

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

Advance Ruling No. KAR ADRG 50/2022

Date : 12-12-2022

Present:

1. Dr. M. P. Ravi Prasad
Additional Commissioner of Commercial Taxes Member (State)
2. Sri. Kiran Reddy T
Additional Commissioner of Customs & Indirect TaxesMember (Central)

1.	Name and address of the applicant	M/s. PREETHI GRANITE EXPORTS, No.91/2, Shayadanahalli, Naganahalli (Post), Mysuru - 570 003.
2.	GSTIN or User ID	29AAEFP0358E1ZC
3.	Date of filing of Form GST ARA-01	12.09.2022
4.	Represented by	Sri. B C Bhat, Advocate & Authorised Representative.
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Central Tax, Mysuru Commissionerate, Mysuru. (Lashker Mohalla Range)
6.	Jurisdictional Authority - State	ACCT, LGSTO-200, Mysuru.
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act & Rs.5,000/- under KGST Act through debit from Electronic Cash Ledger vide reference No. DC2909220008184 dated 03.09.2022.

**ORDER UNDER SECTION 98(2) OF THE CGST ACT, 2017
& UNDER SECTION 98(2) OF THE KGST ACT, 2017**

M/s. Preethi Granite Exports (herein after referred to as 'Applicant'), No.91/2, Shayadanahalli, Naganahalli, Mysuru - 570 003, having GSTIN 29AAEFP0358E1ZC, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of the KGST Rules, 2017, in form GST ARA-01 discharging the fee of Rs.5,000/-each under CGST Act & KGST Act.

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2. The Applicant stated that they are a Partnership firm engaged in the manufacture and sale of granites, falling under tariff heading 2516 12 00 of the Customs Tariff Act; they have their own quarry and also buy quarry blocks from other suppliers; they export the granite slabs, after cutting & polishing, to various countries; they export 90% of the granite slabs and also sell 10% in domestic market; they are running the business for the past 15-20 years; they have decided to close the business as they could not continue the business due to strict competition in the market; there is no stock of raw material, components, consumables, capital goods & machinery at present in the premises and the said premises has been de-bonded; they have small quantity of finished goods, which will be supplied on payment of tax within a short period of time; they have a balance of Rs.37,22,275/- under CGST, Rs.37,22,275/- under KGST; Rs.9,990/- under Cess, in the Electronic Credit Ledger and Rs.37,955/- under CGST & Rs.37,955/- under KGST in the Electronic Cash Ledger.

The applicant, in view of the above, intend to give the said premises on Rent/Lease for commercial purpose and the Lessee will do the commercial business in the said premises on obtaining separate GSTIN and following the procedures as per GST Act & Rules.

3. The applicant, in view of the foregoing, sought advance ruling in respect of the following questions.

- a) *Can the Applicant continue with the existing GSTIN 29AAEFP0358E1ZC to discharge the GST liability for Rent/Lease received from Lessee and for filing the return relating to Renting / Leasing of the said premises.*
- b) *Can the Applicant utilize the balance available in Electronic Credit Ledger (Input Tax Credit) in respect of purchase of Raw material, consumables, capital goods relating to the manufacture of Granite Slabs to discharge GST liability of Rent for the premises given for Rental/Lease basis.*
- c) *Can Applicant utilize balance in Cash Ledger to discharge GST liability (Output Tax) of Rent for the premises given for Rental/Lease basis.*

4. The Assistant Commissioner of Central Tax, Bannimantap Division, Mysuru Commissionerate, Mysuru, vide their letter dated 22.09.2022, offered comments on the questions in respect of which the advance ruling has been sought by the applicant *inter-alia* stating as under:

4.1 The applicant can continue with the existing GST registration as per Section 25(2) of the CGST Act' 2017 to discharge GST liability for Rent/Lease received from Lessee and for filing the return relating to Renting/Leasing of the said premises by applying for requisite amendment indicating the change of PPOB (Principal Place of Business) and business details in their GST registration.



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4.2 Section 16(1) of the CGST Act 2017 and the definitions of 'input' and 'capital goods' under Section 2(19) and 2(59) respectively of the CGST Act 2017 lay down that the same (inputs & capital goods) have to be used or intended to be used in the course or furtherance of business. In the instant application, it is evident that raw material, consumables, capital goods relating to the manufacture of Granite Slabs on which input tax credit was availed are neither used nor intended to be used in the course or furtherance of their new business i.e. Renting/Leasing of the commercial immovable property. Thus allowing the utilisation of the said ITC will result in contravention of Section 16(1) of CGST Act 2017 read with Sections 2(19) and 2(59) *ibid*.

4.3 The ruling of the Gujarat Appellate Authority for Advance Ruling in appeal No.GUJ/AAAR/Appeal/2021/36 dated 23.12.2021, in the case of M/s Aristo Bullion Pvt. Ltd., was based on the fact that it is not feasible to segregate the ITC from a common pool where there are multiple verticals in the same GSTN registration which is not the case in the present situation where the applicant has an ITC specific to raw materials, consumables, capital goods relating to the manufacture of Granite Slabs and has not ITC in relation to the supply of renting / leasing services. Thus the doctrine of common ITC pool as propounded in the said ruling is not applicable to the present case.

4.4 Further, allowing such credit earned through one business vertical to another may not be correct in general, though not specific to the issue in question, in view of the block credit principle under Section 17(5) of the CGST Act 2017 as in such cases of blocked credit is supply specific i.e. the credit is disallowed in respect of some specific supplies whereas the same is allowed for other supplies.

4.5 Applicant can utilise balance in Cash Ledger as per Section 49(3) of the CGST Act 2017 to discharge GST liability (output tax) on rent for the premises given for rental/lease basis.

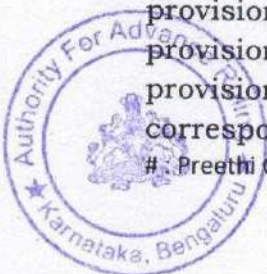
PERSONAL HEARING PROCEEDINGS

5. Sri B C Bhat, Advocate & Authorised Representative of the applicant appeared for personal hearing proceedings held on 29.09.2022 and reiterated the facts narrated in their application. However, the applicant also requested for additional hearing, which was granted and the second hearing was held on 10.11.2022. Sri. B C Bhat, Advocate appeared for the hearing and furnished the written submissions.

FINDINGS & DISCUSSION

6. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in *pari-materia* and have the same provisions in like matters and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

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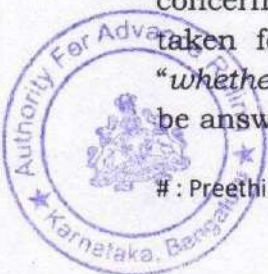
7. We have considered the submissions made by the applicant in their application for advance ruling. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts along with the arguments made by the applicant & the submissions made by their learned representative during the time of hearing.

8. The applicant sought advance ruling in respect of the questions mentioned at para 3 supra. The admissibility of the application was heard on 29.09.2022 and an additional hearing opportunity was given, at the request of the applicant, on 10.11.2022 during which additional submissions were furnished inter alia stating as under:

- (a) Section 41(2) and 49(4) of the CGST Act for utilisation of Input Tax Credit is issued under Notification No.9/2017-Central Tax dated 28.06.2017.
- (b) Section 49 A & 49 B of CGST Act 2017, Rules 86 & 88A of CGST Rules 2017 to utilisation of the tax in chronological way is issued under Notification No.02/2019-Central Tax dated 29.01.2019 and Notification No.16/2019 Central Tax dated 29.03.2019.
- (c) Utilisation of Input Tax Credit available with us is covered under Section 97(2)(b) "applicability of a notification issued under the provisions of this Act" seeking for Advance Ruling.
- (d) Ours is a running business and not a new business. There is no change in GSTIN. The credit is being used for the business within the state and not outside the state.
- (e) In the case of merger or amalgamation, the balance lying in ITC shall be used for transferee company even though it is different and new business unit.

9. On the admissibility of the application, the applicant initially claimed that the ruling sought in respect of questions at para 3 supra are covered under Section 97(2)(d) and Section 97(2)(e) of the Act *ibid* and hence the application is admissible. However, the applicant in the additional submissions stated that the issue of utilisation of Input Tax Credit is covered under Section 97(2)(b) and thus claimed that the instant application is admissible.

10 The first question is whether the applicant can continue with existing registration for discharge of GST liability and also for filing of returns relating to their new business. In other words, the applicant intends to know whether a separate registration needs to be taken or otherwise for conduct of his new business. It is seen, from the said question, that the applicant does not intend to know whether they are required to be registered or not. The applicant's only concern is whether registration can be continued or a fresh registration needs to be taken for their new business, which is not covered under Section 97(2)(f) i.e. *"whether applicant is required to be registered"* and hence the said question cannot be answered.



11. Now we proceed to examine whether the 2nd and 3rd questions, raised by the applicant in para 3 supra are covered under Section 97(2) of the Act *ibid* or not, in respect of which advance ruling can be given or otherwise. In view of the foregoing we first invite reference to Section 97(2) of the CGST Act 2017 which stipulates **that the questions on which advance ruling is sought, under this Act shall be in respect of the following specified issues only.**

- 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.*

12. The second question is about the utilisation of the ITC available in their Electronic Credit Ledger. The applicant claims that the said question is covered under the issue *admissibility of input tax credit of tax paid or deemed to have been paid*, in terms of Section 97(2)(d) of the CGST Act 2017. In this regard we invite reference to Section 16(1) of the CGST Act 2017, which is as under:

“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.”

13. It could be seen from the above that the admissibility or entitlement of credit of tax charged to a registered person, on any supply of goods or services or both, which are used or intended to be used in the course or furtherance of business and the said amount shall be credited to the electronic credit ledger of such registered person, in terms of Section 16 of the CGST Act 2017, subject to the conditions under Section 17(5) of the said Act & relevant rules. It is pertinent to mention here that the admissibility of the ITC is concerned till the credit of the said amount into the electronic credit ledger. The applicant in the instant question seeks advance ruling on the issue of utilization of ITC available in the Electronic Credit Ledger and thus the question is not covered under the issues specified in Section 97(2) of the CGST Act 2017.



14. The third question is about utilization of amount available in their Electronic Cash Ledger towards discharge of GST liability on rental/lease income, which is not covered under the issues specified in Section 97(2) of the CGST Act 2017.

15. The applicant vide their additional submissions, furnished during the hearing held on 10.11.2022, contended that the issue of utilization of Input Tax Credit available with the applicant is covered under Section 97(2)(b) of the CGST Act as "applicability of a notification issued under the provisions of this Act" and sought for advance ruling on the questions raised.

16. The applicant contended that Section 41(2) and 49(4) of the CGST Act 2017 are relevant to utilization of Input Tax Credit, issued under Notification No.9/2017-Central Tax dated 28.06.2017. We invite reference to the aforesaid sections which are as under:

Section 41(2) : The credit referred to in Section 41(1) shall be utilized only for payment of self-assessed output tax as per the return referred to in the said sub-section".

Section 49(4) : The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Act in such manner and subject to such conditions and within such time as may be prescribed.

It is observed on examination that the Notification 9/2017-Central Tax dated 28.06.2017 was issued to appoint the date i.e. 1.7.2017, from which certain provisions of CGST Act shall come into force. It is pertinent to mention here that the said notification is applicable to all and thus not relevant to the questions raised.

17. The applicant also contended that Section 49(A) & 49(B) of the CGST Act 2017 and Rules 86 & 88A of the CGST Rules 2017 are relevant to utilization of Input Tax Credit, issued under Notification No.2/2019-Central Tax dated 29.01.2019 and Notification No.16/2019-Central Tax dated 29.03.2019. We invite reference to the aforesaid sections 49A & 49B which are effective from 01.02.2019 and rules 86 & 88A which are as under:

49A. Utilisation of input tax credit subject to certain conditions.— (1) Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.

49B. Order of utilisation of input tax credit.— (1) Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of sub section (5) of section 49, the Government may, on the



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recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax

Rule 86. Electronic Credit Ledger.-(1) The electronic credit ledger shall be maintained in FORM GST PMT-02 for each registered person eligible for input tax credit under the Act on the common portal and every claim of input tax credit under the Act shall be credited to the said ledger.

(2) The electronic credit ledger shall be debited to the extent of discharge of any liability in accordance with the provisions of section 49 [or section 49A or section 49B]181 .

(3) Where a registered person has claimed refund of any unutilized amount from the electronic credit ledger in accordance with the provisions of section 54, the amount to the extent of the claim shall be debited in the said ledger.

(4) If the refund so filed is rejected, either fully or partly, the amount debited under sub-rule (3), to the extent of rejection, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03.

(4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03.

(5) Save as provided in the provisions of this Chapter, no entry shall be made directly in the electronic credit ledger under any circumstance.

(6) A registered person shall, upon noticing any discrepancy in his electronic credit ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04. Explanation.- For the purposes of this rule, it is hereby clarified that a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal.

Rule 88A. Order of utilization of input tax credit.- Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order:

Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.



18. It is observed on examination that the notification 2/2019-Central Tax dated 29.01.2019 was issued to appoint the date i.e. 1.2.2019, from which certain provisions of CGST Act shall come into force. Further Notification No.16/2019-Central Tax dated 29.03.2019 is issued, in terms of Section 164 of the CGST Act 2017, notifying the amendment to the CGST Rules 2017 and is also applicable to all. Thus the notifications are not relevant to the questions raised and hence the questions are not covered even under "applicability of a notification issued under the provisions of this Act", under Section 97(2)(b) of the CGST Act 2017. In fact the applicant filed the instant application seeking advance ruling in respect of the questions at para 3 supra, claiming that the issues are allegedly covered under Section 97(2)(d) and (e) of the CGST Act 2017.

19. In view of the foregoing, the application is not maintainable as the questions on which advance ruling is sought by the applicant are not covered under the issues specified in Section 97(2) of the CGST Act 2017 and hence the instant application is liable for rejection in terms of Section 98(2) of the CGST Act 2017.

20. In view of the above, we pass the following,

R U L I N G

The Application filed by the applicant for advance ruling is rejected in terms of Section 98(2) of the CGST Act 2017.


(Dr.M.P.Ravi Prasad)
Member

Karnataka Advance Ruling Authority
Place : Bengaluru,
Bengaluru - 560 009

Date : 12-12-2022

To,

The Applicant

Copy to :

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Principal Commissioner of Central Tax, Mysuru Commissionerate, Mysuru.
4. The Asst. Commissioner, LGSTO-200, Mysuru.

5. Office Folder

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(Kiran Reddy T)
Member

MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

