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APPELLATE AUTHORITY FOR ADVANCE RULING, KERALA
PROCEEDINGS OF THE APPELLATE AUTHORITY
FOR ADVANCE RULING
U/s.101 OF THE KERALA STATE / CENTRAL
GOODS AND SERVICES TAX ACT, 2017.

Members present:

1. Pullela Nageswara Rao IRS

Chief Commissioner,

Central Tax, Central Excise and Customs

Thiruvananthapuram Zone

2. Rajan N.Khobragade IAS

Principal Secretary & Commissioner

State Taxes, Kerala

Sub: GST Act, 2017 - Appellate Authority for Advance Ruling
U/s. 99 of the Kerala State/Central Goods and Services Tax Act,
2017 -

- (i) Whether computers, laptops etc., used by the applicant for providing output service would qualify as inputs for the purpose of availing transitional ITC under Section 140(3) of KSGST Act, 2017.
- (ii) If the goods are physically available as closing stock as on 30th June, 2017, can the applicant avail ITC for the VAT paid - Orders issued- reg.

Read: 1. Order No.KER/13/2018 dated 19.09.2018 of the Authority for Advance Ruling U/s.98 of the GST Acts, 2017.

2. Appeal dated 26.10.2018 filed by M/s. Geojit Financial Services Limited.

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M/s. Geojit Financial Services Limited (hereinafter referred as the appellant) is a public limited company having its registered office at Kochi. They are engaged in the activity of providing various retail financial services like stock broking, share broking, marketing of initial public offering of companies and mutual funds, corporate advisory services etc., which were not taxable under VAT Law.

BRIEF FACTS OF THE CASE

2. As on 30th June 2017, they had in their possession physical stock of goods such as computers, laptops etc., which were utilized by them in providing the output services. Placing reliance on the transitional provisions, they have availed input tax credit on closing stock of computers, laptops and other goods lying in the physical possession of the applicant as on 30th June, 2017. The appellant had preferred an application for advance ruling on the following:

- i) Whether computers, laptops etc., used by the applicant for providing output service would qualify as inputs for the purpose of availing transitional ITC under Section 140(3) of KSGST Act?
- ii) If the goods are physically available as closing stock as on 30th June, 2017, can the applicant avail ITC for the VAT paid?

3. During the advance ruling proceedings, the authorized representative of the applicant had stated that by virtue of the statutory provisions, the applicant is entitled to get the input tax on the capital goods held during the transition period. As per Section 140(3) of the GST Act, 2017 a registered person, who was not liable to be registered under the existing law or who was engaged in the sale of exempted goods or tax free goods, by whatever the name called, or goods which have suffered tax at the first point of their sale in the State and the subsequent sales of which are not subject to tax in the State under the existing law but which are liable to tax under this Act or where the person was entitled to the credit of input tax at the time of sale of goods, if any, shall be entitled to take, in his electronic ledger, credit of the value added tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the condition that;

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- (i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;
- (ii) the said registered person is eligible for input tax credit on such inputs under this Act;
- (iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of tax under the existing law in respect of such inputs; and
- (iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

4. The Authority for Advance Ruling had deliberated on the issue raised and after hearing the authorized representative of the applicant elaborated as follows;

5. The applicant being a service provider had no tax liability under VAT regime. As per the proviso to Sub-Section (2) of Section 140 of the GST Act, 2017 a registered person shall not be allowed to take credit unless such credit was admissible as input tax credit under the existing law and is also admissible as input tax credit under GST Act. As per Section 2(59) of GST Act, 'input' means any goods other than capital goods used or intended to be used by a supplier in the course of furtherance of business. The computers, laptops etc., used by the applicant for providing output service are capital assets. These capital goods are ineligible to claim input tax credit under VAT Laws. Section 2 (x) of Kerala Value Added Tax Act, define capital goods as follows:

"Capital goods" means plant, machinery, equipments including pollution / quality control, lab and cold storage equipments used in manufacture, processing, excluding for job works or rendering of services, packing or storage of goods in the course of business and delivery vehicles but shall not include such goods and civil structure as may be notified by Government.

6. The applicant being a service provider is not eligible to avail input tax credit on computers and laptops held during the transition period. The proviso to Sub-Section (2) of Section 140 of the GST Act is specific to the point that input tax credit not admissible under the existing law is also ineligible for input tax





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credit under GST Act. Section 140(2) of the Act covers transitional credit claim on capital goods by a dealer registered in the earlier law. Section 140(3) of the GST Act covers "credit of eligible duties in respect of inputs held on stock and inputs contained in semi finished or finished goods held in stock on the appointed day", hence the transitional credit claim of the tax payer in respect of capital goods is not acceptable.

7. Based on the above deliberations, the Advance Ruling Authority ruled vide paper read 1st above that;

- i) *The computers, laptops etc., used by the applicant for providing output service would not qualify as inputs for the purpose of availing transitional ITC under Section 140(2) / 140(3) of KSGST Act, 2017;*
- ii) *The goods even though physically available as closing stock as on 30th June, 2017, ITC is not eligible for the VAT paid.*

8. Aggrieved by the said Advance ruling, the appellant preferred appeal vide paper read 2nd above, before the Appellate Authority for Advance Ruling. The appellant has stated that the Kerala Authority for Advance ruling has grossly erred in concluding that the closing stock of computers, laptops and other goods lying in the physical possession of the appellant as on 30th June, 2017 do not qualify as 'input' eligible for input tax credit under Section 140(3) of KSGST Act, 2017.

GROUND OF APPEAL

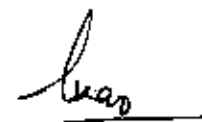
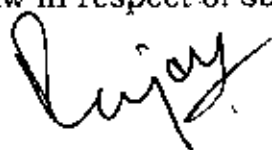
9. The authorized representative of the appellant has stated that the Advance Ruling Authority has primarily relied on Section 140(2) of the Act in ruling that the computers and laptops held by the appellant during the transition period do not qualify for availment of credit under Section 140(2) of the Act relying on the proviso to the said sub-section. In doing so, the Advance Ruling Authority has incorrectly denied eligibility under Section 140(3) of the Act without a proper examination of the grounds put forward by the appellant or the legal provisions relevant to Section 140(3). The appellant has submitted that the items in question are inputs eligible for input tax credit relying solely on the provisions of

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Section 140(3) of the Act. Therefore, denial of input tax credit under Section 140(2) of the Act by the Advance Ruling Authority is irrelevant in the case of the appellant, in so far as the appellant is also of the understanding that the goods in question do not constitute capital goods under the Kerala VAT Act, 2003. By virtue of which the appellant would be ineligible to claim input tax credit under Section 140(2) of the Act.

10. Further, the authorized representative of the appellant has stated that as the goods in question do not constitute capital goods under the Kerala VAT Act, 2003, the goods would automatically qualify as inputs on which the appellant may avail input tax credit under Section 140(3) of Chapter XX of the Act. Chapter XX of the Act dealing with the transitional provisions permit tax payers to take credit of tax paid under laws applicable prior to the introduction of the Act. Section 140(3) of the said Chapter XX of the Act provides for a certain category of persons to take credit of the tax paid on inputs held in stock as on the appointed day i.e. 1st July, 2017, subject to certain conditions as stipulated therein. As per Section 140(3) of the Act, "a registered person, who was not liable to be registered under the existing law or who was engaged in the sale of exempted goods or tax free goods, by whatever name called, or goods which have suffered tax at the first point of their sale in the State and the subsequent sales of which are not subject to tax in the State under the existing law but which are liable to tax under this Act or where the person was entitled to the credit of input tax at the time of sale of goods, if any, shall be entitled to take, in his electronic credit ledger, credit of the value added tax and entry tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:-

- (i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;
- (ii) the said registered person is eligible for input tax credit on such inputs under this Act;
- (iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;



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(iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

11. As per Section 2(59) of the Act, "input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business". Though the term 'Capital goods' has been defined under Section 2(19) of the Act, an explanation of Chapter XX of the Act specifically states that for the purpose of the said chapter, expression 'capital goods' shall have the same meaning as assigned to it under the Kerala VAT Act, 2003 (30 of 2004). The term 'capital goods' has been defined under Section 2(x) of the Kerala Value Added Tax Act, 2003 to mean plant, machinery, equipments including pollution/quality control, lab and cold storage equipments used in manufacturing, processing, **excluding for job works or rendering of services**, packing of storage of goods in the course of business and delivery vehicles but shall not include such goods and civil structure as may be notified by the Government".

12. On a combined reading of the above definitions, it can be understood that capital goods for the purpose of Chapter XX of the Act, excludes those goods, which are used in the rendering of services. Therefore, laptops, computers etc., used by the Appellant in providing its output service would not qualify as capital goods for the purpose of the transitional provisions under the Act. By virtue of the same, the said laptops, computers etc. would qualify as inputs under Section 140(3) of the Act. The Kerala Authority for Advance Ruling has rightly held that the goods in question do not fall within the definition of capital goods defined under Section 2(x) of the Kerala Value Added Tax Act, 2003 thereby the natural consequence would be that the goods in question are inputs as defined in Section 2(59) of the Act. Once the goods in question fall within the ambit of inputs, the eligibility of transitional credit benefit has to be examined under Section 140(3) of the Act and not Section 140(2) of the Act as was incorrectly done by the Kerala Authority for Advance Ruling. They have further submitted that they satisfy all the four conditions prescribed under Section 140(3) of the Act for availment of transitional credit. In light of all of the above, the appellant continues to be of the view that the laptops, computers etc., lying in the physical possession of the





Appellant as on 30th June 2017 being inputs held in stock as on the appointed day qualify as inputs on which the appellant can avail input tax credit under Section 140(3) of Chapter XX of the Act. They have prayed that the Appellate Authority may consider the above submissions and set aside the impugned Advance Ruling and pass such orders as may be deemed fit and proper in facts and circumstances of the case.

DISCUSSION AND FINDINGS

13. The authorized representative of the appellant was heard. During the personal hearing, the authorized representative reiterated the contentions raised in the grounds of appeal and further expressly deposed as follows:

The issue in the present case is with respect to eligibility to avail transitional credit of Kerala VAT paid by a service provider prior to GST on goods which are lying on stock as on 30.06.2017.

In this regard it was submitted that Section 2(59) of the Kerala GST Act defines inputs as any goods other than capital goods used by a supplier in the course or furtherance of business.

Explanation to Section 142 of the Kerala GST Act provides that for the purpose of transitional provisions, capital goods would have the same meaning assigned to it in the Kerala VAT Act. In the Kerala VAT Act capital goods has been defined to exclude Goods which are used for rendering services.

Since the goods involved are used for rendering services, the same cannot be capital goods and consequently the same would become inputs.

Section 140 (3) of the Kerala GST Act, 2017 provide for availment of VAT paid on inputs which are in stock as on 30.06.2017 by a person who was not required to take registration under the Kerala VAT Act. Since the appellant satisfies all the said conditions the appellants would be entitled to take transitional credit of the goods in question under

Section 140 (3) of the Kerala GST Act, 2017.

It is therefore prayed that this appellate authority passes a ruling that -

- The goods in question would be treated as Inputs for the purpose of transitional provisions under the Kerala GST Act***

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- **The Kerala VAT paid on the goods in question can be availed as transitional credit under sec. 140 (3) of the Kerala GST Act, 2017.**

14. The contentions raised by the appellant have been examined in detail. The issue to be decided in this appeal is whether the Computers, Laptops etc used by the appellant for providing output service would qualify as "Inputs" for the purpose of availing transitional input tax credit under the transitional provisions of the KSGST Act, 2017.

i) The appellant is engaged in providing retail financial services like stock broking, share broking, marketing of initial public offering of companies and mutual funds, corporate advisory services etc.

a. In the pre-GST period, the services provided by the Appellant did not have any liability under the Kerala VAT law and the Computers, Laptops etc., used by them were stated as Capital Assets in their books of accounts.

b. In the GST period, the services provided by the Appellant are liable to GST and the Computers, Laptops etc., used by them are continued to be stated as Capital Assets in their books of accounts.

ii) Section 2(19) of the KSGST Act, 2017 defines "capital goods" as

"goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business."

Further, Section - 2(59) of the KSGST Act, 2017 defines "inputs" as

"any goods other than capital goods used by a supplier in the course or furtherance of business."

iii) Hence, from the points (i) and (ii) above it is clear that, in the GST period, the input tax credit of Tax paid on Computers, Laptops etc., can only be claimed as "Capital Goods" but not as "Inputs."

iv) As per Clause (ii) of Section 140(3) of the KSGST Act, 2017, a registered person is eligible for Input Tax credit, if he is also eligible under the KSGST Act,



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2017 to claim the Input Tax credit on such Inputs. Since, the Computers, laptops etc., fail to qualify as "Inputs" under KSGST Act, 2017 and thereby fail to satisfy the condition set under Clause (ii) of Section 140(3) of the KSGST Act, 2017, hence they are not eligible to claim Input Tax credit under transitional provisions of the VAT paid during the pre-GST period on the computers and laptops etc., physically available on 30th June, 2017.

v) Further, the Computers, Laptops etc., which were lying in stock as on 30.06.2017 were declared as capital assets prior to GST and used by the appellant for providing output services. Thereby they had no tax liability under the erstwhile KVAT law. Further, they squarely fall under the definition of "Capital Goods" under Section 2(19) of the KSGST Act, 2017 and not under Section 2(59) of the KSGST Act, 2017. Hence the relevant transitional provision applicable in the instant case is Section 140(2) of the KSGST Act, 2017 and Section 140(3) of the KSGST Act cannot be invoked.

vi) As per section 140(2) of the KSGST Act 2017, a registered person, other than a person opting to pay under Section 10, shall be entitled to take, in his electronic credit ledger, credit of un-availed input tax credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed. Proviso to the said sub-section of the Kerala SGST Act stipulates that the registered person shall not be allowed to take credit unless such credit was admissible as input tax credit under the existing law and is also admissible as input tax credit under the Act.

vii) The appellant being a service provider, had no tax liability under the erstwhile KVAT Act, and thereby was not eligible to avail input tax credit on computers and laptops held during the transition period. Hence the transitional input tax credit claim of the Taxpayer in respect of capital goods is not admissible as per the transitional provisions of the KSGST Act, 2017.

viii) In view of the above discussions, this Appellate Authority for Advance ruling does not find any reason to modify the decision of the Authority for





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Advance Ruling, issued vide paper read 1st above. Accordingly, the following orders are issued.

ORDER No. AAR/05/2018 DATED 14.12.2018

The computers, laptops etc., used by the appellant for providing output service would not qualify as inputs, though they are physically available as on 30th June, 2017, for the purpose of availing transitional input tax credit of the VAT paid during the pre-GST period, under Section 140 of the KSGST Act, 2017.

Therefore the appeal is disallowed.



**Pullela Nageswara Rao IRS
Chief Commissioner,
Central Tax, Central Excise & Customs
Thiruvananthpuram Zone**



**Rajan.N.Khobragade IAS
Principal Secretary and Commissioner,
State Goods & Service Tax Dept.,
Kerala.**

To,

**M/s Geojit Financial Services Ltd.,
11th Floor, 34/659-P, Civil Lane Road,
Padivattom, Kochi.**