

**APPELLATE AUTHORITY FOR ADVANCE RULING - CHHATTISGARH**  
**3<sup>rd</sup>& 4<sup>th</sup> Floor, VanijyikKar GST Bhawan, Sector-19, Atal Nagar,**  
**Raipur (C.G.) 492002**

**PROCEEDING OF THE APPELLATE AUTHORITY FOR ADVANCE RULING**  
**U/s. 101 OF THE CHHATTISGARH GOODS AND SERVICES TAX ACT, 2017**

**Members Present are**

Smt. Reena BabaSaheb Kangale,  
Commissioner, State Tax,  
Chhattisgarh, Raipur

Shri Vinod Kumar Saxena,  
Chief Commissioner,  
CGST & Central Excise, Bhopal Zone

**Sub:-** Chhattisgarh GST Act, 2017 – Advance Ruling U/s 101 :-

Regarding admissibility of input tax credit of tax paid or deemed to have been paid on following in relation with the laying of private railway siding:-

- I. Civil and railway allied work.
- II. Signaling and telecommunication system, mechanical and structural work.
- III. Execution of P-Way, Civil, over head electrification, general electrical and signaling and telecommunication works for the proposed block station yard.

**Read:-** Application dated 04-06-2019 from Shri P.K. Mahapatra, Assistant General Manager (Finance) NMDC Limited, ADMN Building Hilltop Road, Near CSD, 1<sup>st</sup> Floor, Bacheli Complex, Dantewada (South Bastar) Chhattisgarh 494553

**PROCEEDINGS**

U/s 101 of the Chhattisgarh Goods & Services Tax Act, 2017 (herein- after referred to as CGGST Act, 2017)]

No.STC/AAAR/02/2019/76

Raipur, Dated 02/09/2019

The appellant M/s P.K. Mahapatra, Assistant General Manager (Finance) NMDC Limited, ADMN Building Hilltop Road, Near CSD, 1<sup>st</sup> Floor, Bacheli Complex, Dantewada (South Bastar) Chhattisgarh GSTIN 22AAACN7325A1Z5 has filed this appeal u/s 100 of the Chhattisgarh Goods & Services Tax Act, 2017 requesting advance ruling in respect of the following questions:-

1. Whether input tax credit can be availed for civil and railway allied works in connection with the laying of private Railway Siding?
2. Whether input tax credit can be availed on signaling & telecommunication system, mechanical and structural works in relation to Railway Siding?
3. Whether input tax credit can be availed on execution of P-Way, Civil, over head electrification, general electrical and signaling & telecommunication works for the proposed block station yard in relation to private Railway Siding?

## 2. Facts of the case:-

- I. The Appellant NMDC Limited having GSTIN 22AAACN7325A3Z3 is a state-controlled mineral producer of the Government of India. It is owned by the Government of India and is under administrative control of the Ministry of Steel. It is India's largest iron ore producer and exporter producing 30 million tons of iron ore from 3 fully mechanized mines in Chhattisgarh.
- II. NMDC, as part of its diversification, value addition and forward integration programme is setting up a 3 MTPA capacity Greenfield Integrated Steel Plant based on HiSmelt technology in Nagarnar, located 16 km from Jagdalpur in the State of Chhattisgarh with an estimated outlay of Rs. 20,000 Crore. To serve the said plant in receiving the raw materials and dispatching the finished products, a railway siding is proposed for the integrated steel plant, which is located on Kothavalsa- Kirandul (K.K.) single line electrified section of Waltair Division of East Coast Railway. The proposed site is situated approximately 2 Km from K.K. line between Ambagaon and Amagura Railway station. For movement of raw material and finished products by rail, M/s NMDC proposed to have one rail connectivity from the proposed new block station at Ch:277.030 km from Kothavasala Centre of station building on Ambagaon end and one connectivity from the existing Amagura Station at Ch:281.429 km from Kothavalsa Centre of station building on Kirandul end.
- III. The project of railway siding is being implemented by M/s IRCON International Ltd. The project is divided into 3 major packages for laying of private railway siding which are as below:-
  - Package I- Civil and Railway allied works in connection with laying of private railway siding;
  - Package II- Execution of Civil, S&T, Mechanical and Structural works in connection with laying of the railway siding;
  - Package IV- Execution of civil, P-way, Over head Electrification, General Electrification and Signaling & Telecommunication works for the proposed block station yard in connection with 3MTPA Integrated Steel Plant for NMDC Ltd.



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- IV. Each of the above packages is divided into 3 namely, civil works, supplies and erection with separate values identified for supplies made within each part.

M/s NMDC has applied for advance ruling on the following issues:

1. Whether Input Tax Credit can be availed for civil and railway allied works in connection with the laying of private railway siding?
2. Whether Input Tax Credit can be availed on signaling & telecommunication system, mechanical and structural works in relation to Railway Siding?
3. Whether Input Tax Credit can be availed on execution of P-way, civil, over head electrification, general electrical and signaling & telecommunication works for the proposed block station yard in relation to private railway siding?

On all of the above question, the AAR has ruled that "the Appellant is not entitled for Input Tax Credit on the inward supplies pertaining to the activities brought about by the Appellant in their application relating to laying of the said private railway siding located at a site outside the premises of the Appellant, in view of the exclusions stipulated under section 17(5) of the CGST Act, 2017".

- V. The Appellant preferred an appeal on the questions as mentioned in para V above, before the Appellate Authority for Advance Ruling in Chhattisgarh, Atal Nagar, Raipur.
- VI. As per Section 100(1) of CGST Act, appeal against the advance ruling can be presented before the Appellate Authority.

### 3. Contention of the Appellant:



- a) Appellant states that the main objective and purpose of laying railway track is for transporting raw materials inside the factory and for outward transportation of finished product. Taking into account the aforementioned facts it was contended that railway siding is integral part and inseparable in manufacturing process without which steel cannot be manufactured.
- b) The Appellant requests for ruling on the following questions by the Hon'ble Appellate Authority for Advance Ruling (hereinafter 'AAAR'):-

1. Whether the impugned order is right in holding that the items in question merit treatment as a civil structure/immovable property and not as "plant and machinery"?
  2. Whether the impugned order fails to appreciate the expression "plant and machinery" in the explanation in section 17 of the CGST Act, 2017 without considering the meaning of 'equipment', 'apparatus' and 'machinery' mentioned therein?
  3. Whether the Hon'ble Supreme Court's decision in *JAYASWAL NECO LTD. [2015 (319) E.L.T 247 (S.C)]* holding that Railway Siding is eligible for credit can be disregarded merely on the ground that it was rendered under Cenvat Credit Rules when the issue therein involves interpretation of identical words as to whether 'machines, machinery, plant, equipment, apparatus' will include railway siding?
  4. Even if they are regarded as immovable property, the rail tracks, signaling and telecommunication systems can be regarded as are supporting structures or foundation on which the Locomotives and Torpedo Laddle owned by the Appellant has to ply for the purpose of various material handing work within the factory?
  5. Whether the impugned order is right in denying credit for some portion of rail network outside the factory given that such exclusion is limited only to Pipelines in the Explanation?
  6. Whether the impugned order fails to appreciate the scope of section 16 of the CGST Act, 2017, which allows credit of taxes on supply of goods or services or both used or intended in the course or furtherance of one's business?
- e) That, the impugned order concludes that railway siding works are nothing but immovable property and cannot be considered as goods in any way for the simple reason that these are attached to earth. The impugned order also places on the definitions of the term "immovable property" under General Clauses Act, 1897 and section 3 of the Transfer of Property Act, 1882 to explain the term "immovable property". Certain case laws also were relied upon by the Authority in support of its conclusion.



d) That, on bare perusal of section 17(5)(c) and (d) of the CGST Act, 2017, it is understandable that the test of movability/immovability is immaterial to determine the eligibility of credit once the items in question qualify as "plant and machinery". Once the items in question qualify as "plant and machinery", they stand excluded from the meaning of "immovable property". As a matter of fact, under the CGST Act, 2017, even if the items in question are attached to earth, they will qualify as "plant and machinery". The relevant extracts of the section 17(5)(c) and section 17(5)(d) are extracted herewith for ease of reference:-

**"17. (1)....."**

*(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:--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 capitalization, to the said immovable property;*

*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—*



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

- e) That, from the above, it is pertinent to test whether the impugned works are regarded as 'plant & machinery' or foundation or structural support of plant and machinery and does not fall in any of the 3 exclusions given in the Explanation.
- f) That, the order has not examined the meaning of 'plant and machinery' as provided in the Explanation but confined to examining if it is movable or immovable property. It is submitted that even any immovable property, once qualifies as 'plant & machinery', they stand excluded from the restriction and the credit is eligible not only for plant and machinery but includes their foundation and supporting structures.
- g) That, it is evident from para 5.15 of the impugned order, the scope of work under the packages in question is completely misunderstood and misappreciated by the AAR. The Appellant submits the observations of the AAR in the impugned order are incorrect for the following reasons:-



- It is settled law that clauses in the agreement should be read as a whole and not in isolation to understand the tenor and intention of the contracting parties.

The Appellant had explained in their application about the civil works on which the Appellant does not intend to claim credit. The Appellant further made submissions that it is only Package III rail network that is outside the factory which has been duly recorded in Para 4 of the Order.

- The Appellant draws attention the scope of work given package-wise in their submissions dated 13.3.2019.

- Denial of credit only on the ground the contract involves civil work is unsustainable. Basis the above table, it is clear that the contract is for railway siding works and apart from the civil works involved in the contract, the Appellant is eligible to take credit of taxes paid by it.

h) That, the Hon'ble Supreme Court in the case of **JAYASWAL NECO LTD. [2015 (319) E.L.T. 247 (S.C.)]** has held that Railway track was handling system for raw material and processed material. Their use inside plant formed process of manufacturing. It was integral part of process as without activity for which railway tracks are used, manufacturing/commercial production of pig iron was not possible. Hence, railway track was capital goods, on which assessee was entitled to take credit of duty paid by them. The relevant Para is quoted below for your reference:

*"18. We find from the order of the Commissioner that in spite of taking note of the aforesaid use of the railway tracks and accepting the same as correct, the Commissioner denied the relief to the appellant on an extraneous ground, i.e., railway tracks were used for other purposes as well, namely, apart from conveying hot metal and hot pigs, it was used for carrying raw materials and finished goods as well. This can hardly be a ground to deny the relief inasmuch as by incidental use of the railway tracks for some other innocuous purpose, it does not lose the character of being an integral part of the manufacturing process. The Commissioner has further observed in his order that the railway track is not utilized directly or indirectly for producing or processing of goods or bringing about any change for manufacture of final product. This conclusion, obviously, is completely erroneous and amounts to misreading of the process. Such an error has occurred because the Commissioner did not keep in mind the principle of law laid down by this Court in M/s. J.K. Cotton Spinning & Weaving Mills Co. Ltd.'s case, highlighted above.*

- i) When we read the order of the CEGAT, we find that CEGAT has not even adverted to and examined the issue from the aforesaid angle, which was the only method for arriving at a finding as to whether the railway tracks installed within the plant would come within

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the definition of capital goods under Rule 57Q of the Rules or not. The order of the CEGAT is stoically silent. It has affirmed the order of the Commissioner by simply observing that the Commissioner has arrived at the conclusion that these goods are not being used directly or indirectly for producing or processing the goods or for bringing about any change for the manufacture of the final product. We have already pointed out that the aforesaid conclusion of the Commissioner is not only factually incorrect and perverse but legally unsustainable as well.

- j) Resultantly, we set aside the order of the Commissioner as well as of CEGAT insofar as it pertains to item "railway track material used for handling raw materials, process goods" and hold that the appellant has rightfully claimed for Modvat credit in respect of this item which credit is wrongly reversed by the authorities below. To that extent, order of the Commissioner as well CEGAT is set aside and the present appeal is allowed in the aforesaid terms."
- k) That, the Appellant would also like to quote decision of Hon'ble High Court of Rajasthan in case of **Aditya Cement [2008 (221) E.L.T. 362 (Raj.)]** wherein in Para 20 it was held that:

"So far as the claim to Railway Track material is concerned, it is common ground that the same has been used for transporting of coal and product of cement. Apparently, though the coal is not end product of the appellant but used as essential adjunct of plant for feeding it with fuel, the essential element of production process for manufacture of cement. Without supply of fuel the plant does not function. Therefore, the Railway Track used for one of the essential activity of running the plant itself cannot be kept out of consideration for availing Modvat credit though which is not being used directly for the purpose of manufacture of cement. But if as an integral part of manufacturing cement bringing of coal directly to the machine from site, railway track is used, it becomes part of plant and of manufacturing process. Similarly, until the end product reaches in deliverable state, it remains part of the manufacturing process. In view of this matter the claim of the assessee in respect of Modvat credit of duty paid on railway track material deserves to be sustained."



- l) The Appellant also wishes to quote Hon'ble Supreme Court in its decision in **Commissioner of C. Ex., Coimbatore v. Jawahar Mills Ltd., 2001 (132) E.L.T. 3 (S.C.) page 3**, wherein for weigh bridge following has been while considering the definition of capital goods under Rule 57Q even after its amendment said :

*"4. The aforesaid definition of 'Capital goods' is very wide. Capital goods can be machines, machinery, plant equipments, apparatus, tools or appliances. Any of these goods if used for producing or processing of any goods or for bringing about any change in any substance for the manufacture of final product would be 'Capital goods', and, therefore, qualify for availing Modvat credit. Per clause (b), the components, spare parts and accessories of the goods mentioned in clause (a) used for the purposes enumerated therein would also be 'Capital goods' and qualify for Modvat credit entitlement. Clause (c) make moulds and dies, generating sets and **weigh bridges** used in the factory of the manufacturers as capital goods and thus qualify for availing Modvat credit. The goods enumerated in clause (c) need not be used for producing the final product or used in the process of any goods for the manufacture of final product or used for bringing about any change in any substance for the manufacture of final product and the only requirement is that the same should be used in the factory of the manufacturer. Thus, it can be seen that the language used in the explanation is very liberal."*

- m) Further, in case of **Ultra Tech Cement Ltd [2016 (339) E.L.T. 127 (Tri. – Hyd)]**, it was held in Para 6 that mono block concrete sleepers for Rail track are eligible Cenvatable goods. The relevant extract of the said case is excerpted below for reference.

*"I have considered the submissions made by either side. The issue is whether credit is admissible on MBC sleepers. The allegation in the show cause notice is that these are used for foundation and therefore credit is not admissible. The appellants have put forward a consistent plea regarding the use of MBC sleepers within the factory. It is used for transportation of raw material and finished product. The use as explained by*



*the learned counsel makes it clear that these are essential and integrally connected to the process of manufacture. In addition, the judgments relied by the appellant and stated supra have held that credit is admissible on railway tracks/sleepers used within the factory for transportation of raw materials and finished goods. Following the ratio laid in these judgments, I hold that the appellant has established a case on merits and that credit is admissible on MBC sleepers."*

- n) In the case of **Orient Cement Ltd. Vs CCE, Hyderabad-I 2017 (51) S.T.R. 459 (Tri.-Hyd.)**, Railway siding laid outside the factory premises were held to be part and parcel of facility for transportation provided inside the factory premises and the assessee was held eligible for Cenvat credit. The Appellant wishes to quote Para 7 and 8 of the said decision for reference:

*"7. From the discussions and observations made in the above judgments as well as the facts presented before us, we are of the view that the credit availed on service tax paid on maintenance service of railway sidings is eligible. It has also to be pointed out that without the railway sidings laid outside the factory so as to connect factory with a railway station, no purpose would be served. Following the decisions, we hold that the credit is admissible.*



- o) *In the result, the impugned order to the extent of disallowing credit in respect of erection, commissioning and installation services and Maintenance of Railway sidings is set aside. We hold that appellant is eligible for credit of these two set of services."*

- p) Hon'ble High Court of Chhattisgarh, in case of M/s. Vimla Infrastructure India Pvt Ltd vs CCE, Raipur [**2018-TIOL-556-HC-CHHATTISGARH-ST**], held that

*"The railway sidings are low-speed tracks, distinct from a running line or through route such as a main line or branch line - Railway sidings are used for marshaling, stabling, storing, loading and unloading vehicles & other goods - In raising*

construction of railway siding, the assessee used MBC Sleepers, which are in turn constructed using MBC Railway Sleepers and RLS Rails - It may be noted that such railway sidings facilitate provision of 'Cargo Handling Service' - Thereby, considering such facts, the 'Inputs' were used to provide taxable output services - Hence, by erecting Railway Siding, the assessee provided taxable service for providing an output service - Thus it is eligible to claim Cenvat credit: High Court"

q) The Appellant also wishes to rely on Schedule XIV to the Companies Act, 1956, wherein the rates of depreciation provided for "Railway sidings" is categorized under the head plant and machinery. Therefore, it can be said that Railway siding will qualify as plant and machinery and meets the test of qualifying as plant and machinery. Thus, the credit would be eligible.

r) The Appellant wish to rely on the judicial precedents under Income Tax Act, 1961 as below:

In the case of *Chief Commissioner(Admn.) v. Visveswarayya Iron and Steel Ltd.*, (1993) 199 ITR 98 (Kar), wherein the Karnataka High Court treated Railway Siding as part of the plant.

In the case of *Kalinga Tubes Ltd. v. CIT* [1974] 96 ITR 20. The Orissa High Court held in the said decision that the assessee was entitled to the development rebate on railway sidings which were erected for the purpose of business of the assessee. It was held that this was covered by the heading "Machinery and plant" under rule 8.

s) Based on the above citations, it can be concluded that even as per Companies Act and Income Tax Act, Railway Siding is construed as Plant and Machinery and therefore credit on the same is eligible.

t) Without any reference to the decision of the Delhi High Court in ***Vodafone Mobile Services Limited v. Commissioner of Service Tax, Delhi, CEAC 12/2016 dated 31.10.2018***, the reliance on the decision of the Bombay High Court in the ***BhartiAirtel (case)***, is completely erroneous and misplaced.



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- u) In the **Vodafone Mobile Services Limited Case**, the Hon'ble Delhi High Court had expressly recorded its dissent with the decision of the Bombay High Court in the **BhartiAirtel case** and held the credit of taxes paid of telecom towers is eligible. According to the Delhi High Court, the Bombay High Court's decision in the **BhartiAirtel** case goes against the law laid down by the Apex Court in **Commissioner of Central Excise v. Solid and Correct Engineering Ruling, 2010 (5) SCC 122**. The relevant extracts of the decision are as under:-

*"This court is of the opinion, with due respect to the Bombay High Court that those two judgments are contrary to settled judicial precedents, including the later view of the Supreme Court in Solid and Correct Engineering (supra)."*

- v) While the Hon'ble AAR ignored the reliance placed by the Appellant on the case of **M/s Vodafone Mobile Services Ltd** during the course of the hearing, the same authority placed reliance on the case of **M/s BhartiAirtel Limited** in support of its conclusion. The Appellant submits that the principle debated in both the above matters was the same but the AAR has rejected the contention on the Appellant on one hand while relying on a similar issue to support their stand.

- w) That, the Delhi High Court had allowed credit of taxes paid on telecom towers holding the same to be essential for provision of telecommunication service. Likewise, when railway siding works are essential for transport of raw materials, credit of taxes paid thereon should be allowed by this Authority.

- x) That, reliance was also placed by the AAR on the decision of the Supreme Court in **Triveni Engineering Ltd. v. Commissioner of Central Excise, 2000 (120) ELT 273 (SC)** to support its conclusion that if anything is attached to earth, both the factum as well as the intention of fastening has to be ascertained from the facts and circumstances of the each case.

- y) That, any reliance on the decision in **Triveni Engineering** is incorrect for several reasons. The decision in **Triveni Engineering** was rendered in the context of central excise law, whereunder the movability or otherwise of the items in question was



integral to determine the excisability of goods. In **Triveni Engineering**, the items in question (steam turbine and alternator) were erected on a platform specially constructed for the purpose which made the machine immovable. Under the GST law, the test of movability/immovability is irrelevant and the explanation in section 17 of the CGST Act, 2017 clearly permits and does not bar "plant and machinery" to be attached to earth by foundation or structural support.

- z) That, reference is also made by the impugned order to CBIC Circular No. 58/1/2002-CX dated 15.01.2002 to state that if items assembled or erected at site and attached by foundation to earth cannot be dismantled without substantial damage to its components, then the items cannot be considered as movable and will, therefore, not be goods.
- aa) That, the Appellant, reiterates that the test of immovability/movability is irrelevant under the GST law and that under the GST law, the explanation in section 17 of the CGST Act, 2017 clearly allows items to be assembled to earth by foundation/structural support.
- ab) That, under section 17 of the CGST Act, 2017, the expression "plant and machinery" is defined as apparatus, equipment and machinery fixed to earth by foundation or structural support used for making outward supply of goods or services or both and includes such foundation and structural support.
- ac) The Appellant submits that they are entitled to input credit for the following reasons:
- a. Large part of the railway are intended to bring the raw material, unload them in the material handling plant area, move the molten metal in the Torpedo Ladle to the Pig iron plant, load the finished goods for further transportation and they are integrally connected with the operations.
- b. The expression 'plant and machinery' does not merely include only mechanical items but those that aid in the manufacture of goods. The rail network within the plant, signaling system and other telecom network established in the factory can be regarded as 'apparatus' or 'equipment' 'machinery'. As they do not fall in the exclusion clause, credit shall be eligible.
- c. It is submitted that the restriction is limited only to buildings and civil structures.



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d. Even if they are not regarded as plant & machinery, they can be regarded as supporting structures and foundation on which locomotives and torpedo ladle shall ply and they shall be regarded as accessories. It is submitted that locomotives and torpedo ladles are owned by the Appellant and they qualify as equipment, machinery and without rails, they cannot be effectively used or operated.

ad) Explaining the term "plant", the Supreme Court in **Scientific Engineering House Private Limited v. Commissioner of Income Tax, AP**, 2002-TIOL-665-SC-IT, observed as below:-

"In other words, plant would include any article or object fixed or movable, live or dead, used by a businessman for carrying on his business and it is not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in mechanical or industrial business. In order to qualify as plant, the article must have some degree of durability, as for instance, in *Hinton v. Maden & Ireland Ltd.* [1960] 39 ITR 357 (HL), knives and lasts having an average life of three years used in manufacturing shoes were held to be plant. IN *CIT v. Taj Mahal Hotel* [1971] 82 ITR 44 (SC) = **2002-TIOL-642-SC-IT**, the respondent, which ran a hotel, installed sanitary and pipeline fittings in one of its branches in respect whereof it claimed development rebate and the question was whether the sanitary and pipeline fittings installed fell within the definition of plant given in section 10(5) of the 1922 Act which was similar to the definition given in section 43(3) of the 1961 Act and this court after approving the definition of plant given by Lindley L.J. in *Yarmouth v. France* [1887] 19 QBD 647, as expounded in *Jarrold v. John Good and Sons Ltd.* [1962] 40 TC 681 (CA), held that sanitary and pipeline fittings fell within the definition of plant."

ae) That, relying on the above definition of the Apex Court, the Gujarat High Court in **Pipavav Defense and Offshore Engineering Company Ltd [2017-TIOL-1018-HC-AHM-VAT]** observed as below:-



"26. The word "plant", though an ordinary English word, is not altogether an easy word to construe. It may have a more or less extensive meaning according to its context. It has come up for interpretation before various courts on numerous occasions in the context of different statutes and the catena of judicial decisions shows that it is a word of wide and varied import susceptible of diverse meanings depending upon its setting in the scheme of the statute. Almost all cases bearing upon the interpretation of the word "plant" decided in England and in this country were cited before us and the following enumeration would show as to what an amazing variety of articles, objects or things have been held to be plant or not plant :

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(i) Horse, *Yarmouth v. France*; (ii) knives and lasts used in manufacture of shoes, *Hinton v. Maden&Ireland Ltd.*; (iii) aircraft engine which was being dismantled, *Watts v. Enfield Rolling Mills (Aluminium) Ltd.*; (iv) movable office partitions, *Jarrold v. John Good & Sons Ltd.*; (v) concrete dry dock, *Inland Revenue Commissioner v. Barclay, Curle & Co. Ltd.*; (vi) electircal fans and other office appliances, *Sundaram Motors Pvt. v. Commissioner of Incometax*; (vii) poles, cables conductors and switch boards for distribution of electricity, *Commissioner of Incometax v. Indian Turpentine and Rosin Co. Ltd.*; (viii) **light fittings**, ceiling and pedestal fans and water pipe fittings in a hotel, *Commissioner of Incometax v. Jagadeeschandran & Co.*; (ix) sanitary and pipeline fittings in a hotel, *Commissioner of Incometax v. TajMahal Hotel.*"

- af) That, the common definition of the term "equipment" is "a set of equipment or tools or a machine that is used for a particular purpose". The Appellant would also like to cite meaning of the above term from different dictionaries as under:

*"Apparatus - It is a collection or set of materials, instruments, appliances or machinery designed for a particular use (Mav. Web.Dic). A compound instrument designed to carry out a specific function. (McGraw Hill Dic. of Sc. & Tech. Terms)."*

- ag) That, the Appellant wishes to quote further on the meaning of apparatus from the Webster's Encyclopedic Unabridged Dictionary of the English Language which reads as under :-

*"a group or aggregate of instruments, machinery, tools, materials etc., having a particular function or intended for a specific use. 2. any complex instrument or machine for a particular purpose. 3. any system or systematic organization of activities, functions, processes, etc., directed toward a specific goal; the apparatus of government; espionage apparatus. 4. Physiol, a group of structurally different organs working together in the performance of a particular function: the digestive apparatus."*

- ah) That, the Appellant also wishes to rely on the definition cited in various case laws. As per the P RamanathaAiyar's Legal Lexicon:

*"The word apparatus would certainly mean the compound instrument or chain of series if instruments designed to carry out specific function or for a particular use (Commer. Of Customs v. C-NET Communication (1) (P) Ltd., (2007) 12 SCC 72, 82-83, para 36).*

*Apparatus is a compound instrument designed to carry out a specific function or for a particular use. I.C.B. (P) Ltd. v. CCE, 1997 (95) ELT 239 (T)."*



ai) That, the Appellant encloses herewith the interpretation of the expression 'apparatus', 'equipment', 'machinery' given as a compendium in various dictionaries. In terms of the above definition, it is clear that the railway siding in question having a particular function or intended for a specific use of transport of materials can get rightly covered under the definition of "plant and machinery".

aj) That, the railway siding in question does not definitely do not qualify as land/building. The exclusion is for land, building or any other civil structure. Applying the principle of *ejusdem generis*, it needs to be understood that the phrase "any other civil structures" has to be read in conjunction with land and building. Any civil structure in the nature of land and building will ordinarily be a place from where the business is being carried on and not a structure used in the process of manufacture or forming part of factory premise for making inward and outward supply of goods/services. Therefore, it can be safely inferred that facilities in question used will not be a civil structure and falls within the definition of plant and machinery.

ak) That, it is submitted that the Hon'ble AAR never examined and confined their analysis to Sec.17(5) of the Act and never proceeded to examine the definition of 'plant and machinery' given in the Explanation.

al) That, the explanation proceeds to clarify the meaning of Plant & machinery as under:

- (i) Any equipment, apparatus or machinery fixed to earth by foundation
- (ii) Any equipment, apparatus or machinery fixed to earth by structural support
- (iii) It includes the foundation and such structural support

The explanation only excludes the immovable property in the nature of land, building or any other civil structure.



am) That, these expressions of equipment, apparatus, machinery are not defined in the GST Act, the appellant placed reliance on the above Supreme Court's decision wherein similar words were come up for interpretation in the context of Railway Siding for the purpose of credit under the erstwhile Rule 57Q of the Central Excise Rules.

an) That, the same expression of machinery, equipment, apparatus were defined as 'capital goods' and in this case they are defined as 'plant and machinery'. The Court after examining the arguments has held that railway siding can be regarded as machinery, equipment or apparatus and held that credit is eligible.

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The Appellant therefore submits that issue therein involves what items will come within the ambit of machinery or equipment or apparatus and the same question is involved in the impugned case also.

- ao) That, the impugned order observes that railway siding and allied works of signaling, telecommunication located outside the premises of the Appellant cannot be treated as plant and machinery by any stretch of imagination in as much as plant and machinery used for making outward supplies and rather merit treatment as civil structure at a premises not within the precincts of the Appellant.
- ap) That, it is also observed that provisions facilitating availment of input tax credit under the CGST Act, 2017 do not extend any blanket or unconditional permission for availment of credit and all items irrespective of its use, place of use and its role in making the outward supply.
- aq) That, the conclusion of the AAR is also flawed for the following reasons:-

- Section 16 of the CGST Act, 2017 allows credit inputs/inputs services used or intended to be used in the course of furtherance of one's business, unless restricted by section 17 of the CGST Act, 2017.
- Since railway siding is essential/integral for transport of materials for the assessee to carry on its operations, credit of taxes paid on railway siding should be construed for use in the course or furtherance of business and used for making outward supply.

It is to be kept in mind that the words used in the explanation are "used for making outward supply" and not "directly used in making outward supply". Any input/input service, even if remotely essential, should be considered as eligible for credit.

- Also, unlike under the pre-GST law, inputs/input services were to be used "in or in relation to the manufacture" or "in the factory by the manufacturer", section 16 of the CGST Act, 2017 allows credit of taxes paid on inputs/input services "used or intended to be used in the course of furtherance of business." The said



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expression is of the widest possible import and is in keeping with the spirit of the GST law to allow seamless flow of credit.

ar) The Appellant relied upon the following case laws, although under the erstwhile indirect tax regime to support their submissions:-

- In ***CCE v. Solaris Chemtech Ltd., 2007 (214) ELT 481 (SC)***, examining the phrase "in relation to manufacture", the Supreme Court observed that the said phrase has been used to widen the scope and contents of the expression "inputs" and allowed credit of taxes paid on low Sulphur heavy stock (LSHS) and furnace oil used in generation of electricity, which was further used in the manufacture of caustic soda.
- In ***Oblum Electrical Industries Private Limited v. Collr. Of Cus., Bombay- 1997 (94) ELT 449 (SC)***, the Supreme Court held the expression "material required for manufacture" would also bring within its ambit material (which though not used in the manufacture) is required for the purpose of manufacture.
- In ***Commissioner of Customs, Kolkata v. Rupa and Co. Ltd-2004 (170) ELT 129 (SC)***, the SC observed that "goods required for the manufacture of" used in the exemption notification is of very wide import and includes not only the material which directly goes into the manufacturing process but also the material necessary for the act of ultimate manufacture.
- In ***Industrial Machinery Manufacturers Private Limited v. State of Gujarat, (1965) 16 STC 380***, the Gujarat High Court held that the humidifiers used in order to maintain certain humidity for the purpose of the strength of the yarn should be regarded as machinery used in manufacture of goods and that it was not necessary to show that it was used in the actual process of manufacture.



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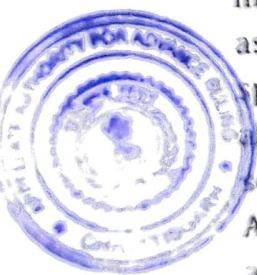
- **GTL Infrastructure Ltd. v. CST, Mumbai in 2015 (37) STR 577 (Tri-Mumbai)**, applying the functional utility test, the Mumbai bench of CESTAT held that towers would qualify as inputs for the passive infrastructure provider.
- In **J.K Cotton Spinning and Weaving Mills Co. Ltd. v. Sales Tax Officer, Kanpur, 1997 (91) ELT 34 (SC)**, the Supreme Court held if an activity is so integrally connected to the process of manufacture, goods intended for use in the process will qualify as credit.

#### 4) Personal hearing:-

In accordance with the established principles of natural justice, personal hearing in the matter was extended to the authorized representative of the appellant and accordingly, Mr. Sanjay Padhy (Finance Manager) appeared for hearing on 11.07.2019 and sought adjournment. Acceding to their request, another hearing in the case was also extended to the Appellant on 05.08.2019, wherein Mr. S. Ananatnarayan and Mr. Krishna Tej from M/s Price Waterhouse Coopers, Hyderabad and authorized representative, Mr. Sanjay Padhy (Finance Manager) M/s NMDC, appeared before us for hearing on 05.08.2019. They furnished a written submission dated 03.08.2019 along with a paper book and reiterated the same, which has been taken on record.

#### 5) Legal position, Analysis and Discussion:-

5.1 At the very outset, we would like to make it clear that the provisions for implementing the CGST Act and Chhattisgarh GST Act, 2017 [hereinafter referred to as "the CGST Act and CGGST Act"] are similar and thus, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the CGGST Act, 2017. Now we sequentially proceed to discuss the issues involved in the instant appeal filed by the Appellant along with the provisions applicable in the present case. The present appeal has been filed under Section 100(1) of the Central Goods and Services Tax Act, 2017 and the CGGST Act, 2017 by the Appellant M/s. NMDC Ltd, having their registered office at Khanij Bhavan, 10-3-311/A, Castle Hills, Masab Tank, Hyderabad, Telangana and works/ administrative office at ADMN Building Hilltop Road, Near OSD, 1<sup>st</sup> Floor, Bachel Complex, Dantewada (South Bastar) Chhattisgarh and GSTIN: 27AAA0N7325A373, against the Advance Ruling order No. STC/AAR/CD/2019 dated 24<sup>th</sup> April 2019.



5.2 The Appellant NMDC Limited is a state-controlled mineral producer of the Government of India. It is owned by the Government of India and is under administrative control of the Ministry of Steel. It is India's largest iron ore producer and exporter producing about 30 million tons of iron ore annually from 3 fully mechanized mines in Chhattisgarh. NMDC, as part of its diversification, value addition and forward integration programme is setting up a 3 MTPA capacity greenfield Integrated Steel Plant based on HiSmelt technology in Nagarnar, located 16 km from Jagdalpur in the State of Chhattisgarh with an estimated outlay of Rs. 20,000 Crore. To serve the said plant in receiving the raw materials and despatching the finished products, a railway siding is proposed for the integrated steel plant, which is located on Kothavalasa - Kirandul (K.K) single line electrified section of Waltair Division of E.Co. Railway. The proposed site is situated approximately 2 km away from K.K line between Ambagaon and Amagura Railway stations. For movement of raw materials and finished products by rail, M/s. NMDC proposed to have one rail connectivity from the proposed new block station at Ch:277.030 Km from Kothavalasa Centre of station building on Ambagaon end and one connectivity from the existing Amagura station at Ch:281.429 Km from Kothavalasa Center of station building on Kirandul end.

5.3 The project of Railways Siding is being implemented by M/s. IRCON International Ltd. The project is divided into 3 major packages for laying of private railway siding which are as below:

Pkg I - Civil and Railway allied works in connection with laying of private railway siding;

Pkg II - Execution of Civil, S&T, Mechanical and Structural works in connection with laying of railway siding for NISP;

Pkg IV - Execution of Civil, P-Way, Over head Electrification, General Electrical and Signalling & Telecommunication works for the proposed block station yard in connection with 3 MTPA Integrated Steel Plant for NMDC Ltd.

Each of the above packages is divided into 3 parts namely, civil works, supplies and erection with separate values identified for supplies made within each part.

5.4 On being aggrieved by the Advance Ruling order no. STC/AAR/03/2019, dated 24th April 2019 passed by the AAR Chhattisgarh, Raipur, the Appellant has filed the instant appeal under Section 100(1) of the Central Goods and Services Tax Act, 2017 and the CGGST Act, 2017, seeking an order under Section 101 ibid., as regards Appellant's (NMDC's) eligibility to take Input Tax credit on GST paid towards:



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- (i) Civil and railway allied works in connection with the laying of private railway siding.
- (ii) Signaling & telecommunication system, mechanical and structural works in relation to railway siding.
- (iii) Execution of P-way, civil, over head electrification, general electrical and signaling & telecommunication works for the proposed block station yard in relation to private railway siding.

5.5 M/s NMDC's project of laying railway siding is being implemented by M/s IRCON International Ltd., to be used for transportation of input materials inside the factory and to carry finished goods outside the factory. The issue being raised is the eligibility or otherwise of ITC on items/services used for laying such railway siding under the provisions of CGST Act, 2017. The scope of work constituting three packages viz. Package-I, Package-II and Package-IV respectively consists of:-

- (i) Civil and Railway allied works in connection with the constructions of Private Railway siding on item rate basis.
- (ii) Execution of Civil, General Electrical, Signaling & Telecommunication and Mechanical Equipment for Loco shed works in connection with construction of Private Railway siding.
- (iii) Execution of P-Way, Civil, Overhead Electrification, General Electrical and Signaling & Telecommunication Works for the proposed Block Station Yard in connection with Construction of Private Railway Siding.

5.6 The relevant Tender Enquiry no. HO(Contracts)/NISP/RSP/357 dated 25.3.2014 in respect of aforesaid Package-I, issued by NMDC, the Appellant specifies the Scope of Work as under:-

As per the provisions of the bidding documents, Contractor will be responsible for the entire scope of work, Execution **Package-I** of Civil & Railway Allied works and that the Contractor in accordance with the design, technical specification and approved drawings shall execute all the above works. The Scope of Work includes,

*Civil Works:-*

- i. *execution of earthwork in formation including cutting and filling, blanketing layers, slope dressing, pitching along the track for required width of formation of railway track up to required depth as per drawing and as per direction of Engineer-in-charge.*



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- ii. *Disposal of surplus and unserviceable earth / materials outside the work limit / and acquisition limit including transportation, excavation and clearing of site in all respects all complete as per specifications and direction of Engineer-in-charge. Disposal shall be away from working area for any lead outside the premises as per direction of Engineer-in-charge and shall be arranged by contractor.*
- iii. *Execution of Monor Bridges / Culverts, drains, nallah crossings and road bridges*
- iv. *Construction of Pathways*
- v. *Construction of Level Crossing Gates*
- vi. *Dismantling of existing structures if any*
- vii. *Construction of Loading Platforms*
- viii. *Installation & Commissioning of In-motion Weigh Bridges*
- ix. *Installation & Commissioning of Static weigh Bridge*
- x. *Construction of drains along the track at the required locations.*
- xi. *Installation of Barbed wire fencing along the forest boundary.*

Similarly the *Railway allied works* in the aforesaid Package- I include supply of Rails as per specification, Supply of BG Mono-block Pre-Stressed Concrete (PSC) Sleeper for straight, curve tracks including special sleepers, Welding of rails, Fixing of check rails on level crossings, curves and other location as per the drawings as per direction of Engineer-in-charge, Fabricating, supplying & fixing fouling blocks, gradient post, curve post, Engineer stop whistle board, level crossing warning board etc., laying and linking all permanent way elements of work including rails at site including all lead and lift and safe custody and handling at site etc.

5.7 The relevant Tender Enquiry no. TS No. AA/904/14-15/Pkg-2/Rev-II dated 2<sup>nd</sup> August 2014 in respect of aforesaid **Package-II**, issued by NMDC, the Appellant specifies the Scope of Work as under:-



*Civil works* : Construction of Service buildings for Solid State Interlocking cabin, Block cabin, Crew-guard rest, Commercial officer, Rolling hut, Weigh bridges, Loco shed, Carriage and wagon shed, C& W office at HSM area and at sick lines etc., Construction of Foot over bridge in the in-plant yard, Construction of Road over bridge in the in-plant yard.

*Railway allied works*: Signaling and telecommunication works in the in-plant yard and connectivity lines, General electrical works in the in-plant yard and connectivity lines etc.

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- 5.8 The relevant Tender Enquiry no. TS No. AA/904/14-15/Pkg-4/Rev-II dated 14<sup>th</sup> August 2014 in respect of aforesaid **Package-IV**, issued by NMDC, the Appellant specifies the Scope of Work as under:-

*Civil Works:-* Leveling, providing blanketing layer, slope dressing, Turfing, pitching, providing longitudinal /cross/catch water drains, Disposal of surplus and unserviceable earth, Construction of Minor Bridges / Culverts (Extension / New Bridge), drains /Nullah crossings etc. Extension of Level crossing Gates and construction of gate lodge Buildings, construction of Railway staff quarters, Station building and other ancillary works, dismantling of existing structures, if any, Construction of Platforms, Construction of Foot over bridge, Construction of Massonary /CC drains, Provision of fencing as required, Approach Roads as required, Construction of retaining walls, if required etc.

*Supply of Railway materials:-* Supply of Rails, PSC Sleepers, Laying & linking the track including assembly of points and crossings and sand humps, Fabrication & fixing of check rails on level crossings / curves and guard rails etc., Fabrication & erection of Dead ends, Casting & fixing RCC fouling marks, gradient posts, KM posts, Hectometer posts, Curve Point number of boards, level crossing boards etc., Construction of buildings for TSS, SSP, SP, OHE, Tower wagon shed & PSI Depot, OHE for diversion line etc.

- 5.9 The Appellant have pleaded in the instant appeal, that perusal of section 17(5)(c) and (d) of the CGST Act, 2017 reveals that the test of movability/immovability is immaterial to determine the eligibility of credit once the items in question qualify as "plant and machinery". It was their contention that once the items in question qualify as "plant and machinery", they stand excluded from the meaning of "immovable property". The Appellants contention is that under the CGST Act, 2017, even if the items in question are attached to earth, they will qualify as "plant and machinery". As regards the exclusions specified in the statute it was their opinion that ITC on goods and services is restricted if the same is used for construction of an immovable property unless that immovable property results in plant & machinery and further that credit of taxes paid on various inputs will be eligible as railway siding satisfies the definition of plant & machinery.

- 5.10 In the instant Appeal, the Appellant seeks addressal on the primary issue as to whether the AAR was right by holding that the items in question merit treatment as a civil structure /immovable property and not as "plant and machinery" and whether the order of AAR dated 24.4.2019 failed to appreciate the scope of section 16 of CGST Act, 2017.



5.11 Section 16(1) of CGST Act stipulates that:

*"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.*

*As per "Section 2(59) "Input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;*

*As per Section 2(19) "capital goods" means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;*

5.12 Section 17(5) of CGST Act, 2017 stipulates about the restrictions on availment of input tax credit. Clause (c) and (d) of section 17(5) provides for restriction of input tax credit in respect of goods and services used for construction of immovable property (other than plant and machinery).

5.13 "Works contract" has been defined under section 2(119) of the CGST Act, 2017 as a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract. The above definition thus stipulates only certain works performed on immovable property as works contract. Further, it is only when there is involvement of transfer of property in goods that would make the contract as works contract i.e. there must be a supply of goods along with supply of service by the supplier (contractor).

5.14 "Construction" is defined under explanation to section 17(5)(c) and (d) for the purpose of these provisions to include re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property.

5.15 The relevant sub clause under Section 17(5) of CGST Act, 2017 reads as under:

*(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (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.

**5.16 The listed works are works contract service on a immovable property involving transfer of property in goods:**

The provisions restrict credit of works contract services for works to be performed on immovable property and also restrict the credit of construction related activity of immovable property even when construction activity does not fall into the scope of works contract. However, works contract of construction activity is eligible for Input Tax Credit if done in respect of plant and machinery. Plant and machinery has been specifically defined as any equipment, apparatus attached to earth by foundation or structural support used for supply of goods or services. Plant and machinery specifically excludes land, building & any other civil structures, telecom towers, pipelines etc. As per the definition of works contract, the works contract *inter-alia* include **construction** of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract. On the other hand Construction has been defined under explanation to section 17(5) (c) and (d) as reconstruction, repairs, renovation, additions etc. to an immovable property the cost of such work is capitalised. Thus, Construction activity will not qualify as works contract if there is no transfer of property in goods involved i.e. the contractor is supplying service and there is no supply of goods. Thus, works contract may or may not be a construction.



- 5.17 From the scope of work as discussed in preceding para 5.5 pertaining to the said Package-I, II & IV, it is seen that the work allotted includes Construction of Pathways, Construction of Level Crossing Gates, Dismantling of existing structures if any, Construction of Loading Platforms, Construction of drains along the track at the required locations, Installation of Barbed wire fencing along the forest boundary, Construction of Service buildings for Solid State Interlocking cabin, Block

cabin, Crew-guard rest, Commercial officer, Rolling hut, Weigh bridges, Loco shed, Carriage and wagon shed, Extension of Level crossing Gates and construction of gate lodge Buildings, construction of Railway staff quarters, Station building and other ancillary works, dismantling of existing structures, if any, Construction of Platforms, Construction of Foot over bridge, Construction of Massonary /CC drains, Provision of fencing as required, Approach Roads as required, Construction of retaining walls, if required etc. There hardly remains any doubt that the above listed works are nothing but civil work, eventually resulting in civil structures.

**6. The large part of the listed works are located outside the premises of the Plant Area:**

The aforesaid Tender document, furnished by the Appellant in respect of Tender enquiry no. : HO(contracts)/NISP/RSP/357 dated 26.03.2014 floated by M/s NMDC Ltd., makes it abundantly clear that Package-I is for Civil and Railway allied works in connection with the construction of Private Railway siding for the proposed 3.0 MTPA Integrated steel plant at Nagarnar, Chhattisgarh on item rate basis. The civil works include execution of earth work, disposal of surplus and unserviceable earth/material outside the work limit, construction of pathways, execution of Minor bridges/culverts, nallah crossings, road bridges, construction of railway crossing gates, construction of loading platforms, installation and commissioning of In-motion weigh bridges, installation and commissioning of static weigh bridges, construction of drains along the track at the required locations, installation of barbed wire fencing along the forest boundary etc. Similarly railway allied works comprises of rails, supply of BG Mono-block Pre-stressed (PSC) Sleeper, supply of fastenings, fish plates, fish bolts, welding of rails, supply of all materials and fabrication & dead ends, supply of all materials and construction of rail road level crossings, fixing of check rails on level crossings, curves and other locations etc.

Similarly it is seen from the documents furnished by the Appellant viz. Tender document dated 02.08.2014.that, Package-II is for execution of civil, general electrical, signaling & telecommunication and mechanical equipment for loco shed works in connection with the construction of Private Railway Siding for the proposed 3.0 MTPA Integrated steel plant which consists of civil and railway allied works which includes construction of service buildings for solid state interlocking cabin, bloc cabin, foot over bridge, road over bridge, installation of mechanical equipments in loco shed and C&W shed.

Besides this as per Tender document dated 14.08.2014 furnished by the Appellant, Package-IV is for execution of P-way, civil, over head electrification, general electrical and signaling & telecommunication works for the proposed block station



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yard in connection with the construction of Private Railway Siding which consists of civil and railway allied works which includes construction of platforms, foot over bridge, masonry/CC drains, approach roads, retaining walls, supply of rails, fabrication and erection of dead ends, fabrication & fixing of check rails on level crossings, curves and guard rails etc., construction of buildings for TSS, SSP, OHE, Tower wagon shed & PSI depot etc.

We also find that AAR has also observed in the impugned order that, from the details of contract placed by IRCON through open tender as appearing at the website of IRCON that the OHE work for the said proposed block station yard in connection with the construction of private railway siding at Nagarnar has been awarded to M/s KAMY India, Nagpur. Similarly it is seen that the work order related to civil work for the said private railway siding has been awarded to M/s RKTC Group.

- 6.1 The Appellant in their appeal have also mentioned that the proposed private railway siding for their integrated steel plant, is located on Kothavalsa- Kirandul (K.K.) single line electrified section of Waltair Division of East Coast Railway and that the proposed site is situated approximately 2 Km from K.K. line between Ambagaon and Amagura Railway station. Further that they have accordingly proposed to have one rail connectivity from the proposed new block station at Ch:277.030 km from Kothavasala Centre of station building on Ambagaon end and one connectivity from the existing Amagura Station at Ch:281.429 km from Kothavalsa Centre of station building on Kirandul end. This establishes about the location of the said proposed railway siding and in this context, we also find that the AAR has also observed that most of such work including electrical, telecommunication works as also the resultant structures are constructed/located outside the premises of plant.
7. Immovable property has not been defined under the provisions of GST. However Immovable property stands defined under Section 3(26) of the General Clauses Act, 1897 to include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth. As per Section 3(36) of General Clauses Act, 1897, "movable property" shall mean property of every description, except immovable property. Section 3 of the Transfer of Property Act, 1882 stipulates that unless there is something repugnant in the subject or context "immovable property" does not include standing timber, growing crops or grass. The Section however, defines the term "attached to the earth" to mean (a) rooted in the earth, as in the case of trees and shrubs. (b) embedded to earth, as in the case of walls or buildings and (c) attached to what is so embedded for permanent beneficial enjoyment of that to which it is attached. Thus the essential character of "immovable property", as emerges from the above discussion, relevant to the present context is that it is attached to the earth, or permanently fastened to anything attached to the



earth, or forming part of the land and not agreed to be severed before supply or under a contract of supply.

- 7.1 Thus from above discussion it gets established that the instant contract consists of transfer of property in goods, coupled with supply of services which leads to the inevitable conclusion that this is a case of Works contract, covered under the definition of "Works contract" defined under section 2(119) of the CGST Act, 2017 supra. Works contract, covers in its ambit only certain works performed on immovable property. The details of works as enumerated above and as forthcoming from the contract, goes to show that the said project of Private Railway siding awarded to the Contractor by the Appellant is not as simple or movable. The work consists of an entire system comprising of a variety of different structures which are installed after a lot of prior work which involves Civil work, Civil engineering, Ground work, supply, Foundation work, Fabrication, Erection of Building Steel Structures, sheds, Block cabin, Railway allied works, Signaling & telecommunication works, Construction of Railway Staff quarters, Station building etc.. The magnitude of project covers a large area, tailored specifically to fit the dimensions and orientation of the needs of the project. In no case it appears to be prudent or for that matter viable to move these items from one place to the other. Thus, the project of construction of Private Railway siding fulfills the conditions of it being an immovable property.

8. In the aforesaid context, Hon'ble Supreme Court Judgment in the case of *M/s.T.T.G. Industries Ltd. v. Collector of Central Excise*, [decided] on 7 May, 2004 (167) E.L.T. 501 (S.C.) in Appeal (civil) 10911 of 1996, wherein the contract was for the design, supply, supervision of erection and commissioning of four sets of Hydraulic Mudguns and Tap Hole Drilling Machines required for blast furnace and the issue was whether the same is immovable property observed as under: -

*"Keeping in view the principles laid down in the judgments noticed above, and having regard to the facts of this case, we have no doubt in our mind that the mudguns and the drilling machines erected at site by the appellant on a specially made concrete platform at a level of 25 feet above the ground on a base plate secured to the concrete platform, brought into existence not excisable goods but immovable property which could not be shifted without first dismantling it and then re-erecting it at another site. We have earlier noticed the processes involved and the manner in which the equipments were assembled and erected. We have also noticed the volume of the machines concerned and their weight. Taking all these facts into consideration and having regard to the nature of structure erected for basing these machines, we are satisfied that the judicial member of the CEGAT was right in reaching the conclusion that what ultimately emerged as a result of processes undertaken and erections done cannot be described as "goods" within the meaning of the Excise Act and exigible to excise duty."*



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8.1 Hon'ble Supreme Court in the aforesaid case took note of the fact regarding the volume and weight of these machines are such that there is nothing like assembling them at ground level and then lifting them to a height of 25 feet for taking to the case house floor and then to the platform over which it is mounted and erected. It observed that the machines cannot be lifted in an assembled condition and after taking note of these facts, it concluded that the same is immovable property. *The Court further held that it cannot be disputed that such Drilling Machine and Mudguns are not equipment which are usually shifted one place to another nor it is practicable to shift them frequently.* The court also referred to its own judgments in the case of *Quality Steel Tubes (P) Ltd.* 1995 (75) E.L.T. 17 (S.C.) and *Mittal Engineering Works (P) Ltd.* 1996 (88) E.L.T. 622 (S.C.). In the case of *Quality Steel Tubes* (cited supra), the court held that goods which are attached to earth and thus become immovable did not satisfy the test of being goods within the meaning of the Act. It held that tube mill or welding head is immovable property. In the case of *Mittal Engineering Works*, the issue was whether mono vertical crystallisers are goods (in which case it would be excisable or immovable property). The mono vertical crystallisers is fixed on solid RCC Slab. It consists of bottom plates, tanks, coils, drive frames, supports etc. It is a tall structure rather like a tower with a platform. It was decided by the Court that the said product has to be assembled, erected and attached to the earth by a foundation and therefore not goods but immovable property.

8.2 In the case of *Duncans Industries Ltd. v. State of U.P. & Ors* on 3 December, 1999 Hon'ble Supreme Court had to decide whether the 'plant and machinery' in the fertilizer is 'goods' or 'immovable property'. The Apex Court held that the same is immovable property and observing as under:-

*"The question whether a machinery which is embedded in the earth is movable property or an immovable property, depends upon the facts and circumstances of each case. Primarily, the court will have to take into consideration the intention of the parties when it decided to embed the machinery whether such embedment was intended to be temporary or permanent. A careful perusal of the agreement of sale and the conveyance deed along with the attendant circumstances and taking into consideration the nature of machineries involved clearly shows that the machineries which have been embedded in the earth to constitute a fertilizer plant in the instant case, are definitely embedded permanently with a view to utilize the same as a fertilizer plant. The description of the machines as seen in the Schedule attached to the deed of conveyance also shows without any doubt that they were set up permanently in the land in question with a view to operate a fertilizer plant and the same was not embedded to dismantle and remove the same for the purpose of sale as machinery at any point of time. The facts as could be found also show that the purpose for which*



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*these machines were embedded was to use the plant as a factory for the manufacture of fertilizer at various stages of its production. Hence, the contention that these machines should be treated as movables cannot be accepted."*

8.3 In view of the discussions supra and as works contract, covers in its ambit only certain works performed on immovable property, we in affirmation with the findings of the AAR and more so with no visible intention to dismantle the said project of construction of private Railway siding, these being intended to be used for a fairly long period of time and on the basis of the scope of work itself as forthcoming from the documents supra issued by the Appellant M/s NMDC, we come to the considered conclusion that the said project of private Railway siding, consists of civil structures with foundations and are immovable in nature.

9. Now coming to the other issue raised by the Appellant, viz. whether credit of the taxes paid on various items will be eligible if the said laying of private railway siding satisfies the definition of "plant and machinery" and that the rail network, signaling system and other telecom network established can be regarded as an apparatus or an equipment. The test of immovable property is not relevant for plant and machinery as section 17(5)(c) and (d) exclude plant and machinery from immovable property. Since, plant and machinery are excluded from immovable property, construction and other activity in relation to plant and machinery shall be eligible for Input Tax Credit unless otherwise restricted. The restriction of ITC is only on the telecom towers, pipelines which are not treated as plant and machinery by virtue of explanation to sec 17(5) (c) and (d).

9.1 As already discussed in the preceding paras, Input Tax Credit provisions restrict ITC credit of works contract services for works to be performed on immovable property and also restrict the credit of construction related activity of immovable property even when construction activity do not fall into the scope of works contract. However, works contract and construction activity is eligible for Input Tax Credit if done in respect of plant and machinery.

9.2 Thus, Section 17 (5) (c) and (d) would not apply if the expenditure is in relation to a Plant & Machinery.

Term 'Plant & Machinery' is defined in explanation to section 17 as under:

*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.

9.3 "Construction" is defined under explanation to section 17(5)(c) and (d) for the purpose of these provisions to *include re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property.*

9.4 Thus, Plant and machinery has been specifically defined as any equipment, apparatus attached to earth by foundation or structural support used for supply of goods or services. Plant and machinery to specifically exclude telecom towers, pipelines etc. As per the definition of works contract, the works contract *inter-alia* include construction of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract. On the other hand Construction has been defined under explanation to section 17(5) (c) and (d) as reconstruction, repairs, renovation, additions etc. to an immovable property the cost of such work is capitalized. Thus, Construction activity will not qualify as works contract if there is no transfer of property in goods involved i.e. the contractor is supplying service only without any supply of goods. Works contract may or may not be a construction.

9.5 On dissection of the above definition, it can be seen that "Plant and Machinery" means

- (i) apparatus, equipment, and machinery, which is
- (ii) fixed to earth by foundation or structural support, that are
- (iii) used for making outward supply of goods or services or both and includes such foundation and structural supports
- (iv) but excludes—
  - a) land, building or any other civil structures;
  - b) telecommunication towers; and
  - c) pipelines laid outside the factory premises.



Accordingly, If a structure resulting from an expense satisfies above definition, then it shall be construed as a Plant and Machinery.

9.6 The said project for laying of private railway siding consisting of civil structures as discussed above and allied works of signaling, telecommunication, can in no way be related to the outward supply of goods. As per Section 2(83) of CGST Act, 2017 "*outward supply" in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business.* Not acceding, but if assuming for the sake of discussion that

these are apparatus/ equipment as contended by the Appellant then too it is implausible and far-fetched to imagine that these items which are eventually used for signaling, telecommunication in a private railway siding, erection of Building Steel Structures, sheds, Block cabin, allied works, Signaling & telecommunication works, Construction of Railway Staff quarters, Station building etc. are used for making any "outward supply". To apply the term "used for" in the definition for plant and machinery, there should be a nexus between the impugned items on which ITC is being claimed and "outward supply". In the present case the project of laying a private railway siding consisting of a variety of different structures which are installed after a lot of prior work which involves Civil work, Civil engineering, Ground work, supply, Foundation work, Fabrication, Erection of Building Steel Structures, sheds, Block cabin, Railway allied works, Signaling & telecommunication works, Construction of Railway Staff quarters, Station building etc. will render such nexus tenuous.

10. In the sectoral FAQs issued by Central Board of Indirect Taxes & Customs (CBIC), relating to eligibility of ITC on railway sidings, a question was raised regarding eligibility or otherwise of ITC on the same. The clarification sought pertained to Mining sector and it was to the effect that whether Railway siding in mining industry, exclusively utilized for dispatch of taxable goods viz. coal (i.e. directly used in the course of furtherance of business) will be treated as Plant & Machinery and ITC under GST is eligible or is to be treated as civil structure and ITC will be denied. In this context, it has been clarified therein that ITC will not be available as railway siding is not plant and machinery as defined in Section 17 of CGST Act, 2017. This FAQ has also been referred to by the AAR in the instant issue.

- 10.1 We also agree with the findings by the AAR that "the provisions facilitating availment of Input Tax credit does not extend any blanket or unconditional permission for availment of credit on all items irrespective of its use, place of use and its role in making outward supply of goods or services or both, as appears to have been misconstrued by the Appellant. These railway siding towers, allied works of signaling, telecommunication located outside the premises of M/s NMDC by their very nature appears to be nothing but independent civil structures, having no relationship whatsoever with outward supply".

- 10.2 The Appellant in their defense have cited reference to the case law of *Jayaswal Neco Ltd. V. CCE, Raipur, 2015 (319) E.L.T. (S.C)*, *Aditya Cement [2008(221) ELT 362 Raj.]*, *CCE, Raipur v. Vimla infrastructure Private Limited-2018-TIOL-556-HC-Chhattisgarh-ST*, *Ultratech Cement Ltd. V. Commissioner of Central Tax, Bangalore North, 2019-TIOL-646-CESTAT-BANG* and *Vodafone Mobile Services Limited v. Commissioner of Service Tax, Delhi, 2018-TIOL-2409-HC-DEL-ST*.



The aforesaid case laws cited by the Appellant pertain to either the erstwhile Rule 57Q of the earlier Central Excise Rules, 1944 as was in vogue, stipulating therein the provisions for availment of credit of Capital goods under Cenvat credit regime when the chapter heading/ subheading of the items which qualified being termed as "capital goods", were specifically covered under the definition of capital goods mention in the statute viz items falling under chapter 84, 85 etc. of CETA, 1985. Further in almost all the case laws cited by the appellant, the credit of duty was claimed on items used within the factory premises of the claimant, which is not the case here in as much as the railway siding is located outside the premises of M/s NMDC. As regards the case of M/s Vimla Infrastructures Pvt. Ltd., the said party was a service provider engaged in rendering cargo handling service wherein it was held that railway sidings facilitate provision of cargo handling service. Thus the said case laws are distinct and distinguishable to the facts and circumstances in hand.

10.3 The Appellant have also cited reference of decisions of Hon'ble Supreme Court's in the case of Scientific Engineering House Pvt. Ltd Vs. Commissioner of Income Tax, AP and in the case of Pipavav Defense and Offshore Engineering Co. Ltd of Hon'ble Gujarat High Court in support of their claim that these items are "plant"/ machinery/ apparatus/ equipment. The case laws cited by the Appellant are distinguishable to the facts and circumstances involved here in as much as, the items involved here lack having the necessary nexus with the "outward supply" as discussed in the preceding para.

10.4 Citing reference of the case of Vodafone Mobile Services Limited Vs Commissioner Of Service Tax (Delhi High Court) dated 31.10.2018, it was Appellant's contention that Credit of taxes paid on telecom towers have been allowed. In this context, it is seen that the case of M/s Vodafone Mobile Services Ltd. and other such providers of Telecommunication service providers are distinct and distinguishable from the facts and circumstances of the case in hand, in as much as in the cited case such towers are being used for providing the "output service", viz. Telecommunication service, whereas in the instant case the impugned items involved here required for the said project of laying of private railway siding on which ITC is being claimed lack having the necessary nexus with the "outward supply". In the cited Vodafone case, 'Capital goods' are the items under specified Tariff headings or parts, components, spares or accessories thereof and these are 'Base Transmission System' (BTS), which enables the telecom company to transmit mobile signals for rendering telecom services. Appellant have also given reference to other case laws as well, all of which in view of the above stated reasons are distinct and distinguishable from the issue in hand. As already discussed it is of utmost importance for availing credit, that the nexus test gets established. Thus, the cited case laws do not help Appellant's cause in any way.



*[Handwritten signature]*

*[Handwritten signature]*

10.5 It has also been the Appellant's contention that in Schedule XIV to the Companies Act, 1956, the rates of depreciation has been provided for "Railway Siding", categorized under the head 'plant & machinery'. This notion of the Appellant is misplaced in as much as in the Companies Act 2013 the said scenario stands changed. In Schedule II ["Useful Lives to Compute Depreciation"] at Part C under the head Nature of assets, at IV Plant & Machinery continues to be mentioned, whereas Railway siding is out of this inclusion and it finds mention at IX. Thus contrary to Appellant's contention, Railway Siding stands excluded from the head "Plant & Machinery".

Having regard to the facts and circumstances of the case and discussions as above, we dispose of the instant appeal filed by M/s NMDC, the Appellant by passing the following order:-

#### ORDER

(Under Section 101(1) of the CGST Act, 2017 and Chhattisgarh Goods and Services Tax Act, 2017)

No.STC/AAAR/02/2019/77

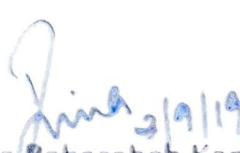
Raipur Dated ..03.. /09/2019

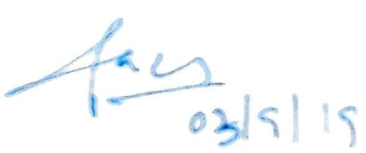
The ruling so sought by the Appellant is accordingly answered as under:-

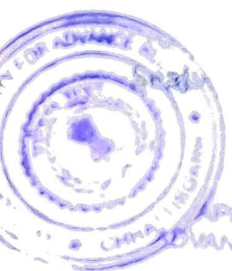
In view of the above, there is no merit in the appeal filed by the Appellant M/s NMDC having GSTIN 22AAACN7325A3Z3, against the Advance Ruling order No. STC/AAR/03/2019, dated 24th April 2019 passed by the AAR, Chhattisgarh and accordingly the said order is upheld.

Place: - Raipur

Date:-

  
Reena Babasaheb Kangale  
Commissioner  
(Member)

  
Vinod Kumar Saxena  
Chief Commissioner  
(Member)



MEMBER  
APPELLATE AUTHORITY FOR  
ADVANCE RULING (CHHATTISGARH)

MEMBER  
APPELLATE AUTHORITY FOR  
ADVANCE RULING, CHHATTISGARH

**Copy to:-**



1. Appellant,
2. The Commissioner, (SGST)
3. The Chief Commissioner, (CGST)
4. The jurisdictional officer, Jagdalpur Circle-2.