

कार्यालय: अग्रिम विनिर्णय प्राधिकरण
वाणिज्य-कर विभाग, भूतल
विकास भवन, बेली रोड, पटना-800001.

सर्वश्री उत्तर बिहार ग्रामीण बैंक, शर्मा कम्पलेक्स, 1, कलामबाग चौक, बिहार, मुजफ्फरपुर-842001

अग्रिम विनिर्णय केस संख्या (मैनुअल) – **AR(B)-04/2019-20**

अग्रिम विनिर्णय ID – **AD100220013399R**

उपस्थित

1. श्री धर्मजीत कुमार, अपर आयुक्त, केन्द्रीय माल एवं सेवाकर, पटना, सदस्य (केन्द्रीय कर)
2. श्री अशोक कुमार झा, अपर आयुक्त, राज्य माल एवं सेवा कर, पटना सदस्य (राज्य-कर)

आवेदक का नाम	सर्वश्री उत्तर बिहार ग्रामीण बैंक, शर्मा कम्पलेक्स, 1, कलामबाग चौक, बिहार, मुजफ्फरपुर, 842001
GSTIN	10AAAJU0238J2ZE
आवेदन करने की तिथि	12.02.2020
क्षेत्राधिकार प्राधिकार-केन्द्र	CGST Authority, Muzaffarpur East Range
क्षेत्राधिकार प्राधिकार-राज्य	राज्य कर संयुक्त आयुक्त, मुजफ्फरपुर पश्चिमी अंचल, मुजफ्फरपुर
आवेदक की ओर से प्रतिनिधित्व	श्री राजेश कुमार खेतान, चार्टर्ड एकाउंटेंट
फीस का भुगतान	CGST Rs. 5000/- Dated. 16.03.2020 (DRC-03 के माध्यम से) एवं SGST Rs. 5000/- Dated. 12.02.2020 Total- Rs. 10,000/-

केन्द्रीय माल और सेवाकर अधिनियम, 2017 तथा बिहार माल और सेवाकर अधिनियम, 2017 की धारा 98 की उपधारा (4) के अधीन आदेश

1. आवेदक एक बैंक है। इनके द्वारा अग्रिम विनिर्णय के लिये दिए गए आवेदन में निम्नलिखित प्रश्न उठाया गया है :-

(i) Applicant is engaged in the business of banking as a regional Rural Bank. It accepts deposit from its customers. It is statutorily require to pay premium to Deposit Insurance and Credit Guarantee Corporation (In short "DICGC) on these deposits, on which GST is collected by the DICGC. Now the bank is availing and intends continue to avail credit of GST paid, as prescribed under respective GST Acts, as it is an inward supply for the purpose of its

banking business. To avoid any future litigation, bank now seek advance ruling, whether input credit of GST on this inward supply is just and proper under the GST law?

2. आवेदक द्वारा आवेदन के क्रमांक 15 “Statement of relevant facts having a bearing on the question(s) raised के अंतर्गत अलग से जो तथ्य संलग्न किए गए हैं, में बताया गया है कि:—

(i) The applicant has only business activity of banking and related financial services and its certain outward supplies are chargeable to GST. Applicant collects Goods and Service Tax, on its taxable outward supplies and makes payment to the Government exchequers as per provisions of the law.

(ii) As applicant also provides certain exempted services, therefore, it exercises option given under section 17(4) and avail only fifty percent of eligible input tax credit on inputs, capital goods and input services in a taxable period.

(iii) Accordingly, fifty percent of GST paid on DICGC premium is being availed by the applicant in a taxable period, as it is statutorily required for the bank to obtain insurance of deposit, which has only been accepted by it in the course of its business or furtherance of business.

3. आवेदक के आवेदन से स्पष्ट है कि आवेदक द्वारा CGST/SGST Act, 2017 की धारा 17(4) में दिए गए Option के अनुसार प्रतिमाह उपलब्ध ITC का 50 प्रतिशत का उपयोग किया जाता है एवं इस अग्रिम विनिर्णय आवेदन में उनके द्वारा ऐसा करने के नियमाकूल होने के बिन्दु पर अग्रिम विनिर्णय माँगा गया है।

4. अग्रिम विनिर्णय हेतु दिए गए आवेदन के निष्पादन हेतु सर्वप्रथम CGST/SGST Act/Rule, 2017 के अंतर्गत Registered Person विशेष कर बैंकिंग कम्पनी द्वारा Input Tax के Credit लिए जाने के Entitlement के लिये किए गए प्रावधान धारा 16, धारा 17 एवं Rule 38 का अवलोकन करना होगा, जो निम्नवत् है :-

Sec. 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, 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 installments, the registered person shall be entitled to take credit upon receipt of the last lot or installment:

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 Income-tax 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 invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

[Provided that the registered person shall be entitled to take 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.]

Sec 17. Apportionment of credit and blocked credits.- (1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(2) Where the goods or services or both are 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.

(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

[Explanation:- For the purposes of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said schedule.]

(4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(a) *motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the and other conveyances except when they are used— (i) for making the following taxable supplies, namely:—*

(A) *further supply of such vehicles or*

(B) *transportation of passengers; or*

(C) *imparting training on driving such vehicles*

(aa) *vessels and aircraft except when they are used-*

(i) for making the following taxable supplies, namely:-

(A) *Further supply of such vessels or aircraft; or*

(B) *Transportation of passengers; or*

(C) *Imparting training on navigating such vessels; or*

(D) *Imparting training on flying such aircraft;*

(ii) *for transportation of goods;*

(ab) *service of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa)*

Provide that the input tax credit in respect of such services shall be available—

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged-

(I) in the manufacture of such motor vehicles, vessels or aircraft; or

(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance;

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession;

Provide that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.]

(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 clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples;

and

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

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

Rule 38. Claim of credit by a banking company or a financial institution.—A banking company or a financial institution, including a non-banking financial company, engaged in the supply of services by way of accepting deposits or extending loans or advances that chooses not to comply with the provisions of sub-section (2) of section 17, in accordance with the option permitted under sub-section (4) of that section, shall follow the following procedure, namely,—

(a) the said company or institution shall not avail the credit of,—

(i) the tax paid on inputs and input services that are used for non-business purposes; and

(ii) the credit attributable to the supplies specified in sub-section (5) of section 17, in

FORM GSTR-2;

(b) the said company or institution shall avail the credit of tax paid on inputs and input services referred to in the second proviso to sub-section (4) of section 17 and not covered under clause

(a);

(c) fifty per cent. of the remaining amount of input tax shall be the input tax credit admissible to the company or the institution and shall be furnished in FORM GSTR-2;

(d) the amount referred to in clauses (b) and (c) shall, subject to the provisions of sections 41, 42 and 43, be credited to the electronic credit ledger of the said company or the institution.

अग्रिम विनिर्णय:- बैंकिंग कम्पनी द्वारा केन्द्रीय/बिहार सेवा कर अधिनियम, 2017 की धारा 17(4) के अंतर्गत दिए गए Option को अपनाने हेतु वांछित प्रक्रिया एवं शर्त केन्द्रीय/बिहार सेवाकर नियमावली 2017 के नियम 38 में वर्णित हैं, जो स्वतः स्पष्ट हैं।

अतः यदि बैंकिंग कम्पनी द्वारा केन्द्रीय/बिहार सेवाकर नियमावली, 2017 के नियम 38 में दिए गए प्रक्रिया एवं शर्तों का अक्षरशः पालन किया जाता है तो उनके द्वारा केन्द्रीय/बिहार सेवाकर अधिनियम, 2017 की धारा 17(2) के प्रावधानों का अनुपालन करने की बजाय धारा 17(4) में दिये गये प्रावधान का लाभ लिया जाना विधिसम्मत है।

ह0 / -
सदस्य,
बिहार अग्रिम विनिर्णय प्राधिकरण,
पटना।

ह0 / -
सदस्य,
बिहार अग्रिम विनिर्णय प्राधिकरण,
पटना।

ज्ञाप संख्या:-

दिनांक:-

प्रतिलिपि:-

1. मुख्य आयुक्त, CGST, Patna
2. राज्य कर आयुक्त-सह-सचिव, वाणिज्य-कर विभाग, बिहार, पटना
3. CGST Authority, Muzaffarpur East Range, Muzaffarpur
4. राज्य कर संयुक्त आयुक्त, मुजफ्फरपुर पश्चिमी अंचल, मुजफ्फरपुर एवं
5. सर्वश्री उत्तर बिहार ग्रामीण बैंक, शर्मा कम्पलेक्स, 1, कलामबाग चौक, बिहार, मुजफ्फरपुर-842001 को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

(धर्मजीत कुमार)
सदस्य,
बिहार अग्रिम विनिर्णय प्राधिकरण,
पटना।

(अशोक कुमार झा)
सदस्य,
बिहार अग्रिम विनिर्णय प्राधिकरण,
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