

Advance Ruling 03/2020-21
BEFORE THE AUTHORITY FOR ADVANCE
RULINGS FOR THE STATE OF UTTARAKHAND
(Goods and Services Tax)

Present:

Shri Vipin Chandra (Member)

Shri Amit Gupta (Member)

In

Application No:12/2019-20

1	Applicant	M/s. Vardhan Holidays, Village-Shivlalpur Pandey, Kashipur Road, Ramnagar, Uttarakhand
2	Jurisdictional Officer	Assistant Commissioner, CGST, Range-111, Ramnagar
3	Present for the Applicant	Mr. Ashwarya Sharma, Advocate
4	Concerned Officer	None
5	Present for the Jurisdictional Officer	Ms Preeti Manral, DC, SGST-Uttarakhand
6	Date of receipt of application	07.02.2020
7	Date of Personal Hearing	25.02.2020 & 15.06.2020

Note Under Section. 100(1) of the Uttarakhand Goods and Services Tax Act, 2017. an appeal against this ruling lies before the appellate authority for advance ruling constituted under section- 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order.

**AUTHORITY FOR ADVANCE RULING FOR THE STATE OF
UTTARAKHAND**

(Goods and Service Tax)

RULING

1. This is an application under Sub-Section (1) of Section 97 of the CGST/SGST Act, 2017 (herein after referred to as Act) and the rules made thereunder filed by M/s. Vardhan Holidays, Village-Shivlalpur Pandey, Kashipur Road, Ramnagar, Uttarakhand (here in after referred to as 'the applicant') is registered with the GSTN having Registration No. 05AAOFV8927H1ZL for providing services seeking advance ruling on the following questions:

- a. Whether input credit on goods/services received for construction of hotel building is available;
- b. Whether input credit on work contract service received for construction of hotel building is available;
- c. Whether input credit on goods/services received for construction of banquet hall which is rented further to customer is available;
- d. Whether input credit on work contract service received for construction of banquet hall which is rented further to customer is available;
- e. Whether the expression 'plant & machinery' would include 'hotel/banquet' under section 17 and accordingly input credit on work contract service or any goods/service received for construction of such hotel/banquet hall is available;
- f. Whether specified goods viz. Lifts, sanitary items, under ground cables etc are fall under the expression 'plant & machinery', & whether input credit on the same and GTA paid on such items under RCM, Architect services etc is available.

2. Advance Ruling under GST means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in sub section (2) of section 97 or sub section (1) of section 100 in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

3. As per the said subsection (2) of Section 97 of the Act advance ruling can be sought by an applicant 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 the 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

4. Since applicant has sought advance ruling on admissibility of input tax credit of tax paid or deemed to have been paid , therefore, in terms of said Section 97(2)(d) of the Act, the application filed by the applicant was admitted. Accordingly hearing was fixed on 25.02.2020 & on behalf of the applicant Sh Ashwarya Sharma, Advocate appeared before the authority and during the course of hearing Sh Manish Mishra, DC, SGST-Uttarakhand intimated the authority that on similar issue M/s Rosewood Hospitality (P) Ltd had filed a writ petition (WP No. 1898/2019) before Hon'ble High Court of Uttarakhand. Thus authority was of the view that before deciding the application, the fate of said writ petition, whether admitted or otherwise, shall be considered and if any issue is there, notice will be issued and personal hearing would be given.

5. Accordingly notice to show cause dated 17.03.2020 was issued to the applicant wherein they were required to Show Cause to the Advance Ruling Authority, Uttarakhand , Dehradun within fifteen days of receipt of this notice as to why the said application filed by them should not be rejected as per proviso to Section 98(2) of the Act.

6. The personal hearing in the instant case was fixed on 15.06.2020 which was attended by Sh Ashwarya Sharma, Advocate on behalf of the applicant, via video conferencing. During the course of hearing proceedings he reiterated the submissions filed vide letter dated 26.05.2020 and also submitted that the appeal in the matter of CCE Vs Safari Retreats (P) Ltd 86 others is only admitted by the Hon'ble Supreme Court and there is no stay of said judgment & accordingly, the decision of Hon'ble Odisha High Court is

binding precedent as on date. However Ms Preeti Manral, DC, SGST-Uttarakhand submitted that the appeal in the case of M/s Safari Retreats (P) Ltd is pending before Hon'ble Supreme Court and thus ITC in question should not be allowed under section 17(5) of the Act. The submissions dated 26.05.2020 of the applicant are summarized as under

- a. That they are engaged in the business of supply of services of accommodation, restaurant & renting of immovable property.
- b. That one portion of hotel including restaurant & banquet is under construction and has incurred huge cost for such construction which also include huge amount of GST paid on purchase of goods/services. The availability of ITC under GST is extended to all inputs/input services which are used by the registered person in the course or furtherance of business but section 17(5) of the Act restricts the ITC on the same. Thus they sought clarification in this regard. .
- c. That they have asked six questions but the SCN has been issued for two questions only, thus they are assuming that the ruling would be provided on the remaining four questions which are not objected in the SCN.
- d. That from the plain reading of first proviso to section 98(2) of the Act, the only ground on which the application can be rejected is when proceedings are pending or decided as the case may be, in the case of applicant and no other person.
- e. That the idea behind creation of such authority was to ensure, striking out the ambiguities in the statute in terms of interpretation, taxability, classification etc so as to ensure correct taxable position and mitigate unwanted financial consequences for future transactions. The entire concept of advance ruling is only taxpayer specific and thus apprehensions placed upon in the SCN is totally misplaced and not in accordance with the legislative scheme.
- f. That on harmonious reading of section 103(1) & 86 (2) of the Act, it can be seen that the advance ruling would be valid so long as there is no change in law and the moment there is change in law either due to legislative amendment or due to pronouncement of judgment by courts, the binding nature of the ruling shall come to an end and thus apprehension placed in the SCN regarding conflicting judgment is not correct as per the express provisions of the Act.
- g. That from the facts mentioned in the SCN it can be seen that there is neither a final nor a temporary order of any kind issued by the

Hon'ble High Court in the writ petition, basis which the purported SCN is issued. On the contrary, the judgment of Hon'ble Odisha High Court in the matter of M/s Safari Retreat, (P) Ltd is the final binding order in the facts and circumstances of the present case.

7. On perusal of records, we find the applicant has sought advance ruling on the admissibility of ITC in respect of goods/services received while constructing hotel including restaurant & banquet hall. We also find that revenue has brought to the notice of the authority that on the similar issue M/s Rosewood Hospitality (P) ltd had filed a writ petition (WP No 1898/2019) before Hon'ble High Court, of Uttarakhand but copy of the said WP was not produced before the authority Further the applicant had intimated the authority that the issue of admissibility of ITC on goods /services received or construction of immovable property has been decided by the Hon'ble High Court of Odisha in the case of M/S Safari Retreats (P) Ltd. and thus issue in hand is no more res integra However, the revenue as file SLP (C) Diary No. 37367/2019 against the said judgment before Hon'ble Supreme Court The applicant has also intimated the authority that similar petition is filed in the Hon'ble P & H High Uour in the case of DLF Cyber City Developers Ltd Vs UOI and the said petition is admitted by the said Hon'ble High Court.

8. We find that the impugned notice dated 17 03 2020 was issued to the applicant in terms of proviso to Section 98|2| of the Act in as much as the issue in hand i.e. admissibility of ITC on goods /services received for construction of immovable property, is pending before Hon'ble High Court of Uttarakhand.

9. Per contra the applicant vehemently argued that the only ground on which the application can be rejected is when proceedings are pending or decided as the case may be, in the case of applicant and no other person The applicant also argued that from the facts mentioned in the SCN it can be seen that there is neither a final nor a temporary order of any kind issued by the Honble High Court in the wnt petition, basis which the purported SCN is issued On tne contrary, the judgment of Hon'ble Odisha High Court in the matter of M/s Safari Retreat, (P) Ltd is the final binding order in the facts and circumstances of the present case

10. In his context provisions of section 98(2) of the Act are reproduced as under:

Section 98(2) of the Act: The Authority may, after examining the application and the records called for and after hearing the applicant or his authorized representative and the concerned officer or his authorized representative, by order, either admit or reject the application:

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:

Provided further that no application shall be rejected under this subsection unless an opportunity of hearing has been given to the applicant:

Provided also where the application is rejected, the reasons for such rejection shall be specified in the order.

11. On perusal of legal provisions (supra) we find that the authority shall not admit the application where the question raised in the application is pending or decided in any proceedings of an applicant under any of the provisions of this Act. No application shall be rejected under this sub section unless the opportunity of hearing given to the applicant. Where the application is rejected reasons of such rejection shall be specified in the order.

12. We find that as per applicant's argument their application can be admitted in as much as no case is pending before Hon'ble Court in the name of the applicant on the issue in hand. In this context we find that applicant has been defined under Section 95(c) of the Act which means any person registered or desirous of obtaining registration under this Act. Thus in light of said definition we do not find force in the applicant's argument in as much as the "applicant" means any person registered under this Act and it could be best interpreted that the legislative intent in its wisdom is to draft the relevant proviso to empower the Authority to reject the application in the cases where there is repeated filing of the application before the Authority on the same issue which is either pending for decision or already decided.

13. In light of above discussion we observe that all the cases mentioned above are pending in respective courts on the same issue and thus matter is sub-judice. Accordingly application filed by the applicant on same issue is rejected in terms of the provisions of Section 98(2) of the Act.

VIPIN CHANDRA (MEMBER) AMIT GUPTA (Member)

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