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APPELLATE AUTHORITY FOR ADVANCE RULING ORDER NO.KAR/AAAR /03/2022, Dated 06th July, 2022

KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING  
6th FLOOR, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD,  
GANDHINAGAR, BANGALORE - 560009

(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide  
Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018 )

BEFORE THE BENCH OF  
SMT. RANJANA JHA, MEMBER  
SMT. SHIKHA C. MEMBER

Sl. No	Name and address of the appellant	Bharatiya Reserve Bank Note Mudran Pvt Ltd, Note Mudran Nagar, BRBNMPL Township, KRS Road, Metagalli, Mysuru 570003
1	GSTIN or User ID	29AAACB8111E1Z1
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 06/2022 Dated: 8,h March 2022
3	Date of filing appeal	16-04-2022
4	Represented by	Shri. Ganesh Prabhu Balakumar CA & Authorised representative Shri. Ravikumar B.S, Assistant Manager BRBNMPL
5	Jurisdictional Authority- Centre	The Commissioner of Central Tax, Mysuru Commissioncrate.
6	Jurisdictional Authority- State	LGSTO 200, Mysuru
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Rs 20,000 I- (CGST & SGST) paid vide Challan CIN SBIN22042900091977 dated 13- 04-2022.

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

- At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, Act 2017 arc in pari materia 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 KGST Act.
- The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by Bharatiya Reserve Bank Note Mudran Pvt Ltd, Note Mudran Nagar, BRBNMPL Township, KRS Road, Metagalli, Mysuru 570003 (herein after referred to as Appellant) against the Advance Ruling order No. KAR ADRG 06/2022 dated 8th March 2022.

Brief Facts of the case:

- The Appellant is a registered Private Limited Company established by the Reserve Bank of India (RBI) as their wholly owned subsidiary. The Appellant is engaged in the printing of currency notes for the RBI at their two currency printing press units, one at Mysore, Karnataka and the other at Salboni, West Bengal. The currency notes are sold to RBI at an agreed rate. The sale of currency notes by the Appellant is wholly exempted from levy of GST vide SI.No 117 of Notification No 02/2017 Central Tax (Rate) dated 28-06-2017. The Mysuru unit also has an exclusive Ink Manufacturing Unit called "Vamika" (referred to as Vamika IMU) which is engaged in the manufacture of ink used for printing of currency notes. The ink manufactured by Vamika IMU is captively consumed by the Mysuru unit for printing of currency notes as well as transferred to Salboni unit. The ink transferred by the Appellant from the Mysuru unit to Salboni unit being a "supply of goods between distinct persons" is a taxable supply in terms of Entry 2 of Schedule I of the CGST Act and hence GST is paid on such supplies. Further the manufactured ink is also sold to M/s

Security Printing and Minting Corporation of India (SPMCIL) on payment of GST. The Appellant maintains separate books of accounts for Varnika IMU and separate books of accounts for the printing press in Mysuru unit.

4. The Appellant avails input tax credit on the raw materials used in the manufacturing of ink as well on the services used exclusively in the manufacturing of ink. On the inputs and input services used exclusively in the printing of currency notes, the Appellant has not any input tax credit as the supply of currency notes to RBI is an exempted supply. However, on the inputs which are transferred to the Salboni unit, the Appellant claims input tax credit as the supply to Salboni unit is a taxable supply. The Appellant receives the following services which are commonly used by both Varnika IMU and the printing press at Mysuru, viz. (i) CISF & Township Security Services, (ii) Maintenance of Water Treatment Plant (WTP), (iii) Horticulture, (iv) Maintenance of residential quarters, (v) Maintenance of Information Systems (Computers, software and electronic equipment), (vi) Maintenance of Sewage Treatment Plant (STP), etc.

5. The Appellant approached the Authority for Advance Ruling (AAR) seeking a ruling on the following questions:-

a. "Whether ITC can be claimed by the applicant on common services such as CISF & Township Security Services, Maintenance of Water Treatment Plant, Horticulture, Maintenance of residential Quarters, Maintenance of Information System (Computers, Software & Electronic Equipment), Maintenance of Sewage Treatment Plant, etc which are utilized for both taxable as well as exempted supply of Varnika IMU and printing press located in Mysuru?

b. Whether the method followed by the applicant in connection with claiming of input tax credit is in accordance with the provisions of law?

c. Turnover of which financial year to be considered in Rule 42 of the CGST Rules, 2017 while calculating ineligible ITC for the invoices which were accounted in the books of accounts in the FY 2019-20, however ITC was claimed during April to September 2020-21 as per Section 16(4) of the CGST Act, 2017?"

6. The AAR vide its order KAR ADRG No 06/2022 dated 8, March 2022 refrained from giving a ruling on any of the above three questions on the grounds that the impugned questions were not covered under Section 97(2) of the CGST Act, 2017 as issues on which an advance ruling can be sought.

7. Aggrieved by the lack of ruling given by the AAR, the Appellant has filed this appeal on the following grounds.

7.1. The Appellant submitted that the AAR's contention that questions concerning the admissibility of ITC on common input services are nowhere covered in Section 97(2) is legally not tenable; that Section 97(2) of the CGST Act confers adequate powers to the appellant to question before the AAR, any questions concerning the admissibility of ITC. The usage of expression 'in respect of' in the opening lines of Section 97(2) is a term of widest import to accommodate any questions concerning the admissibility of ITC of taxes paid or deemed to have been paid. They submitted that one of the key objectives of constituting the Authority for Advance Ruling is to bring certainty in tax regime in relation to activity undertaken or proposed to be undertaken by the Appellant and reduce the unending and tiresome litigation; that under such circumstances, the expression 'in respect of' couches a comprehensive meaning to provide adequate ventilation to cover any questions (direct or indirect) concerning the admissibility of ITC of taxes paid.

7.2. They submitted that questions concerning "admissibility of ITC" should not be seen merely at the time of availment of ITC but rather at all points of time during the financial year; that the reversal of credit happens as per Rule 42(1)(i) of the CGST Rules and that too after the credit is said to have been admitted in the Electronic Credit Ledger; that this will not prevent the AAR from pronouncing a ruling on the questions raised; that what becomes admissible to Electronic Credit Ledger is Input tax attributable exclusively towards taxable supplies and common input tax on inputs and input services attributable towards taxable and exempt supplies; that even though reversal of ITC happens after availment, it suggests the fact that basically an inadmissible credit has been credited to Electronic Credit Ledger and the same is liable for disallowance from the Electronic Credit Ledger; that the scope of Section 97(2)(d) covers even the questions relating to the reversal of credit as the admissibility of ITC should not be seen merely at the time of taking credit but at all points of time during the financial year.

7.3. The Appellant submitted that the AAR has failed to appreciate the fact that Section 17(2) of CGST Act read along with Rule 42 of the CGST Rules also has a bearing on admissibility of ITC on input services attributable towards taxable supplies and exempt supplies; that the expression 'admissibility' means 'allowing of ITC of taxes paid or deemed to have been paid'; that the admissibility of credit will be dependent on the Appellant satisfying the provisions of Section 16; that the ITC should not be blocked under Section 17(5) and in the case of common credits, the ITC should be admissible only to the extent attributable to taxable supplies in terms of Section 17(2); that the manner in which the credit is attributed to taxable supplies is laid down in Rule 42 of the CGST Rules; that the usage of the term 'determination' in the heading of Rule 42 signifies that it is the determination of admissible ITC. They argued that when the intention of Rule 42 is to ascertain the quantum of admissible credit attributable towards the taxable supplies, taking a contradictory stand that Section 97(2)(d) does not seek to cover the situation of ascertainment of ITC on common inputs and services is unjustifiable.

7.4. They submitted that Rule 42(1)(e) is the provision that determines the admissible credit to be credited to the Electronic Credit Ledger; that the formula for reversal of credit demands for a proportionate reversal of common credit attributable towards the exempted supplies in line with the provisions of Section 17(2); that the very principle of the formula is founded on the fact that certain amount of credit which got admitted or credited to the Electronic Credit Ledger is liable to be disallowed or is basically an inadmissible credit which got admitted and is now liable for reversal.

Thus reversal of a portion of common credit has a direct bearing on the admissibility of ITC.

7.5. The Appellant submitted that there is a glaring contrast in the impugned ruling; that the AAR after having admitted the application under Section 97(2) (d) should have proceeded to pronounce the ruling basis the legal issue involved in the questions raised and not changed their position that the questions raised do not fall into Section 97(2); that this amounts to a review of the application already admitted which power is not conferred on the AAR under the Act. They submitted that in para 4 of the ruling, the AAR admitted the application on the contention that the questions raised before the AAR are squarely covered within the provisions of Section 97(2)(d) of the CGST Act. However, while pronouncing the ruling, the AAR has taken a diametrically opposite position that the above question is not covered within the scope of Section 97(2)(d) of the Act; that after having admitted the application, the AAR should have proceeded to pronounce the ruling in view of Section 98(4) of the CGST Act.

7.6. In view of the above the Appellant prayed to quash the ruling pronounced by the AAR as the same is violative of Section 98 and to consider the matter afresh and pronounce a ruling on the questions raised

#### **PERSONAL HEARING**

8. The appellant was granted a virtual hearing on 26th May 2022. The hearing was conducted on the Webex platform following the guidelines issued by the CBIC vide Instruction F.No 390/Misc/3/2019-JC dated 21<sup>st</sup> August 2020. The Appellant was represented by Shri. Ganesh Prabhu CA and authorised representative.

8.1. The Authorised representative explained the facts of the case and the circumstances leading to the present appeal. He submitted that the Appellant manages two currency printing press units, one at Mysore and the other at Salboni, West Bengal, both of which are registered under GST; that the unit at Mysuru also has an ink manufacturing unit (Varnika) engaged in the manufacturing of ink which is used for printing the currency notes; that the supply of currency notes to RBI is exempted from GST as per Notf No 02/2017 CT (Rate) dated 28-06-2017. However, the ink supplied to Salboni and to Security Printing and Minting Corporation of India Ltd, is taxable supply and GST is paid on the same; that the Mysuru unit receives various input services which are used commonly by the ink manufacturing unit and the printing press; that they have proportionately claimed ITC on the input services used in connection with taxable supply and have reversed ITC to the extent of exempted supply; that the common facilities which are shared between the printing press unit and Varnika in Mysuru such as CISF & Township Security services, Maintenance of Water Treatment Plant, Horticulture, Maintenance of residential quarters, Maintenance of Information system, Maintenance of sewage Treatment Plant, would be entitled as eligible ITC as they are used in the course or furtherance of business of both Varnika and printing press; that since the Appellant is engaged in both taxable and exempted supply, the ITC attributable to exempt supply is to be reversed in terms of the formula prescribed under Rule 42 of the CGST Rules, and the balance credit can be claimed by the Appellant. The Appellant had sought for a ruling on whether the ITC can be claimed on the common input services used for both taxable and exempt supplies and the correctness of the method of reversal of ITC and also turnover of which financial year is to be considered in Rule 42 while calculating ineligible ITC in a case where the ITC is availed in the subsequent financial year; that the AAR has refrained from answering the questions and passing a ruling on the grounds that the questions were not covered under Section 97(2).

8.2. He submitted that the AAR has taken a contradictory stand while admitting the application and while passing the ruling; that the application was admitted stating that the questions were within the scope of Section 97(2)(d) but while passing the ruling, a contrary stand was taken that the questions do not fall under Section 97(2). He submitted that the phrase "in respect of" used in Section 97(2) gives adequate scope to accommodate any question concerning admissibility of ITC; that the admissibility of ITC should not be seen only with respect to Section 16 but also that Section 17(2) read with Rule 42 has a bearing on the admissibility of ITC on common input services. This has not been appreciated by the AAR. He referred to the several judicial decisions mentioned in their written submissions in support of their contention.

#### **DISCUSSIONS AND FINDINGS**

9. We have gone through the entire case records and considered the submissions made by the Appellant in their grounds of appeal, as well as the submissions made at the time of personal hearing. We have also gone through the impugned order passed by the lower Authority wherein it was held that no ruling can be given on the three questions raised by the applicant as the same are not covered under Section 97(2) of the CGST Act.

The Appellant is before us in appeal on the primary ground that failure to pronounce a ruling by the lower Authority on the grounds that the questions are outside the scope of Section 97(2) is incorrect and bad in law.

10. The short point for determination by us is whether the lower Authority was correct in not giving a ruling on the following three questions raised by the Appellant in their application:-

> Whether ITC can be claimed on common services which are utilized by Varnika IMU and the printing press at Mysuru, for both taxable as well as exempted supplies?

> Whether the method followed in connection with claiming input tax credit is in accordance with law?

> Which financial year's turnover is to be considered while calculating ineligible ITC under Rule 42 of CGST Rules, when the inward supply invoices were accounted in the books of account for 2019-20 but ITC claimed during April to September 2020-21?

11. For this let us look into the provisions of law relating to the questions on which an advance ruling can be sought. Section 97(2) of the CGST Act states that the question on which the advance ruling is sought under the 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."

12. In this case we are concerned with clause (d) which is 'admissibility of input tax credit of tax paid or deemed to have been paid'. While the lower Authority has held that the questions raised by the Appellant are not covered within the scope of clause (d) of Section 97(2), the Appellant had argued otherwise. The provisions of input tax credit under GST are dealt with in Chapter V of the CGST Act containing Sections 16 to 21 and Chapter V of the CGST Rules containing Rules 36 to 45. Section 16 of the CGST Act lays down that the tax paid by a registered person for receipt of goods and services which are used or intended to be used in the course or furtherance of his business, will be eligible as input tax credit subject to fulfilling the conditions laid down in sub-section (2) of the said Section. The provisions of Section 16 are to be read together with Rule 36 of the CGST Rules which prescribes the documents required for claiming input tax credit as well as certain other pre-requisites for claiming credit. The provisions of Section 16 read with Rule 36 are the threshold provisions for availing input tax credit. Once the goods and services received by a registered person meets the conditions and pre-requisites laid down in Section 16 read with Rule 36 and become eligible for input tax credit, then the admissibility will be further subjected to the restrictions laid down in Section 17 of the CGST Act. The restrictions laid down in Section 17 are as follows:-

- > Where goods and services are used by the registered person partly for business and partly for other purposes, the amount of credit will be restricted to so much of the input tax as is attributable to the purpose of his business. - Section 17(1). The manner of determining the amount of input tax attributable to business purposes is prescribed in Rule 42 and 43 of the CGST Rules.
- > Where the goods and services are used by the registered person partly for effecting taxable supplies (including zero-rated supplies) and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the taxable supplies (including zero-rated supplies). - Section 17(2). The manner of determining the amount of input tax attributable to taxable supplies is prescribed in Rule 42 and 43 of the CGST Rules.
- > Reversal of input tax credit is required when the goods and services are used by a registered person for making exempt supply which includes a supply on which the recipient is required to pay tax under RCM, transactions in securities, sale of land and sale of building. Reversal of input tax credit is not required when the registered person is carrying out activities or transactions specified in Schedule III of the CGST Act (other than sale of land and building) as they are neither a supply of goods nor a supply of service. - Section 17(3)
- > Banks, Financial institutions and non-banking financial institutions have been permitted to exercise an option every financial year to either follow the provisions of Section 17(2) or restrict the availment of credit to the extent of 50% of the eligible input tax credit in a particular month. - Section 17(4)
- > Certain goods and services listed in Section 17(5) are not eligible for input tax credit irrespective of fulfillment of the provisions of Section 16.

13. When we read the provisions of Section 16 and 17 of the CGST Act, we find that the term 'admissibility of input tax credit' as mentioned in clause (d) of Section 97(2) refers to whether a particular good or service is eligible for input tax credit by meeting the conditions laid down in Section 16 as well as adhering to the restrictions laid down in Section 17 of the CGST Act. Admissibility of input tax credit is therefore to be examined at two levels. The first level is by applying the provisions of Section 16 and 17(5) where one determines whether the goods and services received by a registered person are used in the course of or furtherance of his business, whether the registered person has fulfilled the conditions laid down in Section 16(2) read with Rule 36 and whether the goods and services are ineligible for credit in terms of Section 17(5). At the second level, the admissibility of input tax credit is determined by applying the provisions of Section 17 (1) and 17(2) which is to determine whether the goods and services are used partly for business purposes/taxable supplies and partly for non-business purposes/ exempt supplies, and if so, to restrict the input tax credit only to the extent attributable to business purposes and taxable supplies. The manner of determination of the quantum of credit attributable to business purposes/taxable supplies is provided for in Rule 42 and 43 of the CGST Rules.

14. In this case, the first question on which the Appellant had sought a ruling was whether the ITC can be claimed on certain common input services which are used by them in the printing press as well as the ink manufacturing unit for both taxable and exempted supplies. We find that this question is well within the scope of Section 97(2)(d) since the admissibility of input tax credit on the common input service will depend on whether the same are used in the course of or for the furtherance of his business and whether the services are blocked under Section 17(5). The lower Authority has failed to answer this question stating that Section 97(2) does not cover situations governed by Section 17(2) of the CGST Act. We find that the lower Authority has not appreciated the question in the proper perspective. In their application for advance ruling, the Appellant has stated that certain input services are used by them both in the manufacturing of ink and rupee notes as well as in the residential quarters in the township. In this context, the Appellant has sought a ruling whether the credit on such commonly used services can be availed.

This question undoubtedly involves examining the admissibility of credit on the common input services which are used by them in their Mysuru unit in the course or for the furtherance of business. We therefore hold that the lower Authority was incorrect in not giving a ruling on this question. We will however, not go further and decide this question on merits as this Authority is not empowered to do so in appeal proceedings. Section 101(1) of the CGST Act empowers the Appellate Authority to pass such orders either confirming or modifying the ruling appealed against. In this case, since no ruling has been given by the lower Authority on the merits of the question, the Appellate Authority cannot give a ruling ab initio in appeal proceedings.

15. Coming to the second question, "Whether the method followed in connection with claiming of ITC is in accordance with the provisions of law", we find that this question is not within the scope of an advance ruling. The correctness or otherwise of the method followed by the Appellant in claiming input tax credit is not a subject covered under Section 97(2) of the CGST Act. Such questions are to be raised before the assessing officer who is the proper officer to decide whether the method adopted by the Appellant in complying with the provisions of Rule 42 of the CGST Rules is correct or not. We therefore, we agree with the lower Authority that no ruling can be given on the second question.

16. As regards the third question regarding which financial year is to be considered for calculating the ineligible ITC as per Rule 42, we find that this question is also not within the scope of an advance ruling. An advance ruling can be sought on matters or questions specified in Section 97(2) which are in respect of supplies being undertaken or proposed to be undertaken by the applicant. In this case, the question does not fall within the scope of any of the matters listed in Section 97(2). Moreover, we find that the question relates to input tax credit which has already been availed by the Appellant in FY 2020-21. The application filed in August 2021 seeking a ruling on an action which has already been done in the past is not covered under the advance ruling mechanism. We therefore agree with the lower Authority that no ruling can be given on this question.

17. Before we conclude, we would like to touch upon the Appellant's grievance that the lower Authority has contradicted itself in the impugned order; that the application for advance ruling was admitted clearly stating that the questions are within the scope of Section 97(2)(d) but the Authority has later taken a contradictory stand and failed to give any ruling. We are constrained to observe that the lower Authority has not followed the procedure laid down in Section 98 in this case. In terms of Section 98(2), the lower Authority has to examine after hearing the applicant, whether the application for advance ruling can be admitted or rejected. If the application is rejected, an order must be passed under Section 98(2) citing the reasons for such rejection. The order passed under Section 98(2) rejecting the application is not appealable before the Appellate Authority in terms of Section 100 of the CGST Act. If the application for advance ruling is admitted, then a ruling must be passed in terms of Section 98(4) of the CGST Act. A ruling given under Section 98(4) alone is appealable before the Appellate Authority in terms of Section 100 of the said Act. In this case, we find that the lower Authority has passed an order under Section 98(4) of the Act which means that the application has been admitted. However, having admitted the application in terms of Section 98(2) and recording the same in para 4 of the impugned order, the lower Authority has taken a contrary stand in the findings and failed to pass a ruling on all the questions raised in the application. This displays a lack of application of mind on the part of the lower Authority and defeats the very purpose for which the Authority has been constituted. We also observe that in spite of giving a finding that no ruling can be given on the questions asked by the applicant, the lower Authority has gone ahead to discuss the issues on merits and then has finally concluded that no ruling can be given. This is an unacceptable approach and the lower Authority would do well to take note and abide by the judicial principles when dealing with applications for advance ruling.

18. Having thus said, we proceed pass the following order based on our above discussions.

#### **ORDER**

We modify the order No. KAR ADRG 06/2022 dated 8,h March 2022 passed by the Advance Ruling Authority as follows:

The question "Whether ITC can be claimed on common services which arc utilized for both taxable as well as exempted supplies?" is admissible for advance ruling as it falls within the scope of Section 97(2)(d) of the CGST Act.

We uphold the findings of the Authority for Advance Ruling with respect to questions 2 and 3 of their application and hold that they are not questions on which an advance ruling can be given.

The appeal filed by the Appellant. M/s Bharatva Reserve Bank Note Mudran Pvt Ltd. is disposed off on the above terms.

(RANJANA JHA)

(SIHKHA C)

Member

Member

Karnataka Appellate Authority  
for Advance Ruling

Karnataka Appellate Authority  
for Advance Ruling