

THE 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)

Members present:

Shafeeq S, Joint Commissioner, CGST & CX                      Jaydip Kumar Chakrabarti, Additional  
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 there under, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	Eastern Coalfields Ltd.
Address	Eastern Coalfields Limited, CMDs Office, Sanctoria, Dishergarh, Bardhaman, West Bengal, 713333
GSTIN	19AAACE7590E1ZI
Case Number	WBAAR 26 of 2025-26
ARN	AD191025005138E
Date of application	November 17, 2025
Jurisdictional authority (State)	Large Taxpayer Unit
Jurisdictional authority (Centre)	Asansol-II Division, Bolpur Commissionerate
Order number and date	04/WBAAR/2026-27 Dated 05.06.2026
Applicant's representative heard	Mr. Rajeev Kumar Agarwal, Adv.

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 The applicant, M/s Eastern Coalfields Limited (ECL), has filed the present application for Advance Ruling in view of the retrospective insertion of sub-section (5) to Section 16 of the Central Goods and Services Tax Act, 2017 by the Finance (No. 2) Act, 2024 with effect from 01.07.2017. The applicant had earlier availed Input Tax Credit on invoices raised by M/s Gayatri Projects Limited pertaining to the period January 2020, February 2020 and March 2020 in connection with services rendered under a longwall mining project agreement executed with M/s China Coal Overseas Development Co. Ltd. The said Input Tax Credit was subsequently reversed by the applicant pursuant to Order No. 07/WBAAR/2021-22 dated 09.08.2021 passed by this Authority. In this background, the applicant has approached this Authority seeking clarification as to whether, in view of the retrospective amendment to Section 16 of the CGST Act, 2017, the applicant is now entitled to reclaim the Input Tax Credit earlier reversed in respect of the aforesaid invoices.

1.3 The applicant has made this application under sub section (1) of section 97 of the GST Act and the rules made there under seeking an advance ruling in respect of following question:

Whether, in view of the insertion of sub-section (5) of Section 16 of the CGST/WBGST Act, 2017, by the Finance Act (No 2) of 2024, which operates retrospectively w.e.f. July 2017, whether the applicant is now entitled to reclaim the Input Tax Credit on inward supplies on invoices issued by the Vendor/Supplier pertaining to the tax period January, February and March 2020 which have already been reversed pursuant to the Order of the Advance Ruling Authority dated 09.08.2021?

1.4 The aforesaid questions on which the advance ruling is sought for are found to be covered under clause (d) of sub-section (2) of section 97 of the GST Act.

1.5 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.

1.6 The officer concerned from the Revenue has raised no objection to the admission of the application.

1.7 The application is, therefore, admitted.

## **2. Submission of the Applicant**

2.1 The Applicant submits that it had entered into a Longwall Mining Project Agreement with M/s China Coal Overseas Development Co. Ltd. for extraction of coal from its underground mines. In connection with the execution of the said project, various services were rendered by M/s Gayatri Projects Limited as vendor/sub-contractor during the tax periods January 2020, February 2020 and March 2020, against which tax invoices were issued charging GST. The Applicant had availed Input Tax Credit on the basis of the said invoices in accordance with the provisions of the CGST/WBGST Act, 2017.

2.2 The Applicant submits that subsequently a dispute arose regarding admissibility of such Input Tax Credit and an application for Advance Ruling was filed before this Authority. The West Bengal Authority for Advance Ruling vide Order No. 07/WBAAR/2021-22 dated 09.08.2021 held that the Applicant was not entitled to avail the said Input Tax Credit. Pursuant to the said ruling, the Applicant reversed the Input Tax Credit already availed in respect of the invoices pertaining to the aforesaid tax periods.

2.3 The Applicant submits that thereafter the Finance (No. 2) Act, 2024 inserted sub-section (5) to Section 16 of the CGST Act, 2017 with retrospective effect from 01.07.2017. The said amendment provides a substantive benefit by allowing availment of Input Tax Credit in specified circumstances where the same was previously denied on account of procedural or technical restrictions. According to the Applicant, the retrospective nature of the amendment clearly demonstrates the legislative intent to cure hardships faced by taxpayers and to regularize availment of Input Tax Credit for past tax periods.

2.4 The Applicant submits that in view of the retrospective amendment to Section 16 of the CGST/WBGST Act, 2017, the legal position prevailing at the time of passing of the earlier Advance Ruling order dated 09.08.2021 no longer survives. The Applicant contends that once the amendment has been given retrospective operation from July 2017, the amended provision is required to be treated as if it existed in the statute during the relevant tax periods January 2020, February 2020 and March 2020.

2.5 The Applicant further submits that the denial of Input Tax Credit under the earlier ruling was based upon the un-amended provisions of Section 16 as they stood at the relevant point of time. Since the statutory framework itself has now undergone retrospective change, the Applicant contends that it is entitled to seek restoration and reclaim of the Input Tax Credit earlier reversed

pursuant to the ruling of this Authority.

2.6 The Applicant submits that Input Tax Credit is a substantive and vested right forming an integral part of the GST scheme intended to avoid cascading effect of taxes. The retrospective amendment inserted by the Legislature is beneficial in nature and therefore deserves liberal interpretation so as to extend the intended benefit to taxpayers who were compelled to reverse credit under the earlier legal position.

2.7 The Applicant therefore contends that, in view of the insertion of sub-section (5) to Section 16 of the CGST/WBGST Act, 2017 by the Finance (No. 2) Act, 2024 with retrospective effect from 01.07.2017, the Applicant is now legally entitled to reclaim the Input Tax Credit on inward supplies covered by invoices issued by M/s Gayatri Projects Limited pertaining to the tax periods January 2020, February 2020 and March 2020, which had earlier been reversed pursuant to Order No. 07/WBAAR/2021-22 dated 09.08.2021 passed by this Authority.

### **3. Submission of the Revenue**

3.1 The concerned officer from the revenue has not expressed any view on the merit of the issue raised by the applicant.

### **4. Observations & Findings of the Authority**

4.1 We have gone through the records of the issue as well as submissions made by the authorized representative of the applicant during personal hearing. The Revenue has not given any view in respect of the merit of the case.

4.2 As per the statement furnished and submissions made, the applicant Eastern Coalfields Limited (in short ECL) is a public sector undertaking primarily engaged in the business of production and sale of coal.

According to the written submission, the applicant had entered into a contract with M/s. China Coal Overseas Development Co. Ltd. (here-in-after referred to as "CODCO") for Longwall Mining project vide agreement dated 19.12.2015. In terms of the aforesaid contract, ECL and CODCO executed the following three agreements in respect of the following works set out in the Tender:

1. Contract for Site Investigation and Study bearing Contract No: ECL CODCO/HQ/07/2012-2013.
2. Contract for Supply of Equipment and Initial Spares bearing Contract No: ECL CODCO/HQ/07/2012-2013; and
3. Contract for Provision of Services bearing Contract No: ECL CODCO/HQ/07/2012-2013 ("Service Contract").

The applicant states in his submission that CODCO has transferred all the rights and obligations under the service contract in favour of M/s Gayatri Projects Limited (hereinafter referred to as "GPL") by taking approval from ECL vide letter CODCO/ECL-20150828 dated 28.08.2015. ECL, vide its letter dated 14.15.2015, accorded its approval to CODCO for the assignment and transfer of all the rights and obligations of CODCO under the Service Contract in favour of Petitioner and it was agreed between the Parties that even after the assignment by CODCO in favour of GPL, CODCO shall continue to be responsible and liable for the fulfillment of the obligations under the Service Contract.

It was agreed that GPL shall raise invoices in Indian currency for performance of the assigned services in accordance with the provisions of this agreement directly to ECL and accordingly, be entitled to receive payments in Indian currency from ECL in accordance with the terms of payment. In the above background, GPL had inter alia raised 3 invoices on M/s. ECL against work done in the months of January 2020, February 2020, and March 2020 on 01.01.2020, 01.02.2020 and 02.03.2020 respectively. Based on the invoices issued by GPL, the applicant had availed ITC for the respective months and had filed GST Monthly returns. However, owing to the outbreak of COVID-19 pandemic and financial crunch, GST Returns for the said months were filed belatedly beyond the cut off period by the Vendor called GPL. The applicant had, in the above facts, filed an application for Advance Ruling which was registered as Case No. 08/2021, ARN AD190421009699T dated 11.05.2021 regarding availability of ITC in the above stated circumstance.

The Ld. Authority vide its Order No. 07/WBAAR/2021-22 dated 09.08.2021 had, on the facts of the case, held that the ITC availed by the applicant on the invoices raised by GPL pertaining to the period January 2020, February 2020 and March-2020 would be required to be reversed by the applicant in view of the Rule 36 (4) of the CGST/WBGST Rules 2017 (including the proviso inserted vide Notification No 20/2020-Central Tax dated 03.04.2020) read with Para 3 of the Circular No 123/42/2019-GST dated 11.11.2019 and Circular issued by CBIC GST Policy Wing bearing No 142/12/2020-GST dated 09.10.2020. In the course of the Advance Ruling proceeding, the ECL reversed the ITC earlier availed on the disputed invoices and intimated the compliance to its jurisdictional officer.

Subsequently GPL, the vendor preferred a Writ Petition challenging the Advance Ruling dated 09.08.2021 before the Hon'ble Calcutta High Court (Gayatri Projects Limited and Anr. vs. Assistant Commissioner of State Tax, Durgapur Charge and Ors.). The Hon'ble Division Bench of the Calcutta High Court vide its order dated 05.01.2023 set aside the Ruling dated 09.08.2021 and remanded back the matter to the Advance Ruling Authority with a direction to hear the parties afresh, permit GPL to submit documents as well as written submissions and thereafter to pass fresh order on merits in accordance with law.

That in compliance of the order dated 05.01.2023 passed by the Hon'ble Calcutta High Court, the Ld. Bench vide its Order No. 01/WBAAR/2023-24 dated 06.04.2023 allowed M/s. ECL and Gayatri

Projects Limited, both, an opportunity for personal hearing and to furnish Written Submissions, if any. That after hearing both sides, the Ld. Bench reiterated its observations and held that ECL is not entitled to Input Tax Credit and is required to reverse the credit availed by it on the invoices raised by GPL pertaining to the period January-2020, February-2020 & March-2020 unless the condition as prescribed in the proviso to sub-rule (4) of rule 36 of the GST rule is fulfilled.

4.3 The applicant submits that in the event of insertion of sub-section (5) under Section 16 through Section 118 of the Finance (No. 2) Act, 2024 dated 16-08-2024 with retrospective effect from 01-07-2017 and notified by Notification No. 17/2024 Central Tax dated 27-09-2024 the circumstance has changed now. Under this changed circumstance the applicant has placed the following question before us:

**Question:** In view of the insertion of sub-section (5) of Section 16 of the CGST/WBGST Act, 2017, by the Finance Act (No 2) of 2024, which operates retrospectively w.e.f. July 2017, whether the applicant is now entitled to reclaim the Input Tax Credit on inward supplies on invoices issued by the Vendor/Supplier pertaining to the tax period January, February and March 2020 which have already been reversed pursuant to the Order of the Advance Ruling Authority dated 09.08.2021?

4.4 The applicant believes that pursuant to insertion of Section 16(5) CGST Act, 2017 the claim of the ITC by the applicant made originally, which pertains to the periods January, February and March 2020, is fully eligible as the same was availed in the monthly GSTR returns filed before 30th November 2021. On the other hand, GPL had filed its GSTR-1 monthly returns on 17.11.2020 which is well within the date specified in Section 16(5) i.e., 30th November 2021. So, the compliance of provisions contained in Section 16(2)(c) stands duly complied with.

It is also argued by the applicant that the restrictions provided under the provisions of Section 150 of the Finance (No. 2) Act, 2024 is not applicable in his case since he is not claiming refund of ITC but seeking to reclaim ITC of the reversed credit which is now eligible under the changed provisions of law.

4.5 Before going into the details of discussion we should first look at the referred provision of Section 16(5) of the CGST Act, 2017. This section has been inserted in the CGST Act, 2017 by virtue of the Finance (No. 2) Act, 2024 (No. 15 of 2024) Dated 16.08.2024. The section is reproduced as under:

*“(5) Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax*

*credit in any return under section 39 which is filed up to the thirtieth day of November, 2021.”*

This sub-section has been inserted to Section 16 of the CGST Act, 2017 w.e.f. 27.09.2024. The sub-section pertains to four Financial Years viz. 2017-18, 2018-19, 2019-20 and 2020-21 and for those financial years it overrides the provisions of Section 16(4) which provides that

*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 thirtieth day of November 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.*

4.6 In the case we have in our hand, the followings are the facts and circumstances as per application and written submissions at the time of hearing:

- A) The applicant is the recipient of supply and Gayatri Projects Limited (GPL) is the supplier of service.
- B) The related invoices pertain to the financial year 2019-20, more specifically for the months of January, February and March of 2020.
- C) The applicant, being the recipient of supply has availed ITC in the corresponding monthly returns filed within the stipulated time line on the basis of the invoices issued by GPL.
- D) GPL has filed and shown the related transactions in the corresponding returns in GSTR 1 in November 2020, more specifically on 17.11.2020.
- E) This authority in its ruling dated 09.08.2021 has ruled that the ITC for the relevant periods are required to be reversed.
- F) The applicant accordingly reversed the entire amount of ITC under question.
- G) The applicant subsequently recovered the related tax amount from GPL.

The applicant, however, has given written submission that once the legal position with regard to the entitlement of ITC under question gets clarified it will at once reimburse the recovered tax amount to the vendor, GPL.

4.7 The earlier rulings of this authority, both original and the subsequent one upon direction from

the Hon'ble Calcutta High Court, were pronounced prior to the insertion of Section 16(5). Save and except this insertion of a new sub-section to the referred section of the CGST Act, the factual matrix for this present application and earlier rulings are the same. We like to refer to the observations and findings of this authority in respect of the Case No. 08 of 2021. The authority in the said case observed as under:

*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. ll

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.*

On the basis of the above observations and findings this authority ruled that

*“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.”*

4.8 We must keep in mind that Section 16(4) of the CGST Act, 2017 imposes restriction on enjoyment of ITC in respect of any invoice or debit note of supply of goods beyond the 30<sup>th</sup> day of November following the end of financial year to which the particular invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

What really has changed since the pronouncement of the quoted ruling and the subsequent ruling on the same subject (which was nothing but reiteration of the earlier ruling) is the insertion of sub-section (5) to Section 16 on and from 27.09.2024. The provisions of Section 16(4) *supra* have been overridden by virtue of insertion of sub-section (5) to Section 16 for specific financial years. This sub-section nullifies the application of sub-section (4) in respect of Financial Years starting from 2017-18 to 2020-21.

In our understanding, for the above noted financial years eligibility and conditions of availing ITC should be understood keeping aside the provisions of Section 16(4) in case of returns for the said financial years filed up to 30.11.2021. However, in order to clarify any doubt, we reiterate that the

other guiding sub-sections of Section 16 viz. sub-section (2) and (3) will be in force for availing ITC for the related financial years as well. Especially sub-section (2) is a *non-obstante* clause. For entitlement to the credit of any input tax the provisions contained in sub-section (2) are to be fulfilled.

4.9 Now the most relevant question comes whether insertion of Section 16(5) has created any new scenario for the applicant to enjoy the referred Input Tax Credit which has already been reversed. The applicant did comply with the provisions of Section 16(4) during the material point of time by furnishing returns in GSTR 3B for the months of January, February and March 2020 within the prescribed time. What 16(5) has done is to extend the date for entitlement of Input Tax Credit for Financial Years 2017-18, 2018-19, 2019-20 and 2020-21. After the new enactment Input Tax Credit for the referred financial years can be enjoyed in any return under Section 39 which has been filed up to 30.11.2021. The applicant has already filed the relevant returns in GSTR 3B within the time limit prescribed under Section 16(4) and claimed the relevant Input Tax Credit in the filed returns.

Besides, the applicant has to fulfill the conditions prescribed in Section 16(2) for enjoyment of Input Tax Credit. During the material point of time the applicant has to comply with clause (a), (b), (c) and (d) of Section 16(2). Clause (aa) and clause (ba) of Section 16(2) has been effective from 01.11.2022 and 01.10.2022 respectively, which is subsequent to the timeframe of the present issue.

Regarding the fulfillment of the provisions of Section 16(2) by the applicant, we are in complete agreement with the view taken by this authority in Case No. 08 of 2021 noted in clause no. 4.5 to 4.18 reproduced in Paragraph 4.7 *supra*. We are also in complete agreement with the ruling given in the referred case. In our considered view, this insertion has not created any new opportunity for the applicant.

4.10 It is also to be noted here that Section 16(5) *supra* has been inserted in the CGST Act, 2017 by virtue of the Finance (No. 2) Act, 2024 (No. 15 of 2024) Dated 16.08.2024. Section 150 of the said act provides that

*'No refund shall be made of all the tax paid or the input tax credit reversed, which would not have been so paid, or not reversed, had section 118 been in force at all material times'.*

Now the question comes whether the availing of the reversed ITC in this context will be tantamount to refund as provided in the aforementioned Section 150 of the Finance (No. 2) Act, 2024 (No. 15 of 2024) Dated 16.08.2024.

The applicant states that refund in the GST Act should be understood only in the context of Section 54 of Chapter XI of the referred act. It is submitted by the applicant that since the term refund as used in Section 150 of the Finance (No. 2) Act, 2024 (No. 15 of 2024) Dated 16.08.2024 has not been separately defined, we should refer to Section 54 of the CGST Act in order to understand the term.

In this respect we are not inclined to accept the view of the applicant. In our considered view, since it is a case of re-availing of ITC that has been reversed, the reclaim of the same should be tantamount to refund of Input Tax Credit. The legislature has clearly expressed its will by including the expressions “**input tax credit reversed**, which would not have been so paid or so **reversed**” in Section 150 of the Finance Act, 2024. If the applicant’s argument that the refund is to be narrowly construed in terms of the scope of Section 54 of the CGST Act only, the word “reversed” in the Section would lose all meaning. Such an interpretation would also create absurd results where someone who had paid the tax demand arising out of Section 16(4) of the CGST Act in cash would not be eligible for refund, whereas someone who used input tax credit to settle the same demand would be able to claim it back. There is a presumption against absurdity in law, and it is an accepted legal maxim that interpretations which lead to absurd results should be rejected. Further, we must appreciate that the legislation nowhere refers to Section 54 of Chapter XI of the CGST Act, 2017. In our view the legislative intent is clear, and here refund should not be interpreted narrowly in terms of reference to Section 54 only. Any reclaim of ineligible and reversed Input Tax Credit is practically synonymous with refund, which is excluded from the scope of Section 150 of the Finance (No. 2) Act, 2024 (No. 15 of 2024) Dated 16.08.2024.

In view of the foregoing discussion, we rule as under:

### **RULING**

**Question:** In view of the insertion of sub-section (5) of Section 16 of the CGST/WBGST Act, 2017, by the Finance Act (No 2) of 2024, which operates retrospectively w.e.f. July 2017, whether the applicant is now entitled to reclaim the Input Tax Credit on inward supplies on invoices issued by the Vendor/Supplier pertaining to the tax period January, February and March 2020 which have already

been reversed pursuant to the Order of the Advance Ruling Authority dated 09. 08.2021?

**Answer:** The answer is in the negative

Sd/-

(SHAFEEQ S)

Member

West Bengal Authority for Advance Ruling

Sd/-

(JAYDIP KUMAR CHAKRABARTI)

Member

West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 5<sup>th</sup> June, 2026

To,

Eastern Coalfields Limited,

CMDs Office, Sanctoria, Dishergarh,

Bardhaman, West Bengal, 713333

Copy to,

- (1) The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector, Kolkata - 700107
- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata - 700015
- (3) The Commissioner, CGST & CX, Bolpur Commissionerate, Nanoor Chandidas Road, P.O. Sian, Bolpur, Dist. Birbhum, West Bengal, PIN - 731204
- (4) The Special Commissioner, Commercial Taxes, Large Taxpayer Unit, 14, Beliaghata Road, Kolkata - 700015
- (5) Office Copy