

[2019] 102 taxmann.com 283 (AAR - HARYANA)/[2019] 22 GSTL 312 (AAR - HARYANA)[07-06-2018]

GST : Input tax credit on goods is only available when recipient has received goods

GST : Liability to pay tax shall arise on basis of time of supply and, in case invoice has been issued by supplier, date of issue of invoice is date of supply

[2019] 102 taxmann.com 283 (AAR - HARYANA)

AUTHORITY FOR ADVANCE RULINGS, HARYANA

Pasco Motor LLP, *In re*

SANGEETA KARMAKAR AND VIJAY KUMAR SINGH, MEMBER

ADVANCE RULING NO. HAR/HAAR/R/2018-19/11

APPLICATION NO. 11/2018-19

JUNE 7, 2018

I. Section 16 of the Central Goods and Services Tax Act, 2017/Section 16 of the Haryana Goods and Services Tax Act, 2017 - Input tax credit - Eligibility and conditions for taking credit - Whether input tax credit on goods is only available when recipient has received goods - Held, yes - Whether thus, in case of invoices, being raised by supplier in previous month and goods being received in succeeding month, input tax credit on goods so received shall be available to applicant-buyer only when applicant has received goods - Held, yes [Paras 7.2 and 8.1]

II. Section 12 of the Central Goods and Services Tax Act, 2017/Section 12 of the Haryana Goods and Services Tax Act, 2017 - Supply - Time of supply - Whether liability to pay tax shall arise on basis of time of supply - Held, yes - Whether in case invoice has been issued by supplier, date of issue of invoice is date of supply, hence, in such cases where goods are delivered by applicant-supplier later on but invoice is raised earlier, date of issue of invoice will be time of supply for purpose of determining tax period for filing of return and payment of tax for such supplies - Held, yes [Paras 8 and 8.1]

FACTS

The applicant is into the business of 'retail trading' of trucks. It purchases the goods from Tata Motors from different locations Jamshedpur, Lucknow, Pune, etc. The goods remain in transit for roughly five to ten days.

The question relates to the sale invoices which are raised in the end of month by the seller; but the material arrives at the end of the purchaser in the next month. Since the returns are to be filed on monthly basis, a practical problem is being faced by the applicant that the purchases are being booked by the purchaser in the next month only. So in such a situation, when the applicant will be entitled to claim its Input Tax which stands charged and deemed to be paid by the seller in the previous month. The invoice by the seller is raised only after receiving the payment in advance.

The applicant submitted that it will be entitled to claim the Input Tax Credit in the same month in which the invoice is raised and tax is deemed to be paid by the supplier who has delivered the goods to the transporter for transporting the same to the recipient's destination.

In the end of the month, the company announces lucrative incentives for the end customer to boost the sale. The applicant, in the month end; to meet the monthly sale targets (high volume) raises the invoice/s to the end customer/s, deposit the due tax on the raised invoices but before receiving the physical delivery of goods from its supplier since the goods are in transit and makes the delivery of goods only after receiving the same in the next month.

The applicant submitted that it will be under liability to pay the tax in the same month in which the invoice is raised and tax is collected by him even though he is not in physical possession of goods to be delivered under Invoice and delivery/supply of goods is to take place at later stage to end customer.

HELD

It is observed that section 16 relates to situation where the goods are delivered by the supplier to a recipient on the directions of registered person. It covers the situations where the goods are supplied on 'Bill to - Ship to' basis. In other words, the goods are supplied to some other person on the directions of the buyer of the said goods, *i.e.*, the buyer and the recipient of goods are different. The *Explanation* to clause (b) of sub-section (2) of section 16, is not applicable in the instant case, as in the instant case the buyer and recipient of goods is same, *i.e.*, the applicant himself. Therefore, input tax credit on goods is only available when the applicant has received the goods. [Para 7.2]

As regards the question, with regard to tax invoices issued by the applicant without having goods in possession, it is observed that as per section 12 of the CGST/HGST Act, 2017, the liability to pay tax on goods arises at the time of supply. [Para 8]

The provisions of section 12 clearly stipulates that in case the invoice has been issued by the supplier, the date of issue of invoice is the date of supply, hence, in such cases where the goods are delivered by the applicant later on but invoice is raised earlier, the date of issue of invoice will be the time of supply for the purpose of determining the tax period for filing of return and payment of tax for such supplies.

Thus, in case of invoices being raised by supplier in previous month and goods being received in the succeeding month, input tax credit on goods so received shall be available to the applicant buyer, only when applicant has received the goods.

The liability to pay tax shall arise on the basis of time of supply, which in case of supply of goods is earlier of the following dates -

- (a) The date of issue of invoice by the supplier or the last date on which he is required, under sub-section (1) of section 31, to issue the invoice with respect to the supply; or
- (b) The date on which the supplier receives the payment with respect to the supply. [Para 8.1]

K.K. Bomb and **Mrs. P. Manchanda**, Adv. for the Applicant.

RULING

1. M/s. Pasco Motor LLP holding GSTN 06AAPFP2919Q1ZH (hereinafter referred to as the applicant), is into the business of "retail trading" of trucks and has made following submissions.

2.1 Situation One:

It purchases the goods from M/s. Tata Motors Ltd. from different locations *i.e*; Jamshedpur, Lucknow, Pune, etc. The goods remain in transit for roughly five to ten days. The question relates to the sale invoices which are raised in the end of month by the seller; but the material arrives at the end of the purchaser in the next month. Since the returns are to be filed on monthly basis, a practical problem is being faced by the applicant that the purchases are being booked by the purchaser in the next month only. So in such a situation, when the applicant will be entitled to claim its Input Tax which stands charged and deemed to be paid by the seller in the previous month. It is pertinent to mention here that invoice by the seller is raised only after receiving the payment in advance.

2.2 The applicant referred to the following provisions of CGST/HGST Act, 2017.

*Section 2(62) - "**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—*

- (a) the integrated goods and services tax charged on import of goods;*
- (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;*
- (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;*
- (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or*
- (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act, but does not include the tax paid under the composition*

levy;

INPUT TAX CREDIT

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.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

- (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
- (b) he has received the goods or services or both.

Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(c) & (d)**

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**

2.3 The applicant submitted that in the view of the given facts, co-read with the provisions discussed above, the applicant will be entitled to claim the Input Tax Credit in the same month in which the invoice is raised & tax is deemed to be paid by the supplier who has delivered the goods to the transporter for transporting the same to the recipient's destination.

3. Situation Two:

3.1 That in the end of the month, the company announces lucrative incentives for the end customer to boost the sale. The applicant, in the month end; to meet the monthly sale targets (high volume) raises the invoice/s to the end customer/s, deposit the due tax on the raised invoices BUT before receiving the physical delivery of goods from its supplier since the goods are in transit (as discussed above) and makes the delivery of goods only after receiving the same in the next month.

3.2 The applicant referred to the following provisions of CGST/HGST Act, 2017.

*Section 2(82) - "**output tax**" in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis.*

3.3 The applicant submitted that in view of the above given facts read with the provisions discussed above, the applicant will be under liability to pay the tax in the same month in which the invoice is raised and tax is collected by him even though he is not in physical possession of

goods to be delivered under invoice & delivery/supply of goods is to take place at later stage to end customer.

Comments of the concerned officer u/s 98(1) OF THE CGST/HGST ACT, 2017

4. The Deputy Excise & Taxation Commissioner (ST), Gurgaon (West), *vide* letter No.1917 dated 06.07.2018, submitted that there remains no doubt that input tax credit can be availed only and only on the physical receipt of the goods by the applicant. Regarding the second point, he submitted that a taxable person can create his output tax liability by charging the tax from his prospective buyers only and only if he is in the physical possession of the goods to be delivered under invoice as the law does not permit to raise invoices without passing the property, *i.e.*, goods. Legal provisions in this regard are clear to the extent that where the goods invoiced are received in lots and instalments, the registered person shall be entitled to take credit upon the receipt of the last lot or instalment. So physical delivery/receipt of goods is mandatory for the availment of input tax credit.

RECORDS OF PERSONAL HEARING - 2ND PROVISO TO SECTION 98(2) OF CGST/HGST ACT, 2017

5. Personal hearing in the instant case was conducted on dated 14.08.2018 which was attended by Sh. K. K. Bomb, Advocate and Ms. P. Manchanda, Advocate. They reiterated the submissions made in their application for advance ruling.

DISCUSSIONS AND FINDINGS OF THE AUTHORITY

6. As per the records of personal hearing held on 14.08.2018, the applicant has raised the following questions for determination by the authority.

- (i) Regarding time of receipt of goods so as to understand the time when credit shall be available.
- (ii) Regarding the time of supply of goods *vis-a-vis* raising the tax invoice to actual supply of goods.

7.1 In support of their contention, the applicant has referred to the provisions of Section 16 of the CGST/HGST Act, 2017, wherein it has been provided *vide explanation* to clause (b) of sub-section (2) that it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise.

7.2 It is observed that the above provisions relates to situation where the goods are delivered by the supplier to a recipient on the directions of such registered person. It covers the situations where the goods are supplied on "**Bill to - Ship to**" basis. In other words, the goods are supplied to some other person on the directions of the buyer of the said goods, *i.e.*, the buyer and the recipient of goods are different. The *explanation* to clause (b) of sub-section (2) of Section 16 of the Acts *ibid*, is not applicable in the instant case, as in the instant case the buyer and recipient of goods is same, *i.e.*, the applicant himself. Therefore, input tax credit on goods is only available when the applicant has received the goods.

8. As regards the second question, with regard to tax invoices issued by the applicant without having goods in possession, it is observed that as per Section 12 of the CGST/HGST Act, 2017, the liability to pay tax on goods arises at the time of supply. Further, Sub-Section (2) of Section 12 provides as under:

(2) The time of supply of goods shall be the earlier of the following dates, namely:—

(a) the date of issue of invoice by the supplier or the last date on which he is required, under sub-section (1) of section 31, to issue the invoice with respect to the supply; or

(b) the date on which the supplier receives the payment with respect to the supply.

8.1 The provisions of Section 12 clearly stipulates that in case the invoice has been issued by the supplier, the date of issue of invoice is the date of supply, hence, in such cases where the goods are delivered by the applicant later on but invoice is raised earlier, the date of issue of invoice will be the time of supply for the purpose of determining the tax period for filing of return and payment of tax for such supplies.

ADVANCE RULING UNDER SECTION 98 OF THE CGST/HGST ACT, 2017

Question 1. In case of invoices being raised by supplier in previous month and goods being received in the succeeding month, input tax credit on goods so received shall be available to the applicant, only when applicant has received the goods.

Question 2. The liability to pay tax shall arise on the basis of time of supply, which in case of supply of goods is earlier of the following dates—

(a) the date of issue of invoice by the supplier or the last date on which he is required, under sub-section (1) of section 31, to issue the invoice with respect to the supply; or

(b) the date on which the supplier receives the payment with respect to the supply.

Ordered accordingly.

To be communicated.

30.08.2018

Panchkula.