placed at the main gate of the principal place of business  |
| 3.    | Payment of Tax charged in respect of supply, to the Government by the Supplier | Applicant ensures all the available methods provided by the department to ensure that the supplier reports the supplies in his valid returns and then makes the payment pertaining to tax                    |
| 4.    | Furnishing of return under Section 39  | Applicant has furnished all the valid returns under Section 39   |

|    |  |  |
|----|--|--|
| 5. | Payment of amount towards the value of supply along with tax payable, to the supplier within 180 days from the date of issue Invoice | Applicant makes payment in relation to value of goods on receipt of goods and payment in relation to tax on matching the details of inward supply procured by the applicant with the details as appearing in the applicant's GSTR 2A (which is self-generated return on the basis of data reported in the return of outward supply i.e GSTR 1 by the supplier). Nowhere the outstanding payment exceeds the timeline of 180 days on the part of the applicant. |
| 6. | Input Tax credit is not in relation to blocked credits as provided under Section 17(5)   | Input tax credit is not in relation to the blocked credits as provided under Section 17(5) of the CGST Act, 2017   |

2.9 That the applicant has taken all the bona fide steps to ensure that all the conditions to avail Input tax credit is fulfilled and the revenue of the Government is secured at every stage.

2.10 That the applicant also verifies whether the suppliers of the applicant has filed their returns under Section 39 i.e GSTR 3B through which the payment of tax charged by the supplier is made to the Government, which is filed as per the online Goods and Service Tax portal.

2.11 That the applicant exhausts all the available mode to ensure the reporting of the outward supplies made by the supplier to the applicant but the cannot go beyond the systems to ensure actual payment made by the supplier of the tax collected

from the applicant or decide the eligibility of the input tax credit availed by the supplier.

2.12 That the law empowers the department and tax authorities to ensure the matching of the returns filed by any assessee and legitimate tax payments, which at any strength of attempt not available with the applicant.

2.13 That on the basis of the facts provided, the applicant seeks this advance ruling from the Ld' authorities of Advance Ruling on the following broad Questions: (also mentioned separately in point 14 of the AAR application)

**Q1: Whether the input tax credit availed by the applicant is subject to rejection solely on the ground that the tax collected by the supplier of the raw material from the applicant is not paid to the government in cash**

**Q2: Whether the input tax credit availed by the applicant is subject to rejection solely on the ground that the tax collected by the supplier of the raw material from the applicant is paid to the government through utilization of ineligible input tax credit.**

2.14 Further, the applicant party vide their letter 5.06.2020 filed an amended application to their original application which reads as under:

That the questions on which Advance Ruling is required as mentioned in Point 14 of Form GST ARA-01 and Para 13 of Annexure A (Statement of Relevant facts) of the original application may please be read as follows:

1. **Whether the Input Tax credit is admissible to the applicant where the tax collected by the Supplier from the applicant is not paid to the Government in cash but the same is reflecting in GSTR 2A of the applicant**

2. **Whether the Input Tax credit is admissible to the applicant where the tax collected by the Supplier from the applicant is paid to the Government through utilization of ineligible input tax credit but the same is reflecting in GSTR 2A of the applicant**

### **3. CONTENTION- AS PER THE REVENUE DEPARTMENT**

From the provisions of Section 97(2) of the CGST Act 2017, it is apparent that question

on determination of the place of supply has not been covered in the above set of questions on which advance ruling can be given. Hence, the application of the applicant does not merit consideration and should be rejected.

#### **4. RECORD OF PERSONAL HEARING**

##### **4.1 Preliminary First Hearing in the matter was held on 10.06.2020.**

Sh. Archit Singla, CA of M/s Naresh K Singla & associates on behalf of M/s Aditya Industries, Kala Amb, District Sirmour (H.P.) appeared on-line on web-meeting/ video conference for Personal Hearing held on 10.06.2020 on behalf of the applicant. He re-iterated his submissions made in the AAR application. He also requested to consider his amended application on the same subject. The Advance Ruling Authority informed that the applicant party was undergoing an enquiry/ investigating proceedings prior to the filing of his application for advance ruling for which Sh. Archit Singla, CA responded that he will take up the matter with the applicant firm and submit his reply accordingly. The Advance Ruling Authority intimated that they are of the view that the matter pertains to the issue of ITC taken on tax not paid by the supplier and they shall accordingly decide the matter separately before issuing the ruling and in the process the applicant was allowed to submit any further reply before the next hearing.

##### **4.2 Second hearing was held on 03.07.2020.**

**4.2.1** Sh. Archit Singla, CA on behalf of M/s Aditya Industries, Kala Amb, District Sirmour (H.P.) appeared on-line on web-meeting/ video conference for Personal Hearing held on 03.07.2020. He re-iterated his submissions already made in the AAR application and the amended application submitted on 10.06.2020. He also submitted another reply dated 02.07.2020 where under he requested the authority to consider his submissions that the investigation launched by the department were general in nature and were in relation to verification of ITC availed and the department's letter dated 11.11.2019 was not specific and did not co-relate to the question sought in the application and the applicant interpreted that there was no ongoing enquiry/ investigation on the date of filing this application of advance ruling before the authority.

Hon'ble member Sh. Rakesh Sharma, Additional Commissioner, SGST Shimla (H.P.) pointed out that the issue involves two scenarios firstly when tax collected by the supplier of the raw material from the applicant is not paid to the government in cash



and secondly tax collected by the supplier of the raw material from the applicant is paid to the government through utilization of ineligible input tax credit and in both the scenarios tax has not been paid or deemed not to have been paid on the goods against which credit has been taken by the applicant. The Hon'ble member was of the view that before proceeding further, it should be discussed whether the application for advance ruling falls under the purview of the advance ruling or not as the matter pertains to the question raised on non-payment of tax. He categorically pointed out that under Sub-Section 2(d) of Section 97 of CGST Act, 2017 it is very clear that only those cases come under the purview of Advance Ruling where tax has been paid or deemed to have been paid. In the present application, ruling has been sought on the issue where the tax has not been paid. As the statute is very clear, the ruling cannot be issued by this authority as the issue does not come under its purview. Hon'ble member Sh. Abhay Gupta Joint Commissioner, CGST Shimla concurred with the opinion of the Hon'ble member and opined that this should be considered as final hearing as the matter is quite clear and does not come under the purview of the advance ruling authority.

**4.2.2** Sh. Archit Singla, CA of M/s Naresh K Singla & associates argued that the matter comes under the purview as tax deemed to have been paid and expressed his wish to submit some more written reply in this matter for due consideration of the Authority. He requested that no further personal hearing may be given but his submissions regarding this issue be considered before any ruling is passed by the authority for which both members agreed and asked him to file his written submissions at the earliest.

**4.2.3** Both the Hon'ble members were of the view that this should be considered last and final personal hearing and ruling will be issued after due consideration of further written submissions by the applicant.

**4.2.4** The applicant filed his reply vide his letter dated 13.07.2020 where under he submitted as under:

**4.2.4.1** That the relevant extracts of sub Section 2 of Section 97 of the CGST Act, 2017 is reproduced below:

*"S. 97(2): The question on which the advance ruling is sought under this Act, shall be in respect of-*

.....  
*(d) admissibility of input tax credit of tax paid or deemed to have been paid”*

**4.2.4.2** That the subject matter on which this advance ruling sought is on the same issue that the applicant has no mechanism to ensure whether the tax collected by his supplier has been duly paid to the Government or not;

**4.2.4.3** That the applicant on ensuring that the tax collected by his supplier is appearing in the GSTR 2A of the applicant avails the Input Tax credit and believes that the Tax collected is deemed to be paid;

**4.2.4.4** That as per the relevant provisions of the CGST Rules (Rule 69), the procedure to match the details between the supplier and the receiver follows the mechanism as below:

Step 1: The Supplier shall report his details of outward supplies in GSTR 1 (i.e. Statement of outward supplies under Section 37)- the details of which shall auto populate on the portal of respective receiver in GSTR 2A,

Step 2: The Receiver shall accept, reject or validate the details appearing in GSTR 2A which is based on details reported by the Supplier in his GSTR 1, and file the details of inward supplier in GSTR 2 (i.e. Statement of inward supplies under Section 38)

Step 3: Once the details of outward and inward supplies are reconciled between the supplier and the receiver, both shall furnish a return under section 39(1) in Form GSTR 3.

**4.2.4.5** That further the details of outward supplies and inward supplies reported in 'GSTR 1 and GSTR 2 respectively shall electronically be generated in Part A of GSTR 3 and hence the system automatically ensured that the tax is paid through GSTR 3 on the basis of details of outward supplies as reported by the supplier in GSTR 1.

**4.2.4.6** That the above prescribed mechanism was not followed since July, 2017 as the due date of filing GSTR 2 i.e. statement of inward supplies, has been extended initially by way of Notification No 30/2017 - Central Tax dated 11.09.2017 and then further extended vide Notification No 58/2017- Central Tax dated 15.11.2017 till the period not notified till date.

**4.2.4.7** That in the absence of GSTR 2 i.e. statement of inward supplies, the applicant has the option to manually reconcile the Input Tax credit on inward supplies as reported by the supplier in his GSTR 1 which shall be appearing in the GSTR 2A of the applicant;

**4.2.4.8** That there is no further mechanism with the applicant except GSTR 2A, to ensure the details reported by his supplier and relying on same the applicants avails the Input tax credit assuming that tax the has been deemed to be paid by the supplier as the same is reported by him in his GSTR 1;

**4.2.4.9** That the purpose of introducing the deeming fiction in the ibid provision is to reconcile such uncertain situations with the provisions of the law. The word is and its purpose is explained in the matter Consolidated Coffee Ltd. & Another v. Coffee Board, Bangalore, (1980) 3 SCC 358, it was held: (Page 371, Para 11)

*"... the word "deemed" is used a great deal in modern legislation in different senses and it is not that a deeming provision is every time • made for the purpose of creating a fiction. A deeming provision might be made to include what is obvious or what is uncertain or to impose for the purpose of a statute an artificial construction of a word or phrase that would not otherwise prevail, but in each case it would be a question as to with what object the legislature has made such a deeming provision"*

**4.2.4.10** That in the ibid provision as well, when the supplier has reported the tax in his returns (which is reflected in GSTR 2A of the applicant), it should be treated as "Deemed to be paid" on the part of the applicant with respect to the online mechanism available with the applicant and this is the very purpose of introduction of deeming fiction in the ibid provisions;

## **OBSERVATIONS AND FINDINGS**

**5.1** We have gone through the facts of the case and the written submissions made by both, the applicant and the departmental authority. In the subject issue before us, we are asked to pass a ruling which would entail discussion of the "admissibility of input tax credit of tax paid or deemed to have been paid" under the CGST Act.

**5.2** Before we decide the question raised in this application it is essential that it be first determined whether the said questions regarding activities undertaken by the applicant pertains to matters or questions specified in Section 97(2).