

# TAX INFO

*Dated: 05/11/2020*

Latest update on GST Law: Information regarding **ITC not available on goods & services used for construction of Tie-in pipelines, from FSRU to National grid** based on the **Judgement issued by Maharashtra Appellate Authority for Advance Ruling.**

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## **ITC not available on goods & services used for construction of Tie-in pipelines, from FSRU to National grid**

<b>Name of Appellant</b>	In re Western Concessions Private Limited
<b>Name of Court</b>	AAAR-Maharashtra
<b>Appeal Number</b>	MAH/AAAR/SS-RJ/09/2019-20
<b>Date of Judgement</b>	07/10/2019

### **Facts of the Case:**

The appellants are setting up a Liquefied Natural Gas (LNG) re-gasification project at Jaigarh port in the state of Maharashtra. The LNG Terminal consists of a Floating Storage Re-gasification Unit ('FSRU') with 4 MMTPA re-gasification 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.

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. Therefore, the appellants is constructing a gas pipeline for delivering the high pressure natural gas from the FSRU to the National Grid. The Tie-in pipeline is 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

### **Question on which Ruling is sought**

"Whether the appellants would be eligible to avail the ITC of GST paid on goods and services used for construction of Tie-in pipelines, from the FSRU to the National grid."

### **Ruling given by AAR:**

The existence of land or building is not necessary for anything to qualify as 'factory', but it is the manufacturing or production of something that makes a 'factory'. The various equipment fitted to tie-in pipeline constructed by appellants would not make it an 'apparatus', 'equipment' or 'machinery', as every pipeline would be fitted with such equipment. Hence, it would not qualify as 'plant and machinery' under Explanation to Section 17(5) of the CGST Act and thus the ITC in respect of goods and services used for construction of pipeline would not be available to the appellants.

**Contention of Appellant:**

The tie-in pipeline constructed by the appellants would qualify as 'plant and machinery'. Further, since the pipeline is not laid outside a 'factory premises', it would not be covered under the exclusion clause of explanation to section 17(5). Thus, the restriction provided under Section 17(5)(c) and 17(5)(d) would not be attracted.

The exclusion clause of Explanation to Section 17(5) of the CGST Act 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. In absence of factory premise, the exclusion clause would not be applicable.

**Observations:**

On perusal of the entire case records available with us, the moot issues before us are as under:-

- (i) Whether FSRU, where the re-gasification of the LNG is carried out for delivery to the National grid, will be construed as factory or otherwise.
- (ii) In case the same is held as factory, whether the tie-in pipeline which is to be laid can be construed to be the pipeline laid outside the factory premises or otherwise.

The impugned FSRU satisfies both the aforementioned essential conditions of the Factory, and accordingly will be construed as factory.

Once it has been established that the premises of the FSRU can be justly considered as factory premises, then there is no doubt that the tie-in pipeline, to be laid by the Appellant, which will join the FSRU to the National Grid, will be considered as pipeline laid outside the factory premises, and accordingly attract the applicability of the subject exclusion clause i.e. exclusion clause (iii) of the explanation to section 17(5)(c) and section 17(5)(d) of the CGST Act, 2017. As a result of this, the tie-in pipeline under question will not be construed as plant and machinery, and hence the Appellant will not be entitled to avail the ITC of GST paid on goods and services used for construction of Tie-in pipelines, from the FSRU to the National grid as per the provision laid out in section 17(5)(c) and 17(5)(d) of the CGST Act, 2017.

**Ruling:**

Appellant is not entitled to avail the ITC of GST paid on goods and services used for construction of Tie-in pipelines, from the FSRU to the National grid as per the provision laid out in section 17(5)(c) and 17(5)(d) of the CGST Act, 2017.

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