

TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Constituted under Section 99 of Tamil Nadu Goods and Services Tax Act 2017)

A.R.Appeal No.04/2022 AAAR

Date:17.04.2023

BEFORE THE BENCH OF

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| Sh. Mandalika Srinivas, I.R.S., Principal Chief Commissioner of GST & Central Excise, Member, Appellate Authority for Advance Ruling, Tamil Nadu | Sh. Dheeraj Kumar, I.A.S., Principal Secretary/Commissioner of Commercial Taxes, Member, Appellate Authority for Advance Ruling, Tamil Nadu |
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Order-in-Appeal No. AAAR/01/2023 (AR)

(Passed by Tamil Nadu State Appellate Authority for Advance Ruling under Section 101(1) of
the Tamil Nadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamil Nadu Goods & Services Tax Act 2017("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the Order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.
2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only
 - (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling;
 - (b) on the concerned officer or the jurisdictional officer in respect of the applicant.
3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.
4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

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| Name and address of the appellant | M/s. Coral Manufacturing Works India Private Limited, No.150,Villarasampatti Naal Road, Nasiyanur Road, Villarasampatti, Erode, Tamil Nadu 638 107. |
| GSTIN or User ID | 33AAICC4646F1ZT |
| Advance Ruling Order against which appeal is filed | Order No. 12/ARA/2022 dated: 31.03.2022 |
| Date of filing appeal | 13.05.2022 |
| Represented by | Shri.V.Ravindran, Advocate |
| Jurisdictional Authority-Centre | Salem Commissionerate, Erode-I Range |
| Jurisdictional Authority -State | The Assistant Commissioner (ST), Thindal Assessment circle |
| Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details | Yes. Payment of Rs. 20,000/- made vide challan No.IDIB 22053300057984 dated 11.05.2022, and IDIB 22053300079488 dated 12.05.2022. |

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are in *pari materia* and have the same provisions in like matter and differ from each other only on few specific provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act, 2017 would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act, 2017.

1.1 The subject appeal has been filed under Section 100 (1) of the Tamilnadu Goods & Services Tax Act, 2017/Central Goods & Services Tax Act 2017 by M/s. Coral Manufacturing Works India Private Limited, (herein after referred as the Appellant), having their registered office at No. 150, Villarasampatti Naal Road, Nasiyanur Road, Villarasampatti, Erode, Tamil Nadu, 638 107. They are registered under GST with GSTIN 33AAICC4646F1ZT. The appeal is filed against the Order No. 12/ARA/2022 dated 31.03.2022 passed by the Tamil Nadu State Authority for Advance ruling on the application for advance ruling filed by the Appellant.

2. The Appellant has stated that they are in the process of completing the establishment of an Integrated Factory Building to manufacture and supply generators for wind operated electricity generators (WOEG). The Integrated factory building that was being constructed, was a special kind of two-in-one building in the sense that it was not merely a conventional roofed factory building to protect the men, machineries and materials from rain and shine, but was a plant and machinery in itself due to its incrementally strong and large foundation, large numbers of pillars, 10 metres highly placed gantry beams with support mountings across the length and breadth, rails

over the floor and beams for facilitating the overhead cranes to handle, move and operate heavy parts of the Generators from one work-station to another and finally to load the generators on to the special trucks to carry the generators to the destination. These facilities built into the building make the entire building undoubtedly a plant and machinery to make the WOEG.

2.1 As huge amount of steel, cement, structures, pre-cast, reinforced concrete beams, poles etc. are used in the process to make the above Integrated Factory Building and as huge GST amount is paid on these items when converted in to Works contract service (WCS), the Appellants felt in a bonafide manner that they may be entitled to Input Tax benefit under Sec. 16 of the CGST Act, 2017.

3. The Appellant had sought Advance Ruling on the following questions:

Whether input tax credit of GST is admissible for supply of the following goods & services :-

- (a) steel, cement and other consumables etc., to the extent of their actual usage in the execution of the works contract service when supplied for construction of immovable property, in the form of the factory which is an Integrated Factory building with Gantry Beam, which in turn used for mounting across the pre-cast concrete beams, poles and over which the crane would be operated;
- (b) structures, Pre cast, reinforced concrete beams, poles etc. (purchased as it is) which are used as supports to mount and operate the crane over 10 metres from ground, as shown in the pictures attached; and
- (c) Other capital goods, like rails which are fixed over the concrete arms for smooth travel of the over-head crane.

4. The Advance Ruling Authority (ARA) pronounced the following rulings in Para 9 of the Order, as under:

- 1. Input Tax Credit of GST paid on Steel, cement and other consumables are not available for the appellant as per the findings at Para 8 of the ruling.
- 2. The eligibility to credit of GST paid on structures, Pre cast, reinforced concrete beams, poles etc. (purchased as it is) and other capital goods are not answered as the question is not substantiated with the factual documents.

5. Aggrieved with the above ruling, the Appellant has filed the present appeal. The grounds of appeal are as follows:

5.1 "The ruling conveyed in the Order No. 12/ARA/2022 dated 31.03.2022 [impugned] not sustainable in law and the appellants wish to make the grounds of appeal, especially against the findings in para 8.1 and 8.2. and against decision in para 9 of the impugned advance ruling. In addition, the appellants is making the following specific response to the findings in Paras 6.1 to 7.4 of the impugned advance ruling, as per the table given below:-

| Para Ref. | Gist of order | Response to the findings in the impugned order, which is also the grounds of appeal. |
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| 6.1 of the impugned order | Capturing of facts and ruling sought by the appellant. | Facts in brief have been captured correctly, obtained reports from the jurisdictional officers and thereafter <u>the application of the appellants was admitted for issue of advance ruling on merits</u> ought not to have been disposed on in the manner it was done in the impugned order. <i>[Last line of Para 6.1. of the impugned order refers.]</i> |
| 7.1. of the impugned order | Capturing of facts again and rephrasing the issues to be decided by the ARA. | Facts in brief have been captured correctly and the issues to be decided in the language of ARA are also more or less correct. Therefore no specific comments on this sub-para. |
| 7.2 to 7.3 of the impugned order | Incremental earth work Excavation, Foundation, Column to stub/floor level, Foundation refill, increment in the size of plinth Beam & Precast etc.. apparently admitted by ARA, based on the documents / details provided & submissions made. | Apart from the recognition of the facts, the ARA took note of the facts, documents and the submissions made in the form of CDs, Drawings and the Chartered Accountant's/Chartered Engineer's certification taken on record for . |
| 7.3 & 7.4. of the impugned order | In so far as the observation about non-submission of documentary proof for purchase of the pre-cast/ supports, or the details of "other capital goods" and the factual details as to whether 'rails' are procured by them per-se or rails are also | There is no provision under Sec.98 of the CGST Act, 2017 for the ARA to dispose of an application in the manner that has been decided in the impugned order. The ARA having sought admitted the application for advance ruling on merits and also collected additional inputs in connection with such application for ruling from the appellants and the jurisdictional officers and therefore the ARA ought to have decided the issue on merits. The observations made in para 7.3. and 7.4 and the order passed as per para 9(2) are not consistent with the provisions of Sec.98 of the CGST Act, 2017. |

5.2 In so far as the ruling to deny the Input Tax Credit GST paid on steel, cement and other consumable are concerned, the ARA relies on the interpretation of the provisions of section 17 (5) (d) of the GST Act in para 8.1. The definition of immovable property is neither reproduced nor any findings given thereon, although there is a reference to the General Clauses Act in para 8.1.

5.3 According to Section 3(26) of the General Clauses Act, 1897, immovable property includes "land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth".

5.4 The issue particularly raised in the application of the Appellant for advance ruling was that whether the Section 17 (5)(d) restricted the eligibility to the ITC for goods and services or both received by a taxable person for construction of an immovable property other than 'plant and machinery'. From the simple reading of the above provisions, it could be understood that the law presupposes a situation where plant and machinery [attached to the earth] could be one of the exceptions to expression "immovable property". There is no definition cited from GST law for immovable property. Even though there is no discussion or findings in the impugned order on the definition of the expression "immovable property" as per General Clauses Act, it is clear that "plant and machinery" having been carved out of the definition of immovable properties, are eligible for ITC as per Sec.17(5)(d).

5.5 This would leave a simple point to be decided in the present case as to whether ITC on goods or services or both which go into the making of the integrated factory building of the appellant and which is indisputably used as plant and machinery [without which the appellant cannot carry out their manufacturing activity] would come under the exception carved out under section (17) (5) (d). The ARA, for addressing the pertinent question, made only a bald observation in impugned order in para 8.2 which is extracted below for immediate read:-

"In the case at hand, the supply received by the appellant results in construction of a civil structure which is the form of factory. The factory is nothing but a building where people use machines to produce goods or service or both. The foundation and walls through are strengthened is again only a part of factory, which is in the genre of 'Civil Structure'. Any factory premises will be designed and constructed to the support the 'Plant and machinery' to be housed in it for the operation/ production of the goods for which such factory is intended. The entire construction of the 'Integrated factory premises' with the strengthening of the walls, increase in the volume/ size of plinth beam, etc are only part of civil structures of the factory housing the 'Plant and Machinery' and are not the foundation with which such 'plant and machinery' are fixed to earth. The same, at best is an added measure to bear the load of the 'plant and machinery' installed in the factory. Therefore, the additional foundation/ beams are to be considered as any other civil structures'. Excluded from the explanation of 'Plant and machinery'."

5.6 ARA did not distinguish and differentiate the conventional factory from that of an integrated factory wherein the integrated factory served the main purpose of 'plant and machinery'.

5.7 The Appellant during the course of the personal hearing suggested that the ARA could personally visit the factory premises to understand the special attributes of the integrated factory and capture the differences between conventional factory and integrated factory. But ARA sought pictures in the form of drawing, photographs and supported by Cost/Chartered Accountant and Chartered Engineer's certificate. In para 3.2 and 3.3 these facts are acknowledged.

5.8 Moreover the scope and courage of section 17 (5)(c) and (d) were also highlighted by citing a Supreme Court decision as also a ruling on the very same ARA as brought out in para 3.3 (h).

5.9 Copies of the above rulings of the S.C in the case of Jayaswal Neco Ltd. Vs CCE, Rajpur [2015 (4) TMI 569 S.C.] and the ruling of TN ARA in the case of SHV Energy Pvt. Ltd. [reported in 2021 (4) TMI 882] are submitted as part of the appeal.

5.10 The appellant had purchased steel, cement, structures, pre-cast and other consumables for the purposes of constructing the integrated factory building. It is however immaterial as to whether the suppliers of these goods had billed separately as supply of goods with relevant HSN in their invoices or billed these goods as part of their works contract services, which Works Contract, for GST purposes, is supply of service. Thus the supply of goods cited above got merged with work contract service and this is why the contractor had billed all the items by citing SAC 9954. Further the table given under 7.3 of the impugned order, omitted to include the invoice No.40/24.03.2021 of Arcons on the appellants, wherein the supply of goods under HSN 3402 and HSN 8414 are made. Nonetheless, in so far as the Teamage Builders Pvt. Ltd., the main contractor is concerned and whose bills alone were extracted in para 7.3. of the impugned order, the lack of separate invoices for supply of the goods (listed above), ipso facto, would not make any difference as the arrangement with the contractor was such that these items are meant to be worked upon and used in the foundation, gantry beams, precast and pillars.

5.11 The ARA having collected additional data, details, documents, certifications and also having obtained official reports from the state as well central GST authorities, ought to have confronted with the appellants if there were any deficiencies in the data, documents, but should not have left the query unanswered under section 98 of the GST Act. Para 6.1 (last line) clearly is not supporting the ruling conveyed in para 9 (2).

6. Personal Hearing:

6.1 The Appellant was granted personal hearing through Virtual Personal Hearing as required under law before this Appellate Authority on 15.07.2022. The Authorized representative of the Appellant Shri.V.Ravindran, Advocate reiterated their submissions made along with their appeal applications. He requested the authority to extend him with a physical hearing to explain the technical aspects with the help of visual representations. He was told that the members are able to visualize the technicalities of an Integrated Factory Building and was enquired whether the AR still insists on a physical hearing. The AR stated that he shall not insist on physical hearing and continued his submissions with regard to the merits of the matter.

6.2 The AR reiterated the submissions with regard to the issues raised before AAR. He stated the pillars are the one which hold the cranes at about 10m height and bears the weight. The overhead cranes runs on the rails placed on beams resting on the pillars which are part of the Integrated factory. He stated that they had sought ruling on their eligibility to ITC on the GST paid on steel/cement for such Integrated Factory if procured by them, but as the ruling was not forthcoming they had entered into Works Contract Services (WCS). He stated that they will require ruling on their eligibility to ITC on steel/cement/pre-cast sections etc required for the future phase of construction/expansion of the Integrated Building, which he claimed as a part of 'Plant and Machinery'. The AR was asked to furnish his submissions in detail with specifics and the supporting documents on or before 20th July 2022.

6.3 In response the appellants have filed written submissions on 20.07.2022 stating that the findings and pronouncement of ARA which are under contest in this appeal are:

- (a) 9. To sum up, the applicant procures services of 'Works Contract' of Construction of 'Integrated Factory Premises' designed to take the load of various 'Plant and Machinery' to be housed for operations. The incremental foundations made is not the 'foundation with which the Plant and Machinery are fixed to earth', which is held as eligible along with the 'Plant and Machinery' as per the Explanation under Section 17 of the GST Act. Also, the applicant has not established that they individually procures steel, cement and other consumables for the works executed by their suppliers, thus the invoices for such goods have not been established to be in the name of the applicant. Therefore, the credit of steel, cement and other consumables even in proportion to the incremental volume of the earth foundation, side walls, beams, etc. are not available as credit to the applicant. No ruling is extended on the 'Pre-cast, Reinforcements, supports' said to have been purchased as it is by the applicant and 'Other Capital goods' as the required facts of procurement and documentary substantiation is not made before us.
- (b) Applicant's factory was being constructed with concrete foundation. Earth work, foundation, plinth beams and tie beams are designed to support the precast concrete gantry beams.
- (c) The civil engineering is done at enhanced levels for the erection of the gantry beams and eventual mounting and operation of the overhead cranes. The civil engineering on the above aspects at a higher level is not at all needed for the normal requirements for the construction of a conventional factory building comprising merely the walls and roof. The higher extent of the civil works in the present case is essentially to meet the need to install the gantry, rails with a view to install and operate the overhead cranes. The above said stronger structure supporting the roof and sidewalls of the factory is incidental
- (d) The enhanced levels of civil engineering design and erection are primarily to construct pillars and gantry beams to adequately support the mounting, and operations of overhead cranes.
- (e) Rails etc. are being fixed over the concrete structure for the overhead crane movement.
- (f) In this case, the entire input supply in question is undoubtedly for "business" only. Yet, the issue of apportionment (between the inward Works Contract Service (WCS) supply attributable for the erection and operation plant and machinery, and that for factory side walls and roof) arises

because the GST incidence on the input supply in question (the WCS received for construction of integrated factory) covers the fixation of plant and machinery to earth by foundation and structural support which inevitably doubles up as load-bearing structure for the roof and sidewalls (which are immovable property for which ITC may be said to be blocked). Such stronger structure is necessitated only to bear the additional load/ range of force and pressures that may arise to the structure on account of the movement of the overhead cranes by themselves and the weight (load of materials/components) that these cranes would be handling (while lifting, moving, shifting). The said foundation and structural supports are used to fix the apparatus, equipment, and machinery namely the gantry, the rails and the overhead cranes.

(g) Appellant is admittedly procuring WCS only but the WCS provider procures his inputs viz. steel, cement and other consumables. Going forward, for the expansion work, the appellant would subject to the outcome of the advance ruling on the eligibility of ITC, can take ITC for such future WCS contracts for the expansion works of identical nature. Advance ruling sought is therefore valid and it need not necessarily be supported by receipt of the inputs in the name of the appellant.

(h) GST on WCS for construction of plant and machinery is not blocked under section 17. Just because, the construction serves the factory roof and sidewalls also, it cannot be said that incremental foundations (the increment is only to sustain the plant and machinery) made is not the 'foundation with which the Plant and Machinery are fixed to earth. Saying so is obviously contrary to fact. Otherwise, there was absolutely no need for the appellant to spend for reinforced structures. It is obviously and undeniably to enable the erection and operation of the plant and machinery only and nothing else.

(i) The issue is only apportionment of the GST incidence on the WCS of which a basic portion is attributable to the factory walls and roof and the incremental engineering is purely for the plant and machinery. This issue is fairly captured in our submissions noted in paragraph 3.2 of the impugned order. The ARA too captured this fact and concluded fairly on facts that *".....the applicant procures services of Works Contract of Construction of 'Integrated Factory premises' designed to take the load of various 'Plant and Machinery' to be housed for operations"*, yet fumbled in legal conclusions.

(j) Legally, the Explanation to section 17 excludes "other" civil structures. Civil structure-to the extent attributable to factory roof and sidewalls-is "other" civil structure but the incremental structural inputs that are entirely dedicated for plant and machinery only and nothing else are expressly allowed for ITC. But for the need to support the plant and machinery, the incremental structural reinforcements are unnecessary. In other words, the extra strength built for the structure is un-attributable to factory but attributable exclusively to erect and operate the plant and machinery. AAR has missed in applying this aspect to the law even while accepting this factual position. This was the reason as to why the physical hearing was also sought to show the video graph of the plant, its nature and the role of the structural reinforcements to the functioning of the over-head cranes in the manufacturing process. Nonetheless, since the Hon'ble Members expressed that they had seen such factories and understood the purpose of such incremental structural reinforcements, the prayer for physical hearing was not insisted upon.

(k) According to section 95(a), advance ruling is in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. For the WCS and a few items required for the plant and machinery, 8 documents were supplied, which are at pages 2 to 9 of letter dated 06.12.2021, submitted to the Authority of Advance Ruling, which were part of the present appeal. These documents would indicate the SAC code as 9954 and HSN Code as 3402 & 8414. The documents for supply of Steel, Cement and other consumables would not be obviously there, as they were not directly purchased from the contractor as per the initial contract, but going forward for the expansion work, the appellant is contemplating. Therefore, advance ruling was not shut out by the non-furnishing of documents for transactions that have not taken place as yet but in the pipeline.

(l) As detailed in paragraph 2 in the Facts-part in the appeal under consideration, we respectfully submit that a view can fairly be taken that the structure being constructed is essentially for plant and machinery-the roof and sidewall load being incidental-the GST suffered on the entire WCS should qualify for ITC. Assuming for a moment that the plant and machinery in this case can operate in the open air, the appellant would be entitled to the whole of the ITC on the civil construction for plant and machinery. The appellant pleaded out of abundant caution for apportionment only to the extent of the incremental civil construction as applied for-excluding the basic structure strength normally required for sidewalls and roof of the factory. Therefore, the advance ruling be given as prayed for in the appeal, so that the appellant would be able to finalize their financial accounts, in so far as the capitalization of the capital goods are concerned, under IT provisions, consistent with the Advance Ruling that may be given herein.

7. Discussion and Findings:

We have gone through the facts of the case, documents placed on record, Order of the Advance Ruling Authority & submissions made by the appellant before this appellate forum.

7.1 The appellant has raised the following four issues praying to set aside the orders of the Advance Ruling Authority, Tamil Nadu.

- i) The appellant pray for setting aside the impugned order and allow the ITC benefit sought for by them..
- ii) The appellant also prays for adoption of just and fair interpretation of the provisions of Section 17 (5) (c) & (d) of the CGST Act, 2017 wherein an exception has been given to bar / restriction to the ITC benefit in the case of plant and machinery, as in the present case the GST paid on goods and services or both (in so far as they pertain to that part of the integrated factory building, which is serving as plant and machinery for the appellants' manufacturing operations.);
- iii) The appellants further pray for application of the ratio of the Supreme Court decision and the ARA ruling, in the facts and circumstances of the present case and allow the ITC prayed for to the extent stated in prayer (ii) above.
- iv) The appellants also pray for proper appreciation on the Chartered Engineer's certificate so as to rule that the integrated factory of the appellant is not nearly a conventional factory

but also a 'plant and machinery' meant to carry out manufacturing activity and that the claim of ITC [attributable to that part of integrated factory building which functions as 'Plant and Machinery'] is confirmed to be correct in law".

7.2 During the virtual personal hearing held on 15-07-2022, the Authorized representative of the Appellant made the submissions with regard to the issues raised before AAR. He stated that pillars are the one which hold the cranes at about 10m height and bears the weight. The overhead cranes runs on the rails placed on beams resting on the pillars which are part of the Integrated factory. He stated that they had sought ruling on their eligibility to ITC on the GST paid on steel/cement for such Integrated Factory if procured by them, but as the ruling was not forthcoming they had entered into Works Contract Service (WCS). He stated that they will require ruling on their eligibility to ITC on steel/cement/pre-cast sections etc. required for the future phase of construction/expansion of the Integrated Building, which he claimed as a part of 'Plant and Machinery'.

7.3 The issue raised before us is the prayer to set aside the impugned order and allow the Input Tax Credit benefit sought for by the appellants.

(i) The appellant's contention that the Integrated factory building that constructed, was a special kind of two-in building in the sense that it was not merely a conventional roofed factory building to protect the men, machineries and materials from rain and shine, but was a plant and machinery in itself as its incrementally strong and large foundation, large numbers pillars, 10 metres highly placed gantry beams with support mountings across the length and breadth, rails over the floor and beams for facilitating the overhead cranes and these facilities built into the building make the entire building a plant and machinery to make the wind operated electricity generators (WOEG) needs examination.

(ii) It is pertinent to refer the provisions of the CGST Act, 2017 relating to the input tax credit eligible for the plant and machinery in sub-section (5) of section 17 of the CGST Act, 2017 for which relevant provisions are extracted here for sake of convenience:

(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:-

(a)

(b)

(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.

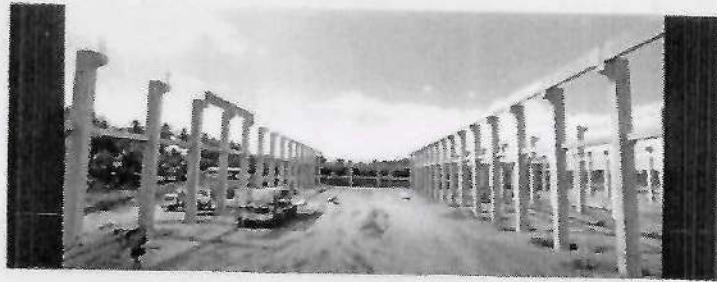
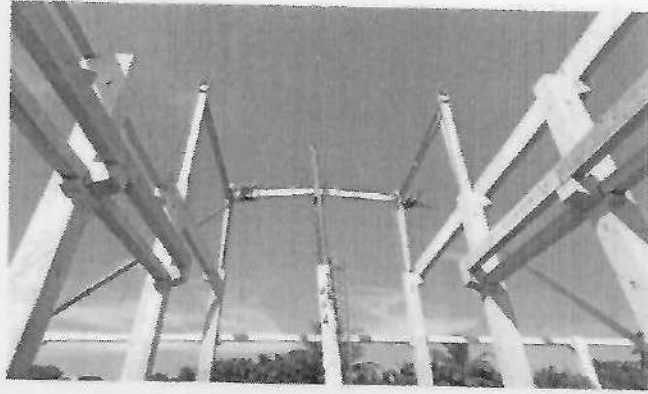
(iii) From the reading of the above Explanation to the definition, input tax credit is available in respect of works contract services and goods or services or both received by a taxable person for Plant and Machinery that are used for making outward supply of goods or services or both. Hence, the contention of the appellant needs to be examined as to whether the integrated factory building could be considered as Plant and Machinery for the benefit of input tax credit.

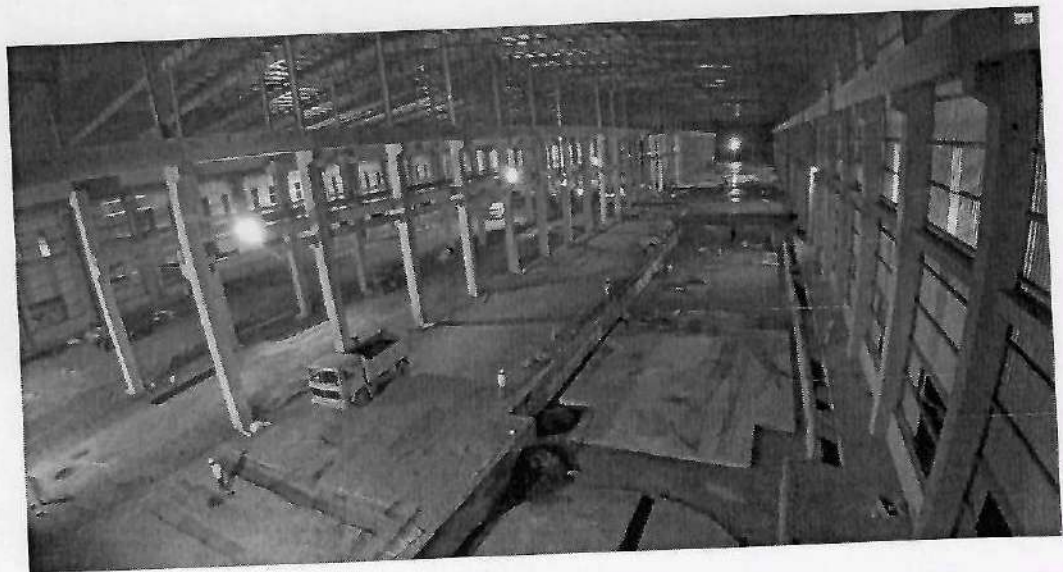
(iv) In the additional submissions made along with video clip of the construction of the factory building, the Appellant contended that they had procured WCS only, but the WCS provider procures his inputs viz. steel, cement and other consumables and for the expansion work, the appellant would subject to the outcome of the advance ruling on the eligibility of ITC, can take ITC for such future WCS contracts for the expansion works of identical nature. In this regard, section 17(5) (c) of the CGST Act, 2017 provides for blocking of input tax credit on works contract service 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. Here, the appellant did not carry on the supply of works contract service and the eligibility or otherwise will be deliberated while examining the contention of treating the factory as Plant and Machinery since the above condition is excluded for Plant and Machinery.

(v) According to section 95(a) of the CGST Act, 2017, advance ruling is in relation to the supply of goods or services or both, being undertaken or proposed to be undertaken by the appellant. The appellant filed copies of documents for procurement of works contract service before the Advance Ruling authority. Here, the provisions of section 95(a) read with section 97(2)(d) of the CGST Act, 2017 regarding, admissibility of input tax credit of tax paid or deemed to have been paid, answers the admissibility of the prayer for advance ruling sought by the appellant.

7.4 The contentions of the authorized representative of the appellant made at the time of virtual hearing and subsequent filing of additional grounds along with photo copies of the factory premises constructed are considered at great length. For the sake of convenience, the photo copies of the factory premises constructed taken from the visuals presented in a pen-drive by the Authorised Representative are reproduced below:









7.5 Examination of the above photographs and the averments made by the appellants would reveal that the factory premises have been constructed with large numbers of pillars, gantry beams with support mountings across the length and breadth, rails with a view to install and operate the overhead cranes. But the pillars and beams are found to be commonly erected as structurals to bear the weight of overhead crane as well as to support the walls and roofs constructed alongside such pillars. Thus, there are two purposes of the pillars & beams involved in the construction of factory building, one relates to structural support to move the overhead crane and other one to support side walls and roof of the Integrated factory building premises to protect it from outside environment.

7.6 In the additional submissions, the appellant reiterated the construction of integrated factory building as plant and machinery and eligibility of Input Tax Credit on input supply in respect of so called plant and machinery. Initially they contended that inward works contract supply service would be eligible for plant and machinery. But they sought for advance ruling only on the grounds as per additional submission which are as follows:

"Appellant is admittedly procuring WCS only but the WCS provider procures his inputs viz. steel, cement and other consumables. Going forward, for the expansion work, the appellant would subject to the outcome of the advance ruling on the eligibility of ITC, can take ITC for such future WCS contracts for the expansion works of identical nature. Advance ruling sought is therefore valid and it need not necessarily be supported by receipt of the inputs in the name of the appellant."

7.7 In this regard, the point to be decided is whether the integrated factory building is plant and machinery or not.

7.8 In the case of the appellant, they have erected pillars, gantry beams, rails and beams for movement of overhead crane in the factory premises. The CGST Act, 2017 states that "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 exclude land, building or any other civil structures.

7.9 First we look into the question of whether the overhead crane fixed in the factory premises can be classified as plant and machinery. This crane is falling under HSN 8426 and taxable at 9% CGST+9% SGST in schedule III under Sl.No.327 of rate notification No.1/2017 Central Tax Rate. Chapter 84 deals with machinery and hence the overhead crane would fall under the category of plant and machinery. As per the Explanation under section 17 of the CGST Act,2017, 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. Therefore, the structural support erected in relation to overhead crane alone would cover under the extended meaning of plant and machinery.

7.10 From the materials made available before us, the integrated factory building *per se* is not to be categorized as plant and machinery. The overhead crane and its proportionate structural support would be categorized as plant and machinery as per the explanation to Section 17 of the TNGST Act,2017. Such structural support would not fall under the category of blocked input tax credit. Hence the appellant would be eligible for input tax credit proportionate to the extent of structural support erected in relation to overhead crane alone subject to fulfillment of conditions stipulated in section 17(5)(c) and (d) of the CGST Act,2017 and explanation thereunder. However, they are not eligible for input tax credit relating to construction of other civil structure like side walls, roof of the Integrated factory building.

7.11 In other words, the eligibility of ITC would be as follows:

(i) The appellants are entitled to the eligible ITC on overhead rails and gantry beams laid exclusively for the purpose of movement of overhead crane.

(ii) The appellants are entitled to proportion of eligible ITC in respect of structural support for overhead crane by applying the ratio of Load transferred by overhead crane, railings and gantry beams to the pillars and beams to the total load including roof, walls etc., whose load are transferred to the pillars and beams of the integrated factory building i.e.

(Eligible ITC on works
contract service for
construction of integrated
factory building)

X

(Load transferred by Overhead Crane, railings and gantry beam
to the pillars and beams)

(Total load of the integrated factory building including roof
walls etc., whose load are transferred to the pillars and beams)

(iii) However, they are not eligible for input tax credit relating to construction of other civil structure like side walls, roof of the Integrated factory building.

In view of the above, the appeal is allowed and orders of the AAR is modified to the extent mentioned in the foregoing paragraph.

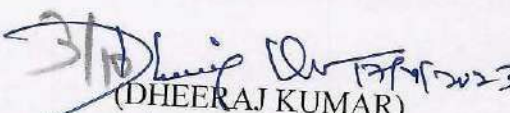
8. With regard to the appellant's prayer for application of the ratio of the Supreme Court decision and the ARA ruling, the Hon'ble Supreme Court in the case of M/s. Jayaswal Neco Ltd. Vs, Commissioner of Central Excise, Raipur [2015 (4) TMI 569] had upheld the MODVAT credit claimed on the railway tracks installed within the plant used for handling raw materials, process goods. In the instant case, the issue is relating to input tax credit on the inputs used for the structural support to plant and machinery and hence the ruling of the Hon'ble Supreme Court relied on by the appellant would not be squarely applicable to the case on appeal. The appellant had also relied on the AAR of Tamil Nadu in the case of M/s. SHV Energy Private Ltd. As per section 103(1) of the CGST Act, 2017, the said ruling shall be binding on the appellant who had sought it and on the concerned officer or the jurisdictional officer in respect of the appellant and hence it is not applicable to the present case.

9. In view of the above facts, we rule as under:

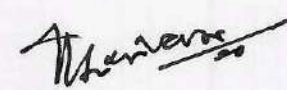
RULING

(i) The appellant would be eligible for input tax credit proportionate to the extent of structural support erected in relation to overhead crane alone as discussed in paras 7.10 and 7.11 above subject to fulfillment of conditions stipulated in section 17(5)(c) and (d) of the CGST Act, 2017 and explanation thereunder.

(ii) However, they are not eligible for input tax credit as per section 17(5)(c) and (d) of the CGST Act, 2017 relating to construction of other civil structure like side walls, roof of the Integrated factory building.


(DHEERAJ KUMAR)
Principal Secretary/
Commissioner of Commercial Tax
Tamil Nadu /Member AAAR

// By RPAD //


(MANDALIKA SRINIVAS)
Pr. Chief Commissioner of GST
& Central Excise, Chennai Zone/
Member AAAR

To

M/s Coral Manufacturing Works India Private Limited,
No.150, Villarasampatti Naal Road,
Nasiyanur Road, Villarasampatti, Erode, Tamil Nadu 638 107.

**APPELLATE
AUTHORITY FOR
ADVANCE RULING**

17 APR 2023

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