

GIB/MH/DAEWOO-TPL JV/24.04.2019/AAR-442

Advance Ruling Category : Work Contract

State : Maharashtra

Order No.: GIB/MH/DAEWOO-TPL JV/24.04.2019/AAR-442

Name of Entry :
DAEWOO-TPL JV

Date : 24-04-2019

Breif Issue :

FACTS AND ISSUE OF THE CASE:

The Applicant though eligible to claim for refund of inverted duty structure under Section 54(3) of the CGST Act, wishes to understand the in-principle applicability of Notification 21 and 26 in as much whether the same allow for refund of ITC availed on input services (and remaining unutilized) in whole or part thereof.

Daewoo-TPL JV, a joint venture between M/s. Daewoo Engineering and Construction Company Limited and M/s. Tata Projects Limited ('the Applicant') is inter alia engaged in the business of designing, engineering and construction of Mumbai Trans Harbour Link Project ('MTHL Project'). The Applicant is a job worker providing its services at outward taxability @ 12% GST. For the purchase of raw material and other inputs required to execute the project, the Applicant pays 18% and 28% GST on inputs and capital goods;

As per Section 54(3) of the CGST Act, 2017 ('the Act'), a registered person is eligible to claim refund of accumulated ITC in case the rate of GST on inputs is higher than the GST Rate on outward supplies, subject to certain conditions.

As per Section 54(3) of the Act, benefit of refund of unutilised ITC is available in case of inverted duty structure. The benefit is extended on entire of such ITC whether it is on account of inputs, input services or capital goods

According to Section 54(3) of the Act read with Notification No. 21/2018 – C.T. (Rate) dated 18 April 2018 implies that the formula under Rule 89(5) of the Rules for Net ITC only considers ITC on inputs and not input services

Decision of Advance Ruling Authority :

DECISION:

The contention of the Application that Section 54 of the Act does not provide or stipulate that

amount of refund granted is subjected to restriction in the Rules. Section 164 of the Act empowers the Government to make Rules for carrying out the provisions of the Act

Interpretation of notifications and its scope is beyond the authority of AAR in terms of Section of 97 of the Act

Notification No. 21/2018 – C.T. (Rate) dated 18 April 2018 and Notification No. 26/2018 – C.T. dated 13 June 2018 prescribes the method for carrying out provisions of Section 54(3) of the Act and **therefore do not allow refund of ITC availed on input services**