

**BEFORE THE AUTHORITY OF : Smt. Gayathri P.G., IRS &
: Shri Abdul Latheef. K**

Legal Name of the applicant	Shri. Kottoor Mathew Jose Mathew, M/s. JOSE MATHEW & CO.
GSTIN	32AEHPM9073L1Z3
ARN	AD320821004708B
Address	463/A/B/C/D/E/F/G/H, Kandanadu, Manakunnam, Udayamperoor, Ernakulam - 682307
Date of Personal Hearing	01.12.2023
Authorized Representative	Sri.K.S Hariharan, Advocate

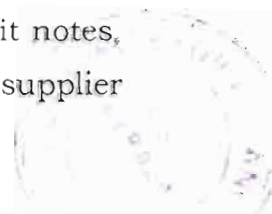
ADVANCE RULING No.KER/35/2023 Dated 29/12/2023

1. Shri.Kottoor Mathew Jose Mathew, Jose Mathew and Co (hereinafter referred to as the applicant) is a registered tax payer under GST, engaged in the business as a distributor of consumer products, mainly of Hindustan Unilever Limited (hereinafter referred to as HUL).

2. At the outset, it is clarified that the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act) and the Kerala State Goods and Services Tax Act, 2017 (hereinafter referred to as KSGST Act) are the same except for certain provisions. Accordingly, a reference hereinafter to the provisions of the CGST Act, Rules and the notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the notifications issued there under.

3. Applicant requested advance ruling on the following:

3.1. When there is no agreement between applicant and original supplier saying that the credit notes should not be treated as financial/commercial credit notes, then if the applicant has treated the credit notes issued by the original supplier



as financial/commercial credit notes, whether the applicant will be liable to reverse the applicant's input tax credit to the extent of tax element in such credit note?.

3.2. In view of provision under section 43, when there is no agreement between the applicant and the supplier to have the ITC claim reduced, and when the applicant has treated the credit notes as financial/commercial credit notes only, and paid tax after deducting ITC based on original supply invoice, whether the applicant is eligible to claim the Input Tax Credit claimable by him as per the purchase invoices shown in GSTR-3B?

3.3. In view of provision u/s 43(5), where mismatch of ITC claim figures is seen between GSTR-3B and GSTR-2A figures, when such mismatch has occurred due to situations where Section 43(5) of the CGST Act can be invoked, can the GST Department reject the applicant's ITC claim on the basis of such mismatch?.

3.4. When the original supplier incorrectly claims output tax liability reduction based on a financial/commercial credit note issued by him to applicant, will such action affect the output tax liability or input tax credit claim of the applicant?

4. The contentions of the applicant:

4.1. Applicant acts as a distributor of consumer products, mainly those manufactured by Hindustan Unilever Limited, (HUL). The HUL supplies goods to the applicant after raising taxable invoice and subsequently the applicant sells these goods to retailers. The relationship between the applicant and HUL is based on time-to-time renewed agreements titled 'Redistribution Stockist Agreement'.

4.2. When the applicant achieve specified targeted amount of supplies, the HUL gives post-supply discount to the applicant, by issuing credit notes as financial/commercial credit notes to the applicant. The discount allowed was not based on any written agreement but done out of a common trade practice and the agreement does not contain any clause dealing with post-supply discount in this manner. Applicant consider those credit notes as financial/commercial credit notes without tax element and therefore do not acknowledge any tax element on those credit notes. The applicant also transfer the discount benefit given through these credit notes, to their retailers who obtain supply from the applicant



4.3. Applicant claimed ITC based on original supply invoice and paid output tax after deducting the eligible Input Tax Credit to claim based on Tax Invoices raised by original supplier while making the original supply. This Input Tax Credit claim is also shown by the applicant in their GSTR-3B.

4.4. The applicant submits that the supplier, i.e, HUL wrongly consider the credit notes as GST credit notes bearing tax element and deducted the tax element of these credit notes, from the supplier's output tax liability. The applicant had communicated to the supplier that the applicant has not acknowledged the tax element in the credit notes which were issued by HUL for the purpose of giving post-supply discount to the applicant. But the supplier has not rectified their books of accounts or returns to show the true nature of the credit notes as commercial credit notes.

4.5. The supplier's treatment of credit notes created mismatch and by this reduction of output tax liability by the supplier caused huge mismatch in GSTR-3B (the Input Tax Credit claimed by the applicant) and GSTR-2A (the Input Tax Credit eligible by the applicant).

4.6. The applicant contended that, according to the proviso to Section 34(2) of the CGST Act, if the recipient does not acknowledge or accept the tax element in the credit notes issued by the supplier, but supply the goods outward, and paid output tax on such outward supply after utilising the ITC according to the tax invoice raised by the supplier, then the supplier is ineligible to deduct the tax element in that credit note from supplier's output tax liability. But the supplier was not heeding applicant's request to set right their incorrect treatment of credit notes.

Section 34(2) is extracted below:

S.34. Credit and debit notes.(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed: Provided that no reduction in output tax liability of the supplier shall

be permitted, if the incidence of tax and interest on such supply has been passed on to any other person

4.7. The applicant also submits that, according to Section.43 (5) of the CGST Act, it is seen that

- ▶ the output tax liability reduction of the supplier on the basis of credit notes exceeds the corresponding input tax claim reduction by the goods recipient or
- ▶ the goods recipient has not declared in his return the credit note based on which the supplier made reduction in supplier's output tax liability, then the GST Department should add back such amount to the output tax liability of the supplier, that is, disallow the reduction if any made by the supplier in his output liability, on the basis of such credit notes. The relevant provisions of Section 43 are extracted below:

(3) Where the reduction of output tax liability in respect of outward supplies exceeds the corresponding reduction in the claim for input tax credit or the corresponding credit note is not declared by the recipient in his valid returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.

(5) The amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the recipient in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the supplier, in such manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.

(7) The supplier shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5) if the recipient declares the details of the credit note in his valid return within the time specified in sub-section (9) of section 39.

(10) The amount reduced from output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the supplier in his return for the month in which such contravention takes place and



such supplier shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.

4.8. The Applicant submits that Section 43 should be invoked in his case and which clearly states the course of action when mismatch is seen due to non-declaration of credit notes by the goods recipient or when supplier claim OPT reduction in excess of ITC claim reduction made by the recipient. But in their case, the GST Department have taken action against the applicant due to the incorrect treatment of credit notes by the original supplier and initiated action to disallow input tax credit claim of the applicant merely based on the mismatch of ITC claim figured in GSTR-3B filed by the applicant and GSTR-2A which is auto-generated based on entries made by the original supplier. The applicant believes that in view of Section 43 of CGST Act, the GST Department do not have the power to disallow applicant's ITC claim based on mismatch between GSTR-3B and 2A when such mismatch has occurred due to situations where Sec.43 can be invoked. The GST Department should disallow the output tax liability reduction of the supplier, instead of taking action to disallow recipient's ITC claim

5. Comments of the Jurisdictional Officer:

The application was forwarded to the jurisdictional officer as per provisions of Section 98(1) of the CGST Act. The jurisdictional officer has reported that a notice for intimating discrepancy in GST ASMT-10 has been issued to the applicant for the year 2017-18 in connection with the reversal of input tax credit against credit notes issued by the supplier dealer.

6. Personal Hearing:

The applicant was granted an opportunity for a personal hearing on 01.12.2023. Adv. K.S Hariharan represented the applicant in the personal hearing. The representative reiterated the contentions made in the application and requested to issue a ruling based on the submissions in the application and filed at the time of hearing.



7. Discussion and Findings:

7.1. The issue was examined in detail. M/s. Jose Mathew and co, the applicant in this case is a distributor of Consumer products mainly those manufactured by Hindustan Unilever limited. The original supplier supplies goods to the applicant after raising taxable invoice. The applicant later sells these goods to retailers. The relationship between the applicant and the original supplier (HUL) is redistribution stockist agreement. The original supplier gives a post supply discount to the applicant when the applicant achieves a specified targeted amount of business. The post supply discounts is granted to the applicant by the original supplier by credit notes. The applicant has furnished some copies of credit notes issued by the supplier during the period 2017-18 & 2018-19 which contains the details of taxable value, tax details, previous invoice details etc. The applicant considers the credit notes as financial commercial credit notes without tax element.

7.2. At the outset it has to be examined whether the questions on which advance ruling is sought are admissible as per the provisions of the CGST Act 2017 governing advance ruling. Sect. 97 of the CGST / SGST Act specifies about the application for advance ruling. Sect. 97 of the Act specifies as follows:-

- (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.

The question Nos. 1& 2 raised by the applicant on which advance ruling is sought by the applicant falls within the purview of clause (d) of sub-section (2) of Section 97 of the CGST Act, 2017; i.e, "admissibility of input tax credit of tax paid or deemed to have been paid". The question Nos. 3 &4 are not in respect of any matter that is specified in Sect. 97(2) of the CGST Act. This authority being a creature of statute has to function within the limits of the jurisdiction conferred on it. Accordingly, the jurisdiction of this authority does not extend to issue rulings on the questions at Sl. Nos. 3 & 4.

7.3. Section 97 of the CGST / SGST Act specifies the manner and subjects on which an application for advance ruling can be made. An advance ruling application filed by an applicant is valid only if certain conditions are satisfied. Section 98 of the Act specify the procedure to be followed on receipt of an advance ruling application.

7.4. Sub section (1) & (2) of Section 98 of the CGST/ SGST Act reads as follows

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records:

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

Provided that the Authority shall **not admit** the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:



7.5. On a combined reading of the above provisions governing advance ruling under the CGST Act it is evident that the authority shall **not admit** the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of the CGST/SGST Act.

7.6. It is seen that in the instant case it is apparent that the original supplier has issued credit notes with tax elements and reduced their output tax liability, resulted in mismatching of the input tax credit available in GSTR 2A of the applicant and the ITC availed in GSTR 3B. The applicant has not furnished adequate reasons for the said mismatch; instead they have filed an application for advance ruling to the competent authority and also submitted their readiness to reply to the proceedings on the receipt of advance ruling.

7.7. The GSTR 2A of the applicant shows that the supplier had issued credit notes in the form of reducing selling price through invoices and it is seen that the credit notes issued by the supplier to the applicant are not commercial ones. The applicant also submits that the original supplier has already reduced their tax liability by considering the credit notes issued, which results in an appropriate reduction of eligible input tax credit in the GSTR 2A of the applicant. The issue came to light when the applicant was issued with ASMT-10 by the proper officer in connection with the short-payment of tax/ non-reversal of ineligible ITC.

7.8. Further, the Jurisdictional Officer has reported that the applicant has been served with a notice GST ASMT-10 dated 09.07.2020 under Section 61 of the CGST/SGST Act 2017 to the applicant for the discrepancies noticed in the scrutiny as per the scrutiny task parameters. The advance ruling application has been filed by the applicant on 19.08.2021. While examining the application of the applicant in terms of Section 98(2), we find that the questions raised in the application pertains to the discrepancies noticed as per the GST ASMT – 10 issued to them by the jurisdictional Proper Officer, which states that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provision of the Act. This reinforces the importance of ensuring no active proceedings are underway before seeking an advance ruling.



tax matters. On a combined reading of the provisions governing advance ruling under Sect. 97 & 98 of the CGST Act it is evident that the authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of the CGST/SGST Act.

7.9. Therefore, it is apparent that, proceedings are pending against the applicant on the date of filing of advance ruling online application on 19.08.2021 and liable to be rejected under first proviso to Section 98(2) of the Act.

In the light of the facts and legal position as stated above, the following ruling is issued:

RULING

Question: 1. When there is no agreement between applicant and original supplier saying that the credit notes should not be treated as financial/commercial credit notes, then if the applicant has treated the credit notes issued by the original supplier as financial/commercial credit notes, whether the applicant will be liable to reverse the applicant's input tax credit to the extent of tax element in such credit note?

Question: 2. In view of provision under section 43, when there is no agreement between the applicant and the supplier to have the ITC claim reduced, and when the applicant has treated the credit notes as financial/commercial credit notes only, and paid tax after deducting ITC based on original supply invoice, whether the applicant is eligible to claim the Input Tax Credit claimable by him as per the purchase invoices shown in GSTR-3B?

Ruling (Q. Nos. 1 & 2) :-The query raised in the application is already pending in proceedings, accordingly the same is rejected in terms of the provisions of Section 98(2) of the Act.

Question:3. In view of provision u/s 43(5), where mismatch of ITC claim figures is seen between GSTR-3B and GSTR-2A figures, when such mismatch has occurred due to situations where Section 43(5) of the CGST Act can be invoked, can the GST Department reject the applicant's ITC claim on the basis of such mismatch?



Question:4. When the original supplier incorrectly claims output tax liability reduction based on a financial/commercial credit note issued by him to applicant, will such action affect the output tax liability or input tax credit claim of the applicant?

Ruling :- The above questions 3 & 4 being not in respect of any matter specified under section 97 (2) of the CGST Act, 2017, this authority has no jurisdiction to issue ruling on the same for the reasons as stated above.

Gayathri P.G.
Gayathri P.G.

**Joint Commissioner of Central Tax
Member**

Abdul Latheef. K
Abdul Latheef. K

**Joint Commissioner of State Tax
Member**

To

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Copy submitted to :-

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2. The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram - 695002.
3. The Commissioner of Central Tax & Central Excise, Thiruvanthapuram Commr.'te, GST Bhavan, Statue, Thiruvanthapuram -. (E-mail id : commr-tvmhqs@gov.in)

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- 5 The Superintendent, Central Tax, Kakkanad-1 Range, Cochin -17.
6. The State Tax Officer, Tax Payer services Circle, Thrippunithura.

