

Whether the purchaser is entitled to claim Input Tax Credit on the purchases made by it from the seller who had discharged its tax liability but the preceding seller has not discharged its liability under the Act? HELD No. As per provisions of Section 16(2)(c) of CGST Act read with PGST Act, the purchaser is not entitled to claim Input Tax Credit on the purchases made by it from the seller who had discharged its tax liability but the preceding seller has not discharged its liability under the Act (2) If answer to the above is in negative, then how the purchaser will ensure that the tax liability has been discharged by all the sellers falling in the queue of the transaction? (3) Whether the purchaser would be eligible for the ITC since no infrastructure has been provided by the Govt, in order to ensure discharging of tax liability by the sellers falling in the queue of a transaction? (4) Whether the purchaser is entitled to claim Input Tax Credit on the purchases made by it from the seller in the event of non-payment of tax by the seller even though the purchaser is in possession of the invoice, other relevant documents and the payments have been made through banking channels and there is no connivance or collusion between the purchaser and seller? HELD Question no. 2,3 and 4 above are not covered under the purview of Section 97(2)(d) of CGST Act and PGST Act, hence no ruling could be passed on these questions.

ADVANCE RULING ORDER NO. AAR/GST/PB/31, Dated 03rd February, 2022

**PUNJAB AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX, BHUPINDRA ROAD,
PATIALA 147001, PUNJAB**

(Constituted under Section 96 of the Punjab Goods and Service Tax Rules, 2017)

BEFORE THE BENCH OF

1. Ms. Varinder Kaur, Additional Commissioner of Central Tax (Central Tax)
2. Mr. Viraj Shyamkarn Tidke, Additional Commissioner of State Tax-1 (State Tax).

GSTIN		03AAACV7801M1ZB
Legal Name		M/s VIMAL ALLOYS PVT. LTD.
Trade Name		M/s VIMAL ALLOYS PVT. LTD.
Registered Address		Shop No. 445, Sector 3-C, G.T. Road, Mandi Gobindgarh-147301
Correspondence Address		M/s Vimal Alloys Pvt. Ltd. C/o Sandeep Goyal, Advocate, House No. 224, Sector 35-A, Chandigarh.
Details of Application		GST ARA-01 dated 13.12.2018
Nature of activity (present/proposed) in respect of which advance ruling sought.		
A	Category	Manufacturer
B	Description in brief	The applicant is running a furnace at Mandi Gobindgarh and for the purpose of the same, the applicant is procuring ferrous alloys, scrap, gas and other materials from within the State of Punjab.
Issue(s) on which advance ruling is sought.		iv) Admissibility of input tax credit of tax paid or deemed to have been paid.
Questions(s) on which advance ruling is		As reproduced in Para 01 of the Proceedings below

sought.

(An Appeal against this order lies with the Appellate Authority in terms of Section 99 and Section 100 of the CGST Act, 2017 and Section 99 and Section 100 of the PGST Act, 2017 within a period of thirty days from the date of communication of this order.)

PROCEEDINGS

The present application has been filed under Section 97 of the Central Goods and Service Tax, 2017 and the Punjab Goods and Service Tax Act, 2017 [hereinafter referred to as "the CGST Act and PGST Act"] by M/s VIMAL ALLOYS PVT. LTD., GSTIN: 03AAACV7801M1ZB, Shop No. 445, Sector 3-C, G.T. Road, Mandi Gobindgarh-147301, the applicant, seeking Advance an advance Ruling in respect of the following questions.-^

- a. Whether the purchaser is entitled to claim Input Tax Credit on the purchases made by it from the seller who had discharged its tax liability but the preceding seller has not discharged its liability under the Act?
- b. If answer to the above is in negative, then how the purchaser will ensure that the tax liability has been discharged by all the sellers falling in the queue of the transaction?
- c. Whether the purchaser would be eligible for the ITC since no infrastructure has been provided by the Govt, in order to ensure discharging of tax liability by the sellers falling in the queue of a transaction?
- d. Whether the purchaser is entitled to claim Input Tax Credit on the purchases made by it from the seller in the event of non-payment of tax by the seller even though the purchaser is in possession of the invoice, other relevant documents and the payments have been made through banking channels and there is no connivance or collusion between the purchaser and seller?~

At the outset, we would like to make it clear that the provisions of both the CGST Act and the PGST 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 provisions under the PGST Act.

2. STATEMENT OF RELEVANT FACTS - AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-

A. The assessee is running a furnace at Mandi Gobindgarh and for the purpose of the same, the assessee is procuring ferrous alloys, scrap, gas and other materials from within the State of Punjab.

B. That the assessee is receiving the material against GST Invoice on which it is entitled to claim Input Tax Credit on the tax paid on the purchases made by it. The assessee is making the payments through banking channels and all the transactions are being reflected in its books of accounts.

C. That in accordance with the provisions of Central GST Act, 2017 read with Punjab GST Act 2017, the assessee is filing its returns in form GSTR-3B and Form GSTR-1. Here it is pertinent to mention that the Central Govt, has abandoned the filing of Form GSTR-2 for the time being and the same is not being filed. As per the provisions of the Central GST Act, the sellers who had sold the goods to the assessee, the transactions of the same will be reflected in Form GSTR-2A in the account of the assessee at the GST Portal from which the assessee would come to know the Invoice No., Date, Invoice Value entered by the seller in its Returns and the status of the filing of the Returns by the seller.

D. That recently, news are being published in the newspapers that the officials of the Department have unearthed the scam of bogus purchases as a result of which the furnaces, rolling mills etc. are being targeted by the Department in order to recover the demands even though they have nothing to do with the bogus purchases as the goods purchased by them on account of raw material is being entered in its books of account and the finished goods manufactured are sold after discharging its tax liability. The Department officials also caught hold of the furnaces/rolling mills on the ground that the preceding sellers of the seller from they have purchased goods, had not paid the tax and, therefore, they are liable to pay tax and consequential interest and penalty, even though there is neither any obligation nor any infrastructure provided under the Act to verify or to find out the status of the discharge of tax liability by the said sellers.

E. That for the sake of abundant precaution, the assessee is procuring Returns from its immediate Vendors, i.e. Form GSTR-3B and Form GSTR-1 in order to make sure that the seller has discharged his tax liability and the purchases made by him have been entered in the books of accounts of the seller.

F. For the ready reference of this Hon'ble Court, the relevant provisions of the Central GST Act 2017 read with Punjab GST Act 2017 and the rules framed thereunder are reproduced here below:-^

16. Eligibility and conditions for taking input tax credit.

(1) 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 and the said amount shall be credited to the electronic credit ledger of such person

(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 or 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.

Explanation. For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise:

(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 that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

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 output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax

payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961. the input tax credit on the said tax component shall not be allowed. 4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Rule 36

36. Documentary requirements and conditions for claiming input tax credit: -

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely: -

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31 (time limit for issue of tax invoice);

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31 invoice issued by supplier itself for the supplies received from unregistered person on which supplier is liable to pay tax under reverse charge to comply with sub-section (3) & (4) of section 9 of CGST Act, 2017), subject to the payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section 34:

(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports:

(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document, and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such person.

(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts.~

2A. STATEMENT CONTAINING APPLICANT'S INTERPRETATION

a) The assessee is procuring iron and steel scrap, ferrous alloys, gas and other materials for manufacturing of finished products. The said material is being received by the assessee against GST Invoice fulfilling all the particulars as prescribed under the Act and the payments are being made through banking channels. The assessee is duly filing its Returns i.e., in Form GSTR-3B and GSTR-1 reflecting all the transactions and accordingly discharging its tax liability. Insofar as the purchases are concerned, assessee is also verifying Form GSTR-2A which is a auto-populated Form generated in the account of GST Portal of the assessee whereby the transactions entered by the sellers of the assessee in respect of the assessee are being reflected. Accordingly, assessee verifies the same and if there is any discrepancy, the assessee gets the same rectified. The assessee is also procuring Form GSTR-3B and GSTR-1 from its sellers in order to ensure the filing of the Returns and the transactions being reflected in their Returns. Therefore, there cannot be any liability on the part of the assessee for non-payment of tax by the seller.

b) The assessee is making transactions through banking channels and, therefore, the same cannot remain unaccounted from its books of accounts. The provisions of the Central GST Act

2017 read with Punjab GST Act 2017 put an obligation upon the assessee to discharge its tax liability in accordance with law. The assessee accordingly is discharging its tax liability and due to unscrupulous dealers, the assessee cannot be held liable for non-payment of tax by them. In case, there is any default by the sellers or seller of the seller on account of payment of tax, the assessee cannot be fastened with the liability.

c) The law in this regard is already settled by the Hon'ble Punjab and Haryana High Court and various other High Courts, wherein It has been held that the purchaser cannot be fastened with the liability in the event of non-payment of tax by the seller unless and until there is collusion and connivance between seller and the purchaser. The Hon'ble Punjab and Haryana High Court in the case of *Gherulal Balchand vs State of Haryana* reported as 45 VST 190 held as under:-^

"In legal jurisprudence, the liability can be fastened on a person who either acts fraudulently or has been a party to the collusion or connivance with the offender. However, law nowhere envisages imposing any penalty either directly or vicariously where a person is not connected with any such event or an act. Law cannot envisage an almost impossible eventuality. The onus upon the assessee gets discharged on production of Form VAT C-4 which is required to be genuine and not thereafter to substantiate its truthfulness by running from pillar to post to collect the material for its authenticity. In the absence of any mala fide intention, connivance or wrongful association of the assessee with the selling dealer or any dealer earlier thereto, no liability can be imposed on the principle of vicarious liability. Law cannot put such onerous responsibility on the assessee otherwise, it would be difficult to hold the law to be valid on the touchstone of Articles 14 and 19 of the Constitution of India. The rule of interpretation requires that such meaning should be assigned to the provision which would make the provision of the Act effective and advance the purpose of the Act. This should be done wherever possible without doing any violence to the language of the provision. A statute has to be read in such a manner so as to do justice to the parties. If it is held that the person who does not deposit or is required to deposit the tax would be put in an advantageous position and whereas the person who has paid the tax would be worse, the interpretation would give result to an absurdity. Such a construction has to be avoided.

In other words, the genuineness of the certificate and declaration may be examined by the taxing authority, but onus cannot be put on the assessee to establish the correctness or the truthfulness of the statements recorded therein. The authorities can examine whether the Form VAT C-4 was bogus and was procured by the dealer in collusion with the selling dealer. The department is required to allow the claim once proper declaration is furnished and in the event of its falsity, the department can proceed against the defaulter when the genuineness of the declaration is not in question. However, an exception is carved out in. The event where fraud, collusion or connivance is established between the registered purchasing dealers or the immediate preceding selling registered dealer or any of the predecessors selling registered dealer, the benefit contained in Form VAT C-4 would not be available to the registered purchasing dealer. The aforesaid interpretation would result in achieving the purpose of the rule which is to make the object of the provisions of the Act workable, i.e., realization of tax by the revenue by legitimate methods."~

d) Moreover, the Hon'ble Delhi High Court in the case of *On Quest Merchandizing India Pvt. Ltd. vs Govt. of NCT of Delhi and others*, reported as 56 GSTR 177, held that it can be safely concluded in that case that there is a singular failure by the legislature to make a distinction between purchasing dealers who have bona fide transacted with the selling dealer by taking all precautions as required by the DVAT Act and those that have not. Therefore, there was need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not punish bona fide purchasing dealers. The latter cannot be expected to do the impossible. It is trite that a law that is not capable of honest compliance will fail in achieving its objective. If it seeks to visit disobedience with disproportionate consequences to a bona fide purchasing dealer, it will become vulnerable to invalidation on the touchstone of Article 14 of the Constitution.

The relevant excerpts of the judgment are as under:

"..The Court respectfully concurs with the above analysis and holds that in the present case, the

purchasing dealer is being asked to do the impossible, i.e. to anticipate the selling dealer who will not deposit with the Government the tax collected by him from those purchasing dealer and therefore avoid transacting with such selling dealers. Alternatively, what Section 9 (2) (g) of the DVAT Act requires the purchasing dealer to do is that after transacting with the selling dealer, somehow ensure that the selling dealer does in fact deposit the tax collected from the purchasing dealer and if the selling dealer fails to do so, undergo the risk of being denied the ITC. Indeed Section 9 (2) (g) of the DVAT Act places an onerous burden on a bonafide purchasing dealer.

All this points to a failure to make a correct classification on a rational basis so that the denial of ITC is not visited upon a bonafide purchasing dealer. This failure to make a reasonable classification, does attract Invalidation under Article 14 of the Constitution, as pointed out rightly by learned counsel for the Petitioners. This is also what weighed with the Court in *Shanti Kiran India Pvt. Ltd.* (supra) where it was observed as under:-^

"In the present case, Section 9 (1) grants- Input-tax credit to purchasing dealers. Section 9 (2), on the other hand lists out specific situations where the benefit is denied. The negative list, as it were, is restrictive and is in the nature of a proviso. As a result, this Court is of the opinion that the interpretation, placed by the Tribunal-that there is statutory, authority for granting input-tax credit only to the extent tax is deposited by the selling dealer, is unsound and contrary, to the, statute. It is also iniquitous because an onerous burden is placed on the purchasing dealer in the absence of clear words to that effect in the statute to keep a vigil over the amounts deposited by the selling dealer. The court, does not see any provision or methodology by which the purchasing dealer can monitor the selling dealers behaviour, 'vis-a-vis the latter's VAT returns. Indeed, Section 28 stipulates confidentiality in such matters. Nor is this Court in agreement with the Tribunal's opinion that insertion of clause (g) to section 9 (2) is clarificatory. As observed earlier, Section 9 (2) is an exception to the general rule granting input tax credit to dealers who qualify for the benefit. The conditions for operation of the exception are well defined. The absence of any condition such as the one spelt out in clause (g) and its addition in 2010, rules out legislative intention of its being a mere clarification of the law which always existed."~

Conclusions:

In light of the above legal position, the Court hereby holds that the expression "dealer or class of dealers" occurring in Section 9 (2) (g) of the DVAT Act should be interpreted as not including a purchasing dealer who has bona fide entered into purchase transactions with validly registered selling dealers who have issued tax invoices in accordance with Section 50 of the Act where there is no mismatch of the transactions in Annexures 2A and 28. Unless the expression "dealer or class of dealers" in Section 9 (2) (g) is read down" in the above manner, the entire provision would have to be held to be violative of Article 14 of the Constitution.

The result of such reading down would be that the Department is precluded from Invoking Section 9 (2) (g) of the DVAT to deny ITC to a purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number. In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC. Where, however, the Department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the Department can proceed under Section 40A of the DVAT Act.

Resultantly, the default assessment orders of tax, Interest and penalty issued under Sections 32 and 33 of the DVAT Act, and the orders of the OHA and Appellate Tribunal Insofar as they create and affirm demands created against the Petitioner purchasing dealers by invoking Section 9 (2)(g) of the DVAT Act for the default of the selling dealer, and which have been challenged in each of the petitions, are hereby set aside..."

e) Here it is also pertinent to mention that the assessee can only ensure that its seller had filed the Returns and reflected the transactions in question as the utility for the same has been provided at the GST Portal, or it can also procure the same from the seller. However, there is neither any

obligation nor infrastructure to ascertain as to whether the seller had discharged its tax liability in accordance with law or not. It cannot also ascertain as to what product its seller is buying and selling or the preceding sellers of its seller had discharged their tax liabilities or not. Therefore, in the event of the same the assessee cannot be held liable and fastened upon the liability on account of its sellers or their preceding sellers.

3. CONTENTION - AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

Submissions by the Jurisdictional Authority: -

The Assistant Commissioner of State Taxes, Fatehgarh Sahib has furnished his written comments on behalf of the department, as below:

A. The availability of Input Tax Credit on the purchases is subject to provisions of section 16 of the Punjab GST Act, 2017. Wherein, u/s 16(2)(c) of the Act ibid no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, 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;

Thus, input tax credit shall be available only if the tax has actually been paid in cash or through admissible ITC. If the input tax credit has been accumulated in violation of provisions of the Act(s) the same shall not be available to the successive suppliers in the chain. Hence the Firm M/S Vimal Alloys cannot claim ITC if the preceding sellers doesn't have the admissible ITC.

B. The said query does not fall under the purview of section 97(2) which lists the scope of questions for Advance Ruling.

C. The said query does not fall under the purview of section 97(2) which lists the scope of questions for Advance Ruling.

D. The availability of Input Tax Credit on the purchases is subject to provisions of section 16 of the Punjab GST Act, 2017. Wherein, u/s 16(2)(c) of the Act ibid no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, 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.

4. HEARING

Personal hearing in the matter was held on 11.02.2022 but no one appeared on behalf of the applicant. However, on next date of hearing on 18.02.2022, Sh. Rishab Singla, counsel for the applicant appeared and submitted the written submissions. The submission were given from Point no. 5 to Point no. 13. It is pertinent to mention here that the submission given from Point no. 5 to Point no. 9 are the same which are given in Para "2A. STATEMENT CONTAINING APPLICANTS INTERPRETATION" above and therefore the same are not being repeated herein. The submissions made vide Point 10 to 13 are as under:-

"10. Recently, the Hon'ble Madras High Court as well as Hon'ble Calcutta High Court have held that in case the seller has not paid the tax, the purchaser cannot be fastened upon the liability and have remanded back the matters to the respective Assessing Authorities to look into the matter. In the present case also, the assessee is in possession of all the requisite documents as prescribed in Section 16 read with Rule 36. The assessee is complying with all the conditions and therefore in case the seller of the assessee or preceding dealer of the seller of the assessee has not paid the tax, no proceedings could be initiated against the assessee for the said reason.

11. Recently, the Hon'ble Punjab and Haryana High Court in the case of M/s Shiv Enterprises versus State of Punjab and others, though deciding the issue of detention made on the basis of

seller not paying the tax, observed that it is virtually impossible for a trader to ascertain as to whether the Input Tax has been paid by his predecessor or not and it is for this reason also, that the claim to Input Tax Credit has been made subject to scrutiny and assessment. It is a fundamental legal principle embedded in legal maxim *lex non cogit ad impossibilia* that the law does not compel a man to do that which he cannot perform possibly. Once a person cannot be compelled to do something not possible, definitely he cannot be penalized for not doing so.

12. It is submitted that the assessee is also not in a position to ascertain as to whether its predecessors have paid the tax or not as no infrastructure has been provided to it to find out the same. Therefore, in absence of any mechanism, the assessee cannot be held to be liable on the part of the selling dealer if the same has not paid tax to the Government. The issue in question can also be analyzed for another aspect where the predecessor of the assessee has paid the tax but some dealer in the chain has not paid the tax. Therefore, it is not possible for the assessee to find out that the goods in question have not only suffered the tax but the tax has actually been paid into the Treasury by all the dealers from the origination till the end user.

13. The issue in question can also be analyzed from another angle, wherein an assessee like the applicant who is a bona fide purchaser has purchased the goods from a dealer to whom it has paid the tax amount along with amount of goods.

The said dealer has not deposited the same into the Treasury or is engaged in passing of ingenuine Input Tax Credit. It is submitted that in case the Department catch hold of the said assessee and raises demand against him under Section 74 and the said dealer pays the same also, then also the assessee is not entitled to Input Tax Credit as the same is barred under Section 17.

Along with above submissions the applicant has also submitted the copies of Sections & rules of the CGST Act, 2017 and various judgements, which are as follows:-^

- (1) Copy of Section 16 of the CGST Act, 2017.
- (2) Copy of Section 37 of the CGST Act, 2017
- (3) Copy of Section 38 of the CGST Act, 2017.
- (4) Copy of Section 39 of the CGST Act, 2017.
- (5) Copy of Rule 59 of the CGST Rules, 2017.
- (6) Copy of Rule 60 of the CGST Rules, 2017.
- (7) Copy of Rule 61 of the CGST Rules, 2017.
- (8) Copy of Judgement by Hon'ble Punjab & Haryana High Court in the case of Gheru Lal Bal Chand v. State of Haryana and Another.
- (9) Copy of Judgement by Hon'ble Delhi High Court in the case of Shanti Kiran Singh Private Limited v. Commissioner Trade and Tax Department.
- (10) Copy of Judgement by Hon'ble Delhi High Court in the case of On Quest Merchandising India Private Limited v. Government of NCT of Delhi and Ors.
- (11) Copy of Judgement by Hon'ble Madras High Court in the case of D.Y. Beathel Enterprises v. the State Tax Officer (Date Cell) (Investigation Wing),
- (12) Copy of Judgment by Hon'ble Calcutta High court in the case of LGW Industries v. Union of India and Ors.

(13) Copy of CWP in the case of M/s Shic Enterprises v. State of Punjab Ors.~

4A. Sh. Rishab Singla, Counsel of the applicant again appeared for personal hearing on 16.08.2022 and submitted the additional submissions vide mail dated 19.08.2022 as under: -^

a) The assessee has filed Application for Advance Ruling under Section 97 of the Punjab GST Act, 2017/Central GST Act, 2017. The said Application was listed for hearing on 16.08.2022, wherein an objection was raised with regard to maintainability of the Application in view of the scope of Section 97(2).

b) In this regard it is submitted that the Application for Advance Ruling filed by assessee is maintainable as the case of the assessee falls under Section 97(2)(d) of the Acts *ibid*. For the ready reference of your goodself, Section 97(2) is reproduced here below:

Section 97, Application for advance ruling:-^

"1)

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.

3) That the questions on which Advance Rulings have been sought by the applicant fall under Section 97(2)(d) and, therefore, the application filed by the applicant is maintainable.~

5. DISCUSSIONS AND FINDINGS:

A. We have carefully gone through the facts of the case, submissions made by the applicant in his application for advance ruling as well as the submissions made by Advocate at the time of personal hearing. We have also gone through the questions raised by the applicant on which advance ruling is sought, the applicant's interpretation of law and the detailed comments submitted by the Assistant Commissioner State Tax, Fatehgarh Sahib. At the outset, we would like to state that the provisions of both the CGST Act and the PGST 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 provisions under the PGST Act.

B. The applicant is running a furnace at Mandi Gobindgarh and for the purpose of the same, they are procuring ferrous alloys, scrap, gas, and other materials from within the State of Punjab. The applicant requested for the Advance Ruling as per questions stated in Para 14 of application as under:-^

i) Whether the purchaser is entitled to claim Input Tax Credit on the 3 purchases made by it from

the seller who had discharged its tax liability but the preceding seller has not discharged its liability under the Act?

ii) If answer to the above is in negative, then how the purchaser will ensure that the tax liability has been discharged by all the sellers falling in the queue of the transaction?

iii) Whether the purchaser would be eligible for the ITC since no infrastructure has been provided by the Govt, in order to ensure discharging of tax liability by the sellers falling in the queue of a transaction?

iv) Whether the purchaser is entitled to claim Input Tax Credit on the purchases made by it from the seller in the event of non-payment of tax by the seller even though the purchaser is in possession of the invoice, other relevant documents and the payments have been made through banking channels and there is no connivance or collusion between the purchaser and seller?~

C. We have gone through the provisions of Section 97 whereunder the applicant is authorized to make an application vis-a-vis the four questions on which advance ruling has been sought, have revealed that out of four questions, Question no. 2,3 and 4 are not covered under the purview of Section 97(2)(d) of CGST Act and PGST Act. As these three questions are out of ambit of Section 97(2) (d), the same are not taken up for discussion and no advance ruling can be passed on these questions.

D. Before proceeding further to discuss question no. 1, it will be appreciable to discuss relevant provisions of law applicable in the present case. Section 16 of the CGST Act, 2017, inter alia, prescribes conditions and restrictions for a registered person for availing ITC of input tax charged on supply of any goods or services or both to him which are used or intended to be used in the course of furtherance of his business. In terms of Clause (b) of Sub Section (2) of Section 16 ibid inter alia states that 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 or both to him unless he has received the goods or services or both. The relevant provisions of the Central Goods and Service Tax Act, 2017, Punjab Goods State Tax Act, 2017 and rules made thereunder are as under: -

Section 16 of the Central Goods and Services Tax Act, 2017 provides for eligibility and conditions for taking input tax credit (ITC).

(1) 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 and the said amount shall be credited to the electronic credit ledger of such person.

(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 or 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;

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;

(b) he has received the goods or services or both~

Explanation.- For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-^

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction

of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;

(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;

(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 that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

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 output tax liability, along with interest thereon, in such manner as may be prescribed :

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the 6 [thirtieth day of November] following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.

From the perusal of above-mentioned provisions of the section 16(2)(c) CGST Act and PGST Act, it is very much clear that no registered person shall be entitled to take the credit of any input tax in respect of any supply of goods or services or both unless 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. If the seller or preceding sellers have not deposited the tax either in cash or through utilization of input tax credit admissible in respect of the said supply, purchaser is not eligible to claim ITC on such supply.

E). Therefore, keeping in view the relevant provisions of Section 16(2)(c) of CGST Act read with PGST Act, we have no doubt in holding that the purchaser is not entitled to claim Input Tax Credit on the purchases made by it from the seller who had discharged its tax liability but the preceding seller has not discharged its liability under the Act.

As regards Question no. 2,3 and 4, we have already held in Para 3 above that the same are not covered under the purview of Section 97(2) (d) of CGST Act read with PGST Act.

6. In view of the observations stated above, the following rulings are issued:

RULING

As per discussions made in the body of the order, the questions are answered as under: -

Question 1. Whether the purchaser is entitled to claim Input Tax Credit on the purchases made by it from the seller who had discharged its tax liability but the preceding seller has not discharged its liability under the Act?

Answer: No. As per provisions of Section 16(2)(c) of CGST Act read with PGST Act, the purchaser is not entitled to claim Input Tax Credit on the purchases made by it from the seller who had discharged its tax liability but the preceding seller has not discharged its liability under the Act

Question 2. If answer to the above is in negative, then how the purchaser will ensure that the tax liability has been discharged by all the sellers falling in the queue of the transaction?

Questions 3. Whether the purchaser would be eligible for the ITC since no infrastructure has been provided by the Govt, in order to ensure discharging of tax liability by the sellers falling in the queue of a transaction?

Question 4. Whether the purchaser is entitled to claim Input Tax Credit on the purchases made by it from the seller in the event of non-payment of tax by the seller even though the purchaser is in possession of the invoice, other relevant documents and the payments have been made through banking channels and there is no connivance or collusion between the purchaser and seller?

Answer: Question no. 2,3 and 4 above are not covered under the purview of Section 97(2)(d) of CGST Act and PGST Act, hence no ruling could be passed on these questions.

03/02/2023

Viraj Shyamkarn Tidke
Member, SGST

Varinder Kaur
Member, CGST