

WEST BENGAL AUTHORITY FOR ADVANCE RULING  
GOODS AND SERVICES TAX

14 Beliaghata Road, Kolkata – 700015

(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

Members present:

Mr Brajesh Kumar Singh, Joint Commissioner, CGST & CX

Mr Joyjit Banik, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	Anmol Industries Limited
Address	Maity Para, Delhi Road, Hooghly, West Bengal, Pin Code-712311
GSTIN	19AADCB9169P1ZS
Case Number	WBAAR 30 of 2022
ARN	AD190922011281C
Date of application	October 11, 2022
Jurisdictional Authority (State)	Large Tax Payers Unit
Jurisdictional Authority (Central)	Dankuni Division, Howrah Commissionerate
Order number and date	26/WBAAR/2022-23 dated 09.02.2023
Applicant's representative heard	Mr. Ankit Kanodia, Authorized Advocate

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for

certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression 'GST Act' would mean the CGST Act and the WBGST Act both.

1.2 The applicant submits that he has entered into a leasing agreement with the Shyama Prasad Mookerjee Port, Kolkata (hereinafter referred to as SMPK), a body incorporated under the Ministry of Ports, Shipping and Waterways, Government of India, wherein, the SMPK has agreed to lease a industrial plot of land at Taratala Road for a period of thirty years (30 years) for setting up commercial office complex. The allotment of the plot has been done vide letter bearing number Lnd. 6063/22/2869 dated 21.09.2022.

1.3 The applicant submits further that as per the allotment letter supra, it has been agreed that the applicant shall pay a sum of Rs. 39,00,11,000/- to the Lessor, SMPK as upfront lease premium. The applicant states that the allotment letter further seeks to charge GST @18% on the above amount also.

1.4 The applicant is of the view that as per entry No. 41 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017, as amended from time to time, the above upfront lease premium is exempt from GST.

1.5 In the backdrop of aforesaid activities, the applicant has made this application under sub section (1) of section 97 of the GST Act and the rules made there under raising following question vide serial number 14 of the application in FORM GST ARA-01:

- Whether the upfront premium payable by the applicant towards the services of leasing of the land for industrial purposes by SMPK is exempted under entry 41 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017?

1.6 During the course of hearing, the AAR observed that the instant application cannot be accepted since an application for advance ruling can be filed by the supplier in relation to supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. But, in respect of supply involved in the aforesaid question, the applicant is the recipient of services.

1.7 The authorised advocate of the applicant, on being informed of the issue, has furnished a written submission which is reproduced herein under in verbatim:

1.7.1 During the course of hearing for admission of the above mentioned Advance Ruling application as filed by M/s. Anmol Industries Limited, hereinafter referred to as the applicant as defined under section 95(c) of the WBGST/CGST Act, 2017, the applicant was asked to submit written submission in objection for entertaining the application on the ground that since the applicant herein is not the service provider for which the ruling has been sought but is the service recipient, thus the ruling cannot be pronounced having regard to the provisions of section 97 of the Act.

1.7.2 In this regard, the applicant wishes to submit as below:

Relevant Provisions of the statute –

Section 95 (a) "advance ruling" means a decision provided by the Authority or the Appellate Authority or the National 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 or of section 101C, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

Section 95 (c) "applicant" means any person registered or desirous of obtaining registration under this Act;

Section 97 (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
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1.7.3 The applicant states that the definition of the word applicant as defined in section 95(c) of the Act supra, provides that any person registered or desirous of obtaining registration under the CGST/WBGST Act, 2017.

1.7.4 On the combined reading of the above two sections what transpires is that an applicant can apply for advance ruling on the questions as stated above which includes the applicability of a notification issued under the provisions of the Act. In the given case of the applicant, the applicant has raised a question as to applicability of the exemption notification No. 12/2017-CGST (R) dated 28.06.2017, more particularly entry number 41 of the said notification in the facts and circumstances as provided in details in the said application filed by the applicant.

1.7.5 The applicant states that the provisions nowhere state that the applicant has to be service provider in order to seek an advance ruling on the questions as stated above. The only condition to be fulfilled is that the applicant should be registered under the Act or desirous to undertake a registration. There is no provision provided in the statute that the applicant must be a output supply of goods/services provider. Had that been the intent of the legislature, the legislature would not have used the term applicant in section 95(c) and would have rather used the word supplier which is already defined under section 2(105) of the Act.

1.7.6 The applicant states that the word 'in relation to the supply of goods or services or both' in Section 95(a) of CGST Act, 2017, can be interpreted to include, supply of both inward supply and outward supply.

1.7.7 The inward supply or outward supply are specifically defined in the Act which are two parts of the supply. As per Section 97(2)(d) of the CGST Act, 2017 applicant can ask question or administering of input tax credit of tax paid or deemed to have been paid. In respect of the above questions applicable to inward supply, where the receiver of goods or services or both alone can ask for his inward supply. Hence, the cogent reading of Sections 95(a) and 97(2) of the CGST Act, 2017, doesn't deny the application of AAR by the person who is receiving the goods or services or both as applicant to obtain the advance ruling. Moreover, the recipient only is paying the tax and the supplier merely collecting the tax from recipient and paying to the Government. Further, in the definition of advance ruling, the word mentioned as supply of goods or services or both, not as a supplier of goods or services or

both means, both the inward supplier (that is recipient) and outward supplier (that is supplier). If the AAR applies only for supplier not for the recipient, then such a view may be considered to be violating the principles of constitution.

1.7.8 Thus, since the word used in the statute is applicant and the applicant can either be a supplier or a recipient of goods/services, the application should not be rejected on the ground that the applicant is acting as a service recipient in the case. Interpretation of an exemption notification can be used by either the supplier or the recipient of services/goods. In the case of the applicant, since KoPT had not approached the authority, the applicant had approached the authority for a ruling.

1.7.9 It is also made clear by section 103 of the Act that the said ruling would be binding only on the applicant who had sought the ruling and the on the concerned officer or the jurisdictional officer in respect of the applicant. The section nowhere specifies that the said ruling will be applicable to the supplier or the recipient and hence it is amply clear from the unambiguous words of the statute that any person who qualifies to be an applicant can seek an advance ruling on questions as per section 97(2) whether it be acting as a recipient of supply or supplier of the alleged supply of goods or services.

1.7.10 In the case of the applicant, the applicant is seeking an advance ruling on the applicability of the exemption notification basis of the facts given in the application filed and the applicant being a recipient of the service is entitled to have an advance ruling on the said issue raised by the applicant.

1.8 The submission of the applicant has duly been considered. The contention of the applicant can be summarized as under:

- Application for advance ruling can be filed by any person registered or desirous of obtaining registration under the GST Act and the law nowhere states that the applicant has to be a supplier in order to seek an advance ruling on the question as stated above.
- The expression 'in relation to the supply of goods or services or both' in Section 95(a) of GST Act can be interpreted to include both inward supply and outward supply.
- In the definition of advance ruling, the expression has been mentioned as 'supply of goods or services or both' and not as a 'supplier of goods or services or both'. It therefore means that both the inward supplier (that is recipient) and outward supplier (that is supplier) can file an application for advance ruling.

- An advance ruling, in terms of section 103 of the GST Act, is binding only on the applicant and on the concerned officer or the jurisdictional officer in respect of the applicant. Since the aforesaid section nowhere specifies that the said ruling will be applicable to the supplier or the recipient, any person who qualifies to be an applicant can seek an advance ruling on questions as per section 97(2) whether it be acting as a recipient of supply or supplier of the goods or services or both.

1.9 There is no dispute that the applicant is the recipient of services in respect of supply involved in the question on which the advance ruling is sought. The core contention of the applicant, as we find is that the expression 'in relation to the supply of goods or services or both' in clause (a) of section 95 is to be interpreted in such a manner to include both outward and inward supply so as to entitle the applicant to file this application as a recipient of services.

1.10 In the instant case, the applicant being the recipient of services has sought an advance ruling on the applicability of the exemption notification i.e., whether the services to be provided to him by the supplier can be regarded as an exempt supply or not. 'Exempt supply' as defined in clause (47) of section 2 of the GST Act means 'supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply'. Further, 'aggregate turnover' as defined in clause (6) of section 2 means 'the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess'. A conjoint reading of section 2(6) and 2(47) clearly denotes that it is the supplier of services who is required to account for his outward exempt supply in order to determine his aggregate turnover and further to claim exemption in respect of services specified in column (3) under serial number 41 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 [corresponding West Bengal State Notification No. 1136 F.T. dated 28.06.2017], as amended. Here, the intention of the legislature is to provide exemption to the taxable person who is supplying the services since other than the supply on which the recipient is liable to pay tax under reverse charge, tax is payable by the taxable person who is making the supply.

1.11 The applicant has submitted that the recipient only is paying the tax and the supplier merely collecting the tax from recipient and paying to the Government. Section 49 of the GST Act deals with payment of tax, interest, penalty and other amounts. Further, sub-section

(8) of section 49 provides the sequences to be followed by a taxable person to discharge his tax and other dues under the GST Act. Furthermore, sub-section (9) of section 49 speaks that “Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both”.

1.12 The provisions for payment of tax under the GST Act, as it can be understood from the aforesaid sections, are clear and unambiguous. Thus, to bear the incidence of tax as a recipient of supply cannot be construed as payment of tax under the GST Act, as contended by the applicant.

1.13 Finally, we proceed to appreciate the issue of admissibility of this application with reference to section 103 of the GST Act and for that purpose, we like to reproduce sub-section (1) of section 103 of the GST Act which reads as follows:

“Applicability of advance ruling.—

(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.”

The aforesaid sub-section, thus, categorically speaks that the ruling pronounced is binding only on the applicant and on the concerned officer or the jurisdictional officer in respect of the applicant. The applicant has submitted that the aforesaid section nowhere specifies that the said ruling will be applicable to the supplier or the recipient and hence any person who qualifies to be an applicant can seek an advance ruling on questions as per section 97(2) whether it be acting as a recipient of supply or supplier of the supply of goods or services.

However, if an application is filed by the recipient of goods or services or both on the taxability of his inward supply of goods or services and ruling is pronounced accordingly, such ruling shall be binding only on him and on the concerned officer or the jurisdictional officer of him. In no way, the ruling shall be binding on the supplier of such goods or services.

To illustrate, say Mr A of West Bengal receives inward supply of goods from Mr B (Location of Mr B may be in West Bengal or may be in other states). Mr A files an application for advance ruling seeking the taxability of his inward supply. The Advance Ruling Authority

pronounces ruling declaring the supply to be an exempt supply. However, since the same is not binding on his supplier, the supplier may not follow the ruling and even find the supply as a taxable supply. In such a scenario, the ruling loses its relevance and applicability.

1.14 Any provisions of the Law, therefore, should not be interpreted in a way which defeats the very purpose of the objective and purpose of the law provision. We are therefore of the view that in the subject application, the applicant cannot seek an advance ruling in relation to the supply where he is a recipient of services.

1.15 In the light of discussions as detailed herein above, we are unable to accept the instant application for pronouncement of ruling. The application, therefore, is rejected.

(BRAJESH KUMAR SINGH)  
Member  
West Bengal Authority for Advance Ruling

(JOYJIT BANIK)  
Member  
West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 09.02.2023

To,

Anmol Industries Limited

Maity Para, Delhi Road, Hooghly, West Bengal, Pin Code-712311

Copy to:

- (1) The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector, Kolkata-7000107
- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3) The Special Commissioner, Large Tax Payers Unit, 14, Beliaghata Road, Kolkata-700015
- (4) The Commissioner of CGST, Howrah Commissionerate, Customs House, M.S. Building, 2<sup>nd</sup> floor, 15/1, Strand Road, Kolkata-700001
- (5) Office Folder