



TELANGANA STATE AUTHORITY FOR ADVANCE RULING
CT Complex, M.J Road, Nampally, Hyderabad-500001.
(Constituted under Section 96(1) of TGST Act, 2017)

Present:

Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Taxes)
Sri Sahil Inamdar (I.R.S), Additional Commissioner (Central Taxes)

A.R.Com/04/2023

Date:02.09.2023

TSAAR Order No.15/2023

[ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE TEALANGANA GOODS AND SERVICES TAX ACT, 2017.]

1. M/s. Geekay Wires Limited, 11-70/5, 2nd Floor, G.P Complex Shivalayam Road, Fathenagar, Rangareddy, Telangana -500 018 (36AAACG7452M1ZA) has filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules.

2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.

3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- for SGST and Rs. 5,000/- for CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided by nor are pending before any authority under any provisions of the GST Act. The application is therefore, admitted.

4. **BRIEF FACTS OF THE CASE:**

The applicant M/s. Geekay Wires Limited is engaged in the business of manufacturer of Steel Nails and other steel products in its manufacturing unit situated at Shankarampet-R, Village, Shankarampet- R Mandal-Medak, Medak, Telangana. The raw materials for manufacturing Steel Nails are Steel Wire rod. The applicant purchases steel wire rods and draw it to required sizes and then in Nail making machine make Steel nails of different sizes. The other major inputs for manufacturing Nails are Polypropylene, Copper wire, Paper tape and packing material like cartons, pallets etc...The applicant purchases these raw materials from the other registered taxable persons within the State and also from outside the State of Telangana and avail GST input tax credit on all the materials purchased as stated above. Output tax on Nails supplied in the course of business is regularly paid as per the provisions of the GST Act. During the

manufacturing process steel scrap is also generated which the applicant sells in the market and GST liability is paid / set off on the same against the GST input.

Manufacturing process:

Steel wire rod is drawn in wire drawing machine for required sizes and then in Nail making machine Steel nails of different sizes are manufactured. Once steel Nails are manufactured, they are further collated through collating machines by using the collation material like Polypropylene, Copper wire, Paper tape. Once Nails are collated they are packed in Cartons and then all these cartons are palletized on wooden pallets for sales purpose as a Finished goods.

3. It is submitted by the applicant that on 17th Dec '2022 fire broke out in the applicant's factory premises and major quantities of Finished goods as stated above are destroyed and now these finished goods can be sold only as a steel scrap in the market.

4. The applicant submitted that he has already claimed the input tax credit on all the raw materials and other inputs for manufacturing of Steel Nails in the month in which they are procured from the registered taxable persons under the GST Act as per Section 16 of the CGST Act

5. The applicant submitted that according to Section 17 (5) (h) of the CGST Act, input tax credit shall not be available **in respect of** the goods lost, stolen, destroyed, written off or disposed of way by of gift or free samples. In the applicant's case, the goods purchased from the GST registered taxable persons are not destroyed but they are used in the manufacturing of finished goods and the finished goods are destroyed in the fire accident and these burnt finished goods can be sold only as scrap in the market and output tax liability will be paid on such supply of scrap under the GST Act.

STATEMENT containing the applicant's interpretation of law and/or facts, as the case may be in respect of the aforesaid question (i.e. applicant's view point and submissions on Issues on which the advance ruling is sought):

1. That according to Section 16 (1) of the CGT Act, 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 business and the said amount shall be credited to the electronic credit ledger of such person.

2. That as per the above provision under the CGST Act, a registered person is entitled to take input tax credit on the goods used or intended to be used in the course of business. In the case of the applicant, the goods/service received from registered taxable persons are already used in the manufacturing process and new commercial commodity is emerged than the different inputs used in such manufacturing activity. These inputs and input services are not destroyed in the fire

accident as already by the time of fire accident they are used in the manufacturing of finished goods and lost their identity. The relevant expenditure is then business expenditure.

3. That according to Section 17 (5) (h) of the CGST Act, input tax credit shall not be available in respect of the goods lost, stolen, destroyed, written off or disposed of way by of gift or free samples. It is submitted that the goods destroyed in the applicant's case is finished goods and these finished goods are not procured from any registered taxable person under the Act and therefore the question of availing Input tax credit/restriction of such availed input tax credit in respect of the finished goods does not arise.

4. That as per Section 2(62) of the CGST Act, 'input tax' in relation to a registered person, means the GST charged on any supply of goods or services or both made to him. It is submitted that the applicant availed ITC on inputs and input services which are already used in the manufacturing process.

5. That the words used in Section 17 (5) (h) with regard to non-availability of input tax credit is in respect of. It is therefore important to understand the ambit of the phrase 'in respect of and whether the same would extend to raw material which are already consumed in the final product.

6. That to understand the scope of the phrase 'in respect of, reference is made to **State of Madras Vs. Swastik Tobacco Factory AIR 1966 SC 1000** wherein the Court was examining the phrase in respect of used while granting deduction of excise duty paid in respect of goods sold. While the Revenue argued that 'in respect of here is synonymous with 'on' and narrows down the scope of the phrase to only those goods 'on' which excise duty was paid, the assessee argued that the phrase was wide enough to cover even cases where excise duty paid on raw materials can be attributed to the finished goods. The Court rejected the argument of the assessee and held **that 'in respect of in the context can only mean goods 'on' which excise duty was paid and not on raw materials which are attributable to the final product.**

7. That even though the above case was not pertaining to destruction of finished goods, a similar interpretation can be adopted for the purpose of 'in respect of used in Section 17(5)(h) of the CGST Act Accordingly, ITC can be disallowed only 'on' those input goods which are lost, stolen, destroyed, etc.

8. That in light of the above analysis, it emerges that there has to be a matching of the identity of goods on which credit is take and on which credit is denied under Section 17(5)(h). Thus, while applying the said Section, the "identity test" of the goods needs to be considered i.e. ITC can be denied only on those specific goods on which credit is taken. Once the goods on which credit is taken are consumed in the final product and lose their identity, then, ITC reversal cannot be demanded.

9. That accordingly, it can be said that the ITC restriction does not extend itself to inputs contained in the finished goods after being put to use.

10. That a similar interpretation was taken by the **Maharashtra Authority for Advance Ruling in General Manager Ordnance Factory Bhandara, 2019 (26) G.S.T.L. 423 (A.A.R. GST)**, where it was held that "where inputs are used, they cease to -- exist and they being destroyed, lost or stolen will not arise. Therefore, once the inputs are used in manufacture of final products, which are then sent for testing purposes, then in such a case the said inputs cannot be considered to have been destroyed."

11. That when inputs are properly/fully utilized in the manufacturing of finished goods, the same cease to exist and thus, credit availed on said inputs is not required to be reversed in the event of destruction of finished goods in fire.

12. That when the finished goods are destroyed in fire accident and the destroyed finished goods are sold as scrap also input tax credit is available for the reasons mentioned above. It is also submitted that in this case, on the supply of scrap output tax liability is liable to be paid at the applicable rates under the GST Act.

5. QUESTIONS RAISED:

The applicant seeks clarification with regard to eligibility of input tax credit on the raw materials purchased for manufacture of finished goods i.e. whether already claimed ITC is required to be reversed or not in the following circumstances.

i) When the raw materials purchased are already used in the manufacture of finished goods and the finished goods are destroyed in the fire accident completely

ii) When the raw materials procured are lost in the fire accident before use in manufacture of finished goods.

iii) When the destroyed finished goods can be sold as steel scrap in the open market and output tax liability on such supply of scrap is paid.

6. PERSONAL HEARING:

The Authorized representatives of the unit namely Sri. M.Ramachandra Murthy, Advocate & AR attended the personal hearing held on 20.03.2023. The authorized representatives reiterated their averments in the application. Further, the Authorised Representative/Applicant M/s. Geekay Wires Limited, Rangareddy, reiterated that their case /Similar Case is not pending in any proceedings in the applicant's case under any of the provision of the Act and have not already decided in any proceedings in the applicant's case under any of the provisions of the Act.

7. DISCUSSION & FINDINGS:

It is a general rule of interpretation of a statute that it must be read as a whole in its context. The Hon'ble Supreme Court of India in the case of Uninor India Vs Elephinstone spinning and

weaving company limited (2001) 4 SCC 139 (Constitution bench) has adopted the statement from a catena of earlier case law that when the question arises as to the meaning of a certain provision in a statute, it is not only legitimate but proper to read the provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute and the mischief that it was intended to remedy. The Hon'ble Supreme Court in an earlier case of Philips India Limited Vs Labour Court (1985) 3 SCC 103 held that it is a rule now firmly established that the intension of the legislature must be found by reading the statute as a whole. This rule referred to as "elementary rule" was followed in many national and international cases. It is spoken of construction '**ex visceribus actus**' i.e., every part of the statute must be construed within the four corners of the Act.

In this context the legislative intent for allowing input tax credit under Section 16 has to be gathered from the conditions under which restrictions to claim the same arise under Section 17 of the CGST Act, 2017.

Section 17(2) of the CSGT Act, 2017 concludes with the clause "The amount of credit shall be restricted to so much of input tax as is attributable to the taxable supplies including zero rated supplies". Therefore the input tax credit on the purchases made in the context of Section 17(2) has to be restricted to the taxable supplies only. This Section is further buttressed by Section 18(4) where in the condition of debiting or paying back the input tax already claimed is clearly enumerated. The sub section is abstracted hereunder.

"(4) Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or both supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption:

PROVIDED that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse."

It is seen from the above statute that once the output becomes non-taxable for any reason the input tax already utilized pertaining to the corresponding inputs has to be reversed or paid back. Under this statute this reversal will apply to the portion of input tax relatable to

- i. Inputs held in stock.
- ii. Inputs contained in semi finished or finished goods in stock.
- iii. Capital goods.

Further under Section 17(5)(h) clearly mentions that input tax shall not be availed in respect of "goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples".

The above statutory provision of the Act has to be interpreted in the context of other statutory provisions i.e., 17(2) and 18(4) and the meaning has to be discerned by applying the principle discussed above i.e., 'ex visceribus actus'. The scheme of the Act becomes clear from the combined reading of three provisions that input tax credit is available to a taxable person only when such taxable person makes taxable supplies. When the taxable supplies are not made input tax credit is not available under Section 17(2) and 17(5)(h). If the input tax credit is already utilized such credit needs to be paid back as given under Section 18(4).

Therefore the input tax credit to the extent of manufactured goods destroyed or inputs destroyed is not available to the applicant and the same needs to be paid back either through the credit available in the credit ledger or by cash.

Scrap sold by the applicant is nothing but a destroyed goods therefore in the context of above discussion sale of scrap i.e., sale of destroyed goods are not eligible for input tax credit.

8. In view of the foregoing, we rule as follows:

The applicant seeks clarification with regard to eligibility of input tax credit on the raw materials purchased for manufacture of finished goods i.e. whether already claimed ITC is required to reversed or not in the following circumstances:

Questions	Ruling
i) When the raw materials purchased are already used in the manufacture of finished goods and the finished goods are destroyed in the fire accident completely.	ITC is required to reversed
ii) When the raw materials procured are lost in the fire accident before use in manufacture of finished goods.	ITC is required to reversed
iii) When the destroyed finished goods can be sold as steel scrap in the open market and output tax liability on such supply of scrap is paid.	ITC is required to reversed


 (S.V. KASI VISWESWARA RAO)
 ADDL. COMMISSIONER(STATE TAXES)


 (SAHIL INAMDAR)
 ADDL. COMMISSIONER(CENTRAL TAXES)

[Under Section 100(1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this Order]

To
 M/s. Geekay Wires Limited,
 11-70/5, 2nd Floor, G.P Complex
 Shivalayam Road, Fathenagar,
 Rangareddy, Telangana -500 018.

Copy submitted to :

1. The Commissioner (State Tax) for information.
2. The Commissioner (Central Tax), Medchal Commissionerate, III Floor, Medchal GST Bhavan, 11-4-649/B, Lakdikapul, Hyderabad – 500 004

Copy to:

3. The Superintendent (Central Tax), Fatehnagar Range