

2020 (10) TMI 808 - AUTHORITY FOR ADVANCE RULING, TAMILNADU

IN RE: M/S. KUMARAN OIL MILL

TN/33/AAR/2020

Dated: - 28 September 2020

Input tax credit - proportionate claim - procurement of Inputs/Capital Goods and 'Input services' for setting up the Solar PV system and installation of the same - whether the goods/services procured can be considered as 'Capital goods'? - what should be considered as total Turnover for arriving at the attributable credit?

HELD THAT:- As per Section 16 (1), it is evident that a registered person is 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. Section 16 (2) provides that such person will be eligible for such credit only when he is in possession of a tax invoice, has received the goods or services, paid the tax charged on such supply and has furnished the returns. Section 16 (3) provides that if depreciation is claimed the ITC on the said tax component is not available. The plain reading of the above statute and applying to the case at hand, prima facie, it indicates that the credit of Input tax on the inputs/inputs services used in setting up of the 'Renewable Energy Generator' in the furtherance of their business, is permitted under these provisions. The applicant has stated that they are in receipt of the goods/services, possess the invoices and paid the taxes and thus fulfills the conditions stipulated under Section 16(2) and have not claimed depreciation under Income-tax provisions, thus have fulfilled provisions of Section 16(3) of the Act.

The taxes paid on Inputs/capital goods and Input services used in the course or furtherance of business are permitted to be availed as per Section 16 of the Act. Section 17 (2) provides for apportionment of credits pertaining to supply of taxable supply when the said Inputs, Capital Goods and Input services are used to make both exempted and taxable supply - the RE power generator is used in the business by the applicant and the output of such RE Power Generator is Electricity and Renewable Energy Certificate - the proportionate claim of Input Tax Credit is available for the applicant and the provisions of Section 17(2) applies to the case at hand.

Whether they could consider the solar panels and its installation cost as 'Capital Goods used for both taxable and exempt purpose and claim the Input Tax as Prescribed in Rule 43 of the Act? - HELD THAT:- The applicant has furnished only the list(Statement) with the particulars as detailed above, Invoice No., Taxable Value, Tax Rate, Type of Tax and Total Tax Value. The said statement consists of both 'Goods' and 'Services'. While 'Goods' if capitalised may be termed as 'Capital Goods', the services are in no way 'Capital Goods' but are 'Input Services' consumed by the applicant - the applicant has just furnished the list and has not furnished any documentary proof to establish that the goods listed in the statement furnished have been capitalised in their books of accounts - thus, subject to the goods being capitalised in their books of account, the applicant is eligible to claim Input tax on such goods as 'Capital Goods' and the Provisions of Rule 43 of the GST Rules is applicable to determine the eligible credit in respect of the taxable supplies made by them. In respect of Inputs and Input services, the attributable credit is to be arrived at by applying Rule 42 of the GST Rules.

The applicant has further sought to clarify as to whether they could apportion the common credit using total turnover of the registered person for the tax period, i.e., Turnover of the tax period of existing business + Turnover of the tax period of the new Power Generation business - it is found that both under Rule 42 and Rule 43, the 'F' in the Formula denotes the 'Total Turnover[in the State] of the registered person during the tax period'. It is clear that the rule wants the 'total turnover' to be considered against 'F' in the formulae under Rule 42 & Rule 43 of the GST Rules. In the applicant's case at hand, therefore, we clarify that the 'Total Turnover of the Registered Person' should include the 'Turnover of Edible Oil Business' and 'Total Turnover of Power Generation Business'.

Thus, the applicant is eligible for Proportionate claim of Input Tax Credit as per Section 17 (2) of the CGST/TNGST Act read with Rule 42/Rule 43 of CGST/TNGST Rules 2017 on the Goods/Services used in installation of Renewable Power Generation Plant under the 'REC Scheme'.

Judgment / Order

**THIRU B. SENTHILVELAVAN., I.R.S, AND THIRU KURINJISELVAAN V.S., M.SC., (AGRI.),
M.B.A.,MEMBER,**

Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

M/s. Kumaran Oil Mill, No.19, Ayyasamy Nagar, Palayakottai Road, Kangayam, 638 701.(hereinafter called the Applicant) are registered under GST with GSTIN. 33AARFK9215C1ZD. They are engaged in the business in Edible oil and now starting a new business vertical which deals in 'Generation and Distribution of Renewable Energy' using the same name and the existing GSTIN. The applicant has sought Advance Ruling on:

Whether proportionate claim of input tax credit for procurement of capital goods can be made for power generation business?

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of ₹ 5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The applicant has stated that in the new business they generate electricity through Photovoltaic Solar panels and sell it to third parties with whom agreements were made. The distribution is made using the grid facilities of Tamil Nadu Electricity Board, for which charges are paid to TNEB. They have stated that the Commission has framed "Central Electricity Regulatory Commission(Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010", to facilitate and promote the development of market in electricity based on renewable energy sources. In the regulation, the commission has highlighted that Renewable Energy Certificate (REC) will be issued to the Solar Power Generators(SPG) on the basis of electricity generated. As per the 4th amendment of the above regulation dated 23rd March 2016, the commission has made SPGs who sell electricity component to third party through open access eligible for the entire energy generated from such plant for participating in the REC scheme, subject to the condition that such generator do not avail or do not propose to avail any benefit in the form of concessional/promotional

transmission or wheeling charges or banking facility benefit. The applicant has stated that they have taken this opportunity and are entering the business in above scheme of selling electricity component to third party through 'Open access' foregoing concessional benefit, so that they become eligible for REC. The REC is allotted to the SPGs based on the power generated and injected into the Grid, which is regulated by National Load Despatch Centre(NLDC), the central agency for regulations of REC. Currently 1 REC is issued for every 1MWh(1000KWh) of electricity generated and injected into grid. These REC are tradable commodity which has active market consisting of Renewable Purchase Obligated Entities(RPO). These are traded through Indian Energy Exchange(IEX). These REC are traded under HSN 4907-Unused postage, revenue or similar stamps of current or new issue in the country in which they have, or will have, a recognised face value; stamp-impressed paper; banknotes; chequ forms; stock, share or bond certificates and similar documents of title [other than Duty Credit Scrips]. Based on the Circular No. 46/20/2018-GST, these REC fall under the said HSN which will be charged GST at 12%. The Electricity Generated is sold under HSN 2716 which is exempt by Notification No. 2/2017-C.T.(Rate) dated 28th June 2017. The applicant has stated that PV solar modules attracts GST 5% under HSN 8469 and the setting up costs attracts GST @ 18%.

2.2 The applicant has further stated that based on the above facts, the sales turnover of the business consists of taxable supply and exempt supply. The applicant requested to know whether they can consider the solar panels and its installation cost as 'Capital goods used for both taxable and exempt purpose' and claim the Input tax as prescribed in Rule 43 of CGST Act. They claim that if the above ruling allows them to treat the Solar Panels as 'Capital Goods used for both taxable and exempt purpose' then it attracts of the provisions of section 17 (2) of CGST Act. As per the provisions of Section 17 (2), the input tax component will become common credit that has to be treated with Rule 43, which prescribes the common credit be apportioned over period of 60 months. While calculating the above Eligible credit for a tax period (one month), they use the formula: $T_e = (E/F) \times T_r$. In which the resulting T_e portion will be reversed. In the above formula, as given in Rule 43, "F" denotes the total turnover (in the State) of the registered person during the tax period. In their case, the Total turnover of the registered person during the tax period will consist of the Turnover of the existing oil business and the proposed Power generation business, as they do both the business under one GST registration number. Since the input tax component of Solar Panels being Common Credit (T_r), and the apportionment of common credit is based on the turnover of the registered person for the period and not the business vertical. They have further required to clarify as to whether they could apportion the common credit based on the above formula, using total turnover the registered person for the tax period. i.e. Turnover of the tax period of existing business + Turnover of the tax period of the new Power generation business.

3.1 The applicant was heard on 11.02.2020. The Authorised representative appeared before us. They stated that they are about to commission a solar energy project of 3MW. They intend to come under REC scheme (Renewable energy certificate) which is further sold in Indian Energy Exchange. The REC are given by Central Electrical Regulatory commission through an online Portal. The applicant need not pay anything to get this certificate. This REC will be bought by usually thermal Power generating plants who are obligated to buy them. They charge 12% GST as per the Board's Circular, under HSN 4907. The question is about the Capital goods including solar cells, that they use to generate electricity and its input tax paid can that be used as ITC to pay GST, as these capital goods are used to produce electricity. They stated that this electrical energy is exempt under GST at Sl. No. 104 of Notification No. 02/2017. They undertook to submit a write up on each of capital goods in two weeks time. During hearing, they submitted copies of invoices of goods, services used for installation, letter from TANGEDCO approving the establishing 3MW solar power plant for Third Party sale under REC Scheme dated 11.12.2019, consent letter dated 12.11.2019 of Aravind Eye Hospitals to become Third Party User with the applicant.

3.2 The state jurisdictional officer who has the administrative jurisdiction over the applicant, attended the hearing. He gave a written submission quoting ***Karnataka Advance Ruling in the case of [Shri. Kesav Cement and Infra Limited = 2019 \(10\) TMI 570 - AUTHORITY FOR ADVANCE RULING, KARNATAKA](#)*** and stated that the applicant is doing business both in taxable and exempted goods and they can avail the eligible input tax credit, and it can be determined as per the provisions of the relevant provisions of the Act.

3.3 The applicant vide their letter dated 17.02.2020 received on 26.02.2020, furnished the list of Capital Goods and Services that were used in commissioning of their Solar Power Plant but had not furnished the write-up on each of the capital goods as undertaken by them during the hearing.

4.1 Due to the prevailing PANDEMIC situation and in order not to delay the proceedings, the appellant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital media vide e-mail dated 03.07.2020. The applicant consented and the hearing was held on 30.07.2020 virtually. The applicant along with the Authorised representative participated in the hearing. A written submission was shared (via e-mail) and the same was taken on record. They reiterated their submissions and requested clarification on their eligibility to credit of tax paid on the Solar Panels, erection, maintenance and stated that this is their primary concern & if allowed, whether the turnover of the existing business should also form a part to arrive at the eligible credit.

4.2 In the written submissions furnished on 30.07.2020, it is inter-alia stated that:-

- *In the Regulated process of RE Power generation, all approvals from the Central Electricity Regulatory Commission (CERC) and Tamil Nadu Generation and Distribution Corporation were taken and Commercial production has commenced from March 2020 under REC Scheme - Third Party Sale.*
- *Kumaran Oil Mills has got approval from the NLDC under REC Scheme - Third Party Sale. Under this REC scheme of Renewable Solar Power generation, as per the Electricity Act, 2013, CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, they are eligible for One Renewable Energy Certificate (REC) for every 1MWh of energy produced and injected in grid.*
- *With this, turnover (Receipts) from the process of Solar power Generation will consist of two commodities:*
 1. *Electric Energy- HSN 2716 - Exempt by Notification No. 2/2017-C.T.(Rate).*
 2. *Renewable Energy Certificate - HSN 4907 - Unused postage, revenue or similar stamps of current or new issue in the country in which they have, or will have, a recognized face value; stamp-impressed paper; bank notes; cheque forms; stock, share or bond certificates and similar documents of title [other than Duty Credit Scrips] - Taxable at 12% as clarified by Circular No. 46/20/2018- GST.*
- *With respect to the Capital goods procured by them, the condition for availing Input tax under Section 16 (2) and Section 16 (3) are satisfied by them and the invoices were submitted to the authority during their first personal hearing*
 1. *Possession of the invoices issued by the supplier (submitted with the authority)*
 2. *Has received the goods. (installed and operations started)*
 3. *The tax has been actually paid by the supplier. All the invoices are reflected in GSTR 2A of the applicant.*

4. All the payments with respect to capital goods are made.

5. Have not claimed depreciation on the Input Tax Credit portion of capital goods and are not capitalised in books.

- With respect to section 17(2), the capital goods used in RE Power generation results in both taxable turnover and exempt turnover. Since REC and Electricity are in two different forms, they want to clarify whether both REC and Electric Energy can be considered as “Supplies Effected by the Capital Goods” and claim input credit proportionately.
- They have referred to CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 of The Electricity Act, 2013, which governs the electricity generation business. The definition given in Para 2.1 (c) defines REC as “Certificate’ means the renewable energy certificate issued by the Central Agency in accordance with the procedures laid down by it and under the provisions specified in these regulations.”
- They also referred the Report submitted by ABPS Infrastructure Advisory Private Limited, that was released by Ministry of New and Renewable Energy in its website on June 2009. In the specified report, they have elaborated on the REC mechanism and the proposed framework in India. In Para 1.4 they have given Overview on REC mechanism as

“It is acknowledged that renewable energy generation entails production of certain environmental attributes apart from electricity generation per se. Thus, RE generator can sell two different products on account of renewable energy generation”.

- By referring to above regulations and the REC Mechanism practice that is adopted in India, it is specified that the REC is an output from the RE Power generation process. With this as a justification they want to consider REC as “Supplies Effected by the Capital Goods” as per Section 17 (2) and want to Claim Input Tax credit following Section 17(2) accordingly.

They have attached the List of Capital Goods; No Objection Certificate of TANGEDCO for establishing RE Power Plant in REC Scheme, Circular No. 46/20/2018-GS; CERC(Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations 2010; Extract of Statement of Objects and Reasons issued by CERC along with above Regulation; Extracts from Conceptual Framework report on REC Mechanism Submitted to Ministry of New and Renewable Energy by ABPS Infrastructure Advisory Private Limited, Published by MNRE in its website.

5. The central jurisdictional authority reported that there are no pending proceedings in the applicant’s case on the issues raised by the applicant in the ARA application in their jurisdiction

6. We have carefully examined the statement of facts, supporting documents filed by the Applicant, all the additional submissions made during the hearings and thereafter and the submissions of the Jurisdictional authorities. The applicant are engaged in the business of Edible Oil and are starting a new business which deals in ‘Generation and Distribution of Renewable Energy’ under the same name and the existing GSTIN. The applicant has stated that they have been permitted by the TANGEDCO to establish RE Power Plant for supply of electricity to third Parties under the REC Scheme, wherein the applicant are extended Renewable Energy Certificate(REC) for the electricity generated and uploaded in the grid. These REC can be traded in Power Exchange and are subjected to GST (if, 12% as has been clarified vide Circular No. 46/20/2018-GST. The contention of the applicant is that in the RE power plant set up by them under the REC scheme, electricity and REC are the two outputs available to them, while

supply of Electricity is exempted, REC is chargeable to GST. The applicant has sought Advance Ruling on the Question:

Whether proportionate claim of input tax credit for procurement of capital goods can be made for power generation business?

They have further required clarification on whether they can consider the solar panels and its installation cost as 'Capital goods used for both taxable and exempt purpose' and claim the Input tax as prescribed in Rule 43 of CGST Act; and whether they can apportion the common credit based on the total turnover of the registered person for the tax period i.e., Turnover of the tax period of existing business + Turnover of the tax period of the new Power Generation business.

7. From the submissions before us, we find that the question which needs answer is on the eligibility to credit of the tax paid on the Inputs/Capital Goods and 'Input services' procured by them for setting up the Solar PV system and installation of the same and clarifications on whether the goods/services procured can be considered as 'Capital goods' & what should be considered as total Turnover for arriving at the attributable credit. The Question and the clarifications raised are covered under Section 97 (2) (d) of the GST Act 2017 and therefore admissible before this authority for consideration and pronouncement of ruling.

8.1 The applicant has proposed to engage in the business of 'Renewable Energy Generation' and has sought the approval of TANGEDCO for their proposal to Generate Electricity under the 'Renewable Energy Certificate Scheme. TANGEDCO has approved the proposal of the applicant to establish 3MW solar Power Plant and wheel the energy generated for Third Party under the REC Scheme vide Lr. No. CE/ NCES/ SE/ Solar/ EE/ SCB/ AEE 2/F.M/s. Kumaran Oil Mill/D/1541/19 dated 11.12.2019. The applicant has furnished the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 which stipulates the requirements, categories, eligibility, issuance of certificates, pricing, etc. It is seen that a renewable energy generator selling electricity component to third party through open access shall be eligible for the entire energy generated from such plant for participating in the REC scheme subject to the condition that such generator do not avail or do not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges or banking facility benefit.; The Certificate issued to eligible entity by the Central Agency may be placed for dealing in any of the Power Exchanges as the Certificate holder may consider appropriate, and such Certificate shall be available for dealing in accordance with the rules and byelaws of such Power Exchange; Thus it is seen that when a person is participating in the REC Scheme and generates Electricity which is supplied to third party, he is eligible to REC equivalent to the Electric energy generated by them which can be traded by him for supply of the same. Further, Tax Research Unit vide Circular No. 46/20/2018- GST dated 6th June 2018 has clarified that REC are classifiable under heading 4907 and attract 12% GST.

8.2 The supply of REC by the applicant is chargeable to GST while the electrical Energy generated and supplied is exempted under GST. The applicant having been approved to establish 3MW solar Power Plant under the REC Scheme, has established the Solar Power Plant by procuring the necessary inputs/capital goods and services. It is without doubt that if the electrical energy is not generated and wheeled, REC equivalent to that Electrical Energy will not be available for trading. Thus it emanates that with the installation of the 'Renewable Energy Generator, the applicant generates Electrical Energy (exempted under GST) and gets REC(taxable under GST). i.e., on installation of the Renewable Energy Generator, the applicant engages in the generation of Electrical energy resulting in both exempted and taxable supply. The applicant has stated that the condition for availing Input Tax under Section 16 (2) and Section 16 (3) are satisfied by them and has sought to clarify their proportionate eligibility to the credits of taxes paid for Installation of the Renewable Energy Generator in as much as the supply of REC is taxable.

9.1 Before proceeding further, the Statutory provisions relevant to Input Tax Credit are analysed as under. Section 16 (1) to (3) of CGST Act 2017 85 TNGST Act 2017 provides the “Eligibility and conditions for taking Input tax credit” is as follows:

16. (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 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;*

(c) subject to the provisions of section 41, 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:

(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 Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

From the above, as per Section 16 (1), it is evident that a registered person is 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. Section 16 (2) provides that such person will be eligible for such credit only when he is in possession of a tax invoice, has received the goods or services, paid the tax charged on such supply and has furnished the returns. Section 16 (3) provides that if depreciation is claimed the ITC on the said tax component is not available. The plain reading of the above statute and applying to the case at hand, prima facie, it indicates that the credit of Input tax on the inputs/inputs services used in setting up of the ‘Renewable Energy Generator’ in the furtherance of their business, is permitted under these provisions. The applicant has stated that they are in receipt of the goods/services, possess the invoices and paid the taxes and thus fulfills the conditions stipulated under Section 16(2) and have not claimed depreciation under Income-tax provisions, thus have fulfilled provisions of Section 16(3) of the Act.

9.2 Section 17 of the Act gives the provisions relating to Apportionment of credit and blocked credits. The provision relevant to apportionment in case of usage for both taxable and exempted supply is given under Section 17(2) of the Act, which is given under for ease of reference:

“(2) Where the goods or services or both we used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit

shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.”

The provision relevant to blocked credits is given under Section 17 (5) of the Act, which is as under:

(5) 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:-

.....

(c) works contract services 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 or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

.....

Explanation.-*For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means 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-*

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises.

Section 17 (1) restricts the eligibility to credit to the extent attributable to the taxable supply. In the case at hand the applicant supplies Edible Oil, Electrical Energy and Renewable Energy Certificate. It has been put forth before us that REC are traded in Power Exchanges with stipulated Regulations. Also, it has been clarified that such REC are taxable under GST. The only thing which requires clarity is whether electricity is the only output of the Solar PV Cell Generator put up by the applicant or REC can also be called as an output of the installed Power Generator. The applicant is engaged in the business of generating Electric Energy through the Solar PV cell generator under the REC scheme which as observed in the Para 7 Supra, entitles the applicant, REC equivalent to the Electrical energy generated and uploaded in the grid for supply to the third parties, thus by the `Renewable Solar PV Generator` installed, electricity is generated and the applicant is automatically eligible to the REC equivalent to such generation of electricity. To become eligible to REC, it is necessary to generate electricity using RE sources and thus it cannot be held that the output of PV Generator is only `Electrical Energy` but REC is also as an output of generation of Electricity using RE sources. Hence Provisions under Section 17 (2) of the Act is applicable to the case at hand. Section 17 (5) which states the blocked credits, under (c) and (d) provides blocking of credits works Contract service / construction but it excludes `Plant and Machinery` which is defined under the Explanation to the Section. Applying the above to the case at hand, it is evident that the Solar PV Cell Generator being a Plant the related Credits are not blocked under this Section.

9.3 From the above statutory provisions, it is clearly evident that taxes paid on Inputs/capital goods and Input services used in the course or furtherance of business are permitted to be availed as per Section 16 of the Act. Section 17 (2) provides for apportionment of credits pertaining to supply of taxable supply when the said Inputs, Capital Goods and Input services are used to make both exempted and taxable supply. As discussed in Para 8.1, the RE power generator is used in the business by the applicant and the output of such RE Power Generator is Electricity and Renewable Energy Certificate. Thus to answer

the question raised, we hold that the proportionate claim of Input Tax Credit is available for the applicant and the provisions of Section 17(2) applies to the case at hand.

10.1 Having answered the question raised, the clarifications sought are taken up for consideration. The applicant has sought clarification as to whether they could consider the solar panels and its installation cost as 'Capital Goods used for both taxable and exempt purpose and claim the Input Tax as Prescribed in Rule 43 of the Act.' In this connection, we find that the applicant has furnished a Statement as the List of Capital Goods containing the particulars which are described as 'Switch & Switch Board', 'Inverter', 'Solar Panel(Imported)', 'Transformer', 'UPS Panel', 'Import Clearing Service', 'Installation & Consultancy'. Section 2 (19) of the Act defines 'Capital Goods' as

(19) "capital goods" means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;

The applicant has furnished only the list(Statement) with the particulars as detailed above, Invoice No., Taxable Value, Tax Rate, Type of Tax and Total Tax Value. The said statement consists of both 'Goods' and 'Services'. While 'Goods' if capitalised may be termed as 'Capital Goods', the services are in no way 'Capital Goods' but are 'Input Services' consumed by the applicant. Further, we find that the applicant has just furnished the list and has not furnished any documentary proof to establish that the goods listed in the statement furnished have been capitalised in their books of accounts. Therefore, we clarify that subject to the goods being capitalised in their books of account, the applicant is eligible to claim Input tax on such goods as 'Capital Goods' and the Provisions of Rule 43 of the GST Rules is applicable to determine the eligible credit in respect of the taxable supplies made by them. In respect of Inputs and Input services, the attributable credit is to be arrived at by applying Rule 42 of the GST Rules.

10.2 The applicant has further sought to clarify as to whether they could apportion the common credit using total turnover of the registered person for the tax period, i.e., Turnover of the tax period of existing business + Turnover of the tax period of the new Power Generation business. We find that both under Rule 42 and Rule 43, the 'F' in the Formula denotes the 'Total Turnover[in the State] of the registered person during the tax period'. It is clear that the rule wants the 'total turnover' to be considered against 'F' in the formulae under Rule 42 & Rule 43 of the GST Rules. In the applicant's case at hand, therefore, we clarify that the 'Total Turnover of the Registered Person' should include the 'Turnover of Edible Oil Business' and 'Total Turnover of Power Generation Business'.

11. In view of the above, we Rule as under:

RULING

The applicant is eligible for Proportionate claim of Input Tax Credit as per Section 17 (2) of the CGST/TNGST Act read with Rule 42/Rule 43 of CGST/TNGST Rules 2017 on the Goods/Services used in installation of Renewable Power Generation Plant under the 'REC Scheme'

Citations: in 2020 (10) TMI 808 - AUTHORITY FOR ADVANCE RULING, TAMILNADU

1. [2019 \(10\) TMI 570 - AUTHORITY FOR ADVANCE RULING, KARNATAKA](#)