TELANGANA STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Goods and Services Tax)
1st Floor, Commercial Taxes Complex, M.J. Road, Nampally,
Hyderabad 500 001

AAAR.COM/03/2023. **Date: 20.02.2025.**

Order-in-Appeal No. AAAR/05/2025
(Passed under Section 101 (1) of the Telangana Goods and Services Tax Act, 2017)

PREAMBLE

1. In terms of Section 102 of the Telangana Goods and Services Tax Act, 2017 (TGST Act, 2017 or the Act), this Order may be amended by the Appellate Authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the appellant within a period of six months from the date of the order. Provided that, no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.

2. Under Section 103 (1) of the Act, this advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act 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.

3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

4. Under Section 104 (1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-Section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

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Subject: GST – Appeal filed by M/s Geekay Wires Limited, Hyderabad, under Section 100 (1) of TGST Act, 2017 against Advance Ruling TSAAR Order No.15/2023 dated 02.09.2023 passed by the Telangana State Authority for Advance Ruling - Order-in-Appeal passed – Regarding.

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1. The subject appeal has been filed under Section 100 (1) of the Telangana Goods and Services Tax Act, 2017 (hereinafter referred to as "TGST Act, 2017" or "the Act", in short) by M/s. Geekay Wires Limited, 11-70/5, 2nd Floor, G.P Complex Shivalayam Road, Fathenagar, Rangareddy, Telangana -500 018 (GSTIn: 36AAACG7452M1ZA) (hereinafter referred in short as "M/s. Geekay" or "the appellant") against the Order No.15/2023 dated 02.09.2023 ("impugned order") passed by the Telangana State Authority for Advance Ruling (Goods and Services Tax) ("Advance Ruling Authority" / "AAR" / "lower Authority").

2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the corresponding provision under the TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.

Brief facts:

3. The appellant is engaged in the business of manufacture of Steel Nails and other steel products in its manufacturing unit situated at Shankarampet-R, Village, Shankarampet- R Mandal-Medak, Medak, Telangana. The primary raw material for manufacturing Steel Nails are Steel Wire rods. The appellant purchases steel wire rods which are drawn to required sizes and then nails of different sizes are manufactured in the nail making machine. The other major inputs for manufacturing Nails are Polypropylene, Copper wire, Paper tape and packing material like cartons, pallets etc. The appellant purchases these raw materials from the other registered taxable persons within the State and also from outside the State of Telangana and avails GST input tax credit on all the materials purchased as stated above. Output tax on Nails supplied in the course of business is paid as per the provisions of the GST Act. During the manufacturing process steel scrap is also generated which the appellant sells in the market and GST liability is paid / set off on the same against the GST input.

4. The appellant submitted that a fire broke out in their factory premises on 17.12.2022 and major quantities of finished goods i.e. Steel Nails became unfit for being sold as such and, hence, these damaged finished goods were sold as scrap in the market and applicable GST has been paid on the sale of such scrap. They have claimed input tax credit (ITC) on all the raw materials and other inputs for manufacturing of steel nails in the month they are procured, as per Section 16 of CGST Act, 2017. Since goods/inputs purchased by the appellant were used in the manufacturing of finished goods and the finished goods became unfit for being sold as such in the fire accident, they sought for advance ruling with regard to eligibility of ITC on the raw materials consumed in the manufacture of finished goods which became unfit for being sold as such.

5. Vide the impugned order, the Advance Ruling Authority has given the following advance ruling on the questions raised by the appellant:

Sl No	Question raised	Advance Ruling
1	When the raw materials purchased are already used in the manufacture of finished goods and the finished goods are destroyed in the fire accident completely.	ITC is required to be reversed
2	When the raw materials procured are lost in the fire accident before use in manufacture of finished goods.	ITC is required to be reversed
3	When the destroyed finished goods can be sold as steel scrap in the open market and output tax liability on such supply of scrap is paid.	ITC is required to be reversed

6. Aggrieved by the decision of lower authority the appellant filed present appeal challenging the ruling on the following grounds.

1. In terms of Section 16 (1) of the CGST Act, 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 business and the said amount shall be credited to the electronic credit ledger of such person;

2. the goods/inputs received from registered taxable persons were already used in the manufacturing process and new commercial commodity had emerged which is different from inputs used in such manufacturing activity;

3. that the inputs are not destroyed in the fire accident, since by the time of fire accident, they were used in the manufacturing of finished goods and lost their identity and the relevant expenditure is then business expenditure.

4. According to Section 17 (5) (h) of the CGST Act, input tax credit shall not be available in respect of the **goods lost, stolen, destroyed, written off or disposed of way by of gift or free samples**. It is submitted that as clause (h) of sub-section (5) of Section 17 of the Act, used the words "in respect of" before different type of events, as per strict interpretation of the clause, ITC shall not be available in respect of those goods only which are purchased and which are lost, stolen, destroyed, written off or disposed of by way of gift or free samples only. Appellant therefore says that such events are in relation to the inputs and not in relation to finished goods/output goods. They relied upon case of ***State of Madras vs. Swastik Tobacco Factory AIR 1966 SC 1000*** in this regard;

5. even though the above case was not pertaining to destruction of finished goods, a similar interpretation can be adopted for the purpose of 'in respect of' used in Section 17(5)(h) of the CGST Act. Accordingly, ITC can be disallowed only 'on' those input goods which are lost, stolen, destroyed, etc. The learned Authority has not at all considered the above judgment in the impugned Ruling;

6. the goods which became useless due to fire accident in the appellant's case are finished goods and these finished goods are not procured from any registered taxable person under the Act and therefore the question of availing input tax credit and restriction of such availed input tax credit does not arise;

7. as per Section 2 (62) of the CGST Act, 'input tax' in relation to a registered person, means the GST charged on any supply of goods or services or both made to him; that the appellant availed ITC on inputs and input services which are already used in the manufacturing process;

8. In the light of the above analysis, it emerges that there has to be a matching of the identity of goods on which credit is taken and on which credit is denied under Section 17(5)(h). Thus, while applying the said Section, the "identity test" of the goods needs to be considered i.e. ITC can be denied only on those specific goods on which credit is taken. Once the goods on which credit is taken are consumed in the final product and lose their identity, then, ITC reversal cannot be demanded;

9. The appellant also relied up on the decision of *Maharashtra Authority for Advance Ruling* in *General Manager Ordnance Factory Bhandara, 2019 (26) G.S.T.L. 423 (A.A.R. - GST)*, wherein it was held that - ***"where inputs are used, they cease to exist and they being destroyed, lost or stolen will not arise***. *Therefore, once the inputs are used in manufacture of final products, which are then sent for testing*

purposes, then in such a case the said inputs cannot be considered to have been destroyed.";

10 that when the finished goods lost their shape and identity in fire accident and when they are sold as scrap also, input tax credit is available for the reasons mentioned above. It is also submitted that in this case, on the supply of scrap output tax liability is liable to be paid at the applicable rates under the GST Act and hence even Section 17 (2) of the Act restriction of ITC is not applicable in this situation. Hence, it is submitted that the reasoning given by the learned Advance Ruling Authority is not applicable to the present facts of the case of the appellant. It is submitted that sale of scrap is not an exempt sale to apply Section 17 (2) and Rules 42 and 43 of CGST Rules, 2017;

11 when the provisions of the Act are very clear and if there is any lacuna in the provisions only the legislature can rectify it and the officers who are implementing the Act, and who are creatures of the Statue and even the Courts cannot supply a casus omission. It is a settled law. In this regard, the appellant relied on the decision of the Honourable High Court of Andhra Pradesh in the case of M/s. Gokul Institute of Technology and Science and Gokul college of Pharmacy, Bobbili Vs. DCTO, Bobbili (56 APSTJ page 111). Appellant also relies upon the decision of the Honourable Apex Court in the case of Ashok Lanka Vs. Rishi Dixit,(2005) 5 SCC 589 and Uco Bank Vs. Rajendralal (2008) 5 SCC 257 in this regard;

12 **Without prejudice to the above grounds**, it is particularly submitted that the Advance Ruling Authority held that "Scrap sold by the appellant is nothing but a destroyed goods therefore in the context of above discussion sale of scrap i.e., sale of destroyed goods are not eligible for input tax credit."; that the learned Authority committed a grave error in stating 'scrap sold is nothing but a destroyed **goods'**. The learned authority admits that even scrap is goods. It means appellant has sold goods (scrap), which has been obtained from the finished steel nails, etc. The fact of supply of goods (scrap) has been admitted and the fact of paying output tax on such supply of scrap has not been denied. If the sale of scrap (destroyed goods) is not entitled for corresponding ITC, equally the learned authority shall be deemed to have stated that even there is no liability to pay output tax on the sale of scrap. Drawing spirit from this ruling, dealers may not be paying output tax on such sales and in such circumstances. In such factual situation, appellant couldn't comprehend as to how the learned authority came to the conclusion that the appellant would not be eligible for the corresponding ITC. It is respectfully submitted that for this ground also, the impugned ruling is arbitrary, illegal and unjustifiable.

13 In view of the above grounds, appellant submits that the impugned Advance Ruling is liable to be set aside and the appellant is rightly eligible for input tax credit on the inputs and input services, which are used in the manufacture of finished goods which are destroyed in fire accident and also ITC is fully available on the inputs that are used in the scrap on which tax is paid under the provisions of the Act. Accordingly, it is prayed to set aside the Advance Ruling and allow the appeal.

Whether the appeal is filed in time:

7. In terms of Section 100 (2) of the Act, an appeal against Advance Ruling passed by the Advance Ruling Authority, has to be filed within thirty (30) days from the date of communication thereof to the appellant. The impugned Order dated 02.09.2023 was received by the appellant on 16.09.2023 as mentioned in their Appeal Form GST ARA-02. They filed the appeal dated 10.10.2023, which is within the prescribed time-limit.

Personal Hearing:

8. Personal Hearing was held on 17.02.2025. Shri M Ramachandra Murthy, Advocate appeared on behalf of the appellant. The Ld. Advocate reiterated the written submissions made in their appeal and requested to consider the same.

Discussions and Findings:

9. This Authority has carefully gone through the case records and submissions made by the appellant.

10. The issue that requires determination for the disposal of the present appeal is whether Input Tax Credit availed on inputs consumed in the manufacture of finished goods viz. Steel Nails that were got destroyed in fire accident is required to be reversed.

11.1 In terms of Section 2(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.

> In terms of Section 2(62) - "input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and .....
>
> In terms of Section 2(63) - "input tax credit" means the credit of input tax.

11.2. Section 16 of the SGST Act, provides for eligibility and conditions for taking input tax credit. As per the said section-

> 16. (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".

12.1 On a combined reading of Section 2 and Section 16 of SGST Act, 2017, it can be construed that the definition of input tax is very wide and a registered person is entitled to take input tax credit on inputs, input services and capital goods if the same are used by him in course or furtherance of his business or the registered person has an intention to use such inputs, input services or capital goods in the course or furtherance of his business at the time of procurement of such goods/ services.

12.2 However, availment of input tax credit is subject to certain restrictions laid down in sub-section (5) of Section 17 of the Act. Section 17(5) provides a list of goods or services on which ITC is not admissible. Relevant extracts are reproduced hereunder:

"(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, **input tax credit shall not be available in respect of the following, namely**:-

.... (h) **goods** lost, stolen, destroyed, written off or disposed of by way of gift or free samples;"

On a plain reading of the above extracted provisions it is clear that ITC shall not be available in respect of goods lost, stolen, **destroyed** or written off. Further, the use of non-obstante clause makes it evident that the provisions of Section 17(5) have an overriding effect over the provisions of Section 16(1) & Section 18(1). As such, the averments made by the appellant with reference to Section 16 (1) of the CGST Act, 2017 do not merit consideration.

12.3 Hon'ble Supreme Court has, in the case of Tata Consultancy Services Vs State of

literally construed and same cannot be denied merely because consequences of such interpretation may lead to penalty. In the instant case the wording of Section 17(5)(h) of CGST Act, 2017 are simple, clear and unambiguous and any averment that seeks to restrict the plain and unambiguous meaning cannot be countenanced. As such, there is no merit in the contention of the appellant that the phrase "in respect of" used in Section 17(5)(h) indicates only 'inputs'.

13.1 Further, the appellant has relied upon a decision of Maharashtra Authority for Advance Ruling in General Manager Ordnance Factory Bhandara, {2019 (26) G.S.T.L. 423 (A.A.R. - GST)}, wherein it was held that - ***"where inputs are used, they cease to exist and they being destroyed, lost or stolen will not arise;*** *that therefore, once the inputs are used in manufacture of final products, which are then sent for testing purposes, then in such a case the said inputs cannot be considered to have been destroyed.";*

13.2 It is observed that the issue involved in the said case is that finished goods sent for testing were destroyed during testing and the AAR was of the view that in such a case where inputs are used, they cease to exist and cannot be considered to be destroyed, lost or stolen etc. have been destroyed. AAR has further held that **"goods destroyed would imply goods which are destroyed on various kinds of natural and manmade situations such as flood, fire, and destruction of expired goods (especially in the case of drugs). The interpretation as made out by the applicant that reversal of ITC will arise only if the inputs or capital goods are themselves lost, stolen or destroyed etc and not where the finished goods are lost, stolen or destroyed etc. is not acceptable for the simple reson that Section 16(1) contemplates both the situations ie., cases where the goods are actually used or intended to be used."** The relevant para of the AAR is reproduced below:

> *"(E) Question No. 5 :- Whether Input Tax Credit is to be reversed on finished goods that are destroyed during testing?*
> The applicant has submitted that they send samples of the finished goods, for quality testing, to proof establishments set up under the Ministry of Defence outside the factory where such samples are completely destroyed during the testing process. Section 17(5)(h) of the Central GST (CGST) Act, 2017 reads that "input tax credit shall not be allowed in respect of goods lost, stolen, destroyed, written off, or disposed of by way of gift or free samples." From a perusal of Section 16 it is seen that only a registered person is entitled to take credit of input tax charged on any supply which are used or intended to be used in the course or furtherance of business. Accordingly we find that goods, or services, or both are eligible for input credit in both the scenarios i.e. when they are intended to be used and when they are actually used. In the subject case the said goods are actually used in the manufacture of final goods which are then sent for testing. Hence it cannot be said that the said goods are destroyed. Goods destroyed would imply goods which are destroyed on various kinds of natural and manmade situations such as flood, fire, and destruction of expired goods (especially in the case of drugs). The interpretation as made out by the applicant that reversal of ITC will arise only if the inputs or capital goods are themselves lost, stolen or destroyed etc. and not where the finished goods are lost, stolen or destroyed etc. is not acceptable for the simple reason that Section 16(1) contemplates both the situations i.e. case where the goods are actually used or intended to be used. To arrive at the conclusion that the applicant's submission is not tenable, we find that where inputs are used, they cease to exist and they being destroyed, lost or stolen, etc. will not arise. We therefore conclude that once the inputs are used in the manufacture of final products, which are then sent for testing purposes, then in such a case the said inputs cannot be considered to have been destroyed."

13.3 Thus, Maharashtra AAR has distinguished the goods sent for testing with the goods destroyed in natural or manmade situation and has held that ITC need not be reversed where goods are sent for testing. Maharashtra AAR has, in fact, negated the contention that ITC need not be reversed where inputs are used in manufacture of final products, which are

destroyed in flood, fire etc. As such, the ruling not only does not support the case of appellant herein, it in fact supports the view taken by the lower authority.

14. In view of the above, we do not find any infirmity in the Order passed by the AAR and pass the following order.

ORDER

The impugned Order of Advance Ruling Authority is upheld.

(Sandeep Prakash)
Principal Chief Commissioner
Central Tax & Customs
Hyderabad Zone

(S.A.M. Rizvi)
Commissioner
Commercial Taxes
Hyderabad

To:

M/s. Geekay Wires Limited,
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Copy to:

1. The Telangana State Authority for Advance Ruling, CT Complex, MJ Road, Nampally, Hyderabad- 500 001.

2. The Principal Chief Commissioner of Central Tax & Customs, Hyderabad Zone – for information and for forwarding copies of the order to the concerned / jurisdictional officer of Central tax.

3. The Commissioner of State Tax, Telangana State – for information and for forwarding copies of the order to the concerned / jurisdictional officer of State tax.