

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/15/2021
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/48)

Date: 27.01.2021

Name and address of the applicant	:	M/s. Aristo Bullion Pvt Ltd B-81, Pariseema Complex, C G Road, Ahmedabad, Gujarat-380006.
GSTIN of the applicant	:	24AATCA6371N1ZO
Date of application	:	06.11.2020.
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(d) admissibility of input tax credit of tax paid or deemed to have been paid.
Date of Personal Hearing	:	23.12.2020(Through online hearing)
Present for the applicant	:	Mrs. Shailee Shah

BRIEF FACTS

The applicant M/s. Aristo Bullion pvt.ltd., R.B.Chamber, B/3. Chanla Ole, Manek Chowk, Ahmedabad-380001 has submitted that they recently registered as a private limited company with effect from 25.07.2020 for which Certificate of Incorporation is issued by the Registrar of Companies; that they intend to engage in supply of Gold (including Gold Plated with Platinum) unwrought or in semi-manufactured forms or in powder form, based metal clad with silver, not further worked than semi-manufactured, coin etc; that it involves some manufacturing process also and in the said activities various inputs viz. Gold dore, silver dore are required; that the said inputs will be procured domestically on payment of GST at appropriate rate; that sometimes the applicant may import raw materials/inputs from overseas market and will be discharging applicable duty and tax including IGST; that the input tax credit has to be availed in terms of Section 16 of the CGST Act, 2017 and Rules made thereunder; that they will also avail input tax credit of GST paid on the goods procured domestically as well as from overseas market and the applicant will have to discharge GST on their outward supplies at applicable rate; that the said taxes will be discharged through Electronic Credit Ledger as well as through Electronic Cash Ledger in the case if balance available in Electronic Credit Ledger is not adequate.

2. The applicant has submitted that they also intend to procure Castor oil seeds directly from the Agriculturists who produce the same in their farms and after procuring the said Castor oil seeds they intend to supply in the Domestic market as well as intend to export the same; that as per their understanding, as of now “Agriculturists” are not required to obtain registration under Section 23 of the CGST Act, 2017; that ‘Castor oil seeds’ is also not covered in the Notification No.4/2017-Central Tax issued under Section 9(4) of the CGST Act, 2017 as amended from time to time as is evident from the following table

S.No.	Tariff item, sub-heading, heading or Chapter	Description of supply of Goods	Supplier of goods	Recipient of supply
(1)	(2)	(3)	(4)	(5)
1.	0801	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person
2.	14049010	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person
3.	2401	Tobacco leaves	Agriculturist	Any registered person
4.	5004 to 5006	Silk yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn.	Any registered person
4A.	5201	Raw cotton	Agriculturist	Any registered person
5.	---	Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent. Explanation.- For the purposes of this entry, lottery distributor or selling agent has the same meaning as assigned to it in clause (c) of Rule 2 of the Lotteries (Regulation) Rules, 2010, made under the provisions of sub section 1 of section 11 of the Lotteries (Regulations) Act, 1998 (17 of 1998).
6.	Any chapter	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap.	Central Government, State Government, Union Territory or a local authority	Any registered person.

3. The applicant has further submitted that as of now, the provisions of Section 9(4) of the CGST Act, 2017 and Section 5(4) of the IGST Act, 2017 are not operative attracting GST on the supply of goods received by the Registered person from the unregistered person, hence the Castor oil seeds procured from unregistered person will not attract GST in the hands of the recipient of supply at the receipt stage; that therefore the procurement of Castor oil seeds from the agriculturists who are unregistered is not liable to GST either in the hands of the Agriculturists under Section 9(1) of CGST Act, 2017 or in the hands of Recipient of the Castor oil seeds procured from the unregistered person under Section 9(4) of the CGST Act, 2017, hence the question of availing input tax credit does not arise on such purchase; that as mentioned in the preceding para, the applicant intends to trade in Castor oil seeds (HSN Code 1207) and it is the applicant's understanding that they are not falling under the exempted category and hence they are therefore liable to discharge GST in terms of Section 9(1) of the CGST Act, 2017 read with Notification No.01/2017-Central Tax(Rate), in terms of Schedule-I, Sr.No.70 of Notification No.01/2017-Integrated Tax(Rate) for Inter-state supply @5%; that the said notification does not stipulate that tax so payable is without input tax credit; that in other words when the applicant procures Castor oil seeds it does not attract GST; that however, it attracts GST when it is supplied by the applicant; that simultaneously, the applicant is having input tax credit earned on the inward supply viz. Gold meant for manufacture and its supply gold semi-finished silver etc. out of unwrought or in semi-manufactured forms or in powder form and base metal and the same are lying as Balance in Electronic Credit Ledger of the applicant; that in this back drop, the applicant wants to know whether GST on Castor oil seed can be discharged through the input tax credit balance available in the Electronic Credit Ledger of the applicant and has asked the following question seeking Advance Ruling on the same:

“Can the applicant use Input Tax Credit Balance available in the Electronic Credit Ledger legitimately earned on the inputs/raw-materials/inward supplies(meant for outward supply of Bullions) towards the GST liability on ‘Castor Oil Seed’ which were procured from Agriculturists and subsequently meant for onward supply?”

4. The applicant has submitted his view of the aforementioned issue stating that as per his understanding that input tax credit available as balance in the Electronic Credit Ledger is legitimately earned on the various inputs and raw materials used by them in their outward supplies; that the input tax credit available is claimed in GSTR-3B and consequently the same will be reflected in their Electronic Credit Ledger; that in other words, Electronic Credit Ledger is an input tax credit pool and once amount is credited, it works as deemed cash balance without linkage with inward supply and therefore the balance available in this pool account or say in Electronic Credit Ledger maintained on the GSTN Portal which can be used for payment of GST on the outward supplies in terms of Section 49(4) of the CGST Act, 2017, which provides that:

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.

5. The applicant has stated that according to aforesaid understanding, they are of the view that in the given scenario, they can use input tax credit available as Balance in the Electronic Credit Ledger for payment of GST on the Castor oil seed out of the input tax credit earned on the inputs/raw-materials/inward supplies viz. Gold dore, silver, dore which are used in the manufacture of outward supplies viz. Gold and Silver bars along with gold coins of various purities.

6. The applicant has given additional submission vide their letter dated 24.12.2020 stating that during the course of personal hearing, the Hon'ble Advance Ruling Authority had asked them to submit a note on the business understanding and the reasons for accumulation of input tax credit and accordingly they have submitted the details as under:

1. Business Plan.

M/s Aristo Bullion Private Limited, plan to engage in two types of business as under:

- (i) To import the bullions (HSN 710817106) on payment of IGST (3%at present). The Bullion so received will be refined and thereafter the same will be sold in to domestic market to various buyers on payment of GST at applicable rates (3% at present). Further we may also domestically trade in bullion to take the advantage of price fluctuations.
- (ii) We intend to procure Castor oil seeds (HSN 1207) from agriculturist (not liable to be registered u/s 23 of CGST/SGST Act, 2017), and will be selling in the Domestic Market to the buyer [Trading Activities]. No ITC will be available on procurement of Castor oil seeds as the same will be procured from the agriculturist. Whereas the sale will attract GST @ 5% on sale.

2. Reasons for accumulation of ITC.

1. The physical bullion is hedged on MCX and is highly volatile in nature. There can be sudden upward or downward movement in prices which may exceed the percentage of value additions on physical trades, thereby leading to accumulation of ITC on physical trades. For eg; We buy gold from market at Rs 50000 on 01-01-21 and hedge the same on MCX by selling the future contract worth the same amount at Rs 50500 On the same date. Now we may sell the gold on 01-02-21 at Rs 48000 simultaneously we will buy the future contract

on MCX at Rs 48000. Thereby in the above mentioned example we incur loss of Rs.2000 on sale of bullion hence we will have an accumulated ITC and a profit of Rs 2500 in MCX.

2. At times we may opt for stocking of bullion beyond a month in anticipation of better prices which may lead to deferment of sales beyond a month, this may lead to ITC being unutilized beyond a month. In nutshell, on account of the reason explained above there may be accumulation in the Input Tax Credit due to price fluctuation on downward side which will lead to reduction in price, and increase in inventories due to decrease in volume of sale(stocking).

DISCUSSION & FINDINGS:

7. We have considered the submissions made by the applicant in their application for advance ruling, additional submission of the applicant dated 24.12.2020 (received vide email on 28.12.2020) as well as the arguments/discussions made by their representative Mrs. Shailee Shah at the time of personal hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

8. At the outset, we would like to state that the provisions of both the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 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 similar provisions of the GGST Act.

9. On going through the submission of the applicant, we find that:

- (i) They will be availing input tax credit in terms of Section 16 of the CGST Act, 2017 and Rules on the inputs like Gold dore, silver dore procured domestically on payment of GST at appropriate rate which will be used in the manufacturing process of their final products i.e. Gold(including Gold Plated with Platinum) unwrought or in semi-manufactured forms or in powder form, based metal clad with silver, not further worked than semi-manufactured, coin etc and GST will be discharged on their outward supplies at applicable rate through Electronic Credit Ledger as well as through Electronic Cash Ledger in the case if balance available in Electronic Credit Ledger is not adequate.
- (ii) They intend to procure Castor oil seeds directly from the Agriculturists who produce the same in their farms and after procuring the said Castor oil seeds, they intend to supply in the Domestic market as well as intend to export the same and the GST on these castor oil seeds is 5% in terms of Schedule-I, Sr.No.70 of Notification No.01/2017-Central Tax(Rate).
- (iii) No input tax credit is available on procurement of castor oil seeds since the provisions of Section 9(4) of the CGST Act, 2017 and Section 5(4) of the IGST Act, 2017 are not operative and therefore not attracting GST on the supply of goods received by the Registered person from the unregistered person(in this case, the Agriculturist), and therefore they are not availing any input tax credit on procurement of such Castor oil seeds from Agriculturists.
- (iv) The applicant intends to trade in castor oil seeds (HSN Code 1207) and since they are not falling under the exempted category and hence are liable to discharge GST in terms of Section 9(1) of the CGST Act, 2017 read with Notification No.01/2017-Central Tax(Rate).

- (v) The said notification does not stipulate that tax so payable is without input tax credit and when the applicant procures Castor oil seeds, it does not attract GST but attracts GST when it is supplied by the applicant.
- (vi) The applicant is intending to avail input tax credit on the inward supply viz. Gold and silver dore meant for manufacture of their final product Gold(including Gold Plated with Platinum) etc. and the same are lying as Balance in Electronic Credit Ledger of the applicant.
- (vii) In this back drop, the applicant wants to know whether GST on Castor oil seed can be discharged through the input tax credit balance available in their Electronic Credit Ledger and have asked the following question seeking Advance Ruling on the same:

“Can the applicant use Input Tax Credit Balance available in the Electronic Credit Ledger legitimately earned on the inputs/raw-materials/inward supplies(meant for outward supply of Bullions) towards the GST liability on ‘Castor Oil Seed’ which were procured from Agriculturists and subsequently meant for onward supply?”

10. Based on the submissions of the applicant, we find that the moot issue to be decided is whether the applicant can use the Input Tax credit available in the Electronic Credit Ledger towards the GST liability on ‘Castor Oil Seed’ which they intend to supply in domestic market or to export it. For the said purpose, we find it absolutely necessary to refer to the provisions of Section-16 of the CGST Act, 2017 which pertains to the eligibility and conditions for taking input tax credit. We would also be required to refer to Section 17(5) of the said Act which contains the list of inputs/services on which input tax credit is not available, in order to confirm whether the inputs on which the applicant intends to avail input tax credit is eligible as per the said provisions or otherwise. Section 16 of the CGST Act, 2017 reads as under:

“16. Eligibility and conditions for taking input tax credit.— (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.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both. [Explanation.— For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;]

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39: Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Incometax Act, 1961, the input tax credit on the said tax component shall not be allowed.

(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 return, 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.]

Section 17(5) of the CGST Act, 2017 reads as under:

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

(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:—

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used—

(i) for making the following taxable supplies, namely:—

(A) further supply of such vessels or aircraft; or

(B) transportation of passengers; or

(C) imparting training on navigating such vessels; or

(D) imparting training on flying such aircraft;

(ii) for transportation of goods

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available—

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged—
(I) in the manufacture of such motor vehicles, vessels or aircraft; or
(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness center; and

(iii) travel benefit's extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) goods or services or both used for personal consumption;

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

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

Explanation.—For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises.

11. On going through the provisions of Section 17(5) as mentioned herein above, we find that the inputs i.e. gold dores and silver dores on which the applicant intends to avail input credit are not covered under the excluded provisions of the said section. Further, on going through the provisions of the Section-16 as mentioned above, we find that sub-section(1) specifically mentions that the 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.** This means that, for the applicant, to be eligible to take input tax credit on any supply of goods or services, the same has to be used or should be intended to be used in the course or furtherance of his business i.e. the nexus/connection between the inputs and the final products manufactured from these inputs is required to be proved. For example, inputs such as dores of gold, silver etc. procured by the applicant are used in the manufacture of their final product i.e. Gold(including Gold Plated with Platinum) unwrought or in semi-manufactured forms or in powder form, based metal clad with silver, not further worked than semi-manufactured, coin etc. It can, therefore, be derived from the above that the aforementioned inputs are used in the course or furtherance of their business i.e. supply of Gold, Gold plated with platinum etc. In this context, even a layman can make out that dores of gold and silver are indeed used as inputs in the manufacture of the aforementioned final products(made up of gold) and are therefore used or intended to be used in the course or furtherance of the business of supply of gold and we certainly do not need the services of an expert to know that.

12. Now, the core issue is that the applicant wants to trade in Castor oil seeds on which the GST liability is 5% and wants to utilise the input tax credit (availed on inputs such as gold dores, silver dores etc.) available with him in his electronic credit ledger for the payment of the said GST. However, we find that, for the applicant, to be eligible to avail the aforementioned input tax credit for the payment of the GST leviable on the Castor oil seeds which they intend to supply domestically or to export it, the applicant has to first prove the nexus or connection between the aforementioned inputs and the castor oil seeds which he intends to supply, in the terms of sub-section(1) of Section 16 of the CGST Act, 2017 as discussed above i.e. he has to prove as to how the gold dores or silver dores are used or intended to be used in the course or furtherance of his business of supply of Castor oil seeds. In this regard, we find that firstly, the applicant has not submitted any document/literature etc. in respect of how they wish or intend to carry out the business of supply of castor oil seeds. Secondly, they have not provided/submitted any proof in respect of the input-final product nexus/connection in respect of the inputs i.e. gold and silver dores etc. vis-a-vis Castor oil seeds nor provided any such document/literature in respect of how the inputs i.e. gold dores or silver dores are used or intended to be used in the course or furtherance of their business of supply of Castor oil seeds. Even otherwise, on a plain comparison of the provisions of Section 16(1) of the CGST Act, 2017 with the issue in hand, it can very easily be derived that there is no nexus/connection whatsoever, of the inputs i.e. gold dores or silver dores with the business of supply of Castor oil seeds by the applicant. It can therefore, be seen that the even the basic conditions envisaged in the provisions of Section 16(1) have not been fulfilled in the instant case and we can therefore, undoubtedly conclude that the aforementioned inputs are not used or intended to be used in the course or furtherance of the business of supply of Castor oil seeds. In view of the facts mentioned above, and the non-submission of the aforementioned document/literature as mentioned above, by the applicant, we conclude that the applicant is not eligible to utilise the input credit available in their

Electronic Credit Ledger (earned on the inputs/raw-materials/inward supplies meant for outward supply of Bullions) for payment of GST liability on supply of Castor oil seeds.

13. In light of the above circumstances, we rule, as under –

R U L I N G

Question: Can the applicant use Input Tax Credit Balance available in the Electronic Credit Ledger legitimately earned on the inputs/raw-materials/inward supplies(meant for outward supply of Bullions) towards the GST liability on 'Castor Oil Seed' which were procured from Agriculturists and subsequently meant for onward supply?

Answer: The applicant cannot use the Input Tax Credit Balance available in the Electronic Credit Ledger legitimately earned on the inputs/raw-materials/inward supplies(meant for outward supply of Bullions) towards the GST liability on 'Castor Oil Seed' which were procured from Agriculturists and subsequently meant for onward supply, for the reasons discussed hereinabove.

(SANJAY SAXENA)

(MOHIT AGRAWAL)

MEMBER

MEMBER

Place: Ahmedabad

Date: 27.01.2021.