

APPELLATE AUTHORITY FOR ADVANCE RULING – CHHATTISGARH
3rd & 4th Floor, Vanijikar 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:-

- (i) Design and engineering of lighting for plant road, boundary wall and watchtower.
- (ii) Supply of plant and equipment for lighting of plant road, boundary wall and watchtower.
- (iii) Erection of plant and equipment for lighting of plant road, boundary wall and watchtower.

Read:-Application dated 04-06-2019 from Shri P.K. Mahapatra, Assistant General Manager (Finance) NMDC Limited, ADMN Building Hilltop Road, Near CSD, 1st 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/03/2019/78

Raipur, Dated 03/09/2019

The appellant M/s P.K. Mahapatra, Assistant General Manager (Finance) NMDC Limited, ADMN Building Hilltop Road, Near CSD, 1st 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 on design and engineering of lighting for plant road, boundary wall and watchtower?
2. Whether input tax credit can be availed on supply of plant and equipment for lighting of plant road, boundary wall and watchtower?
3. Whether input tax credit can be availed on Erection of plant and equipment for lighting of plant road, boundary wall and watchtower?

2. Facts of the case:-

- I. The Appellant NMDC Limited holding 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 about 30 millions of tons of iron ore 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. NMDC has entered into a contract agreement with M/s Bajaj Electricals Limited for lighting of plant road, boundary and watchtower. It includes various inputs and input services like design and engineering supply of plant and equipment and erection of such plant and equipment including steel, lighting tubular poles, fittings, aviation lamps, switchbox, pipes, for laying the cables.

To serve the said plant and enable NMDC for round the clock manufacturing operations, lighting is indispensable and in this regard NMDC has awarded the project of lighting of plant road, boundary, and watchtower (Package 33) to M/s Balaji Electricals Limited.

- II. M/s NMDC had applied for advance ruling before the AAR, Chhattisgarh on the following issues:

Eligibility to take credit of taxes paid on the following:

- (i) Design and engineering of lighting for plant road, boundary wall and watchtower.

- (ii) Supply of plant and equipment for lighting of plant road, boundary wall and watchtower.
- (iii) Erection of plant and equipment for lighting of plant road, boundary wall and watchtower.

On all of the above questions, the AAR has ruled that "the applicant is not entitled for input tax credit on the inward supplies for the said activities of design & engineering, supply of plant and equipment and erection of plant and equipment for lighting of plant road, boundary and watchtower in view of exclusions stipulated under section 17(5) of the CGST Act, 2017."

- III. The Appellant preferred an appeal on all of the above question as mentioned in para(II) before the Appellate Authority for Advance Ruling in Chhattisgarh, Atal Nagar, Raipur(C.G).

3. Contention of the Appellant:

- a) The Appellant prays that the following questions have to be addressed 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?



Whether Flood Light Fittings, Transformers and other electrical appliances shall be regarded as 'plant & machinery' as they meet the test of apparatus, equipment or machinery?

4. If so, the tubular poles, lamp post and the foundation required to host the above will be regarded as 'foundation or structural support of plant and machinery' and falls in the inclusive part of the definition and eligible for input credit?
5. Whether the AAR erred in relying on the Bombay High Court's decision in **Bharti Airtel case** and refused to follow the decision of the Delhi High Court in the

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Vodafone case cited by the Appellant when the correctness of the former decision was doubted by the Delhi High Court in the latter case?

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?
- b) That, the impugned order concludes that the items in question 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.
- c) 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.

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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—

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

- d) 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.
- e) That, it can be observed from the AAR, 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 immoveable 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.
- f) That, it is evident from para 5.14 of the impugned order, the scope of work under the agreement dated 10.03.2017 with M/s. Bajaj Electricals Ltd. 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 civil work in the contract is to provide to foundation and structural support to the structures and equipment in question and nothing more. The foundation and structural support is given to the lighting equipment in order to ensure their stability and wobble-free operation. In fact, the explanation in section 17 of the CGST Act, 2017 defines 'plant and machinery' to include structural support and foundation thereof.

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- On a perusal of the contract in its entirety, it is evident that only an insignificant portion of the contract price is paid towards erection of plant and equipment. Therefore, the fact that there is erection work, (which is insignificant to ensure the operation of the structures in question) should be no reason to deny the benefit of the input tax credit to the Appellant.
 - The price adjustment clause (Appendix 4 to the Contract) is also misunderstood by the Authority. Reference to building steel structures and sheeting would not necessarily imply supply of building steel structures as part of the Appellant's contract. As is evident from the billing schedule, there is no supply of building steel structures by the contractor.
 - Also, there is no construction of boundary walls/watch tower by the contractor, as understood by the Authority. The contractor's role is limited to supply of lighting system to the plant road, watchtower and the boundary walls.
- g) 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.
- h) That, the lighting system works are used for illuminating the plant area, lighting arterial roads, boundary wall and watch tower which are essential to carry the manufacturing operations as the steel plant it is a continuous process plant which will run round the clock.
- i) The Appellant submits that they are entitled to input credit for the following reasons:



- Flood Light Fittings, Transformers and other electrical appliances shall be regarded as 'plant & machinery' as they meet the test of apparatus, equipment or machinery.
- b. The expression 'plant and machinery' also includes mechanical items. The flood light fittings, transformers and other electrical appliances 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. The tubular poles, lamp post and foundation required to host the above mentioned can be regarded as supporting structures and foundation of plant and machinery.

j) That, 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."*

k) 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) *moveable office partitions, Jarrold v. John Good & Sons Ltd.*; (v) *concrete dry dock, Inland Revenue Commissioner v. Barclay, Curle& Co. Ltd.*; (vi) *electrical 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.*"

- l) 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)."

- m) The Appellant further 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."

- n) 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 of 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).*"

- o) 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".
- p) That, lighting of plant road comprises of equipment like street poles, fittings, aviation lamps, switch box, pipes for laying the cables. Therefore, lighting of plant road, boundary & watchtower will qualify as an apparatus or an equipment.
- q) That, In terms of the above definition, it is clear that lighting of plant road & watch tower is a group of instruments, tools, materials etc., having a particular function or intended for a specific use for lighting at the Plant. Therefore, the same rightly gets covered under the definition of plant and machinery.
- r) That, the items in question 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.
- s) That, the Appellant also relied on the following case laws:-



Steel Authority of India Ltd vs. CCE & ST Raipur, [2016 (343) E.L.T. 805 (Tri. - Del.)] (paras 3 and 6): The Hon'ble CESTAT Delhi allowed credit of taxes paid on light fittings/structurers, lamps, high mast light, tubes/glasses and allied fixtures as they necessary for illumination and enable round the clock operation of the assessee's factory. According to the Tribunal, since the light structures are classifiable under chapters 84, 85 and 9405 of the Central Excise Tariff, the fact that these fixtures become part of the civil structure/immovable property was no basis to deny credit of taxes paid.

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- **CCE v. India Cement, (2017) (3) G.S.T.L 144 (Tri-Hyderabad) (paras 2 and 4):**
The CESTAT allowed credit of taxes paid on lighting works as they are related to the business of manufacture.
- In **Commissioner of Central Excise v. Jawahar Mills Limited, 2001 (132) E.L.T 3**, the Supreme Court, having regard to the normal conditions prevailing in the industry, held capacitors, control panels, cables distribution boards, switches and starters and air compressors would qualify as capital goods under rule 57Q of the erstwhile Central Excise Rules, 1944. The Apex Court held the 'capital goods' can be machines, machinery, plant, equipment, apparatus, tools or appliances and any of these used in the factory for manufacture shall be eligible for credit.
- In **Commissioner of Central Excise, Tiruchirapalli v. Maris Spinners Limited, 2008 (223) E.L.T 163 (Mad.)**, following the decision of the Apex Court in **Jawahar Mills (cited supra)** the Madras High Court allowed credit of taxes paid on light fittings and parts thereof.
- GST Advance Ruling in the case of **Nipro Corporation Private Limited** by the Maharashtra Advance Ruling Authority where credit of taxes paid on 'electrical works' was allowed to the assessee.

t) That, the Appellant also stated that as per Section 17 of Factories Act, 1948, In every part of a factory where workers are working or passing there shall be provided and maintained sufficient and suitable lighting, natural or artificial, or both. Therefore, it is mandatory for the Appellant to have proper lighting in terms of Factories Act for round the clock working specially for night shift.



u) That, 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:-

v) 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:-

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"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)*."

- w) That, 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 and 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.
- x) 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 illumination is required and essential for the round the clock operation of the plant, credit of taxes paid thereon should be allowed by this Authority.
- y) That, the AAR also relied 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.
- z) That, it is submitted 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, where the movability or otherwise of the items in question was integral to determine the excisibility 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.
- aa) 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 moveable and will, therefore, not be goods.



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ab) The Appellant reiterated 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.

ac) That, the AAR observed that lighting of plant road/towers 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 having no relationship with outward supply. It is also observed that provisions facilitating availment of input tax credit 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.

ad) That, the conclusions of the AAR is also flawed for the reason section 16 of the CGST Act, 2017 for the following reasons:-

- Section 16 of the CGST Act, 2017 allows credit inputs/input 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 the inputs/services in question are necessary for illumination of the plant and enable round the clock manufacturing operations, the goods and services in question should be construed to be used 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 expression is of the widest possible import and is in keeping with the spirit of the GST law to allow seamless flow of credit.

ae) 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.



- In ***CTL 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.

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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. Another hearing in the case was also extended 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 for hearing on 05.08.2019. They furnished a written submission dated 03.08.2019 along with a paper book and reiterated the same and 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 CSD, 1st Floor, Bacheli Complex, Dantewada (South Bastar) Chhattisgarh and GSTIN 22AAACN7325A3Z3, against the Advance Ruling order No. STC/AAR/02/2019, dated 24th 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. Further, NMDC Ltd. has entered into a contract agreement with M/s Bajaj Electricals Ltd for Lighting of Plant Road, Boundary & Watchtower. It includes various Inputs and Input services like design

and engineering, supply of plant and equipment and erection of such plant and equipment including street lighting tubular poles, fittings, aviation lamps, switch box, pipes for laying the cables. It is in this context, they M/s NMDC has awarded the project of Lighting of Plant Road, Boundary & Watchtower (Package 33) to M/s. Bajaj Electricals Limited.

5.3 On being aggrieved by the Advance Ruling order no. STC/AAR/02/2019, 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 ITC on GST paid towards:

- i. Design and engineering of lighting for Plant Road, Boundary Wall and Watchtower
- ii. Supply of Plant and Equipment for of lighting for Plant Road, Boundary Wall and Watchtower
- iii. Erection of Plant and equipment for Lighting of Plant Road, Boundary & Watchtower"

5.4 It is observed that the Appellant M/s NMDC had entered into a contract agreement with M/s Bajaj Electricals Ltd for Lighting of Plant Road, Boundary & Watchtower. It includes various Inputs and Input services like design and engineering, supply of plant and equipment and erection of such plant and equipment including street lighting tubular poles, fittings, aviation lamps, switch box, pipes for laying the cables. The issue in hand is whether the tax paid on such inputs and input services used for lighting of plant road, boundary wall and watchtower is eligible for Input Tax Credit under CGST Act, 2017. It has further been their contention that to serve the said plant and enable NMDC for round clock manufacturing operations, lighting is indispensable and in this regard NMDC has awarded the project of Lighting of Plant Road, Boundary & Watchtower (Package 33) to M/s. Bajaj Electricals Limited. The lighting system works are used for illuminating the plant area, lighting arterial roads, boundary wall and watch tower which are essential to carry the manufacturing operations as the steel plant it is a continuous process plant which will run round the clock. We also find that the scope of impugned work can be summarized as comprising of three major parts viz. Design & Engineering, Supply of Plant & Equipment and Erection of such Plant & Equipment. The Appellant has further contended that the lighting installed at their Plant Road, Boundary Wall and Watchtower can be dismantled without substantial damage and can be reassembled at another place without substantially damaging it and therefore may be considered as movable property and accordingly they are eligible for credits of tax paid on



inputs and input services used for Lighting of Plant Road, Boundary & Watchtower should be eligible. Without prejudice to above it was also M/s NMDC's contention that if such lighting is treated as an immovable property, then credit of the taxes paid on various inputs will be eligible if the said lighting satisfies the definition of the "plant and machinery" and that Lighting of plant road comprises of equipment like street poles, fittings, aviation lamps, switch box, pipes for laying the cables and therefore lighting of plant road, boundary & watchtower will qualify as an apparatus or an equipment.

5.5 As regards the exclusions specified in the statute it was their stated position that the phrase "any other civil structures" has to be read in conjunction with land and building and therefore 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. It was thus their submission that the same will not be a civil structure and that it falls within the definition of plant and machinery.

5.6 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.

5.7 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;



5.8 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).

5.9 "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).

5.10 "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.

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

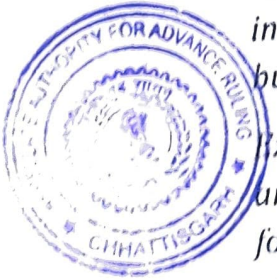
(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

.....
(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.



5.12 Input Tax Credit provisions thus 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. 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 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 only without any supply of goods. Works contract may or may not be a construction.

6. For the work in question viz. Lighting for Plant Road, Boundary and Watch Tower, the Appellant, M/s NMDC Ltd., (the employer) had entered in to a Contract agreement dated 10.3.2017 with M/s Bajaj Electricals Ltd, Mumbai (Contractor), bearing Contract no. HO(Contracts) /NISP/PI/52 to install Lighting for Plant tower, Boundary & Watch tower (Package-33) at 3.0 MPTA Integrated Steel Plant at Nagarnar, Chhattisgarh, as M/s Bajaj Electricals Ltd, the contractor has valuable and specialized knowledge and expertise for the work for lighting for plant road, boundary & watch tower.

6.1 It has been categorically specified in the aforesaid Contract agreement that the scope of work shall also include any and all work, supplies and services for construction and completion of all works as described in Bill of Quantities and Technical Specification and that the contractor M/s Bajaj Electricals Ltd., shall also execute all such works which, in the opinion of the Employer viz. the Appellant M/s NMDC are require to be executed for the successful completion of the work and that all such works shall be deemed to have been included in the contract and further that the Contractor, at his own cost is required to undertake modifications / re-construction etc. for completion of work strictly meeting the requirement of Technical Specifications(refer Article 3-Scope of Work).



6.2 Article 5, relating to Contract price for the aforesaid contract agreement specifies that the Employer viz. M/s NMDC hereby agrees to pay to the Contractor the Total Contract Price in consideration of the completion of the Works and performance by the Contractor of its obligation under the Contract and in accordance with the Contract and that the Contract price shall be INR 19,19,86,000/-. Besides this Article 10 to the impugned contract specifies that the Contractor shall use such items of steel that are manufactured by SAIL, RINL, TATA Steel, Essar, Jindal, Ispat etc. confirming to BIS standards and which are required for execution of all civil and structural work including sheeting, technological structure, piping etc.

6.3 In the price schedule at Appendix-1 to the contract agreement it has been specifically mentioned that the prices in the contract is inclusive of rates including transportation handling, insurance etc. and all taxes, duties, levies as applicable to the respective portion of work, including VAT on Works Contract (Works contract Tax) and Service Tax & Education cess thereon which will be paid against proper Service Tax Invoice as per Rules and as required by Employer for availing Cenvat Credit. Further perusal of the aforesaid price schedule it is seen that the prices have been agreed upon taking in to consideration three aspects viz. Design & Engineering Part, Supply part and Erection part with the respective amount being Rs. 16.01 Lakh, Rs. 1487.78 Lakh and Rs. 416.07 Lakh, collectively amounting to Rs. 1919.86 Lakh. It has also been specifically mentioned therein that the above prices cover the total scope of work as specified in the contract document.

6.4 The items of works as has been mentioned in the instant contract, under the said price schedule, for the said Lighting for Plant Road, Boundary & Watch tower agreed upon by the Employer, M/s NMDC Ltd., the Appellant and M/s Bajaj Electricals Ltd., the Contractor, includes 9 numbers of Foundations for Compact Transformer sub-stations complete with supply of all erection materials for civil work, Fencing materials, Gate etc. confirming to TS, 1170 numbers of Foundations for 8m/10m height Street Light Poles complete with supply of erection material for Civil works confirming to Technical Specifications, 10 numbers of Foundations for 30m height Lighting High Mast complete with supply of erection materials for Civil work, with rail guard /channel fencing for protection against heavy vehicle confirming to technical specification, 105 numbers of Foundations for 20 m height Lighting High Mast complete with supply of erection materials for Civil work, with rail guard /channel fencing for protection against heavy vehicle confirming to technical specification, 15 numbers of Foundations for outdoor feeder pillar with platform & fencing, gate, cable trench, conduit inserts, plate inserts etc. complete with supply of

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all erection materials for Civil works confirming to technical specification, one number of Foundations for outdoor feeder pillar cum PDB with Platform & fencing and gate, cable trench, conduit inserts, plate inserts etc. complete with supply of all erection materials for Civil works confirming to technical specification and 105 number of Foundations for installation of Structure mounted Power JB's complete with supply of all erection materials for Civil works. As regards the civil engineering work it has been categorically mentioned in the agreement itself under the general conditions for contract that the Contractor viz. M/s Bajaj Electricals Ltd., shall be responsible for the construction of all civil foundation for structures and equipment and all other connected civil construction works included in the scope of work as per technical specifications.

6.5 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.



6.6 Thus from above discussion it gets crystal clear 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 lighting of Plant Road, Boundary and Watchtower awarded to the Contractor by the Appellant is not as simple or movable. The work consists of an entire system comprising a variety of different

★ structures which are installed after a lot of prior work which involves detailed Designing, Engineering, Supply, Civil work, Civil engineering, Ground work, Foundation work, Fabrication, Erection of Building Steel Structures & Sheet piling and Erection of Electrical items etc.. The magnitude of work done is enormous and these are tailored specifically to fit the dimensions and orientation of the needs of the project. It does not appear prudent or for that matter viable to move these items from one place to the other. Thus, the project fulfills the conditions of it being an immoveable property.

6.7 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 immoveable 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."

6.8 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 house floor and then to the platform over which it is mounted and erected. It is observed that the machines cannot be lifted in an assembled condition and after taking note of these facts, it concluded that the same is immoveable 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),

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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 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.

- 6.9 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 'immoveable property'. The Apex Court held that the same is immoveable 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 fertiliser plant in the instant case, are definitely embedded permanently with a view to utilise the same as a fertiliser 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 these machines were embedded was to use the plant as a factory for the manufacture of fertiliser at various stages of its production. Hence, the contention that these machines should be treated as movables cannot be accepted."

- 6.10 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 for lighting and 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 contract agreement supra between the Appellant M/s NMDC and M/s Bajaj Electricals, come to the considered conclusion that the resultant structures are civil structures with foundations and are immovable in nature.

7. 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 lighting project satisfies the definition of "plant and machinery" and that Lighting of plant road boundary & watchtower which comprises of items like street poles, fittings, aviation lamps, switch box, pipes for laying the cables would qualify 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).

7.1 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.

7.2 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.

7.3 "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



7.4 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 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 only without any supply of goods. Works contract may or may not be a construction.

7.5 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.

7.6 The said project for lighting consisting of civil structures as discussed above cannot be said to be used by the Appellant for making outward supply of goods or services or both, which is the utmost essential ingredient for being termed as "Plant and Machinery". In the instant case, Structures/towers meant for Lighting for Plant Road, Boundary Wall and Watch tower 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 eventually are used for lighting of Plant Road, Boundary wall and watchtower, 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 lighting of plant Road, Boundary wall and watchtower will render such nexus tenuous.

7.7 We affirm 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 applicant. These towers, boundary and watch tower by their very nature appears to be nothing but independent civil structures, having no relationship whatsoever with outward supply".

8. The Appellant have 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 Gujrat 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, these items have no nexus whatsoever with the "outward supply" involved here, as already discussed in the preceding para.

8.1 The Appellant's reliance of the case laws of Hon'ble CESTAT in the case of *SAIL vs CCE & ST Raipur* and *CCE vs India Cement*, Hon'ble Supreme Court in the case of *CCE vs Jawahar Mills Ltd*, Hon'ble HC in the case of *CCE Tiruchinapallivs Maris Spinners Ltd*, in the instant case is misplaced as the issues involved therein pertained to an altogether distinct and different set of law governing availment of Modvat/ Cenvat credit under Modvat /Cenvat Credit Rules. These issue pertains to the erstwhile Capital goods cenvat credit regime when the chapter heading / subheading of the items, qualified them being termed as "capital goods", that were specifically covered under the definition of capital goods mentioned in the statute viz. items falling under Chapter 84, 85 etc. of CETA, 1985. Some case law cited even pertain to the period when Rule 57Q of erstwhile Central Excise Rules, 1944 as was in vogue, stipulating therein the provisions for availment of credit.

8.2 The Appellant in their defense have also cited reference to the GST Advance Ruling in the case of *Nipro Corporation Pvt. Ltd by Maharashtra AAR*, stating that credit of taxes paid on "electrical works" was allowed. In the cited case the said credit was



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allowed for items used at the production floor / production utilities, which is certainly not the case here in as much as here the items are undisputedly being used for lighting of Plant Road, Boundary wall & watchtower and are not for making any "outward supply", as discussed in the preceding paras. Thus the case of *M/s NIPRO Corporation Pvt. Ltd* supra, cited by the Appellant does not in any way relate to the present case. It is also worth mentioning here that as per Section 103 (1) of CGST Act, 2017, the advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling and on the concerned officer or the jurisdictional officer in respect of the applicant.

8.3 Citing reference of the case of *Vodafone Mobile Services Limited Vs Commissioner Of Service Tax (Delhi High Court) dated 31.10.2018*, the Appellant's contention was 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 there is no nexus between the impugned items required for the said project of lighting of plant Road, Boundary wall and watchtower on which ITC is being claimed and the "outward supply" of the Appellant. 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 and thereby render 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 are not applicable to the instant case.

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/03/2019/79

Raipur Dated ...13/09/2019

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/02/2019, dated 24th April 2019 passed by the AAR, Chhattisgarh and accordingly


the said order is upheld.



Place:- Raipur

Date:-

Seal:-


Reena Babasaheb Kangale
Commissioner
(Member)

MEMBER
APPELLATE AUTHORITY FOR
ADVANCE RULING, CHHATTISGARH



Vinod Kumar Saxena
Chief Commissioner
(Member)

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.