# DAEWOO-TPL JV

Authority for Advance Ruling — Maharashtra

**GST-ARA-113/2018-19/B-41, Mumbai, dated 24.04.2019 (handwritten date…** Dated **24.04.2019**

## Q Questions Before the Authority

- Whether the applicant, although eligible to claim refund of inverted duty structure under Section 54(3) of the CGST Act, can claim refund of input tax credit availed on input services (and remaining unutilised) in whole or in part, in view of Notifications 21/2018 and 26/2018.
- If the answer to the first question is negative, how Notifications 21/2018 and 26/2018 apply to a scenario with stated figures: works contract revenue of INR 1,000 with 12% output GST of INR 120, ITC on inputs of INR 65, ITC on input services of INR 90, and net unutilised balance of INR 35, including whether ITC of input services may first be set off against output tax.

## F Facts

Daewoo-TPL JV is a joint venture of Daewoo Engineering and Construction Company and Tata Projects Limited, formed to bid for and execute Package 2 of the Mumbai Trans Harbour Link (MTHL) project awarded by MMRDA. The contract is a works contract taxed at 12% outward GST, while the major inputs, input services and capital goods carry GST at 18% or 28%, so input tax credit accumulates. The applicant therefore has an inverted duty structure and unutilised credit, and it sought to know whether that credit on input services is refundable.

## H Ruling

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| **Q1: Whether refund of inverted duty ITC under s.54(3) extends to ITC on input services (unutilised) under Notifications 21/2018 and 26/2018** | **No. Both notifications apply and do not allow refund of ITC on input services, in whole or in part.** | Based on the definition of 'input' in s.2(59) and the definition of 'Net ITC' in Notification 26/2018. The Authority accepted that rules cannot override the Act but held that s.54 is applied through Rule 89. |
| **Q2: How Notifications 21/2018 and 26/2018 apply to the stated financials (ITC on inputs INR 65, input services INR 90, output tax INR 120, unutilised INR 35)** | **Not answered.** | The Authority held that the question concerns the formula for calculating refund and is not within Section 97(2) of the CGST Act, so it was not answered. |

The Authority held that Notifications 21/2018 and 26/2018 apply to the applicant and prescribe the method for refund under Section 54(3), so refund of ITC on input services (and remaining unutilised) is not allowed in whole or in part. The Authority declined to answer the second question, holding that it concerns the calculation formula, which falls outside the matters listed in Section 97(2).

## R Reasoning

The Authority accepted that subordinate legislation cannot override the statute, but held that Section 164


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empowers rules for carrying out Section 54, so refund under Section 54 must be computed under Rule 89 as amended. It read Section 54(3)(ii), which refers to credit accumulated on account of the rate of tax on inputs, together with the s.2(59) definition of 'input' (goods only), and concluded that the amended Rule 89(5) formula and Notification 26/2018's 'Net ITC' definition exclude input services. It relied on the Supreme Court's observations in Gwalior Rayon Mills on delegated legislation. On the second question, it applied Section 95 and Section 97(2)(a) to (g) and held that the formula question is not a ruling category.

## P Provisions Relied On

- Section 54(3) of the CGST Act, 2017 (including proviso (ii))
- Section 2(59) CGST Act (definition of 'input')
- Section 2(62) and 2(63) CGST Act (input tax and input tax credit)
- Section 164(1) CGST Act (power to make rules)
- Section 95 and Section 97(2)(a) to (g) CGST Act
- Rule 89(5) CGST Rules, 2017 (as amended)
- Notification No. 21/2018-Central Tax (Rate) dated 18.04.2018
- Notification No. 26/2018-Central Tax dated 13.06.2018

## ! For the Practitioner

Practitioners with inverted duty claims involving input services should note that this ruling reads Notifications 21/2018 and 26/2018 as excluding ITC on input services from the Rule 89(5) refund formula. It is an advance ruling binding only on the applicant and the Authority's reasoning on the statute is open to challenge, particularly the applicant's argument that s.54(3) contains no such restriction. The ruling does not decide the arithmetic of the Rule 89(5) formula, which the Authority declined to address, so the set-off sequence in the second question remains unresolved. Check the appellate position before relying on it.

### Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> maharashtra aar 113 2018-19 daewoo-tpljv 24.04.19.pdf

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