

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

**Advance Ruling No. KAR ADRG 62/ 2019
Dated: 20th September, 2019**

Present:

1. Sri. Harish Dharnia,
Addl. Commissioner of Central Tax Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of Commercial Taxes Member (State Tax)

1.	Name and address of the applicant	M/s Knowlarity Communications Pvt. Ltd., "We Work India Management Pvt Ltd" Residency Road, Bengaluru 560025
2.	GSTIN or User ID	29AADCK7606G1ZF
3.	Date of filing of Form GST ARA-01	04.09.2018
4.	Represented by	Sri Atul Puri, Chartered Accountant
5.	Jurisdictional Authority - Centre	Commissioner of Central Tax, Bangalore-South, Queens Road, Bengaluru
6.	Jurisdictional Authority - State	LGSTO-020, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of 1. Rs.5,000/- under CGST Act vide CIN ICIC18092900010560 dated 03.09.2018 2. Rs.5,000/- under KGST Act vide CIN ICIC18082900005342 dated 01/08.2018

ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE KARNATAKA GOODS AND SERVICES TAX ACT, 2017

1. M/s Knowlarity Communications Private Limited, (called as the 'Applicant' hereinafter), having GSTIN number 29AADCK7606G1ZF, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 & KGST Act, 2017 read with Rule 104 of the CGST Rules 2017 & KGST Rules 2017, in FORM GST ARA-01, discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The Applicant is a Private Limited Company and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:



Whether or not a registered person under the Goods and Services Tax Act, 2017 can claim eligible input tax credit of goods and services tax paid on input invoices of goods or services procured or availed by a registered person before its effective date of registration under GST, where such inputs are eligible input credits and for the purpose of furtherance of business?

3. The applicant furnishes some facts relevant to the stated activity:
 - a. The applicant states that he is engaged in the business of providing cloud telephony internet based communication solutions to its customers in different States of India through its offices in such State and has its corporate office in Gurugram, Haryana.
 - b. The Company is having centralized accounting system and books of accounts are maintained at the Corporate Office located in the State of Haryana. During the Service Tax Regime, centralized billings used to happen from the corporate office for services rendered in different States of India. In order to render services in any state, the Company first requires to take a virtual office in that State where it can get the telephone number registered which it obtained from a telephone operator. In other States, like Maharashtra, Delhi and Karnataka, the Company has taken virtual offices where the telephone numbers obtained from the telecom operators are registered. After getting the telephone numbers registered, the Company gives these numbers to its customers for providing their "Super Receptionists Services".

4. On the issue on which Advance Ruling is sought, the applicant states that whether or not a person registered under Goods and Services Tax Act, 2017 is eligible to claim input tax credit of GST charged on invoices, of goods or services procured or received by such registered person, issued on such registered person before its effective date of registration under GST Act, provided such inputs are eligible input credits and received in the course or furtherance of business and the time period to claim the input tax credit under section 16(4) of the CGST Act, 2017 has not lapsed.

4.1 The Company, in order to save itself from losing the amount of input tax credit of intra-State Karnataka GST, which is charged by the telecom operators on Company in the state of Karnataka, has got itself registered under the GST Law in the State of Karnataka. The effective date of registration is 01.04.2018.

4.2 The Company received certain input invoices of goods or services procured by its office located in the State of Karnataka. These invoices were issued during July 1st, 2017 to March 31st, 2018. Now the Company intends to seek clarification, whether or not its registered office in the state of Karnataka will be eligible to claim input tax credit of Goods and Services Tax charged on such invoices of supply procured by it on a date prior to 01.04.2018 (i.e. effective date of registration in the state of Karnataka).

4.3 In this regard, the applicant makes the following submissions

- a. Section 16 of the CGST Act, 2017 defines the eligibility and condition for taking input tax credit:

"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."

- b. Section 16(2) of the CGST Act, 2017 provides that:

"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;

(c) subject to the provisions of section 41 or section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39."

- c. Section 16(4) of the CGST Act, 2017 provides that

"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 due date of furnishing of the return under section 39 for the month of September following the end of the financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier."

- d. Ongoing through the above provisions, inter-alia other provisions contained under the GST Law, the applicant states that it is pertinent to note that, the section empowers a "registered person" entitled to take credit of the input tax. The section does not restrict a registered person from taking input tax credit of invoices which were issued by the suppliers before the effective date of registration of the person claiming such input tax credit under the CGST Act, 2017. (emphasis supplied by the applicant).

- e. Principally, the section entitles a person to take input tax credit if following conditions are satisfied:

1. Person is registered under the CGST Act;

2. Supply must be used or intended to be used in the course or furtherance of his business
3. He is in possession of tax invoice
4. He has received the goods or services

If the above conditions are fulfilled, inter-alia other provisions contained under the Act, a registered person may take the input tax credit. The substantial benefits of taking the credit may not be withdrawn from the tax payer only because of the reason where he delayed in obtaining the registration under the CGST Act in prescribed time.

- f. Rule 36(1) of the CGST Rules, 2017 defines the documentary requirements and conditions for claiming input tax credit:
"ITC shall be availed by a registered person on the basis of following documents, namely -
(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;
(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to payment of tax;"
- g. Rule 36(2) of CGST Rules 2017:
"Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document, and the relevant information, as contained in the said document is furnished in FORM GSTR-2 by such person."
FORM GSTR-2 for the time being is suspended by the Government.
- h. With respect to the rules mentioned in paragraphs above, the applicant states that it is pertinent to note that ITC is available to a "registered person" if he is in possession of invoices which are issued by the supplier in accordance with section 31 of CGST Act, 2017. A further check that has been imposed by rule 36(2) of the CGST Rules, 2017 to avail ITC which specifies that "all the applicable particulars are contained in said document". If both the said conditions are satisfied, inter-alia other provisions contained under the Act, ITC shall be available to the person. Further, the law nowhere restricts suppliers in issuing a revised invoice where any of the particulars was missed to be mentioned on the original invoice.
- i. In consideration of the above said provisions of section 16 and a combined reading of the above stated sub-sections and rules, the interpretation of the applicant is that, a registered person is entitled to take the input tax credit within the time period given under section 16(4) of the CGST Act, 2017 in respect of supply which is used or intended to be used in the course or furtherance of his business.

- j. The applicant further submits that the date of issue of invoice of supply for which the input tax credit is under question should not bear any relevance till the date time period given under section 16(4) of the CGST Act, 2017 has lapsed. Even if, the input invoice has pertained to period prior to effective date of registration under the GST Law, a registered person should still be eligible to avail the input tax credit provided the time period given under section 16(4) has not been lapsed. Therefore, the applicant is of the opinion that the person registered under GST Law may avail the input tax credit of goods and services tax charged on the supply of goods or services procured by it before the effective date of his registration under the CGST Act, 2017.
- k. The applicant has also brought into record the legal provisions of CENVAT Credit rules, 2004 and VAT Credit relating to pre-registration purchases under the Karnataka Value Added Tax Act, 2003.
- l. The applicant has also taken the support of the following judgements:
- The judgement of the Hon'ble High Court of Karnataka in the case of mPortal India Wireless Solutions (P) Ltd v. Commissioner of Service Tax [(2012) 34 STT 322 (Kar)]
 - The judgement of CESTAT, Chennai Bench in the case of Premedia Global (P) Ltd v. Commissioner of Service Tax, Chennai [(2016) 56 GST 487 (Chennai-CESTAT)]
 - The judgement of CESTAT, Mumbai Bench in the case of Ducon Technologies (India) (P.) Ltd. v. Commissioner of Central Excise, Thane (2018) 95 Taxmann.com 183.
 - The judgement of CESTAT, Ahmedabad Bench in the case of C.Metric Solution (P.) Ltd v. Commissioner of Central Excise, Ahmedabad (2013) 39 STT 313 (Ahmedabad-CESTAT)

The applicant is of the view that a person may claim the input tax credit of GST charged on invoices issued by the supplier for a particular financial year on or before the due date of submitting the return under FORM GSTR-3B for the month of September succeeding the financial year to which such invoices pertained. It is not relevant whether the invoice was issued prior to his effective date of registration under the GST Law because the law nowhere puts any such restriction on the registered person which makes him ineligible to claim input tax credit of invoices prior to the date of his registration. Further, the various judicial precedents under erstwhile law has been given by the Hon'ble Appellate Authorities and High Courts which states that the benefit of CENVAT credit cannot be denied if it has been claimed within time limits i.e one year from the date of issue of invoice.

5. FINDINGS & DISCUSSION:

We have considered the submissions made by the applicant in their application for advance ruling as well as those by Sri. Atul Puri, CA, during the



personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts. At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the KGST Act.

5.1 The issue raised by the applicant is verified with reference to the provisions of the GST Acts. The applicant is registered w.e.f. 01.04.2018 and prior to the effective date of registration he was an unregistered person in the State of Karnataka. All the provisions quoted by the applicant are applicable to a registered person whose registration is effective and not to a registered person for the period of non registration.

5.2 Section 2(94) of the CGST Act defines "registered person" and the same reads as "registered person" means a person who is registered under section 25 but does not include a person having a Unique Identity Number". Hence the meaning of registered person is very clear that the person who is registered under section 25 of the CGST Act can be termed as a registered person.

5.3 Sub-section (11) of section 25 of the CGST Act, 2017 states that the certificate of registration shall be issued in such form and with effect from such date as may be prescribed and it is not disputed that the effective date of registration of the applicant is 01.04.2018. Hence earlier to this period, i.e. from 01.07.2017 to 31.03.2018, the applicant was not a registered person. Further, Rule 10 also deals with the effective date of registration.

5.4 Section 18(1) of the CGST Act, 2017 deals with special circumstances where credit would be available and the same reads as under:

“(1) Subject to such conditions and restrictions as may be prescribed:

- (a) a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;
- (b) a person who takes registration under sub-section (3) of section 25 shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration.”

Further, the "input" has been defined in clause (59) of section 2 of the CGST Act and the same reads as under:

"(59) "input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;"

Hence from the conjoint reading of the above, it is very clear that a person who has been granted registration, where the person has applied for registration within 30 days from the date on which he became liable for registration, would be allowed to take credit of input tax in respect of goods held in stock which are intended to be used by that person in the course or furtherance of business. Hence there is no question of allowing credit on the input tax credit charged on the invoices dated prior to the effective date of registration relating to services and even in respect of goods, they must be available in stock as on the day prior to the effective date of registration.

6. In view of the foregoing, we pass the following

RULING

The applicant is not eligible to claim input tax credit of the tax paid on input invoices of goods or services procured or availed by a registered person before its effective date of registration under GST.

Further, in case of inputs being goods, the applicant is only eligible to claim input tax credit of the tax paid on such goods (inputs) lying in stock on the day previous to the effective date of registration, which are intended to be used in the course or furtherance of business, subject to other conditions and restrictions prescribed in the GST Act and in Rule 40 of the CGST Rules, in case the application for registration has been filed within thirty days from the date on which the applicant became liable for registration under the Act.


20.09.2019

(Harish Dharnia)
Member



(Dr. Ravi Prasad M.P.)
Member

Place: Bengaluru,

Date: 20.09.2019

To,

Applicant

Knowledgy Communications



Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. Commissioner of Central Tax, Bangalore-South, Queens Road, Bengaluru.
4. The Asst. Commissioner, LGSTO-020, Bengaluru.
5. Office Folder.