

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, 8th floor, H-Wing, Mazgaon, Mumbai – 400010.

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)
BEFORE THE BENCH OF

(1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)

(2) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	27AACCH4231P1ZD
Legal Name of Applicant	Western Concessions Private Limited (formerly known as H-Energy Gateway Private Limited)
Registered Address/Address provided while obtaining user id	12th Floor, Knowledge Park, Hiranandani BusinessPark, Powai, Mumbai. 400076
Details of application	GST-ARA, Application No. 94 Dated 26.11.2018
Concerned officer	Division - III, Commissionerate Navi Mumbai
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Service Provision
B Description (in brief)	That applicant is engaged in regasification of Liquefied Natural Gas and delivering the same to customers.
Issue/s on which advance ruling required	(iv) admissibility of input tax credit of tax paid or deemed to have been paid
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act”] by **Western Concessions Private Limited (formerly known as H-Energy Gateway Private Limited)**, the applicant, seeking an advance ruling in respect of the following question.

Whether the applicants are eligible to avail ITC of GST paid on goods and services used for construction of Tie-in pipeline, for delivery of re-gasified LNG from FSRU to the National Grid.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression ‘GST Act’ would mean CGST Act and MGST Act.

02. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-

STATEMENT OF RELEVANT FACTS HAVING A BEARING ON THE QUESTION(S) ON WHICH ADVANCE RULING IS REQUIRED.

1. M/s. Western Concessions Private Limited (formerly known as H-Energy Gateway Private Limited (hereinafter referred to as "the applicant") having its corporate head office at 12th Floor, Knowledge Park, Hiranandani Business Park, Powai, Mumbai, is, *inter-alia*, engaged in regasification of Liquefied Natural Gas and delivering the same **to customers**.
2. The applicant has obtained registration and holding valid registration certificate issued under Central Goods and Services Tax Act, 2017 ("CGST Act").
3. The applicant is setting up a Liquefied Natural Gas (LNG) re-gasification project at Jaigarh port in the state of Maharashtra (hereinafter referred to as "**LNG Terminal**").
4. The LNG Terminal consists of a Floating Storage Regasification Unit ("FSRU") with 4 MMTPA regasification capacity moored to jetty and has associated facilities like gas unloading arm, gas pipeline for delivering natural gas from the FSRU to the National Grid.
5. The re-gasified LNG is required to be inducted into the cross-country **pipeline/national Grid in order to be supplied to the ultimate customer**.
6. Therefore, the applicant is constructing a gas pipeline for delivering the high **pressure natural gas** from the FSRU to the National Grid.
7. The Development of the project consists of two legs as mentioned below:
 - i. Setting up of infrastructure facility, i.e., jetty, onshore receiving facility close to the jetty, etc. for enabling FSRU to regasify the LNG; and
 - ii. Connecting the Terminal with the cross-country gas pipeline to enable supply of regasified natural gas to customer (referred to as the "**Tie in Pipeline**").
8. The re-gasified LNG is of no use unless the applicant is able to supply the gas to its customers. Given the nature of the commodity, i.e., high pressure natural gas, pipeline is the only technically viable and safe method of supply
9. The Tie-in pipeline is, therefore, not constructed to provide gas transportation service to the customers, but it connects the gas terminal to cross-country pipeline to enable further distribution of gas to the customers.
10. The Tie-in pipeline would be laid under the ground and the length of the pipeline would be approximately 60 KMs.
11. Section 16 of the CGST Act deals with the eligibility of taking input tax credit ('ITC') and the conditions to be fulfilled by the registered person. Section 16(1), *inter alia*, states that a registered person shall be entitled to take ITC on goods and services used or intended to be used in **the course or furtherance of his business**. Section 16(1) is reproduced hereunder for ready reference:

"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."

...emphasis supplied
12. Further, Section 17(5) of the CGST Act provides that in certain cases, input tax credit will not be available even if the goods or services are used in the course or furtherance of business. The relevant portion of section 17(5) is extracted as under:

"(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: -
(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."

... **emphasis supplied**

13. Thus, the restriction on availment of ITC under Section 17(5)(c) and 17(5)(d) is not applicable in case where the goods or services are used for construction of Plant and Machinery. However, as per the explanation to Section 17, Plant and Machinery does not includes a pipeline laid outside the factory premises. As a consequence, the ITC of goods and services used for construction of a pipeline laid down outside the factory would not be available in terms of Section 17(5)(c) and 17(5)(d).
14. The applicant's key activity is regasification of LNG, which inter alia includes **delivery in a form and manner which** is consumable, usable and saleable. Hence, the provision of the gas to the nearest practical delivery point i.e. national grid, is an integral and essential part of the economic activity being carried out by the applicant.
15. Therefore, the Tie-in pipeline connecting the LNG terminal to the National Grid, which is immovable in nature, forms Plant and Machinery. Further, the re-gasification activity would be undertaken by the applicants at the FSRU, which is not a factory per se.
16. Thus, the disallowance of ITC under section 17(5)(c) and 17(5)(d) would not be attracted in case of Tie-in pipelines constructed by the applicants.
17. Under the aforesaid peculiar circumstances, we request you to expedite the resolution of the matter at hand and issue a ruling regarding the availability of ITC of GST paid on goods and services used for construction of Tie-in pipelines and also grant us with a personal meeting to represent our case in detail.

STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS, AS THE CASE MAY BE, IN RESPECT OF QUESTION(S) ON WHICH ADVANCE RULING IS REQUIRED.

APPLICANT'S INTERPRETATION

C. **Applicants understanding**

- C.1 Section 16 of the CGST Act deals with the eligibility of taking ITC and the conditions to be fulfilled by the registered person. Section 16(1) inter alia states that a registered person shall be entitled to take ITC on goods and services used **or intended to be used in the course or furtherance of his business.**
- C.2 Section 17(5) of the CGST Act provides that in certain cases, input tax credit will not be available even if the goods or services are used in the course or **furtherance of business.**
- C.3 Clause (c) of section 17(5) restricts availability of ITC in respect of works contract service used for construction of immovable property, except in case where it is an input service for further supply of works contract service. Clause (d) of Section 17(5) bars ITC in respect of goods or service used for construction of immovable **property on assessee's own account.**
- C.4 However, the above restriction on availment of input tax credit will not apply if the immovable property constructed is plant and machinery. The term "plant and machinery" is defined in the explanation to section 17 as apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply but, *inter alia*, excludes pipelines laid outside the factory premises.



- C.5 In the present case, the applicant is constructing a Tie-in pipeline to deliver the re-gasified LNG to the cross-country pipeline/National Grid for further transportation to the customers. The said pipeline will be laid under the ground and the length of the pipeline would be approximately 60 KMs.
- C.6 Since, the pipeline in the present case is embedded in the earth, it would qualify as an immovable property and thus the construction of said pipeline amounts to a Works contract under Section 2(119) of the CGST Act. However, the applicant is of the understanding that the tie-in pipeline qualifies to be a "plant and machinery" as per explanation to section 17 of the CGST Act, and hence the restriction under Section 17(5)(c) and 17(5)(d) would not be attracted in respect of construction of the said pipeline.
- C.7 The applicants submit that following two conditions have to be fulfilled for the Tie-in pipeline to be regarded as plant and machinery in terms of explanation to Section 17 of CGST Act:
- The pipeline should be an apparatus, equipment or machinery used for making outward supply; and
 - It should not be covered by the exclusion clause "pipeline laid outside the factory".

The Tie-Pipeline is an apparatus, equipment or machinery used for making outward supply.

- D.1 The terms 'apparatus', 'equipment' and 'machinery' are not defined under the CGST Act. It is settled position of law that in absence of definition in the statute, the words used in the statute should be understood in their natural and ordinary sense. Accordingly, let us understand the meaning of the terms as understood in common parlance:

P Ramanatha Aiyar's Advanced Law Lexicon:

'Apparatus' is a compound instrument designed to carry out a specific function or for a particular use.

'Apparatus' means something which is inclusive of some other appliance.

'Apparatus' are the implements used in an operation or activity.

'Equipment' is an act of equipping or fitting, or the state of being equipped; to supply with whatever is necessary to efficient action in the way.

'Equipment' is a thing which is used for a particular purpose.

Webster Comprehensive Dictionary

'Apparatus' - A complex devise or machine for a particular purpose: an X-ray apparatus.

'Apparatus' - An integrated assembly of tools, appliances, instrument, etc. operating to achieve a specified result.

'Equipment' - Whatever constitute an outfit for special purpose

'Machine' - Any combination of mechanics for utilizing, modifying, applying, or transmitting energy, whether simple, as a lever and fulcrum, pulley, etc. or complex, as a Fourdrinier papermaking apparatus.

Black's Law Dictionary

'Equipment' - The articles or implements used for a specific purpose or activity.

'Machine' - A devise or apparatus consisting of fixed or moving parts that works together to perform some function. - Also termed apparatus.

- D.2 Therefore, any instrument which is understood to be an apparatus, equipment or machine in common parlance and is permanently fixed to the earth by foundation and structural support which is used for making outward supply will be treated as "plant and machinery".
- D.3 The term equipment is defined in the dictionaries as a thing which is used for particular or special purpose. In the present case, the Tie-in pipeline is used for delivery of natural gas from the terminal to the cross-country pipeline. Thus, the pipeline is used for the specific purpose of delivery. Further, as stated above, the delivery of gas up to the cross-country pipeline is an integral and essential part of the services provided by the applicant.
- D.4 Thus, the Tie-in pipeline is used for making outward supply of re-gasification services by the applicant. Accordingly, the Tie-in pipeline will be treated as "plant and machinery".



The exclusion clause in the Explanation to Section 17 i.e. "Pipelines laid outside the factory premises" is not applicable in present case.

- E.1 Clause (iii) of the explanation to section 17 excludes 'pipelines laid outside the factory premises' from the definition of "plant and machinery". Thus, ITC would be available only in respect of the pipelines which are laid inside a factory premises.
- E.2 The applicants understanding is that, the exclusion clause 'pipelines laid outside the factory premises' does not mean that what is covered within the definition of plant and machinery is only 'pipelines laid inside the factory premises'. The applicants submit that the above clause presupposes that there should be a factory premises, and in order to be excluded from the definition of plant and machinery, the pipeline should be laid outside such factory premises.
- E.3 Therefore, the applicants submit that the, pipelines laid outside some premises, which are not factory premises, will also be covered within the definition of the term "plant and machinery".
- E.4 The applicants submit that the FSRU is not a factory premises and hence the Tie in pipeline laid outside FSRU will not be covered by the exclusion clause in the definition of "plant and machinery" given under Explanation to Section 17 of the CGST Act.
- E.5 The term "factory" is not defined under the CGST Act. In absence of the definition of the term "factory" under the CGST Act, it is pertinent to understand the meaning of "factory" in common parlance:

Webster's Comprehensive Dictionary

"Factory" - An establishment devoted to the manufacture of something, including the building or buildings and machinery necessary to such manufacture; a manufactory.

Oxford Dictionary

"Factory" - Building or range of building with plant for manufacture of goods.

Cambridge International Dictionary

"Factory" - a building or set of building where large amounts of goods are made using machines

- E.6 Thus, in common parlance, factory is understood to be 'building' with plant and machinery for manufacture of goods. A building is generally considered as a **permanent** enclosed structure with roof and walls constructed over a plot of **land**.

- E.7 The Hon'ble Kerela High Court in the case of **V. Kalpakam Amma v. Muthurama Iyer Muthurkrishna, AIR 1995 Ker 99**, observed the meaning of the term "building" in its ordinary and natural sense as under:

"The first question to be decided is what is a building? The ordinary or natural meaning to be assigned to the word 'building' is given in P. Ramanatha Aiyar's Law Lexicon (Reprint Edition 1987) at page 159, thus:

"A thing composed of the fabric of the building and the ground that the fabric rests upon and encloses".

It is further stated by the author that "the land upon which the walls of a stone or brick building rest, or, indeed, of any other kind of building which in law is considered as annexed to the soil, and which is not clearly severed therefrom by the terms of the deed itself, must be considered as part of the building itself."

In Stroud's Judicial Dictionary (Vol. I. 5th Edn.), the word 'building' is defined thus: "What is a building must always be a question of degree and circumstances". In Black's Law Dictionary (5th Edn.), the meaning of the word building is given as follows: "A structure or edifice enclosing a space within its walls, and usually, but not necessarily, covered with a roof. In Bourvier's Law Dictionary (A Concise Encyclopedia of the Law Vol. 1.3rd Revision) the meaning of building is given as "**an edifice, erected by art, and fixed upon or over the soil, composed of brick, marble, wood, or other proper substance, connected together, and designed for use in the position in which it is so fixed.**"

... emphasis supplied.



- E.8 Thus, in common parlance, a building is always understood as a structure over a land. Existence of land is an integral aspect for a structure to be regarded as a building. A floating structure in the water will not be regarded as a building by **any ordinary and reasonable man**. Accordingly, in the ordinary sense, the "factory" will mean a structure over a plot of land with plant for manufacture of goods.
- E.9 In the present case, the applicant has a regasification unit (FSRU) which is a floating structure in water. Therefore, the applicants submit that the FSRU cannot be treated as a factory premises for the purpose of exclusion clause in the explanation to section 17. Accordingly, the Tie-in pipeline will not amount to a '*pipeline laid outside factory premises*'.
- E.10 Hence, such tie-in pipeline will qualify as "plant and machinery" and the applicant will be eligible to avail input tax credit on the goods or services used in the construction of tie-in pipeline.

Additional submissions

1. The undisputed facts of the present case are:
 - i. The applicant is importing a Floating Storage and Regasification unit ("FSRU") which would be moored to jetty at Jaigarh port in the state of Maharashtra.
 - ii. The vessel has 4 MMTPA regasification capacity and associated facilities like gas unloading arm.
 - iii. In order to induct the high pressure natural gas into the cross-country pipeline/ national Grid, the applicant is constructing a pipeline from the jetty where FSRU would be moored to the National Grid.
The Tie-in pipeline would be laid under the ground and the length of the pipeline would be approximately 60 KMs.
2. The applicant is seeking Advance Ruling on the availability of Input Tax Credit ("ITC") of Goods and Service Tax ("GST") paid on goods and services used for creation of the aforesaid Tie-in pipeline.
3. The applicants further wish to make the following submissions in addition to the submission already made in Annexure-B. of the application made in FORM ARA-01,

SUBMISSIONS

The exclusion clause of Explanation to Section 17(5) of the Central Goods and Services Tax Act, 2017 presupposes that there should be a factory premises, and in order to be excluded from the definition of plant and machinery, the pipeline should be laid outside such factory premises. The wordings used in the Explain be read as it is and it cannot imply anything which is not expressly stated.

- A.1 Section 17(5) of the Central Goods and Services Tax Act, 2017 ("CGST Act"), inter alia, restricts the availability of ITC of GST paid on goods and services used for construction of immovable property. The relevant portion of the Section 17(5) is extracted as under
"(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:
(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."

... **emphasis supplied**

- A.2 Thus, Clause (c) and (d) Section 17(5) of the CGST Act provides that ITC on Works contract service and other goods and services used in construction of immovable property will not be available. The said restriction on availment of ITC under section 17(5)(c) and 17(5)(d) is not applicable in case where the goods or services are used for construction of Plant and Machinery. Further, as per the explanation to Section 17(5), "Plant and Machinery" does not include a pipeline laid outside the factory premises.
- A.3 The applicants further submit that the one of the principle objectives of implementation of the CGST Act was to allow seamless flow of Tax-credit to an assessee at each level of value addition and to avoid to blockage of the credit chain. Hence, the Rule of strict construction of statute would apply with great force to the GST legislation, especially to a provision which restricts the availability of ITC in the hands of the supplier.
- A.4 The applicant submit that it is a settled law that a taxing statute has to be strictly construed and no additional meaning shall be given to the plain wordings used by the legislation. Reliance is placed on the decision of Supreme Court in case of Sales Tax **Commissioner v. Modi Sugar Mills** reported at AIR 1961 SC 1047 wherein the Supreme court observed as under -
"In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions". The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed it cannot imply anything which is not expressed it cannot import provisions in the statutes so as to supply any assumed deficiency."
- A.5 Similar view was given in the decision of Supreme Court in case of A.V. **Fernández v. State of Kerala** reported at AIR 1957 SC 657. The relevant portion of the said judgment is extracted as under -
"...It is no doubt true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter..."
- A.6 Thus, the applicants submit that the exclusion clause 'pipelines laid outside the factory premises' has to be strictly interpreted. The aforesaid exclusion clause presupposes that there should be a factory premises, and in order to be excluded from the definition of plant and machinery, the pipeline should be laid outside such factory premises.
- A.7 The contrapositive of 'pipelines laid outside factory premises' is not that only pipelines laid inside a factory would be covered under 'plant and machinery' and eligible for availing ITC. The exclusion provided to 'pipelines laid outside factory' only means that if there is a factory premises, then the pipelines laid outside such factory premises would not be a 'plant and machinery'. In case, where there is no factory premise, the exclusion clause (iii) of Explanation to Section 17(5) would not come into play, and in that case the pipeline would be covered under plant and machinery'.
- A.8 The words 'factory' or 'premises' is not defined under the CSST Act. Therefore, it is pertinent to refer to some dictionary meaning of the term 'factory' and 'premises' which are extracted as under

Dictionary of the term "Factory"

- (i) **Oxford Encyclopedic Dictionary (The new Oxford Illustrated Dictionary)**
Building or range of buildings with plant for manufacture of goods.



- (ii) Collins internet-linked dictionary of Business - Third edition
A business premise used by a firm in the production of goods.
- (iii) The New International Webster's Comprehensive Dictionary of the English Language
An establishment devoted to the manufacture of something, including the building or buildings and machinery necessary to such manufacture;. a manufactory.
- (iv) Cambridge International Dictionary of English
A building or set of building where large amounts of goods are made using machines.

Dictionary meaning of "Premises"

- (i) Illustrated Oxford Dictionary
2. (in pl.) a House, building, with grounds and appurtenances,
- (ii) The New International Webster's Comprehensive Dictionary of the English Language
4. pl. A distinct portion of real estate; land or lands; land with its appurtenances, as buildings:
- (iii) The Chambers Dictionary
(in pl) the aforesaid (property; law); hence, a building and its adjuncts, esp. a public house or place of business;
- (iv) Black's Law Dictionary, V Edition
Premises.
In estate and property. Land and tenements; an estate, including land and buildings thereon; the subject-matter of the conveyance. F.F. Proctor Troy Properties Co. v. Dugan Store, 191 App.Div.685, 181 NYS 786. The area of land surrounding a house, and actually or by legal construction forming one inclosure with it. A distinct and definite locality and may mean a room, especially building or other definite area, or a distinct portion of real estate. Land and its appurtenances.
- (v) Cambridge International Dictionary of English
(in pl) the land and building owned by someone, esp. by a company or organization.
- (vi) The American Heritage Dictionary of English Language, III Edition
4. premises. a. Land and the building on it. b. A building or a part of building on it.
- (vii) Wharton's Law Lexicon, 1976 Reprint Ed
premises' is often used as meaning 'land or houses'.
- (viii) Cochran's Law Lexicon, IV Edition
'Premises' means 'houses or lands'.
- (ix) Earl Jowitt, Dictionary of English Law
Premises...from this use of the word, 'premises' has gradually acquired popular sense of land or buildings. Originally, it was only used in this sense by laymen, and it was never so used in well-drawn instruments, but it is now frequently found in instruments and in Acts of Parliament as meaning land or houses, e.g., the Public Health Act, 1875. Sec. 4, where 'premises' includes measures, buildings, lands, easements, tenements and hereditaments, of any tenure...
- (x) Ballentine, J.A., Law Dictionary with Pronunciation, II Edition
'Premises' - as applied to land, Webster's New International Dictionary defines the word as follows: The property conveyed in a deed; hence, in general, a piece of land or real estate; sometimes, especially in fire insurance papers, a building or buildings on land; the premises insured.



A.9 On perusal of the aforesaid dictionary meanings, a Factory would mean any building or other place where goods are manufactured with machines. Further, the perusal of the dictionary meaning of the term "premises" shows that premises means land, house or building and any land surrounding such house or building.

- A.10 Therefore, a conjoint reading of the term "factory" and "premises" makes it abundantly clear that the phrase "factory premises used in clause (iii) of explanation to Section 17(5) can only mean a factory building located on land. The said phrase has to be strictly interpreted by giving it the general meaning and cannot be stretched to cover FSRU, which is a vessel capable of navigating in oceanic waters.

The tie-in pipeline being created by the applicant indeed qualifies as a plant and machinery'

- B.1 As Explanation to Section 17(5) of the CGST Act "plant and machinery" means any-

- apparatus,
- equipment, and
- machinery

which is fixed to earth by foundation or structural support and is used for making outward supply

- B.2 The terms 'apparatus', 'equipment' and 'machinery' are not defined under the CGST Act. It is settled position of law that in absence of definition in the statute, the words used in the statute should be understood in their natural and ordinary meaning. The dictionary meaning of the aforesaid terms are as under:

P Ramariatin Aiyar's Advanced Law Lexicon:

'Apparatus is a compound instrument designed to carry out a specific function or for a particular use.

'Apparatus' means something which is inclusive of some other appliance.

'Apparatus' are the implements used in an operation or activity.

'Equipment is an act of equipping or fitting, or the state of being equipped; to supply with whatever is necessary to efficient action in the way

'Equipment' is a thing which is used for a particular purpose.

Webster Comprehensive Dictionary

'Apparatus' - A complex devise or machine for a particular purpose: an x-ray apparatus.

'Apparatus' - An integrated assembly of tools, appliances, instrument, etc. operating to achieve a specified result.

'Equipment - Whatever constitute an outfit for special purpose

'Machine' - Any combination of mechanics for utilizing, modifying, applying, or transmitting energy, whether simple, as a lever and fulcrum, pulley, etc. or complex, as a Fourdrinier papermaking apparatus.

Black's Law Dictionary

"Equipment - The articles or implements used for a specific purpose or activity.

'Machine' - A devise or apparatus consisting of fixed or moving parts that works together to perform some function. - Also termed apparatus.

- B.3 The applicants submit that the tie-line pipeline being constructed by the applicant is not merely a passive structure, but a machinery for transportation of gas from the FSRU to the national grid.

- B.4 In order to understand the nature of the Tie-pipeline line being constructed by the applicant, it is pertinent to understand the various components, equipment and devices forming part of the pipeline.

- i. Pipes - These comprises of the hollow pipes laid underground from the Jaigarh Terminal to the National grid.
- ii. High pressure Un-loading Arm - The high pressure unloading arm installed at the Jaigarh terminal is a special equipment for unloading the high pressure Gas from FSRU into the Tie-in Pipeline.
- iii. Isolation valves, Check valves-Check valves are installed to ensure that the flow of Gas is unidirectional. Isolation Valves are installed on the pipeline for controlling flow (to restrict the flow or allow the flow).



- iv. **Metering System at Jaigarh Jetty** - The metering system is installed to measure the quantity of gas supplied. This system is installed at the Jaigarh Terminal i.e. the starting point of pipeline and at Dabhol Terminal i.e. the end point of pipeline before it is connected to National Grid.
- v. **Pressure Regulating System** - This system is installed at Dabhol Terminal to control the pressure at which such gas is supplied
- vi. **Gas Chromatograph** - Chromatograph is a special equipment fitted near the metering device which helps in determination of the composition of the natural gas re-gasified from the FSRU.
- vii. **Pig Launcher/Pig Scrapper** - This equipment are used for cleaning the debris from inside the pipeline. These equipment also facilitate to monitor the inside condition of pipeline. These are located at the starting point and end point of the pipeline.
- viii. **Bends, fittings and Flanges** - The bends and flanges are used to connect two ends of the pipeline where there is turn or curve in the directions of the pipeline.
- ix. **SV Station** - There are 3 SV stations over the entire pipeline network isolating each section of pipeline for identification purposes as well as in case of any emergencies like leakage in pipeline etc.
- x. **SCADA Monitoring system** - This system is installed for supervision and control of pipeline remotely and for data / parameters acquisition remotely.
- xi. **Power Generation Systems (Diesel Generators & Solar Panels)** - These are installed at Terminals and SV Stations for generation of secondary power or back up power.
- xii. **Filtering**- This equipment is located at the start point and end point of the pipeline for filtration of Gas thereby separating any debris or solid contamination.
- xiii. **Gas Detention/ Leak Detection system** - The Gas and leak detection systems are used to identify whether any leak has occurred in any part of the pipeline network.
- xiv. **OFC cables** - These are laid down alongside the pipeline for collection and transfer of data relating to the tie-in pipeline.
- xv. **Gauges & Transmitters** - These instruments are installed in pipeline for measuring and transmitting parameters like pressure and temperature of gas.
- xvi. **Cathodic Protection System** - This system is installed in pipeline for controlling the corrosion of pipeline.



- B.5 The aforesaid equipment and machineries allow the applicant to induct, control, manage and monitor the flow of gas in the tie-in pipeline and such equipment together comprise the tie-in pipeline, which acts a machinery for transportation of gas to national grid.
- B.6 Thus, the applicants submit that the tie-in pipeline qualifies as 'plant and machinery' as defined under Explanation to Section 17(5) of the CGST Act.
- B.7 An exclusion clause of a definition can only exclude something which is already covered by the main body of the provision. Hence, the fact that pipelines laid outside factory premises' is excluded from the definition of "plant and machinery" itself means that such 'pipelines laid outside factory premises" would be otherwise covered under 'apparatus', 'equipment', or 'machinery' and hence qualify as 'plant and machinery' under explanation to Section 17(5).

The Factories Act, 1948 is not applicable in the present case. The definition of factory given under The Factories Act, 1948 would not be applicable in the present case.

C.1 Section 2(m) of The Factories Act, 1948 which defines the term 'factory' reads as under

"2. (m) "factory" means **any premises** including the precincts thereof -

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) Whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on;

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952)] or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place."

C.2 The applicants state that the definition of the term "factory" given under the Factories Act, 1948 cannot be applied for ascertaining the meaning of the term 'factory premises' used in clause (iii) of explanation to Section 17(5) of the CGST Act,

C.3 The applicants submit that to interpret a word used in a statute by using the definition of said word in other statutes, when they are not dealing with the same subject, is bad interpretation. In this regard, the Hon'ble Supreme Court in the case of M/S: MSCO. Pvt. Ltd vs **Union Of India, 1985 AIR 76**, held as under:

*"But while construing a word which occurs in a statute or a statutory instrument in the absence of any definition in that very document it must be given the same meaning which it receives in ordinary parlance or understood in the sense in which people conversant with the subject matter of the statute or statutory instrument understand it. **It is hazardous to interpret a word in accordance with its definition in another statute or statutory instrument and more so when such statute or statutory instrument is not dealing with any cognate subject.**"*

... emphasis supplied

C.4 Thus, in view of the aforesaid judgment, it is incorrect to adopt the meaning of 'factory' given in the Factories Act 1948 to interpret the term "factory premises" used in Explanation to Section 17(5) of the CGST Act.

C.5 Further, even Section 2(m) of the Factories Act, 1948 defined 'factory' as any "premises" where manufacturing activity is undertaken. As already stated in the submissions made in the preceding paragraphs, 'premises' can only mean either land or buildings comprising a factory. Hence, even if the definition given in Factories Act, 1948 is relied upon, the FSRU which is vessel would not qualify as a factory.



CONTENTION – AS PER THE CONCERNED OFFICER

The jurisdictional office has not made any written submissions in the matter.

04. HEARING

The Preliminary Hearing in the matter was held on 19.12.2018, Sh. Ms. Nupoor Agarwal, Advocate, Sh. Kunal Nikumbh, C.A. and Kunal Hora, Sr. Manager Taxation, appeared and requested for admission of application as per contentions made in their application. Jurisdictional Officer Sh. B. S. Mangat J. C. Division –III, Navi Mumbai Commissionerate appeared but made no written submissions.

The application was admitted and called for final hearing on 20.02.2019. Sh. V. Shridharan Sr. Advocate appeared made oral and written submissions. Jurisdictional Officer Sh. B. S. Mangat J. C. Division –III, Navi Mumbai Commissionerate appeared.

05. OBSERVATIONS

We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the jurisdictional office.

The applicant has undertaken the development of a project of re-gasification of LNG and supplying the same to the National Grid, by way of pipelines, in order to reach the ultimate consumer. Hence for the process of re-gasification, the applicant is importing a Floating Storage and Regasification unit ("FSRU"), which would be moored to jetty at Jaigarh port in the state of Maharashtra. The Development of the project consists of (i) Setting up of infrastructure facility, i.e., jetty, onshore receiving facility close to the jetty, etc. for enabling FSRU to re-gasify the LNG; and (ii) Connecting the Terminal with the cross-country gas pipeline to enable supply of re gasified natural gas to customer (referred to as the "Tie in Pipeline"). The project also has associated facilities like gas unloading arm, gas pipeline for delivering natural gas from the FSRU to the National Grid. They have submitted that the pipeline will not provide gas transportation service to the customers, but will connect the gas terminal to cross-country pipeline to enable further distribution of gas to the customers.

The applicant's main concern is whether they are eligible to avail ITC of GST paid on goods and services used for the construction of the pipelines. In this context the questions raised and to be answered are (i) whether FRSU is a 'factory' ; (ii) whether the pipeline flowing from the FRSU can be treated as 'pipeline outside the factory' and (iii) whether the pipeline can be considered as an 'apparatus' to be included in the expression "plant and machinery". The answers to these questions will decide whether they are eligible to avail ITC of GST.

The eligibility for taking input tax credit ('ITC') is dealt in the Sections 16 and 17 of the CGST Act. Section 16 states that a registered person shall be entitled to take ITC on goods and services used or intended to be used in **the course or furtherance of his business** and Section 17(5) of the CGST Act provides that in certain cases, input tax credit will not be available even if the goods or services are used in the course or furtherance of business. The relevant portion of Section 17(5) is extracted as under:

"(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 17, 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.

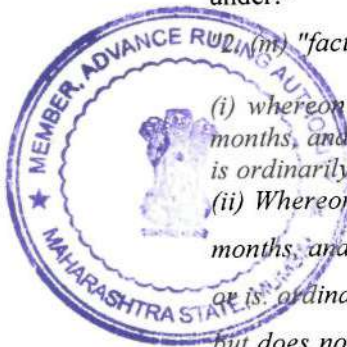
Explanation.- For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes -

- i. land, building or any other civil structures;*
- ii. telecommunication towers; and*
- iii. pipelines laid outside the factory premises."*

It is very clear from clause no. (iii) of the Explanation that credit is not available in respect of pipelines laid outside the factory premises. However, the applicant contended that, the pipelines that will

be constructed should not be seen as “pipelines outside the factory”, since the FSRU cannot be considered as a factory. To support their contention that the FSRU is not a factory, the applicant stating that the term “factory” is not defined under the CGST Act, has relied on dictionary meanings and brought out that it is essential to have ‘building’ for anything to be called a factory and since there is no ‘building’ in place there, the FSRU cannot be called a factory. Citing the decision of the Hon'ble Kerala High Court in the case of V. Kalpakam Amma v. Muthurama Iyer Muthurkrishna, AIR 1995 Ker 99, which has dealt with the term ‘building’, and the definition of the word ‘building’ as given in in Stroud's Judicial Dictionary (Vol. I. 5th Edn.) the applicant has contended that a floating structure in the water, like their FSRU, will not be regarded as a building and therefore cannot be considered as a factory since a “factory” means a structure over a plot of land with plant for manufacture of goods. Therefore the pipeline will not amount to a *'pipeline laid outside factory premises'*

The applicant also argued, without any strong reasoning, that the definition contained in Factories Act, 1948 should not be relied upon but only the dictionary meanings should be taken into consideration to define the term ‘factory’. We do not agree with this contention of the applicant. When there is no definition of factory available in the GST Act, a definition given in some other Act passed by the legislature can always be relied upon. Accordingly we are of the considered view that Section 2(m) of The Factories Act, 1948 which defines the term ‘factory’ should be considered which is reproduced as under:-



(m) "factory" means any premises including the precincts thereof -

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) Whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on;

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952)] or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place."

It is clear from the above definition that a factory means any premises having workers who are involved in a manufacturing process. In the subject case the FSRU is a place where there are workers who are working and the process that takes place there, is one of conversion of LNG to gaseous form. Times and businesses are evolving regularly. Law evolves accordingly.

In case of Porritts and Spencer (Asia) Ltd Vs. State of Haryana SC reported as 1979AIR 300 wherein court was dealing with the product out of new technology/ Invention etc. The Hon SC held as below: *The concept of 'textiles' is not a static concept. It has, having regard to newly developing materials, methods techniques and processes, a continually expanding content and new kinds of fabric may be invented which may legitimately, without doing any violence to the language be regarded as textiles.*

Applying the ratio of this decision to the facts of the case we find that the re-gasification of LNG used to take place on land earlier and even at present in many places. Now, to avoid costs of transportation of gas through pipelines over long distances under the sea, the gas is liquefied and transported in ships on the seas and when it reaches the destination port, the LNG is re-gasified on the ship itself and transported through pipelines to the users on the land. The production or manufacturing process may not be taking place on land but it is taking place on the ship (FSRU) and the same has to be considered as a factory/unit in the subject case, as the process leads to production of natural gas which is then distributed by the grid for ultimate use of the consumer. We therefore find that the pipeline is situated outside the manufacturing premises.

Therefore the applicant's conclusion that there should be a 'building' to consider something as factory is not at all convincing because it is the production / manufacture of something that makes a factory and not the building. A building will not be called a factory if there is no production or manufacture of something. Merriam Webster defines factory as under:

"Factory" - An establishment devoted to the manufacture of something, including the building or buildings and machinery necessary to such manufacture; a manufactory.

As per the above definition quoted by the applicant himself, it is an establishment devoted to manufacture of something. Here 'production /manufacture' of something by an establishment is the critical aspect of a factory not just the building.

It is relevant to mention here that there are some dictionaries which define 'factory ship' which are given below:

The freedictionary.com : *"An ocean vessel equipped to process fish or other marine food"*

Merriam-webster dictionary: *"a ship equipped to process a whale or fish catch at sea"*

Therefore, it is clear that there are some ships which are categorized as factories in the commercial world and hence it is incorrect to argue that FRSU is not a factory by relying on selective dictionary meanings.

The second contention of the applicant is that the pipeline would be otherwise covered under 'apparatus', 'equipment', or 'machinery' since it is fitted with Valves, metering system, pressure regulating system, bends, fittings, flanges, gas leak detection system, gauges, transmitters etc. and hence qualify as 'plant and machinery' under explanation to Section 17(5). We are also not in favour of this contention because every pipeline is fitted with these equipments and the pipeline in question is no exception. To call it an 'apparatus', 'equipment', or 'machinery' would be a distortion of the meaning when the applicant himself has described it as a 'pipeline'. When a specific description is available, it is not justified to bring a 'pipeline' within the meaning of 'an 'apparatus', 'equipment', or 'machinery' by quoting convenient dictionary meanings just in order to claim ITC.

The applicant also contends that the pipeline should be considered as the one which is 'not outside the factory' in as much as FRSU is not a factory. But as explained in the foregoing discussion we find that FRSU is a factory, and hence the pipeline laid for transporting re-gasified LNG from FRSU squarely falls within the meaning of a 'pipeline outside the factory'.



To argue further, a pipeline cannot exist in vacuum without a factory. The expression “pipelines outside the factory” signifies that the pipeline is to transport some product from the factory to the end user. In the instant case the LNG, re-gasified in the ship, is transported through the pipeline which is outside the factory ship. Hence, we are of the view that the said pipeline is a “pipeline outside the factory”.

Having found that the FRSU is a ‘factory’ and that the pipeline to be laid is ‘outside the factory’ and that the said pipeline does not qualify to be an ‘equipment, apparatus or machinery’ for the purpose of claiming ITC, the restriction on availment of ITC under Section 17(5)(c) and 17(5)(d) is applicable in the present case.

05. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 94/2018-19/B- 22 Mumbai, dt. 22/02/2019

For reasons as discussed in the body of the order, the questions are answered thus –

Question: - Whether the applicants are eligible to avail ITC of GST paid on goods and services used for construction of Tie-in pipeline, for delivery of re-gasified LNG from FSRU to the National Grid.?

Answer: - The applicants are not eligible to avail ITC of GST paid on goods and services used for construction of Tie-in pipeline, for delivery of re-gasified LNG from FSRU to the National Grid.




B. TIMOTHY
(MEMBER)


B. V. BORHADE
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint commissioner of State Tax , Mahavikas for Website.

CERTIFIED TRUE COPY


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai – 400021.