

	KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM	
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BEFORE THE AUTHORITY OF: Shri. Sivaprasad.S, IRS &
: Shri. Senil A.K. Rajan.

Legal Name of the applicant	Shri. Kottoor Mathew Jose Mathew, M/s. Jose Mathew and Co.
GSTIN	32AEHPM9073L1Z3
Address	Kandanadu, Manakunnam, Udayamperoor, Ernakulam – 682307
Advance Ruling sought for	<p>i) Is there any further tax liability to the applicant on the discount received through credit notes issued by the M/s. Hindustan Unilever Ltd., (First Supplier)?</p> <p>ii) In the light of the 1st proviso to Sec.34 of CGST Act, 2017, is there any tax liability on the applicant for the discount received on the basis of credit notes issued by the First Supplier?</p> <p>iii) Whether the essence of the advance ruling given by the Hon'ble Kerala Authority for Advance Ruling in M/s. Santhosh Distributors (KER/60/2019 dtd.16-09-2019), is applicable to this applicant with respect to the credit notes given after supply?</p> <p>iv) Whether the applicant can follow the essence of the same advance ruling issued by this Hon'ble Kerala Authority for Advance Ruling?</p> <p>v) If the first supplier issued credit notes showing GST and the applicant treated it as commercial credit notes, what are the consequences of such transactions?</p> <p>vi) As per Section 15(3) of the CGST Act, the value of taxable supply does not include discount. In</p>

	<p>this case, the value taken by the applicant is the invoice value prior to the discount. Is there any error in such procedure?</p> <p>vii) If any error has occurred in the monthly submission of GST return for the year 2017-18 on the basis of discount concepts, what are the steps to be taken by this applicant to rectify such errors for the years 2017-18 and 2018-19?</p> <p>viii) Is there any provision in the GST laws to issue notices to the applicant alleging mismatch between the tax payment in Form 3B under CGST Rules and the GSTR 2A of the applicant, with respect to discount?</p> <p>ix) If there is any such provision as asked for in Question 8, what are the steps to be taken by the applicant to safeguard applicant's interest in compliance with the provisions of GST law?</p>
Date of Personal Hearing	05-01-2021
Authorized Representative	Adv. K.S.Hariharan

ADVANCE RULING No. KER/123/2021 Dated 31-05-2021

M/s. Jose Mathew and Co. (herein after referred to as the applicant) is a supplier of consumer goods. The applicant has been purchasing consumer products mainly from M/s. Hindustan Unilever Ltd.

2. At the outset, the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act) and the Kerala State Goods and Services Tax Act, 2017 (hereinafter referred to as KSGST Act) are same except for certain provisions. Accordingly, a reference hereinafter to the provisions of the CGST Act, Rules and the notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the notifications issued there under.

3. The applicant requested advance ruling on the following;

1. *Is there any further tax liability to the applicant on the discount received through credit notes issued by the M/s. Hindustan Unilever Ltd., (First Supplier)?*

2. *In the light of the 1st proviso to Section 34 of CGST Act, 2017, is there any tax liability on the applicant for the discount received on the basis of credit notes issued by the First Supplier?*
3. *Whether the essence of the advance ruling given by the Hon'ble Kerala Authority for Advance Ruling in M/s. Santhosh Distributors (KER/60/2019 dtd.16-09-2019), is applicable to this applicant with respect to the credit notes given after supply?*
4. *Whether the applicant can follow the essence of the same advance ruling issued by this Hon'ble Kerala Authority for Advance Ruling?*
5. *If the first supplier issued credit notes showing GST and the applicant treated it as commercial credit notes, what are the consequences of such transactions?*
6. *As per Sec.15 (3) of the CGST Act, the value of taxable supply does not include discount. In this case, the value taken by the applicant is the invoice value prior to the discount. Is there any error in such procedure?*
7. *If any error has occurred in the monthly submission of GST return for the year 2017-18 on the basis of discount concepts, what are the steps to be taken by this applicant to rectify such errors for the years 2017-18 and 2018-19?*
8. *Is there any provision in the GST laws to issue notices to the applicant alleging mismatch between the tax payment in Form 3B under CGST Rules and the GSTR 2A of the applicant, with respect to discount?*
9. *If there is any such provision as asked for in Question 8, what are the steps to be taken by the applicant to safeguard applicant's interest in compliance with the provisions of GST law?*

4. Contentions of the Applicant:

4.1. The applicant has been purchasing consumer products mainly from M/s. Hindustan Unilever Ltd., hereinafter referred to as 'First Supplier'. Since 2017-18, the applicant has been receiving taxable goods from the First Supplier. The First Supplier would subsequently issue certain credit notes of discount after the supply of goods to the applicant as a distributor on the basis of the targeted quantity offered by the First Supplier. The applicant would transfer this discount as such to his various resellers or retailers in accordance with the terms and conditions and instructions of the First Supplier, acting as a pure agent of the First Supplier. The applicant has taken all such credit notes issued by the First Supplier as Commercial Credit Notes and has not given much importance to the tax element shown in such credit notes since such credit notes of discount would

be issued in a later period. For example, the supply effected for the period of April may be issued in September or next April on the basis of the target fixed by the First Supplier and on the basis of the evaluation of the supplier company or their consultants. However, the applicant has transferred all such discount to his subsequent resellers or retailers.

4.2. The applicant receives goods on the basis of valid tax invoices and avails Input Tax Credit for these transactions. The Original Supplier from time to time issues credit notes to give discount to the Applicant. The Applicant treats these credit notes as commercial credit notes only, and passes on the discount amount to their customers. However, the Original Supplier has been reducing their Output Tax Liability on the basis of these credit notes issued to the Applicant. This leads to an appearance of mismatch in GSTR 2A of the Applicant. In view of the above factual situation, the Applicant's primary query is whether there is any tax liability on the Applicant, on account of the discount received under the credit notes issued by the Original Supplier.

4.3. In view of the proviso to Section 34(2) of the CGST Act, 2017, and Section 43(3), 43(5), 43(7) and 43(10) of the CGST Act, 2017, so long as the applicant does not declare in their return the tax element attached with the credit notes, then the applicant is not liable for the tax element of such credit notes. The Applicant has treated the credit notes as commercial credit notes only, and has not recorded the same in their returns. Therefore, by operation of Section 43 of the CGST Act, the Original Supplier is not eligible to reduce their Output Tax Liability citing the credit notes issued to the Applicant. Further, the discount provided by the Original Supplier to the Applicant also does not fall under any category mentioned under Section 15(3) of CGST Act because the discount is not included in the Invoice, the discount is not given as per agreement or specifically linked to any invoices, and the input tax credit attributable to the discount has also not been reversed by the Applicant. Therefore, by application of Section 15(3), the discount is to be included in the value of supply and the applicant is eligible to the Input Tax Credit due on the full value of the supply. In the Advance Ruling in the case of Santhosh Distributors (Advance Ruling No. KER/60/2019 dated 16.09.2019), similar issue was considered and the Authority had held that the Original Supplier could not reduce their Output Tax Liability on the basis of discount provided through commercial credit note, and that therefore the Applicant therein was not liable to reduce their ITC. It is this Applicant's query whether this Advance Ruling can be followed in the Applicant's case as well.

5. Comments of the Jurisdictional Officer:

The jurisdictional officer submitted that the products dealt by the dealer are FMCG products of M/s Hindustan Unilever Ltd. The dealer filed application for Advance Ruling claiming Credit Notes of Discount received by him as Commercial credit Notes, further claiming he transferred the discount as such to

the resellers and for this tax element was not considered. The issue of treatment of Commercial Credit Notes was clarified by CBIC Circular No. 92/11/2019-GST dated 07-03-2019. The applicability of conditions laid down in clause (b) of sub-section (3) of section 15 of the CGST Act in this case can be discussed only on production of the agreement or document issued. Pre-adjudication notices on discrepancy found on scrutiny are valid. The dealer has the option to agree or disagree to the proposal in pre-adjudication. Adjudication steps under different sections may follow if the reply is not satisfactory. The proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.

6. Personal Hearing:

The applicant was granted opportunity for personal hearing on 05.01.2021. Adv. K.S.Hariharan, Advocate represented the applicant in the personal hearing. He reiterated the contentions made in the application and also submitted a Hearing Note. The contentions of the applicant in the application and in the Hearing Note dated 05.01.2021, has already been extracted in detail in Para 4 above.

7. Discussion and Conclusion:

7.1. The matter was examined in detail. The issue to be decided are mainly as follows;

- (i) the tax liability of the applicant on the discount received through credit notes issued by the M/s. Hindustan Unilever Ltd;
- (ii) Whether the ruling given by this authority in the application of M/s. Santhosh Distributors [KER/60/2019 dated 16-09-2019] is applicable to them and whether they can follow the ruling;
- (iii) Whether GST credit notes issued by the supplier can be treated as commercial credit notes by the applicant;
- (iv) Whether there is any error in the procedure adopted by them by treating the invoice value prior to discount as the taxable value with reference to the provisions of Section 15 (3) of the CGST Act;
- (v) the steps to be taken for rectification of errors; if any regarding treatment of discount in the monthly returns filed by them for the years 2017-18 and 2018-19 and whether there is any provision in the GST laws to issue notice to the applicant alleging mismatch between the tax payment in Form 3B under CGST Rules and the GSTR 2A of the applicant, with respect to discount and if such provision exists, what are the steps to be

taken by them to safeguard their interest in compliance with the provisions of GST law.

7.2. Section 95(a) of CGST Act defines 'advance ruling' as follows: -

(a) "advance ruling" 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;

7.3. From the above definition it is evident that an applicant can seek an advance ruling in relation to supply of goods or services or both undertaken or proposed to be undertaken by the applicant. Further, as per Section 103(1) of the CGST Act such an Advance Ruling is binding only on the applicant and on the Officer Concerned or the jurisdictional Officer in respect of the applicant.

7.4. Section 97 of the CGST / SGST Act specifies about the application for advance ruling. Section 97 of the CGST/ SGST Act specifies as follows: -

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(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.

7.5. Section 103 of the CGST Act governs the applicability of Advance ruling wherein it is specified that;

(1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—

- (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;
- (b) on the concerned officer or the jurisdictional officer in respect of the applicant.

(2) The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

7.6. On a combined reading of the definition of the terms, advance ruling, applicant and the above provisions governing advance ruling under the CGST Act it is evident that an applicant can make an application for advance ruling if the following conditions are satisfied; (1) the applicant is either registered under GST law or is desirous of obtaining registration; (2) the matter or question pertains to any issue specified in Section 97 (2); (3) such a transaction is being undertaken or proposed to be undertaken by the applicant and the advance ruling is binding only on the applicant and the jurisdictional officer of the applicant.

8. In the instant case the 1st and 2nd question raised is regarding the tax liability on the discount received by the applicant through the credit notes issued by the supplier as per provisions of Section 34 of the CGST Act. The exclusion of any discount from the value of supply is governed by the provisions of sub-section (3) of Section 15 and the issue of credit and debit notes by the provisions of Section 34 of the CGST Act. The relevant provisions are reproduced below;

“15 (3): - The value of the supply shall not include any discount which is given-

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if—

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

“34. Credit and debit notes. - (1) Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed.

(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is

earlier, and the tax liability shall be adjusted in such manner as may be prescribed:

Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

(3) Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient one or more debit notes for supplies made in a financial year containing such particulars as may be prescribed.

(4) Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

Explanation: —For the purposes of this Act, the expression “debit note” shall include a supplementary invoice.”

8.1. Thus, sub-section (3) of Section 15 of the CGST Act clearly specifies the circumstances under which and the conditions subject to which any discount can be deducted / excluded for determining the taxable value of a supply. From the facts as stated by the applicant it is seen that the discount received through credit note is a post – supply discount. However, the applicant has not stated whether such discount is established in terms of an agreement entered into at or before the time of such supply. The applicant has neither produced the copy of the agreement entered into by them with the supplier nor disclosed any details of the agreement. Though the applicant has produced a copy of the credit note issued by the supplier, the credit note does not contain any particulars whereby the nature and purpose of the discount and the circumstances under which the credit note was issued could be discerned. Further they have also not disclosed any information regarding the nature and purpose of the credit note or on the circumstances in which the credit note is issued by the supplier. Therefore, in the absence of necessary information regarding the passing over of discount by the supplier through the credit notes, this authority cannot issue any ruling on the above questions.

9. The Question Nos. 3 to 9 is not in respect of any matter that is specified in Section 97 (2) of the CGST Act. This authority being a creature of statute has to function within the limits of the jurisdiction conferred on it. Accordingly, the jurisdiction of this authority does not extend to issue rulings on the questions at Sl Nos. 3 to 9.

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

RULING

1. Is there any further tax liability to the applicant on the discount received through credit notes issued by M/s. Hindustan Unilever Ltd., (First Supplier)?

The provisions governing the value of taxable supply are contained in Section 15 of the CGST Act. The applicant has not produced any details regarding the nature of discount received through credit notes. In the absence of sufficient information this authority is not in a position to issue ruling on the question.

2. In the light of the 1st proviso to Section 34 of CGST Act, 2017, is there any tax liability on the applicant for the discount received on the basis of credit notes issued by the First Supplier?

The provisions governing debit notes and credit notes are contained in Section 34 of the CGST Act. The applicant has not produced any details regarding the purpose or nature of discount received through credit notes. In the absence of sufficient information this authority is not in a position to issue ruling on the question.

3. Whether the essence of the advance ruling given by the Hon'ble Kerala Authority for Advance Ruling in M/s. Santhosh Distributors (KER/60/2019 dated 16-09-2019), is applicable to this applicant with respect to the credit notes given after supply?

4. Whether the applicant can follow the essence of the same advance ruling issued by this Hon'ble Kerala Authority for Advance Ruling?

5. If the first supplier issued credit notes showing GST and the applicant treated it as commercial credit notes, what are the consequences of such transactions?


6. As per Section 15(3) of the CGST Act, the value of taxable supply does not include discount. In this case, the value taken by the applicant is the invoice value prior to the discount. Is there any error in such procedure?

7. If any error has occurred in the monthly submission of GST return for the year 2017-18 on the basis of discount concepts, what are the steps to be taken by this applicant to rectify such errors for the years 2017-18 and 2018-19?

8. Is there any provision in the GST laws to issue notices to the applicant alleging mismatch between the tax payment in Form 3B under CGST Rules and the GSTR 2A of the applicant, with respect to discount?

9. If there is any such provision as asked for in Question 8, what are the steps to be taken by the applicant to safeguard applicant's interest in compliance with the provisions of GST law?

The above Question Nos. 3 to 9 being not in respect of any matter specified under Section 97 (2) of the CGST Act, this authority has no jurisdiction to issue ruling on the same for the reasons as stated above.



Sivaprasad.S

Joint Commissioner of Central Tax
Member



Senior A.K. Rajan

Additional Commissioner of State Tax
Member

To,

Shri. Kottoor Mathew Jose Mathew,
M/s. Jose Mathew and Co.
Kandanadu, Manakunnam,
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Copy to:

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- 2) The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram – 695002.
- 3) The Deputy Commissioner, State Goods and Services Tax Department, Special Circle – III, Ernakulam. [E-mail ID:acspl3ekm1@gmail.com]