

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015
(Constituted under section 96 of the West Bengal Goods and Services Act, 2017)

BENCH

Ms Susmita Bhattacharya, Joint Commissioner, CGST & CX
Mr Parthasarathi Dey, Additional Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Act, 2017 or West Bengal Goods and Services Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Act, 2017, within thirty days from the date of communication of this ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the rules prescribed thereunder, and the regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	Sital Kumar Poddar
Address	56E, Stephen House, 4 th Floor, Hemanta Basu Sarani, BBD Bag, Kolkata-700001
GSTIN	19AFBPP1032M2ZE
Case Number	16 of 2020
ARN	AD1911200013500
Date of application	18/11/2020
Order number and date	15/WBAAR/2020-21 dated 11/01/2021
Applicant's representative heard	Mr Sandip Choraria, Advocate Mr Abhishek Agarwal, FCA Ms Payel Agarwal, ACA

1. Admissibility of the Application

1.1 The applicant is stated to be supplying works contract service to Kolkata Municipal Corporation to construct buildings for various projects. He wants to know whether he is eligible to claim the input tax credit on the inward supplies of the goods and services procured for supplying the works contract service. An advance ruling is admissible on this question under section 97(2)(d) of the GST Act.

1.2 The Applicant also declares that the issues raised in the application are not pending nor decided in any proceedings under any provisions of the GST Act. The

officer concerned from the revenue has not objected to the admission of the application.

1.3 The Application is, therefore, admitted.

2. Submissions of the Applicant

2.1 The applicant submits that the question has roots in the provisions of section 17(5) (c) & (d) of the GST Act. It states that the input tax credit shall not be available on (i) works contract service 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 [section 17(5)(c)] or on (ii) the goods or services or both received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account including when such goods or services or both are used in the course or furtherance of business [section 17(5)(d)].

2.2 The applicant submits that the prohibition under section 17(5)(c) of the GST Act applies to the input tax credit on the inward supply of works contract service for the construction of immovable property other than plant and machinery. However, the input tax credit on the inward supply of works contract service shall be available if the outward supply is also works contract service.

2.3 The applicant argues that the credit of input tax on the inputs, including input services, for the outward supply of works contract is not blocked by the above provisions of section 17(5)(c) of the GST Act. Such outward supply of works contract service to a municipal corporation is neither an exempted supply under Entry No. 3 of Notification No. 12/2017 – CT (Rate) dated 28/06/2017 and, therefore, the input tax credit cannot be denied under section 17(2) of the GST Act either.

3. Submissions of the Revenue

3.1 The concerned officer from revenue argues that the prohibition under section 17(5)(c) of the GST Act applies to all supply of works contract service except when it is provided for further supply of works contract service. Therefore, a supplier of works contract service can claim input tax credit only on input service of works contract. Section 17(5)(d) of the GST Act extends it further to prohibit the input tax credit on inward supplies of the goods and service when the recipient uses such inputs and input services for the construction of immovable property on his own account.

3.2 The concerned officer, therefore, submits that input tax credit is not available on works contracts in relation to the construction of the immovable property or if such service is capitalized in the business. The input tax credit is not available on other goods and services used to construct an immovable property. The input tax credit is available when works contract service is supplied for plant and machinery or further supply of works contract service.

3.3 As the applicant is a supplier of works contract service, and the recipient is not a works contractor, the input tax credit, according to the concerned officer, is not available to the applicant.

4. Observations and findings of the Authority

4.1 The dispute has a narrow ambit. It arises from the conflicting interpretation about the scope of section 17(5) of the GST Act. The applicant submits that the said sub-section prohibits the recipient from claiming input tax credit on the inward supplies of the goods and services listed in the clauses that follow. The concerned officer from the revenue argues that it prohibits the recipient from claiming input tax credit if his supplies of the goods and services satisfy the conditions mentioned in any of the clauses thereunder.

4.2 For a better understanding of the dispute, excerpts from the provisions under section 17(5) of the GST Act are reproduced below:

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

- (a)
- (aa)
- (ab)
- (b)
- (c) works contract service 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 and machinery) on his own account including when such goods and 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 capitalization, to the said immovable property;

- (e)
- (f)
- (g)
- (h)
- (i)

4.3 The concerned officer from the revenue has interpreted the applicability of the prohibition differently for clause (c) from clause (d) of section 17(5) of the GST Act. He argues that clause (c) refers to the supply of works contract service to construct an immovable property. Therefore, the prohibition from claiming input tax credit applies to the inputs and input services used for the outward supply of works contract service for the aforesaid construction. Clause (d), however, clearly refers to the inputs and input services that a taxable person uses to construct an immovable property on his own account.

4.4 The term 'supply' includes both 'inward' and 'outward' supplies. If a person *makes* a supply, it refers to an outward supply. If the taxable person *claims or is prohibited from claiming the input tax credit in respect* of a supply, it refers to an inward supply. Each of the clauses of section 17(5) of the GST Act describes the supply of a class of goods or services. The input tax credit shall not be available in respect of any of the supplies listed under the clauses (a) to (i). In other words, a taxable person cannot claim the input tax credit in respect of these supplies. A taxable person can claim the input tax credit in respect of a supply only if he is a recipient of the said supply. The clauses (a) to (i) of section 17(5) of the GST Act, therefore, in the context of the sentence that constitutes the said sub-section, and in relation to the taxable person claiming an input tax credit, can only refer to inward supplies of the goods and services. Each of these clauses begins with a statement of the goods or services in respect of the inward supply of which the taxable person is prohibited from claiming the input tax credit. The rest of the clause describes the context and the conditions under which the prohibition applies and also mentions the exceptions if any.

4.5 In the light of the above discussion, clause (c) of section 17(5) of the GST Act should be interpreted as a prohibition on a taxable person from claiming input tax credit on the inward supply of works contract service unless it is an input service for further supply of works contract service. The prohibition applies only if the works contract service is used for the construction of immovable property other than plant and machinery. The clause (d) of section 17(5) of the GST Act extends the prohibition to cover other inputs and input services when the recipient is constructing the immovable property on his own account.

4.6 The applicant is supplying works contract service to the Kolkata Municipal Corporation. He is, therefore, making an outward supply of works contract service and is not prohibited from claiming input tax credit either under clause (c) or clause (d) of section 17(5) of the GST Act.

In view of what is discussed above, we rule as under

RULING

The applicant is eligible to claim the input tax credit on the inward supplies of the goods and services used for supplying the works contract service to Kolkata Municipal Corporation for construction of an immovable property.

This ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.

(SUSMITA BHATTACHARYA)
Member

(PARTHASARATHI DEY)
Member

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