
	KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM	
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BEFORE THE AUTHORITY OF: Dr S. L. Sreeparvathy, IRS &
: Shri Abdul Latheef K

Legal Name of the applicant	M/s. Kwaliti Auto Services
GSTIN	32AAIFK6938K1ZZ
ARN	AD321220004833T
Address	51/39, Kwaliti Auto Service, NH47 Bypass, Vyttila, Ernakulam - 682019.
Advance Ruling sought for	(a) The admissibility of input tax credit of tax paid on inward supply of services by way of Licence Fee Recovery (LFR) on leasing of pumps along with the equipment. (b) The rate of tax applicable on the inward supply of services of leasing of pumps along with the equipment.
Date of Personal Hearing	19.04.2023
Authorized Representative	Smt. Deepa Praveen, Chartered Accountant

ADVANCE RULING No. KER/27/2023 Dated.27/06/2023

1. Kwaliti Auto Services, N.H 47 Byepass, Vyttila.PO, Kochi (herein after referred to as "the applicant") is a retail dealer of Hindustan Petroleum Corporation Ltd and is engaged in the sales of petrol and petroleum products.
2. At the outset it is clarified that the provisions of the Central Goods and Services Tax Act, 2017 (*herein after referred to as CGST Act*) and the Kerala State Goods and Services Tax Act, 2017 (*herein after referred to as KSGST Act*) are same except for certain provisions. Accordingly, a reference herein after to the provisions of the CGST Act, Rules and Notifications issued there under shall include a



reference to the corresponding provisions of the KSGST Act, Rules and the Notifications issued there under.

3. The applicant requested advance ruling on the following:

3.1. The admissibility of input tax credit of tax paid on inward supply of services by way of License Fee Recovery (LFR) on leasing of pumps along with the equipment.

3.2. The rate of tax applicable on the inward supply of services of leasing of pumps along with the equipment.

4. Contentions of the Applicant:

4.1. The applicant is registered under the GST Act and engaged in retail business of petrol and petroleum products. They are receiving services from the oil manufacturing companies by way of leasing of pumps and equipment such as petrol tank and dispenser. The applicant sought advance ruling on the admissibility of input tax credit against the tax paid on receipt of these services from the supplier Hindustan Petroleum Corporation Ltd; since the output tax liability on the outward supply of petrol and diesel has been kept under abeyance.

4.2. The applicant states that as per Section 9(2) of CGST Act the central tax on the supply of petroleum crude, high speed diesel, motor spirit or petrol, natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council. Therefore, the above mentioned goods are liable to tax but are presently kept out of the purview of GST. Hence petrol and petroleum products cannot be treated as non-taxable supplies.

4.3. The applicant submits that as per Rule 42 of CGST Rules if common ITC is used for effecting taxable supplies as well as exempt supplies, part of ITC has to be reversed proportionally. Since the supply of petrol and petroleum products are neither exempt supplies nor non – taxable supplies Rule 42 is not applicable and hence petrol pump is eligible to claim full ITC on inward supplies.



5. Comments of the Jurisdictional Officer:

The application was forwarded to the jurisdictional officer as per provisions of section 98(1) of the Act. The Jurisdictional Officer submitted that the question raised by the applicant for Advance ruling is not pending or decided in any proceedings by that office.

6. Personal Hearing:

The applicant was granted opportunity for personal hearing on 19.04.2023 by Virtual Mode. Smt. Deepa Praveen, Chartered Accountant represented the applicant for personal hearing. The representative reiterated the contentions made in the application and requested to issue the ruling on the basis of the submissions made in the application.

7. Discussion and Conclusion:

7.1. We have carefully considered the Advance ruling application, statement of facts and the oral submissions made at the time of hearing. The questions raised by the applicant are on the admissibility of input tax credit on the service of leasing of pumps along with equipment on payment of License Fee Recovery (LFR) charges and the rate of tax of the above service.

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.

7.3. Section 95(a) of CGST Act defines 'advance ruling' as follows:-

(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.



7.4. From the above definition it is evident that an applicant can seek an advance ruling in relation to supply of goods or services or both undertaken or proposed to be undertaken by them. Further, as per Section 103(1) of the CGST Act such an Advance Ruling is binding only on the applicant and on the officer concerned or the jurisdictional officer in respect of the applicant.

7.5. Section 97 of the CGST Act specifies the subjects on which an application for advance ruling can be made. Section 97 of the CGST Act reads 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.*

7.6. Section 103 of the CGST Act governs the applicability of Advance ruling wherein it is specified that;

(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.

(2) The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

7.7. On a combined reading of the above provisions governing advance ruling under the CGST Act it is evident that an applicant can make an application for advance ruling if the following conditions are satisfied; (1) the applicant is either registered under GST law or is desirous of obtaining registration; (2) the matter or question pertains to any issue specified in Section 97 (2); (3) such a transaction is being undertaken or proposed to be undertaken by the applicant and the advance ruling is binding only on the applicant and the jurisdictional officer of the applicant.

7.8. The first question raised by the applicant is regarding the admissibility of input tax credit of the tax paid on the services of leasing of pumps and equipment received by them. The question is covered under clause (d) of sub-section (2) of Section 97 of the CGST Act, 2017 and is hence admitted.

7.9. The second question raised by them is regarding the rate of tax applicable on the service of leasing of pumps and equipment received by them. Though the question is on a matter covered under clause (a) of sub-section (2) of Section 97 of the CGST Act, 2017 the applicant is the recipient of the service. Therefore, the question do not pertain to a transaction that is being undertaken or proposed to be undertaken by the applicant and hence do not fall within the purview of the definition of advance ruling. Further, it is categorically stated in Section 103 of the CGST Act that the ruling pronounced is binding only on the applicant and the jurisdictional authority of the applicant. Hence, if a recipient obtains a ruling on the rate of tax of his inward supply of goods or services or both the supplier of such goods or services and their jurisdictional authority is not bound by that ruling and the supplier and their jurisdictional authority is free to assess the supply according to their own determination and the ruling has no relevance or applicability. Therefore, the second question is not admissible.



7.10. The applicant is a Petrol Pump operator. The oil marketing company Hindustan Petroleum Corporation Ltd has authorized the applicant for retail sales of petrol and diesel on the basis of leasing agreement. The oil marketing company collects GST on the value of services provided to the applicant by the way of LFR. The supplies made by the applicant include petrol and diesel that are not subject to levy of GST and lubricating oil and other supplies that are subject to the levy of GST.

7.11. Sections 16 to 18 of the CGST Act, 2017 enumerates the circumstances in which ITC is allowed and the conditions, limitations and the procedures subject to which the ITC can be availed.

7.12. Section 16 of the CGST Act, 2017 which prescribes the eligibility and conditions for availing input tax credit reads as follows;

“SECTION 16. Eligibility and conditions for taking input tax credit. —

(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 taxpaying documents as may be prescribed;

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;

(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 or, as the case may be, services —

(i) 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;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.

(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39 :

Provided that where the goods against an invoice are received in lots or installments, the registered person shall be entitled to take credit upon receipt of the last lot or installment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.



(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-Tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.”

7.13. Section 17 of CGST Act pertains to apportionment of credit and blocked credits. Sub-section (1) of Section 17 provides that where the goods or services or both are utilized by the registered person partially for the purpose of any business and partially for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business. Likewise, sub-section (2) of Section 17 provides that where the goods or services or both are used by the registered person partially for affecting taxable supplies including zero-rated supplies and partially for exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies. Sub-section (3) provides that the value of exempt supply shall be such as may be prescribed in cases covered by sub – section (2). Sub-section (4) of Section 17 provides for special provision for availment of ITC by banking companies. Sub-section (5) of Section 17 provides the negative list of goods and services in respect of which input tax credit is not available and sub-section (6) confers power on the Government to prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

7.14. Rule 42 and 43 of the Central Goods and Services Tax Rules, 2017 provides the manner of determination of input tax credit in respect of inputs and input services and in respect of capital goods respectively and its reversal thereof in cases where the provisions of sub –section (1) or sub-section (2) of Section 17 are



attracted. These rules provide a formula restricting the input tax credit in respect of inputs, input services and capital goods which attract sub-section (1) and sub-section (2) of Section 17 being partially used for making taxable supplies and partially for making exempt supplies.

7.15. The issue to be determined is whether the provisions of sub-section (2) of Section 17 of the CGST Act, 2017 is attracted in the case of the applicant. It is an admitted fact that the applicant is engaged in the supply of goods that are subject to GST as well as goods that are not subject to GST namely; Petrol and Diesel. The contention of the applicant is that in view of the provisions of sub-section (2) of Section 9 of the CGST Act, 2017 that the central tax on the supply of petroleum crude, high speed diesel, motor spirit or petrol, natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council the supply of petrol and diesel cannot be considered as exempt supply.

7.16. The term "exempt supply" is defined in clause (47) of Section 2 of the CGST Act, 2017 as follows;

"exempt supply" 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."

7.17. The term "non-taxable supply" is defined in clause (78) of Section 2 of the CGST Act, 2017 as follows;

"non-taxable supply" means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act."

7.18. In view of the provisions of sub-section (2) of Section 9 of the CGST Act, 2017 the levy of GST on the supply of the five petroleum products namely; petroleum crude, high speed diesel, motor spirit or petrol, natural gas and aviation turbine fuel has not come into operation and as such at present the five petroleum



products are not leviable to GST. Hence the supply of the said petroleum products falls within the definition of non-taxable supply and consequently within the definition of exempt supply.

8. On the basis of the above discussion, we conclude that the applicant is engaged in both taxable as well as exempted supplies and hence the provisions of sub-section (2) of Section 17 which stipulates that where the goods or services or both are used by the registered person partially for effecting taxable supplies including zero-rated supplies and partially for exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies applies to the applicant. The service of leasing of pumps and equipment received by them are undoubtedly common input services that are used for taxable as well as the exempted supplies. Therefore, the applicant is not eligible for credit of the full amount of tax paid on the License Fee Recovery for the service of leasing of pumps and equipment received by them; but only eligible to avail the amount of input tax credit determined as per the provisions contained in Rule 42 of the CGST Rules, 2017.

In the light of the observations as above, the following ruling is issued:

RULING


Question-1: The admissibility of input tax credit of tax paid on inward supply of services by way of License Fee Recovery (LFR) on leasing of pumps along with the equipment.


Answer: The inward supply of services by way of License Fee Recovery (LFR) on leasing of pumps along with the equipment being a common input service used by the applicant for the purpose of effecting taxable as well as exempted supplies the applicant is eligible only for proportionate credit as per the provisions of sub-section (2) of Section 17 of the CGST Act, 2017 determined in the manner prescribed in Rule 42 of the CGST Rules, 2017.



Question -2: The rate of tax applicable on the inward supply of services of leasing of pumps along with the equipment.

Answer: No ruling can be given as the question is not in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.


Sreeparvathy S.L.
Additional Commissioner of Central Tax
Member


Abdul Latheef K
Joint Commissioner of State Tax
Member

To,

M/s. Kwaliti Auto Services,
51/39, NH 47 Bypass,
Vytilla, Ernakulam - 682019.

Copy to,

1. The Chief Commissioner of Central Tax and Central Excise, Thiruvananthapuram Zone, C.R. Building, I.S. Press Road, Cochin- 682018. [E-mail ID: cccochin@nic.in; ccu-cexcok@nic.in]
2. The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram – 695002.
3. The State Tax Officer, Tax Payer Services Circle, Vyttila, Ernakulam.

