

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14, Beliaghata Road, Kolkata – 700015

Name of the applicant	Storm Communications Private Limited
Address	1 st Floor, Plot-189, Sector-A, Metropolitan Co-operative Housing Society Ltd., Tiljala, Kolkata- 700105
GSTIN	19AAJCS3681B1Z9
Case Number	39 of 2018
Date of application	December 03 rd , 2018
ARN	AD191118000177A
Order No. & date	39/WBAAR/2018-19 dated 28/01/2019
Applicant's representative heard	Sanjay Mundhra, Authorized Representative

1. The Applicant, stated to be a supplier of Event Management Services in West Bengal and other states, seeks a Ruling on the following points:
 - a. Can a person, registered in WB, claim ITC for CGST and SGST of other states,
 - b. Can he adjust the ITC of one state's CGST for payment of another state's CGST,
 - c. Can he adjust the ITC of Tamil Nadu GST for payment of IGST, whereas he is not registered in Tamil Nadu?

Advance Ruling is admissible on this question under Section 97(2)(d) of the CGST/WBGST Act, 2017 (hereinafter collectively called "the GST Act" and includes reference to any other State GST Act).

The Applicant submits that the question raised in the Application has neither been decided by nor is pending before any authority under any provisions of the GST Act.

The officer concerned raises no objection to the admission of the Application.

The Application is, therefore, admitted.

2. The Application states that the Applicant is a supplier of Event Management Services who organises events on behalf of clients and, for this purpose, books conference halls, banquet halls, outdoor caterers etc. The Applicant is registered as a GST assessee in West Bengal, Jharkhand, Odisha, Maharashtra and Delhi.

In relation to this Event Management Service, the Applicant has to move to other states, where the Applicant is not registered, to serve clients in those states, and incur miscellaneous expenses for booking hotels, banquet halls and on food.

On such inward supplies, the Applicant is charged CGST & SGST of that particular state and the invoices are issued as B2B with the Applicant's GSTIN. These invoices are also reflected in the Applicant's GSTR-2A.

Such inward supplies are taken to serve the clients and the Applicant desires to know if ITC can be claimed in the GST Returns in West Bengal on the CGST & SGST paid on such invoices in other states.

3. GST is a destination based tax i.e. consumption tax, which means the tax will be levied where goods and services are consumed and will accrue to that state. Under GST, there are three levels of Tax, IGST, CGST & SGST and based on the “place of supply” so determined, the respective tax will be levied. “Place of supply” will be determined by the locations of the supplier and the recipient, in the transactions comprising of the goods/services. IGST is levied where the transaction is inter-state, and CGST & SGST are levied where the transaction is intra-state. So, it is very important to determine “place of supply” for understanding levy of tax and further availing of Input Tax Credit (ITC).
4. “Place of supply” has been defined in Chapter V of the IGST Act, 2017. Here, the Applicant, registered in West Bengal, is charged CGST & SGST in states where they are not registered, say, Tamil Nadu for booking hotels, banquet halls and on food by the supplier of that state. In terms of Section 12(3) & (4) of the IGST Act, 2017, the place of supply will be the location of the hotel, banquet hall or restaurant, where the services are actually performed; in this case, Tamil Nadu. Hence, in this case, the suppliers in Tamil Nadu have rightly charged CGST & SGST on the invoices, since all the transactions are intra-state.
5. The main issue to be determined in this Advance Ruling is, whether the Applicant registered in West Bengal, can claim/adjust/avail ITC on the CGST & SGST charged on the invoices issued by Tamil Nadu suppliers. Here, the basic concept of “place of supply” comes into play. In this case, the location of the supplier, providing hotel, banquet hall or restaurant in Tamil Nadu and the location of the recipient i.e. the Applicant, receiving the service, is also Tamil Nadu. So, the Applicant can avail ITC on the said invoices in Tamil Nadu only, if registered in Tamil Nadu. In no case, the Applicant can claim/adjust/avail ITC outside Tamil Nadu on the said invoices, even if the invoices are issued as B2B mentioning the Applicant’s GSTIN in West Bengal.
6. The answers to the Applicant’s questions, therefore, depend upon whether any component of the tax paid on intra-state inward supplies in a state can be used as an input tax credit for paying the outward tax liability in another state.
Section 49(4) of the GST Act provides that the amount available in the electronic credit ledger, as defined under Section 2(46), may be used for making such payment toward outward tax liability. The electronic credit ledger contains the balance of *input tax* credit on inward supplies as per the return of a registered person.
Under Section 2(62) of the GST Act ‘Input tax’ *in relation to a registered person*, inter alia, means, the CGST, SGST and IGST charged on any supply of goods or services to the registered person. CGST and SGST are two components of the GST charged on intra-state supplies and IGST is the GST charged on inter-state supplies.

As input tax and its credit are always linked with whether the person is registered or not, the two components of GST paid on inward intra-state supply in Tamil Nadu could have been taken credit of, if only registration is taken in Tamil Nadu under Section 25(1) of the GST Act and is regarded as “distinct person” within the meaning of Section 25(4) of the GST Act. The architecture of the GST Act is such that even if a person is registered in different states all such registrations will be treated as distinct persons, and input tax in the credit ledger of one such person is not transferable to the credit ledger of another. If the person is not registered in a particular state, the tax paid on the inward supplies in that state is not ‘input tax’ in relation to the said person.

As the Applicant is not registered under section 25(1) in Tamil Nadu, the SGST and CGST paid on intra-state inward supply in Tamil Nadu are not ‘input tax’ to the said person. The GST Act does not contain any concept of ‘input tax’ to an unregistered person. No credit of it is, therefore, admissible under the GST Act.

In view of the foregoing, we rule as under.

RULING

The Applicant is not registered under Section 25(1) of the CGST Act in Tamil Nadu. The SGST and CGST paid on intra-state inward supply in Tamil Nadu are not, therefore, ‘input tax’ to the Applicant. The GST Act does not contain any concept of ‘input tax’ in relation to an unregistered person. No credit of it is, therefore, admissible under the GST Act.

So, to answer in the Applicant’s language:

- a. A person, registered in WB, cannot claim ITC for CGST & SGST of other states.
- b. He cannot adjust the ITC of one state’s CGST for payment of another state’s CGST.
- c. He cannot adjust the ITC of Tamil Nadu GST for payment of IGST, whereas he is not registered in Tamil Nadu.

This Ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104(1) of the GST Act.

Sd-
(SYDNEY D’SILVA)
Member

West Bengal Authority for Advance Ruling

Sd-
(PARTHASARATHI DEY)
Member

West Bengal Authority for Advance Ruling