
	<b>KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM</b>	
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**BEFORE THE AUTHORITY OF:** Shri. Sivaprasad.S, IRS &  
: Shri. Senil A.K. Rajan.

Legal Name of the applicant	Shri. Jimmy Antony, M/s. Jimraj Industries
GSTIN	32ABIPA0688D1Z6
Address	KMC V/155, New No. KMC V/288, Ramalloor Branch Canal Road, Chelad, Kothamangalam – 686681.
Advance Ruling sought for	<p>i) We are suppliers of spare parts of agricultural machinery to Kerala Agro Machinery Corporation Ltd (KAMCO). Does KAMCO come under bodies eligible to deduct TDS as per Section 51 of the CGST Act? If yes, since when can the TDS be deducted?</p> <p>ii) Whether there is any arrangement we can avail through which we may be exempted from the TDS deduction if we submit in prior the particulars of our refundable excess difference between our input tax and output tax?</p> <p>iii) Can any mechanism be devised by which all business like ours can file an application or formal request and get the excess tax refund payable to them be transferred to the TDS account directly instead of paying the TDS out of their pocket first and then later getting refund?</p> <p>iv) If at all TDS under Section 51 is to be mandatorily deducted from us, if the same is found to be in excess, can we claim and receive refund of the excess TDS in the same</p>

	<p>month of the supply, and using Refund Application Form under CGST Rules?</p> <p>v) We supply finished goods, namely agricultural machinery spare parts. These are the raw materials of the awarder. Does this transaction become a transaction attracting Section 51 of the CGST Act? Kindly issue an advance ruling on its nature as to whether the supply of spares / spare parts is a supply of goods or supply of service and whether it attracts Section 51.</p>
Date of Personal Hearing	22-12-2020
Authorized Representative	Adv. K.S.Hariharan

**ADVANCE RULING No. KER/98/2021 dated 25-05-2021**

M/s. Jimraj Industries (**hereinafter referred to as the applicant**) is engaged in manufacture and supply of spare parts of agricultural machinery to Kerala Agro Machinery Corporation Ltd [KAMCO].

2. At the outset, the provisions of the Central Goods and Services Tax Act, 2017 (**hereinafter referred to as CGST Act**) and the Kerala State Goods and Services Tax Act, 2017 (**hereinafter referred to as KSGST Act**) are same except for certain provisions. Accordingly, a reference hereinafter to the provisions of the CGST Act, Rules and the notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the notifications issued there under.

3. The applicant requested advance ruling on the following points;

1. *We are suppliers of spare parts of agricultural machinery to Kerala Agro Machinery Corporation Ltd (KAMCO). Does KAMCO come under bodies*

*eligible to deduct TDS as per Section 51 of the CGST Act? If yes, since when can the TDS be deducted?*

2. *Whether there is any arrangement we can avail through which we may be exempted from the TDS deduction if we submit in prior the particulars of our refundable excess difference between our input tax and output tax?*

3. *Can any mechanism be devised by which all business like ours can file an application or formal request and get the excess tax refund payable to them be transferred to the TDS account directly instead of paying the TDS out of their pocket first and then later getting refund?*

4. *If at all TDS under Section 51 is to be mandatorily deducted from us, if the same is found to be in excess, can we claim and receive refund of the excess TDS in the same month of the supply, and using Refund Application Form under CGST Rules?*

5. *We supply finished goods, namely agricultural machinery spare parts. These are the raw materials of the awarder. Does this transaction become a transaction attracting Section 51 of the CGST Act? Kindly issue an advance ruling on its nature as to whether the supply of spares / spare parts is a supply of goods or supply of service and whether it attracts Section 51.*

#### **4. Contentions of the Applicant:**

4.1. The applicant submits that their input items are taxable at 18% and output is taxable at 12%, due to the very nature of their activities. So they always have excess input and forced to file application for refund of huge amount every month. In addition to that, the 2% TDS payment under Section 51 of CGST Act, shall come up to a very huge amount and this shall be heavily burdensome on their working capital. The input tax paid by them at 18% rate would at the time of supply be already available with the Department. In view of this situation, the applicant has certain queries relating to the applicability and implementation of Section 51 requirement for business like theirs whose input tax always exceeds output tax due to the nature of their business activities.

4.2. The intention of provision for TDS deduction by awarders is to ease the burden of supplier taxpayer by having the awarder take up the duty of handing over

a portion of the supplier's tax payable, to the Government. In the case of businesses where due to the very nature of business input tax is most certainly higher than the output tax, deduction of TDS by the awardee do not serve any purpose as at the time of supply, the input tax paid by the supplier is with the department itself. The logical, hassle-free and practically efficient method of implementation of Section 51 would be by making arrangement to first deduct the TDS from supplier's excess input tax that is available with the department, and only if that amount does not suffice, the supplier may be asked to pay up TDS at the time of supply. In view of the same, the applicability of Section 51 could in fact be done away with for businesses whose input tax is considerably higher than output tax, and if at all TDS is seen as mandatory, some mechanism could be devised by which all such businesses can file an application or formal request and get the excess tax refund payable to them be transferred to the TDS account directly instead of paying the TDS out of their pocket first and then later getting refund. If at all the TDS requirement cannot be dispensed with, then at the very least, the excess TDS may be provided for to be claimed and refunded in the same month as that of the supply.

**5. Contentions of the Jurisdictional Officer:**

The Jurisdictional Officer submitted that the applicant is engaged in manufacturing and supply of agricultural machinery tools to Kerala Agro Machinery Corporation Limited. Their input raw materials are taxable at 18% and output is taxable at 12%. The issue raised in the Advance Ruling application would not come within the ambit of sub-Section (2) of Section 97 of the CGST Act. The points raised for Advance Ruling relate to the liability of TDS under Section 51 of the CGST Act on the part of; (a) Department or Establishment of the Central Government or State Government; or (b) Local authority; or (c) Governmental agencies; or (d) such persons or category of persons as may be notified by the Government to deduct tax at source from the payments made to suppliers of goods or services or both. In respect of suppliers who are engaged in the taxable supply of goods of inverted tax structure there are separate provisions in the CGST Act. The process of manufacturing incurs considerable amounts towards direct expenses for manufacturing and resultant excess input credit will not be such a huge amount as

pointed out by the applicant. In order to protect such dealers there is specific and separate provisions in both the Act and Rules for refunds at specific intervals. The questions raised do not fall within the scope of Section 97 (2) of the CGST Act.

**6. Personal Hearing:**

The applicant was granted opportunity for personal hearing on 22.12.2020. Shri. K.S.Hariharan, Advocate represented the applicant in the personal hearing. He reiterated the contentions made in the application and requested to issue ruling on the basis of the submissions in the application.

**7. Discussion and Conclusion:**

7.1. The matter was examined in detail. Section 95(a) of the CGST Act defines the term "advance ruling". As per Section 95(a) of the CGST Act "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. As per Section 95 (c) of the CGST Act; "applicant" means any person registered or desirous of obtaining registration under the Act.

7.2. Section 97 of the CGST Act that pertains to application for Advance ruling reads as follows;

*(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.*

*(2) The question on which the advance ruling is sought under this Act, shall be in respect of—*

*(a) classification of any goods or services or both;*

*(b) applicability of a notification issued under the provisions of this Act;*

*(c) determination of time and value of supply of goods or services or both;*

*(d) admissibility of input tax credit of tax paid or deemed to have been paid;*

- (e) determination of the liability to pay tax on any goods or services or both;*
- (f) whether applicant is required to be registered;*
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.*

7.3 Section 103 of the CGST Act that pertains to the applicability of advance ruling reads as follows;

*“103. Applicability of advance ruling— (1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter 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.*

*(2) The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.”*

7.4. On a combined reading of the definition of the terms, advance ruling, applicant and the above provisions governing advance ruling under the CGST Act it is evident that an applicant can make an application for advance ruling if the following conditions are satisfied; (1) the applicant is either registered under GST law or is desirous of obtaining registration; (2) the matter or question pertains to any issue specified in Section 97 (2); (3) such a transaction is being undertaken or proposed to be undertaken by the applicant and the advance ruling is binding only on the applicant and the jurisdictional officer of the applicant.

7.5. In the instant case the first and the fifth question raised by the applicant pertains to the applicability of the provisions of Section 51 of the CGST Act to a third person namely; Kerala Agro Machinery Corporation Ltd. As discussed above, the provisions of the CGST Act governing advance ruling does not provide for an

applicant to seek a ruling regarding the applicability of the provisions of the Act or the notification issued there under to a third person other than the applicant.

7.6. Further, the relevant portion of Section 51 of the CGST Act is extracted below;

*“51. Tax deduction at source— (1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate—*

*(a) a department or establishment of the Central Government or State Government; or*

*(b) local authority; or*

*(c) Governmental agencies; or*

*(d) such persons or category of persons as may be notified by the Government on the recommendations of the Council, to deduct tax at the rate of one per cent from the payment made or credited to the supplier of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees.”*

On a plain reading of the above extracted provisions of Section 51 of the CGST Act, it is evident that Section 51 of the CGST Act applies to prescribed and notified categories of persons receiving supplies of goods and / or services exceeding specified value and making payment to the supplier for the same and not to any supplier of goods and / or services. Admittedly, the applicant has preferred this application as a supplier of goods / services. Therefore, the Questions at SI Nos. 1 and 5 of the application are not in respect of any matter specified in Section 97 (2) of the CGST Act in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. Hence this authority has no jurisdiction to issue ruling on the above questions.

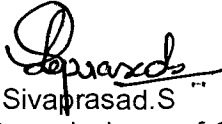
7.7. Further it is seen that the Questions at SI Nos. 2, 3 and 4 raised by the applicant are also not in respect of any matter that is specified in Section 97 (2) of the CGST Act in relation to the supply of goods or services or both undertaken or

proposed to be undertaken by the applicant and accordingly this authority has no jurisdiction to issue any ruling on the questions.

In view of the observations stated above, the following ruling is issued;

### **Ruling**

The questions raised by the applicant being not in respect of any matter specified under Section 97 (2) of the CGST Act in relation to the supply of goods or services or both undertaken or proposed to be undertaken by the applicant, this authority has no jurisdiction to answer them for the reasons as stated above.



Sivaprasad.S  
Joint Commissioner of Central Tax  
Member



Senil A.K. Rajan  
Additional Commissioner of State Tax  
Member

To,

M/s. Jimraj Industries  
KMC V/155, New No. KMC V/288,  
Ramalloor Branch Canal Road, Chelad,  
Kothamangalam – 686681.

Copy to:

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2. The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram – 695002.
3. The State Tax Officer, 1<sup>st</sup> Circle, Ernakulam. [E-mail ID: [ctoernakulam1@gmail.com](mailto:ctoernakulam1@gmail.com)]