M/s Vivo Mobile India Private Limited, Plot No. TZ-13A, Tech Zone, Greater Noida, Gautam Budh Nagar, Uttar Pradesh (GSTIN 09AAECV8538M1ZJ)

Authority for Advance Ruling — Uttar Pradesh

Order No. 46, dated 17-12-19 (handwritten on the order; listing gives 17.… Dated **17.12.2019**

Q Questions Before the Authority

- Whether input tax credit is admissible on the basis of original invoices issued by the service provider from old GST No. 09AVKPS1666H2Z1.
- Whether input tax credit is admissible on invoices issued from the new GST No. 09AVKPS1666H1Z0 under section 31(3)(a) of the CGST Act, 2017 read with rule 53(1) of the CGST Rules, 2017.
- If input tax credit is admissible on the basis of invoices issued from the new GST No., then from which date it is admissible, i.e. the original date or the revised date.

F Facts

The applicant received manpower services from M/s Harbir Singh Contractor, which was registered as an Input Service Distributor under GSTIN 09AVKPS1666H2Z1 and paid tax for July and August 2017. The service provider then obtained a new registration, 09AVKPS1666H1Z0, effective from 1 July 2017, and issued revised invoices for July to October 2017 from that new GSTIN, because the original invoices were not reflected in the applicant's GSTR-2A. The service provider had also obtained a refund of the duty deposited under the old registration, granted on 5 April 2019.

H Ruling

ITC on original invoices issued from old GSTIN 09AVKPS1666H2Z1 (Input Service Distributor)	**Not admissible**	An Input Service Distributor can pass on credit only under rule 54 of the CGST Rules. The service provider had already claimed a refund of the amount deposited under the old registration.
ITC on invoices revised and issued from new GSTIN 09AVKPS1666H1Z0 under section 31(3)(a) read with rule 53(1)	**No (answered in the negative)**	Under section 31(3)(a) read with rule 53, a registrant may revise only its own invoices. Separate registrations under the same PAN are distinct persons under section 25(4), so the revision by the new registration is not permitted.
If ITC is admissible on new-GSTIN invoices, whether from the original date or the revised date	**No reply given**	The Authority held this question redundant because the answer to the second question was negative.

The Authority held that input tax credit is not admissible on the original invoices issued from the old Input Service Distributor GSTIN. It also held that input tax credit is not admissible on the revised invoices issued from the new GSTIN, because one registered person cannot revise invoices issued by another legal entity, even under the same PAN. The third question was treated as redundant and was not answered.

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

R Reasoning

The Authority relied on the definition of Input Service Distributor in section 2(61) of the CGST Act, under which such an office can distribute only credit accumulated to it, and noted that the old registration had already obtained a refund. It held under section 25(4) and section 2(84) that two registrations under one PAN are distinct persons. It read section 31(3)(a) with rule 53 as allowing a person to revise only invoices it issued itself, so the new registration's revised invoices could not support credit. It also relied on the Order-in-Appeal NOI-CGST-002-APP-01-18-19 dated 25.03.2019, which treated the tax liability as that of the old registrant and held that the tax liability of one taxpayer cannot be recovered from another. The applicant had also relied on section 16(2), but the ruling turns on the invoice-revision and ISD points.

P Provisions Relied On

- CGST Act 2017 section 2(61) (Input Service Distributor)
- CGST Act 2017 section 2(84) (person)
- CGST Act 2017 section 25(4) (distinct person for each registration)
- CGST Act 2017 section 31(3)(a) (revised invoice in interim period)
- CGST Act 2017 section 16(2) (cited by applicant)
- CGST Act 2017 section 97(2)(d) (admissibility of ITC, jurisdiction)
- CGST Act 2017 section 103(2) and section 104(1) (binding effect and voidness)
- CGST Rules 2017 rule 53(1) (revised invoices)
- CGST Rules 2017 rule 54 (distribution of credit by Input Service Distributor)
- Order-in-Appeal No. NOI-CGST-002-APP-01-18-19 dated 25.03.2019 (Additional Commissioner, CGST (Appeals), Noida)

! For the Practitioner

The ruling is useful where a supplier's registration has changed mid-period and it has reissued invoices from a new GSTIN, since it indicates that credit on those revised invoices is not admissible to the recipient. It also confirms that an Input Service Distributor passes on credit only under rule 54. The order does not decide whether a supplier may correct invoices through its own original registration, and it does not decide the section 16(2) conditions on their merits. Its binding effect is limited to the applicant under section 103(2).

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> up_aar_46_17.12.2019_vmipl.pdf

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