M/s Toyota Tsusho India Private Ltd., Plot No.33 & 34, Bidadi Industrial Area, Ramanagara District, PIN 562 109 (GSTIN 29AADCS6230N1ZY)

Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG 52/2019, Dated: 18th September, 2019 (o… Dated **18.09.2019**

Q Questions Before the Authority

- (a) Whether the restriction introduced by Notification No. 3/2018-Central Tax (later substituted by Notification No. 39/2018-Central Tax dated 04.09.2018, retrospectively from 23.10.2017) by inserting Rule 96(10) on claiming refund of IGST paid on export of goods applies only to exports for which the corresponding inward supplies were procured at the concessional rate of 0.10% under Notification No. 40/2017-Central Tax (Rate), so that the restriction does not apply to exports of goods procured on full payment of GST.
- (b) Alternatively, whether the restriction prohibits refund of IGST paid in its entirety even on exports where the goods were procured on full payment of GST, by a person who procures only a small quantity of goods at the 0.10% concessional rate under the Merchant Export Scheme.
- (i) Whether the restriction in Rule 96(10) applies only to exports for which the corresponding inward supplies were procured at the 0.10% concessional rate, and not to exports of goods procured on full payment of GST.
- (ii) Whether the restriction prohibits refund of IGST paid in its entirety even on exports of goods procured on full payment of GST by a person who procures only a small quantity at the concessional rate under the Merchant Export Scheme.
- (iii) If (ii) is held to be the restriction, for what period such restriction shall apply.

F Facts

The applicant buys and resells motor cars, automobile parts, chassis and related goods (HSN 8703, 8708, 8706 and 8466) and exports them outside India. It buys these goods from domestic suppliers at full GST and exports some of them on payment of IGST, claiming refund, while exporting others under LUT without payment of IGST. It also proposes to procure some motor cars at the concessional 0.10% rate under the merchant export scheme and export those under LUT, so that in the same tax period it would both pay full tax on some purchases and buy at concession on others.

H Ruling

Whether the Rule 96(10) refund bar applies only to goods bought at the 0.10% concessional rate, or to all IGST-paid exports where the exporter also bought at concession	**Persons who procured goods utilising the benefit of Notification No. 40/2017-Central Tax (Rate) dated 23.10.2017 are not eligible to claim refund of IGST paid on exports under Rule 96(10), from 23.10.2017.**	**Irrespective of the other transactions made by such person**, so the bar is not confined to the concessionally procured goods. The Authority did not rule on the legality of Rule 96(10) (para 5.6). The ruling does not separately answer the period question at (iii).

The Authority ruled that persons who procured goods by utilising the benefit of Notification No. 40/2017-Central Tax (Rate) dated 23.10.2017 are not eligible to claim refund of IGST paid on exports under Rule 96(10) of the CGST Rules, 2017, from 23.10.2017. The bar applies irrespective of the other transactions made by such person. The Authority declined to rule on the legality of the provision, stating that it lacks that power.

R Reasoning

The Authority read Rule 96(10) as it stood from 23.10.2017 and held that the restriction attaches to the person, not to individual transactions: a person who has received supplies on which Notification 40/2017-CT (Rate) was availed cannot claim IGST refund on exports. It relied on Circular 45/19/2018-GST dated 30.05.2018 (para 7), which states that the sub-rule prevents an exporter from using input tax credit on other domestic supplies to pay IGST on exports. It noted that the merchant export scheme and the Rule 96(10) effective date are aligned at 23.10.2017. It also observed that the exporter can still make zero-rated supplies under LUT, so the bar does not deny input tax credit. The applicant's constitutional and equity arguments were not addressed because the Authority lacks power over the legality of the provision.

P Provisions Relied On

- Rule 96(10) of the CGST Rules, 2017, as inserted by Notification No. 3/2018-CT, substituted by Notification No. 39/2018-CT…
- Rule 96(9) of the CGST Rules, 2017 as inserted by Notification No. 75/2017-CT dated 29.12.2017
- Notification No. 40/2017-Central Tax (Rate) dated 23.10.2017 (merchant export scheme concessional rate)
- Notification No. 41/2017-Integrated Tax (Rate) dated 23.10.2017
- Notification No. 48/2017-Central Tax dated 18.10.2017
- Notification No. 78/2017-Customs dated 13.10.2017 and Notification No. 79/2017-Customs dated 13.10.2017
- Section 16 of the IGST Act, 2017 (zero-rated supplies), as cited by the applicant
- Circular No. 45/19/2018-GST dated 30.05.2018, paragraph 7

! For the Practitioner

An exporter that buys even part of its goods at the 0.10% merchant export concession should not expect to claim IGST refund on any of its IGST-paid exports from 23.10.2017 onward, since the bar follows the person and not the transaction. The ruling settles that the bar is not limited to the concessionally bought goods. It does not decide the period for which the bar applies (question iii), and the Authority expressly declined to rule on whether Rule 96(10) is legally valid. The ruling is specific to this applicant and the facts stated, so anyone relying on it should check whether the position has since been changed by later amendments to Rule 96.

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_52_2019_18.09.2019_ttipl.pdf

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