



**BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING
for the State of Andhra Pradesh (Goods and Service Tax)**

(Office at O/o Chief Commissioner of State Tax, Govt. of A.P., D NO 5-56, Block-B,
R.K.Spring Valley Apartment, Bunder Road, Edupugallu, Vijayawada,
Andhra Pradesh – 521151)

Present:

Sri Suresh Kishnani (Member) (Central Tax)

Sri S. Ravi Shankar Narayan (Member) (State Tax)

The 24th day of January, 2022

Order /AAAR/AP/05 (GST)/2022

1	Name and address of the appellant	M/s. Vishnu Chemicals Limited, Plot No 29, JN Pharma City, IOCL Road, Visakhapatnam-531019.
2	GSTIN	37AACC1903A3ZU
3	Date of filing of Form GST ARA-02	08.11.2021
4	Hearing (Virtual)	14.12.2021
5	Authorized Representative	Sri M Narsi Reddy, DGM, Accounts
6	Jurisdictional Authority – Centre	Superintendent, Parawada Range, Visakhapatnam South Division.

**(Under Section 101 of the Central Goods and Service Tax Act and the
Andhra Pradesh Goods and Service Tax Act).**

At the outset, we would like to make it clear that the provisions of both the CGST Act and the APGST 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 APGST Act.

The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and APGST Act"] by M/s. Vishnu Chemicals Ltd (herein after referred to as the "Appellant") against the Advance Ruling No. AAR No.21/AP/GST/2021 dated 20.07.2021 issued by Authority for Advance Ruling, Andhra Pradesh.

1. Background of the Case:

1.1 The appellant , M/s. Vishnu Chemicals Limited is engaged in manufacture of Basic Chromium Sulphate, Sodium Sulphate and Chromic Acid falling under HSN 28332990, 28331100 and 28191000. For the purpose of storing the raw material as well as finished goods, the applicant needed some additional storage space and therefore, entered into lease agreements with M/s. Usha Tubes and Pipes Pvt. Ltd., Visakhapatnam (GSTIN:37AAACU7175R1ZG) (referred to as "UTPL") for leasing of godowns situated at UTPL Campus, Mindi, Gajuwaka, Visakhapatnam.

1.2 The appellant submitted that monthly rental bills were received from M/s UTPL regularly till March 2018. But for the months from April 2018 to March 2019, M/s UTPL issued a single tax invoice bearing No. UTPL0919117KVC dated 01.04.2020 mentioning in the description as Rental charges for the months from April 2018 to March 2019 by showing rent month-wise for 12 months. The invoice mentioned CGST as 26,64,090/- and SGST of Rs. 26,64,090/- on total taxable value of Rs. 2,96,01,000.

1.3 The appellant had approached the Authority for Advance Ruling seeking a clarification whether the invoice dated 01.04.2020 is eligible for input tax credit if claimed before filing GST return for September 2021 or Annual return for 20-21 in terms of Sec 16(4). The Authority for Advance Ruling Andhra Pradesh in its orders in **AAR no.21 /AP/GST/2021 Dt.20.07.2021** ruled as under:

Question 1: Whether the tax invoice dated 01.04.2020 issued by the supplier of service for the rental service supplied for the period 01.04.2018 to 31.03.2019 is hit by the limitation for claiming ITC under Section 16(4) of the CGST/SGST Act, 2017.

Answer: The invoice referred pertains to the services rendered in the financial year 2018-2019 and hence it is 'hit by the limitation for claiming ITC' under Section 16(4).

Question2 : If the applicant avails ITC on such invoice after 01.04.2020 and before filing GST return for September 2021/Annual Return for 2020-2021, whether it amounts to violation of condition stipulated under sub-section(4).

Answer : Affirmative.

Aggrieved by the above ruling, the appellant has filed the present appeal on the following grounds.

2. Grounds of Appeal:

The appellant states that the ruling of AAR is not legal and proper and it is based on the erroneous interpretation of the provisions of Sec 16(4) of the CGST/SGST Act, 2017. The detailed grounds are as follows:

2.1 The AAR had held in its ruling as under:

"The provisions of section 31(2) read with Rule 47, prescribe a time limit for issue of invoice. As per Rule 47, tax invoice in case of supply of service shall be issued within a period of 30 days from the date of services. Since in this case, invoice was not issued within the prescribed time limit, the appellant is not eligible for credit."

In this regard, the appellant submits that there is no condition under Sec 16 that only invoices issued within the due date as per sec 31(2) read with Rule 47 of the CGST/SGST Rules, 2017 are eligible for credit. Going by the Ruling if any supplier issues invoice on 31st day of the supply of service, such invoice is not

eligible for credit. This is not mandated in sec 16 as erroneously held by the Ld. AAR. If there is any delay in issuance of invoice by the supplier, action for such violation lies with the supplier's jurisdiction by way of collecting interest for delayed payment of tax or imposing penalty for violation of the provisions of Sec 31(2) read with Rule 47. Delayed issuance of invoice cannot be a ground to deny the credit to the buyer.

2.2 Another ground taken by the Ld. AAR is that the invoice dated 01.04.2020 issued by the supplier "does not pertain to the Financial year 2020-21", but pertains to Financial year 2018-19 and hence not eligible for credit.

In this regard, the appellant submit that restriction under sec 16(4) is not for the "supplies made during a Financial Year", but only documents issued during the Financial year.

For example, if supplies are made in FY 2018-19 and due to price escalation, if a debit note is issued in the month of October 2019, for supplies made in FY 18-19, then limitation under Sec 16(4) in respect of such debit note for claiming ITC would be Sept 2020, but not Sept 2019 (based on original supply date).

2.3 The appellant further submits that CBIC has issued a clarification on 20.09.2021 on interpretation of the provisions of Sec 16(4) vide **Circular No.160/16/2021-GST**, with the following illustration:

"Illustration 2. A debit note has been issued on 10.11.2020 in respect of an invoice dated 15.07.2019. As per amended provision of section 16(4), the relevant financial year for availment of input tax credit on the said debit note, on or after 01.01.2021, will be FY 2020-21 and accordingly, the registered person can avail ITC on the same till due date of furnishing of FORM GSTR-3B for the month of September, 2021 or furnishing of the annual return for FY 2020-21, whichever is earlier."

From the above illustration, the following emerges:

- Supply made in FY 2019-20
- Debit note issued in FY 2020-21
- Credit can be claimed in FY 2021-22 (by September 2021)

Thus, it is clear that for the supplies made in the Financial Year 2019-20, credit can be availed by due date of furnishing the GSTR 3B for the month of September 2021. In other words, the phrase "following the end of financial year to which such invoice or debit note pertains" used in Sec 16(4) qualify only the documents" issued in a financial year, rather than "supplies made" in a financial year.

2.4 Hence, in the instant case, the supply of service was in the year 2018-19, invoice was issued in the year 2020-21 and the last date for claiming credit would be the due date of filing GSTR 3B for the month of September 2021.

2.5 Hence, the appellant claims that the interpretation of the provisions of Section 16(4) by the LD. AAR is not correct and requests this authority to set aside the ruling and pass appropriate orders.

3. Virtual Hearing:

The Proceedings of Hearing were conducted through video conference on 14.12.2021. The authorized representative Sri. M. Narsi Reddy, DGM Accounts and Taxation, attended and reiterated the submissions already made.

4 Discussion and Findings:

4.1 We have gone through the facts of the case and entire submissions made by the appellant and the Ruling pronounced by the Authority for Advance Ruling as well. In light of the diametrically opposite interpretations made by both the appellant and the lower authority, we discuss the eligibility of the invoice dated 01.04.2020 for claiming input tax credit, if claimed before filing GST return for September 2021 or Annual return for 20-21 in terms of Sec 16(4).

4.2 The main subject of contention is the issuance of a tax invoice dated 1.04.2020 for monthly rental services extended from April 2018 to March 2019 and its eligibility thereon to claim input tax credit under Sec.16(4).

4.3 The AAR while passing the Ruling, recorded the findings pertaining to the statute with reference to 'the issuance of invoice as per Section 31 read with Rule 47' and then found that the invoice dated 01.04.2020, in question, does not pertain to the financial year 2020-21 as the services supplied vide the invoice question pertains to the financial year 2018-19 in which the services were rendered.

4.4 In this connection it is to bring on record that every Invoice will have two principal aspects which are,

1. The period to which the supply pertains to and
2. The period to which the invoice pertains to.

In general conditions, both are same. However, in the instant issue, it appears that, both are not same. The 'Supply of Service' here is 'Renting of immovable property'. The supplier of service issued a tax Invoice dated 01.04.2020 covering the period from 01.04.2018 to 31.03.2019. Therefore the supply of service pertains to the financial year 2018-19. The date on which the invoice issued was 01.04.2020 and hence appears that the invoice issued pertains to the financial year 2020-21. However, the date of invoice or the period to which an invoice pertains will be determined only by the period of supply covering which the said invoice was issued. Therefore, in the instant case, irrespective of the date of Invoice (which is leading to mis-interpretation of the period of Invoice),

the same is pertaining to the period of supply covered by the said invoice i.e. 2018-19.

4.5 While defending the case, in Para 2.1, the appellant claims that 'delayed issuance of invoice' cannot be a ground to deny the credit to the buyer. But it is definitely a ground to claim input tax credit only on the 'documents' that are validated by the Act and in the 'conditions' prescribed by the Act. In para 2.2, the appellant draws an analogy with reference to 'debit note', whereas the current issue pertains to 'invoice', which is out of context. Similarly even in para no 3, the referenced Circular also pertains to the issue of Debit note, which is rather irrelevant to the issue at hand.

4.6 As far as eligibility for availing of ITC is concerned, as per Section 16(4) of CGST Act, 2017, which reads as under;

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

*[Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 **in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18**, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]"*

4.7 In the instant case, as the invoice pertains to the financial year 2018-19, vide Section 16(4), the recipient is entitled to take ITC on an the same before furnishing of Return under Section 39 for the month of September, 2019 following the end of financial year 2018-19 to which such invoice pertains or furnishing of the relevant annual return for the year 2018-19, whichever is earlier.

4.8 Even the proviso to section 16 (4) reiterates that the registered person is entitled to take ITC in respect of **any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18**. This proviso absolutely necessitates or rather endorses the invoices relating to supplies made during the financial year 2017-18 only, for the registered dealer to claim entitlement of ITC in the succeeding financial year.

4.9 The availment of input tax credit is subject to satisfying certain conditions prescribed in the statute. It is supported time and again, even by the Courts of Law in various issues. For instance,

In Jayam and Company versus Assistant Commissioner and Another, (2016)15SCC 125, the Hon'ble Supreme Court had held that,

"11. From the aforesaid scheme of Section 19 following significant aspects emerge:

(a) ITC is a form of concession provided by the legislature. It is not admissible to all kinds of sales and certain specified sales are specifically excluded.

(b) **Concession of ITC is available on certain conditions mentioned in this section.**

(c) One of the most important condition is that in order to enable the dealer to claim ITC it has to produce original tax invoice, completed in all respect, evidencing the amount of input tax."

The Supreme Court further held that

It is a trite law that whenever concession is given by statute or notification, etc. the conditions thereof are to be strictly complied with in order to avail such concession. Thus, it is not the right of the "dealers" to get the benefit of ITC but it is a concession granted by virtue of Section.

Emphasis Supplied"

In light of the above, we uphold the decision of the lower Authority, while dismissing the plea of the appellant for the reasons explained supra. It is our considered view that the appellant is not eligible to claim Input Tax Credit on the disputed invoice dated 01.04.2020 that was issued covering the supply of services pertaining to the period from 01.04.2018 to 31.03.2019.

ORDER

We confirm and uphold the ruling of the AAR.

Sd/-Suresh Kishnani
Chief Commissioner (Central Tax)
Member

Sd/- S. Ravi Shankar Narayan
Chief Commissioner (State Tax)
Member

//t.c.f.b.o//


Deputy Commissioner (ST)
DEPUTY COMMISSIONER (ST)
O/o. Chief Commissioner of State Tax,
Government of A.P., Vijayawada

To

1. M/s. Vishnu chemicals limited,(GSTIN 37AACCV1903A3ZU) Flat No. 29, JN Pharma City, IOCL Road, Visakhapatnam, Andhra Pradesh-531019 **(By Registered Post)**.

Copy to

1. The Assistant Commissioner of State Tax, Steel Plant Circle, Visakhapatnam Division. **(By Registered Post)**.
2. The Superintendent, Central Tax, CGST Parawada Range, Visakhapatnam South Division. **(By Registered Post)**.

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada, (A.P).
2. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central Tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035.A.P. **(By Registered Post)**.