

**WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING
AT 14, BELIAGHATA ROAD, KOLKATA-700015**



Before:

Mr. Rakesh Kumar Sharma, Member

Mr. Randhir Kumar, Member

In the matter of

Appeal Case No. 05/WBAAAR/Appeal/2018 dated 06.07.2018

- And -

In the matter of :

An Appeal filed under Section 100(1) of the West Bengal Goods and Services Tax Act, 2017/Central Goods and Services Tax Act, 2017, by the Assistant Commissioner, CGST & CX, Tollygunge Division, Kolkata South Commissionerate.

Present for the Appellant: None

Present for the Respondent: Mr. Sandeep Kothari, Chartered Accountant, Authorised Representative

Matter heard on: 26.09.2018

Date of Order: 27.09.2018

This Appeal has been filed by the Assistant Commissioner, CGST & CX, Tollygunge Division, Kolkata South Commissionerate (hereinafter referred to as the "Appellant"), on 06.07.2018 against the Advance Ruling No. 07/WBAAR/2018-19 dated 30.05.2018 pronounced by the West Bengal Authority for Advance Ruling.

2. M/s GKB Lens Pvt. Ltd., holding GSTN No. 19AACCG3446M1ZA, re-seller and importer of Sun Glasses, Frames, Lenses, Contact Lenses, etc., having its Head Office in West Bengal (hereinafter referred to as "the Respondent"), transferring, *inter alia*, goods, namely, Optical Lenses and Frames for Spectacles and Accessories, from Head Office in West Bengal to its branches in other States, sought an Advance Ruling on the following issues-

- (a) whether the transfer of goods (optical lenses and frames for spectacles and accessories) from Head Office in West Bengal to its branches in other states, can be done at cost price, by applying the second proviso to Rule 28 of

CGST Rules, 2017 (instead of 90 % of MRP as required under the First Proviso to Rule 28 of CGST Rules, 2017, and

- (b) what is meant by the expression “where the recipient is eligible for full input tax credit” as used in the second proviso to Rule 28 of CGST Rules, 2017.

The Advance Ruling Authority ruled that-

“The applicant has the option of not supplying goods to its branches under the First Proviso of Rule 28 and is eligible to value these goods by applying the terms of the Second Proviso to Rule 28 of GST Act.

The expression “*where the recipient is eligible for full input tax credit*”, as used in the Second Proviso to Rule 28 of CGST Rules, 2017 means that the recipient will be eligible to take full input tax credit of the amount of tax paid by the supplier as mentioned in the respective invoice or any other document valid under Section 16(2)(a) of GST Act.”

3. The Appellant has filed an Appeal against the above Advance Ruling regarding the availability of Input Tax Credit on stock transfer from the Head Office of M/s GKB Lens Pvt. Ltd. to its branches in other States at Zero Value.

According to the Appellant “*the wordings of the Ruling dated 30.05.2018 has created an impression that the recipient would be eligible for Input tax Credit if the supplier paid the tax.*” Instead of those wordings the WBAAR should have declared in no uncertain terms that no input tax credit would be available for supply at Zero Value.

4. During the course of the hearing the Respondent submitted a copy of a tax invoice issued by the Head Office, which may be considered as a prototype invoice, as evidence of no tax being charged on supplies made at zero value. It was further submitted and stated that the Respondent has no objection to any clarification being added to the aforementioned Advance Ruling regarding the non-admissibility of credit of Input Tax on goods supplied at zero value.

5. From a plain reading of law laid down under section 16 of the GST Act, it is clear that, *inter alia*, input tax credit is available only when the recipient is in possession of a tax invoice or debit note issued by the supplier registered under the GST Act, and in case of a



supply between distinct and/or related persons, as between Head Office and Branches, the value declared in the invoice shall be deemed to be the open market value of the goods or services supplied. It is therefore clear that if the value declared in such invoice is zero no input tax credit is available to the recipient.

6. It is seen that the question raised by M/s GKB Lens Pvt. Ltd. was correctly answered by the Authority of Advance Ruling. However, it may be clarified that no input tax credit is available to the recipient of goods/service if the value declared by the supplier in the invoice/debit note is zero.

In the facts and circumstances discussed above the Ruling of the West Bengal Authority of Advance Ruling is modified to the extent that at the end of the second paragraph of the said ruling the following sentence will be added:

“No input tax credit, however, would be available for supply of goods / services at Zero Value.”

The Advance Ruling No. 07/WBAAR/2018-19 dated 30.05.2018, pronounced by the West Bengal Authority for Advance Ruling is modified accordingly and the Appeal stands disposed of.

A copy of this Order may be sent to the Appellant and the Respondent for their information.



Sd/-

(RANDHIR KUMAR)

Member

West Bengal Appellate Authority
for Advance Ruling

Sd/-

(RAKESH KUMAR SHARMA)

Member

West Bengal Appellate Authority
for Advance Ruling