

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 Tax Act, 2017)

BENCH

Mr Brajesh Kumar Singh, Joint Commissioner, CGST & CX
Mr JoyjitBanik, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax 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 Tax Act, 2017, within a period of 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	EASTERN COALFIELDS LTD
Address	SANCTORIA, DISHERGARH, PASCHIM BARDHAMAN, PIN-713333
GSTIN	19AAACE7590E1ZI
Case Number	08 of 2021
ARN	AD190421009699T
Date of application	May 11, 2021
Order number and date	07/WBAAR/2021-22 dated 09.08.2021
Applicant's representative heard	Mr Chanchal Kumar Chandra, Authorised Representative

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression 'GST Act' would mean the CGST Act and the WBGST Act both.

1.2 Eastern Coalfields Ltd (hereinafter referred to as, the applicant) is stated to be a producer and supplier of coal. The applicant submits that he has received services from M/s Gayatri Projects Ltd (GSTIN: 19AAACG8040K1ZG) and has availed of input tax credit during the tax periods January'20, February'20 and March'20 respectively against 03 (three)

invoices bearing number 43 dated 01.01.2020, 44 dated 01.02.2020 and 45 dated 02.03.2020 issued by the said supplier of services. Payments against such supplies have also been made by the applicant.

1.3 However, M/s Gayatri Projects Ltd has furnished FORM GSTR-1 and FORM GSTR-3B for the aforesaid tax periods i.e., January'20, February'20 and March'20 in the month of November'20 which has restricted input tax credit in respect of above-noted invoices in the auto-drafted FORM GSTR-2B of the applicant for the month of November'20 with the remark 'Return Filed Post Annual Cut-off'.

1.4 Based on the aforesaid facts, the applicant has made this application under sub-section (1) of section 97 of the GST Act and the rules made there under raising following questions vide serial number 14 of the application in FORM GST ARA-01:

- Whether the applicant is entitled for input tax credit already claimed by him on the invoices raised by M/s Gayatri Projects Ltd. pertaining to the period Jan-2020, Feb-2020 and March-2020 for which the supplier has actually paid the tax charged in respect of such supply to the Government, either in cash or through utilization of input tax credit admissible in respect of such supply.
- Whether the applicant has to reverse the said ITC already availed by him where M/s Gayatri Project Ltd. has actually paid the tax, though belatedly and fulfilled the responsibility cast upon them by Section 16(2)(c) of CGST Act, 2017 and all other conditions as mentioned in Section 16(2)(a), 16(2)(b), and 16(2)(d) are fulfilled by the applicant.

1.5 The aforesaid questions on which the advance ruling is sought for is found to be in respect of admissibility of input tax credit of tax paid or deemed to have been paid covered under clause (d) of sub-section (2) of section 97 of the GST Act.

1.6 The applicant states that the question raised in the Application has neither been decided by nor is pending before any authority under any provision of the GST Act.

1.7 The officer concerned from the Revenue has raised no objection to the admission of the Application.

1.8 The application is, therefore, admitted.

2. Submission of the applicant

2.1 The authorised representative of the applicant has appeared for personal hearing proceedings and reiterated the submissions as narrated above. A written submission has also been furnished by the applicant in support of his contention which is summarised as follows:

2.2 Notification No. 82/2020 Central Tax dated 10-11-2020, which substituted Rule 59 & 60 of the CGST Rules, 2017 thereby implementing provision of FORM GSTR-2B has been made effective from 01-01-2021. However, in the instant case, ITC had been taken by the

applicant in the month of Jan-2020, Feb-2020 and March -2020. The Remarks "Return Filed Post Annual Cut-off" mentioned in the FORM GSTR-2B of the applicant was generated on trial run basis pertaining to the tax period November -2020 which was prior to 01-01-2021 and it did not have any statutory force during November-2020, being effective from 01-01-2021 onwards.

2.3 As a matter of fact, FORM GSTR-2B had no existence at all during material period of the case i.e. from 01-01 -2020 to 31-12-2020. Prior to substitution of Rule 59 & Rule 60, in the present form, the earlier Rule 59 & Rule 60 were in existence till 31-12-2020 which did not prohibit, in any manner, availment of Input Tax Credit claimed by the Applicant in the instant case.

2.4 The GST Act came into existence w.e.f. 01-07-2017 with the specific motive of seamless availment of Input Tax Credit and every registered person relied upon it.

2.5 Section 16 of the GST Act has prescribed the eligibility and conditions for taking input tax credit. Sub-section (2) of section 16 is absolute over other sub-sections of Section 16 in as much as it begins with the phrase "Notwithstanding anything contained in this section". All the conditions stipulated in section 16(2) are fulfilled by the applicant for which he is entitled to avail the input tax credit in the instant case.

2.6 Rules 59 and 60 substituted by 13th amendment of the CGST Rules, 2017 being subordinate to the CGST / WBGST Act, 2017 did not restrict the seamless availment of input tax credit for any registered person.

2.7 Notification No. 82/2020 — Central Tax dated 10-11-2020 making 13th amendment to the CGST Rules, 2017 was effective from 01-01-2021 and so it could not restrict the ITC availment in the month of November -2020 by mentioning "Return Filed Post Annual Cut-off" in the FORM GSTR-2B.

2.8 The applicant was in possession of the tax Invoices issued by the supplier namely M/S Gayatri Projects Ltd. in compliance of section 16(2)(a) of the GST Act. The applicant had also received the services from the said supplier in compliance of section 16(2)(b) of the Act *ibid*.

2.9 The supplier, M/S Gayatri Projects Ltd. had actually paid the tax charged in respect of such supply to the Government, either in cash or through utilization of input tax credit in compliance of section 16 (2)(c) of the GST Act. The aforesaid supplier had also paid the interest for the month of January-2020, February - 2020 and March-2020.

2.10 The Applicant had furnished the returns under section 39 in compliance of section 16(2)(d) of the GST Act.

2.11 During the material period from 01-01-2020 to 31-12-2020, FORM GSTR-2B had no existence. Prior to substitution of Rule 59 & Rule 60, in the present form, the earlier Rule 59 & Rule 60 were in existence till 31-12-2020, which prescribed the "Form and manner of furnishing details of outward supplies" and "Form and manner of furnishing details of inward supplies" respectively. During that period, as per Rule 60 of CGST Rules, 2017, every registered person was required to furnish the details of inward supplies of goods or services or both received during a tax period on the basis of details contained in Part A, Part B and

Part C of FORM GSTR 2A. Further, every registered person was required to prepare such details as specified and furnish the same in FORM GSTR-2, which had never been activated for compliance at GST web portal. As such there was no prohibition, in any manner, for availment of input tax credit claimed by the Applicant in the instant case.

2.12 In view of above facts and legal position of existing GST Law, the applicant is entitled for the input tax credit already claimed by them on the Invoices bearing No. 43 dated 01-01-2020, 44 dated 01-02-2020 and 45 dated 02-03-2020 raised by M/S Gayatri Projects Ltd. in the instant case.

3. Submission of the Revenue

3.1 The concerned officer from the revenue has expressed his view in writing which is summarised as under:

- (i) Eligibility, conditions and time limit for taking Input Tax Credit have been provided under section 16 of the GST Act.
- (ii) In the instant case, the applicant has fulfilled the conditions as specified under section 16(2)(a) and section 16(2)(b) of the GST Act as he has taken credit of ITC for invoices dated 01-01-2020, 01-02-2020 and 02-03-2020 in question in the month of January' 20, February' 20 and March' 20 respectively for which the service were received by them in the month of December'19, January' 20 and February' 20 respectively.
- (iii) Further, the applicant has also fulfilled the condition specified under section 16(4) of the said act as credit of ITC has been taken in the month of January' 20, February' 20 and March' 20 for the invoices dated 01-01-2020, 01-02-2020 and 02-03-2020 respectively i. e. before the due date of furnishing of their GST return under section 39 for the month of September following the end of financial year to which such invoices pertains.
- (iv) However, the supplier namely M/s Gayatri Projects Ltd has paid the GST amount involved in impugned invoices issued during the month of January' 20, February' 20 and March'20 (on which ITC has already been availed by the recipient in respective months) in November, 2020 as the supplier has filed GSTR-1 & GSTR-3B for the said months in November'20 which is beyond the due date of furnishing of GSTR- 3B under section 39 of the GST Act for the month of September' 20.
- (v) In the instant case, the supplier has paid the GST amount involved in impugned invoices issued during the month of January' 20, February' 20 and March'20 in November, 2020 which is beyond the due date of furnishing of FORM GSTR- 3B under section 39 of the GST Act for the month of September' 20 and same appears to be in contravention of Section 42(7) of the GST Act as the details of the impugned invoices should have been shown in the valid return before due date for furnishing of return for the month of September'20 following the end of the financial year as specified in section 39(9) of the GST Act.
- (vi) It is admitted that FORM GSTR-2B has been made effective with effect from 01.01.2021 vide Notification No. 82 /2020 – Central Tax dated 10th November, 2020.

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorised representative of the applicant during the course of personal hearing. We have also considered the submission made by the officer concerned from the Revenue.

4.2 The issue involves in the instant case is to decide whether the applicant is entitled for input tax credit already claimed by him on the invoices raised by M/s Gayatri Projects Ltd. pertaining to the period Jan-2020, Feb-2020 and March-2020 for which the supplier has declared details of such supply in FORM GSTR-1 and furnished return in FORM GSTR-3B in the month of November'20.

4.3 Eligibility and conditions for taking input tax credit has been enumerated in section 16 of the GST Act which, for the sake of convenience, is reproduced herein 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 or section 43A], 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 [omitted] 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.]

4.4 It therefore follows that while sub-section (1) of section 16 of the GST Act provides for entitlement of input tax credit to every registered person subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, sub-section (2) of section 16 which is a non-obstante provision specifically refers to the conditions where a registered person shall not be entitled to take the credit of input tax in respect of any supply of goods or services or both to him. Further, sub-section (3) and (4) of the said section also put restrictions towards entitlement of input tax credit under certain situations.

4.5 In the case in our hand, we find that the applicant has availed credit of input tax upon receipt of services from M/s Gayatri Projects Limited and has furnished the return under section 39 for the relevant tax periods. The applicant is also in possession of tax invoices issued by the supplier of services. So, the applicant has complied with the conditions for availing of input tax credit specified in clause (a), (b) and (d) of sub-section (2) of section 16 of the GST Act.

4.6 However, it is evident that while the applicant has availed input tax credit in the months of January'20, February'20 and March'20 respectively, the supplier has declared such outward supplies made by him in his respective FORM GSTR-1 in the month of

November'20 and has also paid the taxes on such supply upon furnishing of return in FORM GSTR-3B in the month of November'20.

4.7 Here the question arises whether such belated compliances by the supplier towards payment of tax to the Government would disentitle the applicant to avail of input tax credit as per the condition laid down in sub-section (c) of section 16 of the GST Act read with the rules made there under?

4.8 There can be no denying that section 16 of the GST Act specifies conditions and restrictions towards entitlement of input tax credit. The said section contains four sub-sections which are to be read in a conjoint manner and the same must be read together with the rules prescribed in this regard as sub-section (1) of section 16 entitles a registered person to take credit of input tax subject to fulfillment of such conditions and restrictions as may be prescribed.

4.9 Documentary requirements and conditions for claiming input tax have been prescribed in rule 36 of the Central Goods and Services Tax Rules, 2017/ West Bengal Goods and Services Tax Rules, 2017 (the GST Rules, for short). Sub-rule (4) has been inserted in the said rule 36 with effect from 09.10.2019 vide Notification No. 49/2019 – Central Tax dated 09.10.2019 [Corresponding West Bengal State Notification No. 1730-F.T. dated 16.10.2019] which has been amended further vide Notification No. 75/2019 – Central Tax dated 26.12.2019 [Corresponding West Bengal State Notification No. 2090-F.T. dated 31.12.2019] and Notification No. 94 /2020 – Central Tax dated 22.12.2020 [Corresponding West Bengal State Notification No. 07-F.T. dated 04.01.2021]. The said sub-rule, as it was prevalent during the period from 01.01.2020 to 31.12.2020 reads as under:

“(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 10 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.”

4.10 In this context, reference may be drawn to para 3 of the Circular No. 123/42/2019– GST dated 11.11.2019 issued by Central Board of Indirect Taxes and Customs, GST Policy Wing [Corresponding Trade Circular No. 43/2019 dated 18.11.2019 issued by the Commissioner, State Tax, West Bengal] wherein it has been clarified that *‘The conditions and eligibility for the ITC that may be availed by the recipient shall continue to be governed as per the provisions of Chapter V of the CGST Act and the rules made there under. This being a new provision, the restriction is not imposed through the common portal and it is the responsibility of the taxpayer that credit is availed in terms of the said rule and therefore, the availment of restricted credit in terms of sub-rule (4) of rule 36 of CGST Rules shall be done on self-assessment basis by the tax payers.’*

4.11 It has been further clarified in the said circular that *“The balance ITC may be claimed by the taxpayer in any of the succeeding months provided details of requisite invoices are uploaded by the suppliers.”*

4.12 In the instant case, the applicant has availed of input tax credit in the months of Jan-2020, Feb-2020 and March-2020 against supplies received from M/s Gayatri Projects

Limited and admittedly the details of the invoices in respect of such supplies have not been uploaded by the supplier during the said tax periods. The applicant has, therefore, availed of input tax credit in violation of the restrictions as prescribed in sub-rule (4) of rule 36.

4.13 The applicant has filed the application based on the restriction put on him through auto-drafted FORM GSTR-2B with the remark 'Return Filed Post Annual Cut-off'. We find that prior to the amendment made through Notification No. 82/2020-Central Tax dated 10-11-2020, rule 60 was prescribed for "Form and manner of furnishing details of inward supplies" which has been substituted to 'Form and manner of ascertaining details of inward supplies' and the same has been made effective from 01.01.2021. Sub-rule (7) of the amended rule 60 speaks of FORM GSTR-2B, an auto-drafted statement containing details of input tax credit, to be made available to the registered person electronically through the common portal.

4.14 Since FORM GSTR- 2B has been made effective from 01.01.2021, we agree with the submission made by the applicant that the auto-drafted FORM GSTR-2B generated for the month of November'20 i.e., prior to the enactment of the amended rule, does not have any statutory force towards entitlement of input tax credit for the tax period January-20, February-20 and March-20.

4.15 However, entitlement of input tax credit is governed by sections and rules made under CHAPTER V of the GST Act and Rule respectively. Further, section 41 of the GST Act which deals with 'Claim of input tax credit and provisional acceptance thereof' speaks that every registered person shall be entitled to take the credit of eligible input tax on self-assessment basis subject to such conditions and restrictions as may be prescribed. We admit that FORM GSTR-2B has been made effective from 01.01.2021 but at the same time, the applicant cannot deny that the provisions of sub-rule (4) of rule 36 was already in force during the period when the applicant has availed of input tax credit issues of which we are dealing with in this case.

4.16 Further, we find that a proviso has been inserted to sub-rule (4) of rule 36 vide Notification No. 30/2020-Central Tax dated 03.04.2020 [Corresponding West Bengal Notification No. 462-F.T. dated 15.04.2020] which reads as follows:

"Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above."

4.17 Circular No. 142/12/2020-GST dated 09.10.2020 has been issued by Central Board of Indirect Taxes and Customs, GST Policy Wing [Corresponding West Bengal Trade Circular No. 09/2020 dated 13.10.2020] clarifying applicability of sub-rule (4) of rule 36 of the CGST Rules, 2017 in terms of the said proviso. Relevant portion of the circular is reproduced herein under:

"It is re-iterated that the clarifications issued earlier vide Circular No. 123/42/2019 – GST dated 11.11.2019 shall still remain applicable, except for the cumulative application as prescribed in proviso to sub-rule (4) of rule 36 of the CGST Rules. Accordingly, all the taxpayers are advised to ascertain the details of invoices uploaded by their suppliers under

subsection (1) of section 37 of the CGST Act for the periods of February, March, April, May, June, July and August, 2020, till the due date of furnishing of the statement in FORM GSTR-1 for the month of September, 2020 as reflected in GSTR-2As.”[Para 3.1 the circular]

“The excess ITC availed arising out of reconciliation during this period, if any, shall be required to be reversed in Table 4(B)(2) of FORM GSTR-3B, for the month of September, 2020. Failure to reverse such excess availed ITC on account of cumulative application of sub-rule (4) of rule 36 of the CGST Rules would be treated as availment of ineligible ITC during the month of September, 2020.”[Para 3.4 of the circular]

4.18 Considering the fact of the case in the light of the aforesaid provisions of the GST Act and rules made there under, we are of the opinion that the applicant has availed of input tax credit in excess of his entitlement prescribed under sub-rule (4) of rule 36.

In view of the above discussions, we rule as under:

RULING

The applicant is not entitled for input tax credit claimed by him on the invoices raised by M/s Gayatri Projects Ltd. pertaining to the period Jan-2020, Feb-2020 and March-2020 for which the supplier has furnished FORM GSTR-1 and FORM GSTR-3B in the month of November’20 and the applicant is, therefore, required to reverse the said input tax credit.

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

(BRAJESH KUMAR SINGH)

Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)

Member

West Bengal Authority for Advance Ruling

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