M/s N Ranga Rao & Sons Pvt Ltd (GSTIN 29AAECN8103G1ZH)

Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG 50/2019, dated 18th September, 2019 Dated **18.09.2019**

Q Questions Before the Authority

- Whether the applicant is eligible to claim refund of accumulated input tax credit on both inputs and input services where an inverted duty structure exists.
- Whether the provisions of Notification No. 21/2018-Central Tax dated April 18, 2018 and Notification No. 26/2018-Central Tax dated June 13, 2018 are applicable to the applicant.

F Facts

The applicant, a partnership firm in Mysuru, manufactures incense sticks (agarbathis), dhoops, air fresheners and pooja kits. Its main product, agarbathi under HSN 33074100, is taxed at 5 percent, while its inputs and input services (raw materials, packing materials, marketing, distribution, job work, rental, manpower and freight services) attract higher tax, creating an inverted duty structure. The applicant had filed refund claims for accumulated credit on input services, and the jurisdictional refund authority had rejected the claim for October 2017 to January 2018 relying on Notification No. 21/2018-CT.

H Ruling

The Authority rejected the application as not maintainable and did not answer either question on its merits. It held that the challenge to the vires of Rule 89(5) as amended falls outside the scope of an advance ruling under section 97. It also held that the refund dispute lies before the jurisdictional adjudicating authority, with an appeal to the appellate authority under section 107.

R Reasoning

The Authority noted that the applicant's core argument is that Notifications 21/2018-CT and 26/2018-CT, which amended Rule 89(5) with retrospective effect, are ultra vires section 54(3). Because the question turns on the vires of the rules, the Authority held that it is not within the scope of section 97. It further relied on section 2(4), which excludes the Authority for Advance Ruling from the definition of adjudicating authority, and on section 107(1), which gives the aggrieved person an appeal from the refund decision. In its findings, the Authority observed that Rule 2(iii) of Notification 26/2018-CT substitutes Rule 89(5) without any exclusion for input services, but this observation did not form part of the ruling.

P Provisions Relied On

Section 97(2)(b) and (d) of the CGST Act, 2017

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

Section 98 of the CGST Act and Section 98(4) of the KGST Act, 2017

Section 54(3)(ii) of the CGST Act, 2017

Section 54(8)(b) of the CGST Act, 2017

Section 2(4) of the CGST Act, 2017 (definition of adjudicating authority)

Section 2(59) and 2(62) of the CGST Act, 2017 (input and input tax)

Section 107(1) of the CGST Act, 2017

Rule 89(5) of the CGST Rules, 2017, as substituted

Notification No. 21/2018-Central Tax dated 18.04.2018

Notification No. 26/2018-Central Tax dated 13.06.2018 (Fifth Amendment Rules, 2018)

! For the Practitioner

Practitioners should note that the Authority declined jurisdiction where the question challenges the vires of Rule 89(5) as amended by Notifications 21/2018-CT and 26/2018-CT, and where a refund rejection is already appealable to the adjudicating and appellate authorities. This ruling does not decide whether credit on input services is refundable under an inverted duty structure, nor whether the retrospective amendment applies to pre-amendment supplies. Anyone relying on the observations in the findings about Rule 2(iii) should read the full order before citing them, as they were not part of the operative ruling.

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 -> kar_aar_50_2019_nrspl_18.09.19.pdf

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