

2019-TIOL-65-AAAR-GST

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|  सत्यमेव जयते | RAJASTHAN APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX NCR BUILDING, STATUE CIRCLE, C-SCHEME JAIPUR – 302005 (RAJASTHAN) |  |
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Proceedings under Section 101 of the Central GST Act, 2017 read with Rajasthan GST Act, 2017

Before the Bench of

1. Sh. Rakesh Kumar Sharma, Member(Central Tax)
2. Dr. Preetam B. Yashvant, Member(State Tax)

ORDER NO. RAJ/AAAR/01/2019-20 DATED 08.5.2019

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| Name and address of the Appellant | : | M/s IMF Cognitive Technology Private Limited, 208, Brij Anukampa K-13, Ashok Marg, C –Scheme, Jaipur-302001 (Rajasthan) |
| GSTIN of the Appellant | : | 08AAECI1271Q1Z6 |
| Clause(s) of Section 97(2) of CGST / SGST Act, 2017, under which the question(s) raised | : | Admissibility of input tax credit of tax paid or deemed to have been paid. |
| Date of Personal Hearing | : | 02.05.2019 |
| Present for the Appellant | : | 1. Shri Jatin Harjai , CA 2. Ms. Neha Sethi, CA |
| Details of Appeal | : | Appeal No. RAJ/AAAR/APP/08/2018-19 dated 12.02.2019 against Advance Ruling No. RAJ/AAR/2018-19/30 dated 09.01.2019 |



(Proceedings under Section 101 of the Central GST Act, 2017 read with Section 101 of the Rajasthan GST Act, 2017)

At the outset, we would like to make it clear that provisions of both the Central GST Act, 2017 and Rajasthan GST Act, 2017 are same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central GST Act would also mean a reference to the same provisions under Rajasthan GST Act.

2. The present appeal has been filed under Section 100 of the Central GST Act, 2017 (**hereinafter also referred to as 'CGST Act'**) read with Section 100 of the Rajasthan GST Act, 2017 (**hereinafter also referred to as 'RGST Act'**) by M/s IMF Cognitive Technology Private Limited, Jaipur against the Advance Ruling No. RAJ/AAR/2018-19/30 dated 09.01.2019.

Brief Facts of the Case

3. M/s IMF Cognitive Technology Private Limited, Jaipur (**hereinafter also referred to as 'the Appellant'**) is a Private Limited Company holding GSTIN 08AAECI1271Q1Z6 in the State of Rajasthan . The Appellant is engaged in development, designing and trading in all types of computer software. They are engaged in export of software as well.

4. The Appellant procures various Goods or Services for the purpose of trading and export both within the State of Rajasthan and outside the State of Rajasthan . The Appellant claims the credit of taxes paid on Goods and Services, which are used in the course or furtherance of business and the place of supply of such Goods/Services is the State of registered place of business i.e. Rajasthan.



5. In case of procurement of inward supplies from other States, at times, supplier charges Central GST & State GST of the State of supplier. For example, the Appellant is registered in the State of Rajasthan and if they procure Services of short term accommodation (i.e. Hotel) in Haryana, the supplier (i.e. Hotel) charges Central GST & State GST of that State, due to the reason of place of supply being in the State of Supplier.

6. The eligibility for input tax credit is governed by the provision of Section 16(1) of CGST Act, 2017. As per understanding of the Appellant, the provisions of Section 16(1) entitles the registered person to claim input tax credit of input tax paid on inward supply of Goods and/or Services which are used or intended to be used in the course or furtherance of business. The term '**input tax**' has been defined in Section 2(62) of the CGST Act, 2017.

7. In the case under consideration, on the Hotel services which are procured in the State of Haryana, the Appellant has paid the Central GST & Haryana GST. Such Hotel services are being used exclusively for the purposes of business of the Appellant i.e. for meeting with prospective buyers and vendors.

8. The Applicant/Appellant had sought ruling under Section 97(2)(d) of the CGST Act 2017, on the following question:-

“Whether the input tax credit of Central Tax paid in Haryana be available to the Applicant who is registered in Rajasthan State ?”



9. The Rajasthan Authority for Advance Ruling , GST, Jaipur (**hereinafter referred to as “AAR” also**) observed that in the GST regime, State GST and Central GST charged for the Services provided and availed in a State would be eligible for ITC within that particular State where such services were provided and consumed. As the supplier of services and place of supply both are outside the state of Rajasthan, Input tax credit of Central Tax paid in Haryana is not available to the Applicant/Appellant.

Grounds of Appeal

10. Being aggrieved, the Appellant has filed the subject appeal wherein they have inter alia contended that :-

- (i) whether in the facts and circumstances of the case and in law, is it justified by the AAR to interpret the law by giving preamble of CGST Act, 2017 for levy of GST whereby the Applicant/Appellant has asked question on Input tax credit and not on leviability of tax ?
- (ii) whether in the facts and circumstances of the case and in law, is it justified by the AAR to decide admissibility of credit on the basis of location of supplier and place of supply, while provisions of GST law for admissibility of Input Tax Credit are separately provided under Chapter V of the CGST Act and there is no correlation between admissibility of Credit and Place of Supply?
- (iii) whether in the facts and circumstances of the case and in law, is it justified by the AAR to decide the case without giving any observation or reasoning on the comments given by the jurisdictional officer and disposing of the application for ruling without giving any specific



reference to any provision of the law, while the Applicant had requested for the same specifically ?

(iv) whether in the facts and circumstances of the case and in law, is it justified by the AAR to go beyond the question raised by the Applicant/Appellant by observing admissibility of input tax credit in respect of State, while the question was in respect of credit of Input tax paid in the form of Central Tax to Central Government only ?

Personal Hearing

11. A personal hearing in the matter was held on 02.05.2019 . Shri Jatin Harjai , CA & Authorised Representatives and Ms. Neha Sethi, CA appeared on behalf of the Appellant. Shri Jatin Harjai reiterated the submissions made in their appeal memorandum. He also submitted a written brief at the time of PH and reiterated the submissions mentioned therein.

Discussion and Findings

12. We have carefully gone through the Appeal papers filed by the Appellant, the Ruling of the AAR , as well as oral submissions made by the authorised representative(s) of the Appellant, at the time of Personal Hearing held on 02.05.2019. We find that the Appellant had requested for Ruling on whether the input tax credit (hereinafter referred to as “ITC” also) of the Central GST paid by them in the State of Haryana is admissible to them or not ?

13. The Rajasthan Authority for Advance Ruling, Goods and Service Tax, Jaipur (AAR) in its Ruling No. RAJ/AAR/2018-19/30, dated 09.01.2019, has pronounced that



the credit of the Central GST paid by the Appellant in the State of Haryana is not admissible to them . Contention of the Appellant is that the ITC provisions allow them to claim the credit of the Central GST paid on the input services availed in the State of Haryana. They have taken objection to the AAR delving into preamble of the CGST Act for denying them ITC of the Central tax paid in Haryana.

14. We find a piquant situation here . Piquant in the sense that the Appellant is asking for the ITC of only Central tax paid in Haryana . It means that they are sure that ITC of the State GST paid in Haryana is not admissible to them. This is true also because State GST Act of Rajasthan (i.e. RGST Act) allows ITC of only State GST paid in Rajasthan . In the GST Law, we find that both of these taxes i.e Central GST and State GST go hand in hand . Wherever Central GST is applicable , State GST is also applicable. No situation has been contemplated where one of these tax is applicable but another not. In nutshell if any event attracts Central GST , it would also attract State GST. From this, it naturally flows that if ITC of State GST is not admissible , ITC of Central GST should also not be admissible . But we have to find out whether Law specifically bar this or not.

15. To this end , we are examining the ITC provisions of the CGST Act. Relevant Section is Section 16(1) which is being reproduced for the sake of convenience.



“16(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.”

16. After going through the Section 16(1) above ,which allows credit of **input tax** to a registered person, subject to conditions and restrictions, it is necessary to know what **input tax** is . The term **input tax** has been defined in Section 2(62) which is also being reproduced for the sake of convenience :-

“Input Tax” in relation to a registered person, means the **central tax**, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes -----

17. On perusal of the Section 2(62) as reproduced above , it becomes clear that the **input tax** inter alia is **Central tax** charged on inward supply of a registered person . While **Central tax**, as per Section 2(21) of the CGST Act, means the Central Goods and Services Tax (**Central GST**) levied under section 9 . After going through the Section 9 , we find that Section 9(1) is relevant to the instant matter. So we are reproducing the provisions of Section 9(1) of CGST Act for the sake of convenience :-

9(1): Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.



18. Going through the above Section 9(1) , we come across a phrase “**intra-State supplies of goods or services** ”. Section 8(2) of the Integrated GST Act, 2017 defines ‘**intra-state supplies of services**’ . The Section is being reproduced for the sake of convenience :-

8(2) Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply: Provided that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

19. From above we find that credit of **input tax** is admissible to a registered person, subject to conditions and restrictions , and **input tax** inter alia is **Central tax** charged on inward supply of a **registered person**. Going further, **Central tax** is **Central GST** levied under Section 9 of the CGST Act. After going through the Section 9(1) above, we find that the **Central GST** is a tax levied on all **intra-State supplies of goods or services** or both -----. Going ahead, **Intra-state supply of service** , as per Section 8(2) of the Integrated GST Act, 2017 means supply of services where the location of the supplier and place of supply of services are in the same State. Thus crux of the matter is that for a person registered in Rajasthan, **Central GST** or **Central tax** is a tax levied under Section 9 ibid on supplies having both location of the supplier and place of supply in Rajasthan . At this point it becomes absolutely clear that ITC of the **Central GST** or **Central tax** would be available to a person registered in Rajasthan if the location of the supplier and place of supply of the services are in Rajasthan . In other words , ITC of the **Central tax**



charged from the Appellant in Haryana is not available to them as in this case both the location of the supplier and place of supply of the services are in the State of Haryana. Accordingly we pass the following order :-

ORDER

20. We uphold the Advance Ruling rendered by the Rajasthan Authority for Advance Ruling, Goods and Services Tax, Jaipur vide their Ruling No. RAJ/AAR/2018-19/30 dated 09.01.2019, in respect of ITC of the Central GST paid in Haryana, which has been held as "not admissible" to the Appellant. Consequently, the Appeal filed by the Applicant/Appellant i.e. M/s IMF Cognitive Technology Private Limited, Jaipur is not legally sustainable and hence is liable to be dismissed and we hold accordingly.

Name
08/05/2019
(RAKESH KUMAR SHARMA)

MEMBER (CENTRAL TAX)

mm 8/5/19
(DR. PREETAM B. YASHVANT)
MEMBER (STATE TAX)

To,

M/s IMF Cognitive Technology Private Limited,
208, Brij Anukampa
K-13, Ashok Marg, C -Scheme,
Jaipur-302001 (Rajasthan)



Copy to :-

1. The Chief Commissioner of CGST & Central Excise (Jaipur Zone), NCR Building, Statue Circle , Jaipur-302005.
2. The Commissioner of RGST & Commercial Taxes, Rajasthan, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme, Jaipur-302005.
3. The Principal Commissioner , Central GST Commissionerate , NCR Building, Statue Circle , Jaipur-302005.
4. Deputy/Asstt. Commissioner, Circle-N, Jaipur, Commercial Taxes Deptt., Kar-Bhawan, Jhalana Institutional Area, Jaipur- 302 004
5. The Asstt. Commissioner, Central GST Division-H, CGST Building, Sector- 10 Vidhyadhar Nagar, Jaipur - 302023
6. Rajasthan Authority for Advance Ruling, Goods and Service Tax, NCR Building, Statue Circle , Jaipur-302005
7. Guard File

(Pramod Kumar Sharma)
Superintendent