

Dimensions – 137th Edition

Rulings under GST era

Pristine Industries Limited – Authority for Advance Ruling, Rajasthan¹

Issue for Consideration

Whether a solar power plant (“SPP”) is a ‘plant and machinery’ as per the GST law and accordingly whether input tax credit (‘ITC’) of inputs, input services and capital goods received for setting up the SPP can be availed?

Discussion

- The Applicant is engaged in the manufacture of PP/HDPE woven sacks.
- The Applicant is in the process of installing a 620+Kw roof top SPP at its manufacturing unit for generating electricity and captively consuming it at its manufacturing unit.
- For setting up the SPP, the Applicant has started purchasing inputs / capital goods such as solar power panels, transformers, electrical meters, wiring etc. The work would be assigned to a third-party vendor.

- The Company has capitalised the SPP in its books of accounts under the head ‘plant and machinery’.
- Furthermore, the Applicant being of the view that it is eligible to avail the ITC on inputs, input services and capital goods used in setting up SPP approached the Authority for Advance Ruling, Rajasthan (‘the Authority’) and contended as follows:
 - The primary conditions for availment of ITC as per section 16 of the CGST Act are satisfied in the present case.
 - Section 17 of the CGST Act restricts the credit on goods / services received for construction of immovable property other than plant and machinery².
 - The equipments purchased qualify as ‘plant and machinery’, as they are equipment, apparatus and machinery used by the Applicant for its business. Accordingly, the goods / services used for erection, commissioning and installation of the SPP should not be restricted under section 17.
 - The goods and services used in generation of electrical energy would be solely used for

¹ 2022-VIL-65-AAR

² The expression ‘plant and machinery’ is defined under section 17 of the CGST Act as apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes....



captive / own use for the business of the Applicant for manufacture and supply of taxable goods. Hence, the SPP is used for the business of the Applicant.

- The Jurisdictional officer was also in agreement with respect to the credits being eligible. Reliance was placed upon the advance ruling in the case of *M/s. Kumaran Oil Mill*³.
- After perusing the facts of the case, the Authority observed as follows:
 - The SPP is being built upon the Applicant's own building and the ownership of the property remains with the Applicant.
 - Installation / embedding of the power plant on the roof top of the building involves construction / erection of pillars and other civil work. Such work cannot be done without fastening and embedding part of the plant on the roof top of the building.
 - The roof top is attached to earth and the solar power generating plant is fastened / embedded on top of roof top. Hence, erection, commissioning and installation of SPP should be covered under the expression 'construction' as per explanation to section 17(5)(d) of the CGST Act read with section 3(26) of the General Clauses Act, 1897. Such construction of power plant is an immovable property.
 - With regards to the SPP being regarded as 'plant and machinery', the Authority referred to the meaning of the term apparatus, equipment and machinery and observed that it should be regarded as a machinery.
 - Accordingly, the SPP should qualify as a 'plant and machinery'. Hence, subject to the goods being capitalised in the books of accounts, the plant should be considered as 'capital goods'.
 - Furthermore, the electricity generated from the SPP would be solely captively used for the business of the Applicant.

- The construction of SPP being 'plant and machinery', the ITC in relation to the same is not a blocked ITC as per section 17(5) of the CGST Act.

Ruling

The Authority held that the SPP falls within the term 'plant and machinery' and the Applicant is eligible to avail ITC of inputs, input services and capital goods used for setting up the same.

Dhruva Comments:

The question of as to what constitutes a 'plant and machinery' has been a litigative issue under GST. In the present case, the Authority has rightly considered the solar power plant as plant and machinery and allowed the credit.

RSWM Limited – Rajasthan Authority for Advance ruling⁴

Issue for Consideration

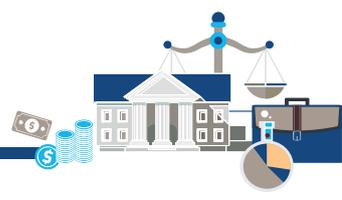
Whether the Applicant is eligible to claim input tax credit ('ITC') under the CGST Act, 2017 ('the Act') of medical / health insurance of employees which is obtained mandatorily?

Discussion

- The Applicant is engaged in the manufacture of textile products and is registered under GST.
- The Applicant has approached the Rajasthan Authority for Advance ruling ('the Authority') to seek a ruling on the eligibility of ITC on medical / health insurance provided to its employees and has submitted as below:
 - As per section 16(1) of the Act, every registered person is entitled to claim ITC of the goods and services used or intended to be used in the course or furtherance of business.
 - Furthermore, section 17(5) of the Act states that ITC of health and life insurance, *inter alia*, is not eligible.

³ 2020 (10) TMI 808

⁴ 2022-VIL-63-AAR



- However, the proviso to section 17(5)(b) specifies that ITC of health and life insurance shall be allowed **only if** such input services are used for making an outward supply of the same category of goods or services or both or is used as an element of taxable composite or mixed supply.
 - Further, the second proviso to section 17(5)(b) specifies that ITC of goods / services shall be allowed where it is obligatory for an employer to provide the same to its employees under any law which is in force.
 - The Ministry of Home Affairs ('MHA') has issued an order dated April 15, 2020, making it mandatory for all employers to provide medical insurance cover to their employees in view of the COVID-19 pandemic in India
 - The MHA has further clarified that all establishments and workplaces shall make suitable arrangements for the implementation of standard operating procedures ('SOP') for social distancing of employees.
 - Though the said order was issued in 2020, it is still relevant and is in force as all state governments are mandating adherence to the SOP. Thus, providing medical and health insurance to employees is mandatory under the law.
 - The conditions laid down under the second proviso to section 17(5)(b) of the Act stands satisfied, and therefore ITC of GST paid on the health / medical insurance premium of employees is available to the Applicant.
- The Authority perused the submission of the Applicant and the applicable provisions under the Act, and observed as follows:
 - The following two conditions should be satisfied for availing ITC on medical / health insurance:
 - Outward taxable supply should be of the same category;
 - Inward supply should be an element of a taxable composite or mixed supply.
 - The Applicant is engaged in the manufacture of textile products. The Applicant is not in the business of providing health and medical insurance policies, nor does its outward supply have an element of health and medical insurance service.
 - The conditions prescribed to avail the ITC of health / medical insurance under section 17(5)(b) of the Act are not satisfied in the present case.

Ruling

The Authority ruled that the Applicant cannot claim the ITC of tax paid on health and medical insurance premiums paid for its employees.

Dhruva Comments:

It is worth noting that the Authority did not consider the proviso to section 17(5)(b) which allows ITC of goods / services mandatorily required to be provided to the employees under the law. There is another issue on whether the proviso to section 17(5)(b), which deals with ITC on goods / services obligatory for an employer to provide to its employees, would apply to section 17(5)(b)(a), which provides for ITC on medical and health insurance. The said issue has also not been dealt with by the Authority.

In a similar issue, the Gujarat Authority for Advance Ruling in the case of *M/s Tata Motors Ltd.*⁵ ruled that the proviso to section 17(5)(b)(iii) is not applicable to section 17(5)(b)(i), which deals with ITC of medical / health insurance, and cannot be read into it.

⁵ 2021 (8) TMI 735



Judgment under GST era

*Dee Vee Projects Ltd v. The Government of Maharashtra and Ors*⁶

Issues for Consideration

- Whether blocking of an electronic credit ledger ('ECRL') amount to provisional attachment of property under section 83 of the Central Goods and Services Tax Act, 2017 ('the Act')?
- Whether the conditions and procedure laid out under section 83 of the Act are to be followed in case of blocking of an ECRL?

Discussion

- The Petitioner is engaged in infrastructure development and is registered under GST. On July 1, 2021, the Petitioner's ECRL was blocked as per rule 86A of the CGST Rules, 2017 ('CGST Rules') by the Respondent, and the Petitioner was unable to utilise the credit.
- The Petitioner has filed the present writ petition before the Hon'ble Bombay High Court challenging the GST department's action of blocking its ECRL, and the submission of the Petitioner is as under:
 - The ECRL is the property of the Petitioner and its blocking amounted to illegal attachment of property under section 83 of the Act.
 - Such an attachment of property can only be made if any proceeding is pending or initiated under any of the sections, such as section 62, 63, 64, 67, 73 and 74 of the Act. In the present case, there are no pending proceedings under the Act and hence, the action of the Respondent is illegal in nature.
 - The Petitioner had submitted a representation challenging the department's action and requested it to unblock their ECRL. However, the Respondent rejected the Petitioner's representation without recording any reasons for rejection.

- The procedure for blocking an ECRL laid out under rule 86A of the CGST Rules has not been followed and hence, the department's action is illegal and liable to be quashed.
- The power of blocking the ECL cannot be exercised without quantifying the amount of wrong availment of ITC as per rule 86A of the CGST Rules.
- The Respondents strongly opposed the allegations of the Petitioner and submitted as follows:
 - During the investigation, it was found that the Petitioner had fraudulently availed the credit in its ECRL in the State of Maharashtra. The principal place of business as disclosed by the Petitioner did not exist and it was not carrying out its business in the State of Maharashtra.
 - The Petitioner never existed at the address declared by it, the rental agreement submitted by it showed a different address, and the name of the owner was not clearly written.
 - The invoices prepared by the company mentioned an address from which the company did not operate. The Petitioner had fraudulently availed the ITC amounting to Rs. 49.19 crores and therefore it is liable to be recovered along with applicable interest and penalty. As a result, the blocking of ECRL under rule 86A of the CGST Rules was desired.
 - There is a proper delegation of authority by the Commissioner to the Deputy Commissioner to invoke the provisions of rule 86A of the CGST Rules to block the ECRL and hence, there is no question that the action of the department lacks jurisdiction.
 - Furthermore, blocking of the ECRL for a limited period of one year cannot be compared with attachment of property under section 83 of the Act. The present petition is not tenable as the Petitioner has an alternative remedy of filing an appeal.
 - Rule 86A of the CGST rules does not require any hearing to be granted to the Petitioner

⁶ TS-43-HC(BOM)-2022-GST



before blocking the ECRL. The evidence collected during the investigation by the department is sufficient to invoke the blocking of the ECRL.

- The Hon'ble Bombay High Court held as follows:
 - The Petitioner has an option to file an appeal against any order passed under the Act. However, in this case, the action has been taken under the provisions of CGST Rules and hence no alternate remedy is available to the Petitioner.
 - Rule 86A of the CGST Rules clearly states that the Commissioner can delegate the power to block an ECRL to any officer not below the level of Assistant Commissioner. In the present case, the action is taken by the Deputy Commissioner, who was duly authorised by the Commissioner and hence the Petitioner's contention about the jurisdiction is not tenable.
 - The amount of ITC lying in the ECRL of the Petitioner could be considered as its property; however, the restriction of its use under rule 86A cannot be viewed as seizure or attachment of property. The custody of the property remains with the taxpayer, but disability is created on its utilisation/ claim refund.
 - Provisional attachment of property can be done only when any proceeding initiated under the Act is pending. However, for invoking the power to block an ECRL, no such requirement has been enacted in the Act. Only the conditions mentioned under rule 86A have to be satisfied. Hence, the powers under provisional attachment of property and blocking of ITC is distinct from each other.
 - An order passed for blocking of ITC cannot be treated as one passed for attachment of property.
 - The conditions mentioned under rule 86A of the CGST Rules require that the Commissioner should be satisfied, based on the material available, of the need to block the ECRL and the reasons for this must be recorded in writing.

Both the above conditions have to be satisfied to invoke the powers under rule 86A.

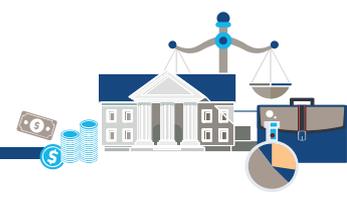
- Such blocking of ERCL is only to the extent of credit wrongly availed or fraudulently taken.
- Powers conferred under rule 86A are drastic in nature and all the requirements of the rule should be complied before exercising the said power.
- The competent authority must have valid reasons, based on the material available, for invoking the powers conferred under rule 86A and it cannot be invoked without sufficient evidence.
- The powers given under rule 86A must be exercised fairly and reasonably by following the principles of natural justice. Also, a post decisional hearing should also be granted to the Applicant within a reasonable period of time.
- In the present case, the action of blocking the ECRL has been done without having the required evidence / reasons, and such reasons have not been recorded by the Respondents. Furthermore, the action of the Respondents is bad in law since the amount of wrongly availed ITC has not been quantified as required under rule 86A. The GST department cannot enable a blanket disallowance of utilising the available ITC in the ECRL.
- The blocking of ECRL was done under the directions issued by the higher authorities and not because the Respondent was independently satisfied about the need to block the ECRL. Thus, the manner of invoking rule 86A is not proper in the present case.

Judgment

The Hon'ble Bombay High Court partially allowed the writ petition and held that the impugned order is arbitrary, illegal, and liable to be set aside.

Dhruva Comments:

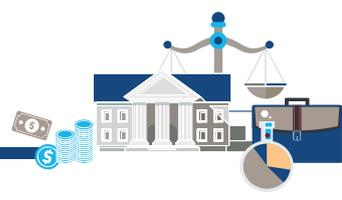
It is a welcome judgment laying down the framework within which the power to restrict utilisation of an ECRL should be exercised. Since such administrative powers



would have financial consequences for the taxpayer, the test of reasonableness should be satisfied.

On similar lines, CBIC has issued a circular⁷ providing certain specific guidelines for invoking rule 86A of the CGST Rules.

⁷ Circular no. 20/16/05/2021-GST dated November 2, 2021





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