THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX

(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/SS-RJ/13/2019-20 Date- 18.10.2019

BEFORE THE BENCH OF

(1) Smt. Sungita Sharma, MEMBER

(2) Shri Rajiv Jalota, MEMBER

GSTIN Number	27AAAGG0001Q1ZM
Legal Name of Appellant	Ordnance Factory, Bhandara
Registered Address	Ordnance Factory Bhandara, Jawahar Nagar, Bhandara, Maharashtra – 441906
Details of appeal	Appeal No. MAH/GST-AAAR-13/2019-20 dated 22.07.2019 against Advance Ruling No. GST-ARA-79/2018-19/B-168 dated 24.12.2018
Jurisdictional Officer	Dy./Asstt. Commissioner of CGST & C.Ex., Bhandara Division, GST Division

PROCEEDINGS

(Under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.

The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by Ordnance Factory Bhandara (herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA-79/2018-19/B-168 dated 24.12.2018.

Brief Facts of the Case

A. M/s. Ordnance Factory, Bhandara (hereinafter referred to as 'Appellant' or OFBa interchangeably) having its corporate head office at, Jawahar Nagar, Bhandara, Maharashtra – 441906 is a unit of Ordnance Factories Board (OFB) functioning under the Department of Defence Production and Supply of Ministry of Defence, Government of India. There are 41 Ordnance factories in India in total, each engaged in different activities like production of finished products and their parts relating to arms, ammunitions, explosives, military clothing, etc. Established in the year 1960, the main business of the Appellant is to manufacture propellants and commercial explosives for use by sister factories for production of finished products like arms and ammunitions, which are ultimately supplied to Indian defence and military forces. Thus, the Appellant acts as a feeder factory for goods such as explosives and propellants for its sister Ordnance Factories that use such goods for production of finished goods. However, some of the manufactured goods are also directly supplied to depots and units of defence and military forces, as per requirement. The Appellant also sells a small part of its manufactured goods to state police and private firms. Supplies to Defence Public Sector companies like Bharat Dynamics Ltd. etc. and defence laboratories like Defence Research & Development Laboratory are also there.

B. The manufacturing process involves procurement of various raw materials from sister Ordnance factories and private entities. Majority of the purchase is from private entities. The output is then transferred to sister Ordnance factories/units of armed forces as per order. The consideration for transfer is fixed by OFB and is booked in the financial accounts of our organisation and the adjustment is done through book transfer. Money consideration is involved only for a small portion of the produce, where the goods are sold to units under Ministry of Home affairs. paramilitary forces like BSF, units of state police, defence PSU's and private entities.

C. The goods are sent in finished condition to proof establishments (such as PXE Balasore, CPF [tarsi] for testing purpose. Such proof establishments are located outside the factory premises across the country and they also function under the Ministry of Defence, Government of India. Such sample goods are destroyed during testing process. The value of the raw materials used in the supply goods

are destroyed is included in the value of the finished goods that are manufactured & thus, included in the value of taxable goods supplied.

D. Apart from sale/transfer of manufactured goods. the factory also sells the scrap generated during the manufacturing process and other used and waste goods to private entities through auction process.

E. Employees of the factory from all over tile country come down and reside in the factory estate to help run the factory and it is the obligation of the factory to provide them with residential quarters for accommodation and to maintain and upkeep their residential quarters along with maintenance of estate including playground, community hall, hospital, roads, school etc. Monthly License fee is collected from the employees in respect of such accommodation.

F. There are 2 guest houses in the factory estate. Expenditure on maintenance of guest houses for stay of various persons visiting the factory is incurred by our organisation. Guest houses are used to provide accommodation services to various guests including employees on tour. Room charges are recovered from such guests for their stay on per day basis that are different for such different guest houses.

G. The factory estate is huge and some portion of it has been let out on leasehold basis for commercial purposes like daily needs shops, banks, etc. Our organisation collects lease rentals from the tenants of such let out immovable property.

H. Other allied establishments like local accounts office & SQAE arc also functioning for the factory & within the factory. These organisations though a separate entity, they are units of the Central Government and function for OFBa. Local accounts office provides services related to accounting of transactions of OFBa. Payment of bills of OFBa etc. to OFBa & SQAE provides service related to quality control & checking of products of OFBa. The cost of salary & other expenses related to such allied establishments is included in the total cost of manufacturing of final products of OFBa &. thus, forms part of the value of taxable supply. Employees of such establishments are also provided residential quarter for accommodation and monthly license fees is collected from them in respect of such accommodation. The employee strength of such organisations is extremely small in comparison to the employee strength of OFBa.

I. The whole of OFBa estate is divided into two parts-

a) Factory premises. It consists of the factory where manufacturing activity is carried out & the administration building.

b) Estate area: - It consists or the area other than factory premises. Residential quarters of employees of OFBa and allied establishments, gardens, parks, playground, factory school for children of employees, hall for recreational activities, places of worship of God, market area, guest houses, school for children of employees, factory hospital & open land is included is included in such estate area

J. **Ordnance Factory Bhandara had sought Advance Ruling on eight questions mentioned below before the AAR, Maharashtra. Question no. 8 was withdrawn later on by Ordnance Factory Bhandara.**

1) Being a part of the Ministry of Defence, Government of India, whether our organization Ordnance Factory Bhandara is liable to pay GST on the following supply of services: -

a) Liquidated damages deducted from the payments to be made to suppliers in case of delayed delivery of goods or services.
b) Amount of Security deposit forfeited of suppliers due to non-fulfillment of certain contract conditions.
c) Security deposit left unclaimed by the suppliers and recognized as income after 3 years.
d) Food and beverages supplied at industrial canteen inside the factory premises.
e) Community hall (Multipurpose Hall) provided on rental basis to employees of our organization.
f) School bus facility provided to children of the employees.
g) Conducting exams for various vacancies.
h) Rent recovered from residential quarters of employees.

2) Whether Input Tax Credit on expenditure on the goods and services consumed by our organisation in following activities shall be available: -

a) Maintenance of garden inside the factory premises.
b) Maintenance and upkeep activities relating to gardens, parks, playground, factory school for children of employees, hall for recreational activities, residential quarter buildings of employees, roads, footpaths, street lightings and other parts of estate area that are located outside the factory premises but within the factory estate.

c) Medicines purchased by the hospital maintained by our organisation and used for treatment of factory employees and their dependents. Expenditure on maintenance, upkeep and other activities relating to such hospital.

d) Expenditure related to maintenance and upkeep of guest houses maintained by organisation.

e) Expenditure related to purchase of LPG cylinders used within industrial canteen.

3) Whether the exemption to a 'defence formation' for preparation and generation of E-way bills is applicable to Ordnance factories & other Central Government & public sector Undertakings (PSU's) that function under the Ministry of Defence, Government of India?

4) Whether exemption on payment of GST on transport of 'military or defence equipment through a goods transport agency applicable to goods transported by our organisation?

5) Whether Input Tax Credit is to be reversed on finished goods that are destroyed during testing?

6) Whether proportionate Input Tax Credit has to be reversed in cases where lesser payment is made to the supplier due to deduction on account of liquidated damages from supplier's dues?

7) Being a part of the Ministry of Defence, Government of India, whether the following notifications are applicable to our organisation and what shall be the impact of such notifications: -

a) Notification No. 2/2018- Central Tax (Rate), in relation to services by an arbitrator or an advocate to our organisation.

b) Notification No. 3/2018- Central Tax (Rate), in relation to services supplied by our organisation by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017.

c) Notification No. 36/2017 – Central Tax (Rate), in relation to payment of tax on reverse charge mechanism on sale of used vehicles, seized and confiscated goods, old and used goods, waste and scrap to a GST registered person.

8) Whether Input Tax Credit on services of passenger vehicles hired by our organisation is available?

Advance Ruling dated 24.12.2018 passed by AAR, Maharashtra

K. The AAR passed the Advance Ruling No. GST-ARA-79/2018-19/B-168 dated 24.12.2018 in respect of the seven questions enumerated above, except the

question no. 8, which was withdrawn by the Appellant later on from their advance ruling application itself.

L. Aggrieved by the above rulings passed by the AAR, the appellant has preferred appeal in respect of questions 1,2,6 & 7 only on the basis of the grounds mentioned hereinunder:

Grounds of Appeal

1. **Appeal against ruling pronounced for Question No. 1: -**

The Question No.1 that was asked for in Form ARA-01 is as follows: - **Being a part of the Ministry of Defence, Government of India, whether our organization Ordnance Factory Bhandara is liable to pay GST on the following supply of services:**

a) Liquidated damages deducted from the payments to be made to suppliers in case of delayed delivery of goods or services.
b) Amount of Security deposit forfeited of suppliers due to non-fulfillment of certain contract conditions.
c) Security deposit left unclaimed by the suppliers and recognized as income after 3 years.
d) Food and beverages supplied at industrial canteen inside the factory premises.
e) Community hall (Multipurpose Hall) provided on rental basis to employees of our organization.
f) School bus facility provided to children of the employees.
g) Conducting exams for various vacancies.
h) Rent recovered from residential quarters of employees.

All the above matters pertain to certain notifications that provide exemptions from payment of GST to "Central Government" on transactions specified in such notifications.

The ruling has not gone in favor of Ordnance Factory Bhandara in respect of all the matters raised from Sr. nos. a) to h) above except Sr. nos. c) & h). So, this appeal is against all Sr. nos. from a) to h) except Sr. nos. c) & h).

2. The reason of such ruling not being pronounced in favor of Ordnance Factory Bhandara for the aforementioned matters is that the AAR, Maharashtra has

failed to recognize Ordnance Factory Bhandara as "Central Government". This failure is despite the fact that it was clearly mentioned in the application to AAR, Maharashtra, that Ordnance Factory Bhandara is "Central Government" on the following grounds: -

"As per section 2(53) of the CGST Act, 2017, 'Government' means the Central Government. As per clause (23) of section 3 of the General Clauses Act, 1897 the 'Government' includes both the Central Government and any State Government. As per clause (8) of section 3 of the said Act, the 'Central Government', in relation to anything done or to be done after the commencement of the Constitution, means the President. As per Article 53 of the Constitution, the executive power of the Union shall be vested in the President and shall be exercised by him either directly or indirectly through officer subordinate to him in accordance with the Constitution. Further, in terms of Article 77 of the Constitution, all executive actions of the Government of India shall be expressed to be taken in the name of the President. Therefore, the Central Government means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of the President."

3. The aforementioned definition & explanation of "Central Government" has been extracted from FAQ's on Government Services issued by the CBIC under the sectoral series on GST. Question No. 3 of such FAQ's issued by CBIC deals with the question – What is the meaning of "Government" and the aforementioned Para has been provided as an answer to such question.

4. It is pertinent to note here that Ordnance Factory Bhandara is an organisation under the Ordnance Factories Board(OFB) functioning under the Department of Defence Production and supply, Ministry of Defence, Government of India.**Ordnance Factory Board (OFB)** consisting of the **Indian Ordnance Factories**, is an industrial organisation, functioning under the Department of Defence Production of Ministry of Defence, Government of India. It is engaged in research, development, production, testing, marketing and logistics of a comprehensive product range in the areas of air, land and sea systems. OFB comprises of forty-one Ordnance Factories, nine Training Institutes, three Regional Marketing Centres and four Regional Controllerates of Safety, which are

spread all across the country.OFB is the world's largest government-operated production organisation, and the oldest organisation run by the Government of India. It has a total workforce of about 164,000. It is often called the "Fourth Arm of Defence", and the "Force Behind the Armed Forces" of India. OFB is the 37th largest defence equipment manufacturer in the world, 2nd largest in Asia, and the largest in India.Ordnance Factory Bhandara is a manufacturer of Propellants and Explosives for use by sister factories for production of finished products like arms and ammunitions that are ultimately supplied to Indian defence and military forces. Thus, Ordnance Factory Bhandara majorly acts as a feeder factory for goods such as explosives and propellants for its sister Ordnance Factories that use such goods for production of finished goods.

5. Going by the industrial nature of Ordnance Factory Bhandara & having an apex body in the Ordnance Factory Board, the legal opinion of the Department was that Ordnance Factory Bhandara cannot be treated as "Government" defined under section 2(53) of the CGST Act, 2017.

Such opinion of the Department was accepted by the AAR, Maharashtra & it ruled that Ordnance Factory Bhandara cannot be treated as "Government" since Ordnance Factory Bhandara is not created by the constitution of India as a legislative, executive or judicial authority of the country.

6. It seems that the AAR, Maharashtra has not properly analyzed the meaning of "Government". It has contended that Ordnance Factory Bhandara is not "Government" since it is not created by Constitution of India as a "legislative, executive or judicial authority" of the country. However, AAR, Maharashtra did not take cognizance of the fact that the Constitution of India need not "create" the organisations intended for functioning of the country. The Constitution only lays down the framework demarcating fundamental political code, structure, procedures, powers, and duties of government institutions and sets out fundamental rights, directive principles, and the duties of citizens. The responsibility & decision of formation of organisations like Ordnance Factory Board & the associated Ordnance Factories under the Board is of the Union Government of India. The executive power of the Union Government is vested in the President.

Thus, it becomes necessary to re-iterate the following: -

"As per Article 53 of the Constitution, the executive power of the Union shall be vested in the President and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, in terms of Article 77 of the Constitution, all executive actions of the Government of India shall be expressed to be taken in the name of the President. Therefore, the Central Government means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of the President."

7. AAR, Maharashtra has ruled that Ordnance Factory Bhandara is not "Government" since it is engaged in research, development, production, testing, marketing and logistics of a comprehensive product range in the areas of air, land and sea systems and is having an industrial status and functions under Ministry of Defence.

8. Kindly note that such ruling is not proper in our knowledge. Nowhere under law is it mentioned that "Government" cannot undertake activities relating to "research, development, production, testing, marketing and logistics of a comprehensive product range in the areas of air, land and sea systems". "Having an industrial status" is the result of the nature of activities carried out by Ordnance Factory Bhandara and "functioning under the Ministry of Defence and being controlled by an apex body (Ordnance Factory Board)" is a result of the organizational structure put in place to govern the functioning of Ordnance Factories. So, these aspects should not be taken into consideration while analyzing whether Ordnance Factory Bhandara is "Government" or not as they are totally irrelevant.

9. The only important factor to be analyzed is that whether Ordnance Factory Bhandara falls into the definition of "Central Government" as per the aforementioned **clause (8) of section 3 of the General Clauses Act, 1897 read with Article 53 & Article 77 of the Constitution of India.**

"As per clause (8) of section 3 of the General Clauses Act, 1897, the 'Central Government', in relation to anything done or to be done after the commencement of the Constitution, means the President. As per Article 53 of the Constitution, the executive power of the Union shall be vested in the President and shall be exercised by him either directly or indirectly through

officer's subordinate to him in accordance with the Constitution. Further, in terms of Article 77 of the Constitution, all executive actions of the Government of India shall be expressed to be taken in the name of the President. Therefore, the Central Government means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of the President."

10. Thus, from a joint reading of all the above, it becomes quite obvious that "Central Government" is one where the President exercises the executive powers by himself or the officers subordinate to the President exercise the executive powers of the Union vested in the President in the name of the President.

11. It is pertinent to note here that all the powers provided to Ordnance Factory Bhandara's officers and decisions taken in Ordnance Factory Bhandara are on behalf of the President of India. Even the recruitments in the Indian Ordnance Factories as a Group A gazetted officers are made through union public service commission on behalf of President of India.

12. Ordnance Factory Board Procurement Manual is a manual issued by the Ordnance Factory Board for procurement of stores for production in Ordnance Factories. This has been finalized by MoD in consultation with Integrated Defence Finance and has the approval of Hon'ble Raksha Mantri.

Para 7.12 of the "Ordnance Factory Board Procurement Manual" states that-

"The parties to the contracts into by ordnance factories **are the President of India as the purchaser**, acting through the authority signing the contract/ agreement/ purchase order etc., and the supplier named in the contract."

Para 7.25 of the "Ordnance Factory Board Procurement Manual" states that-

"All defence contracts are in the name and on behalf of the President of India."

Para 14 of Annexure-2 of the "Ordnance Factory Board Procurement Manual" defines the term purchaser as follows-

14. Purchaser: **The President of India acting through the Authority** issuing the purchase/supply orders or signing the Contracts/Memo of Understanding/Agreements is the Purchaser in all cases of procurement **on behalf of the Government of India.**

Enclosed herewith is a copy of a Supply Order placed on a vendor wherein it can be seen that the Supply Order has been placed on & signed on behalf of the President of India by the concerned officer of Ordnance Factory Bhandara.

Also enclosed is an appointment letter of an officer of Ordnance Factory Bhandara, wherein it can be seen that the recruitment has been done on behalf of the President of India. Thus, to summarize, all the executive functions of Ordnance Factory Bhandara like recruitment, procurement etc. are done on behalf of the and in the name of the President of India **while exercising the executive powers of the Union vested in the President**. Thus, Ordnance Factory Bhandara is not merely a Government organization, it is "Central Government" itself since as explained above, it satisfies the conditions of being called "Central Government" as per the aforementioned **clause (8) of section 3 of the General Clauses Act, 1897 read with Article 53 & Article 77 of the Constitution of India.**

13. It is pertinent to mention here that the order-in-appeal did not counter such definition & explanation of "Central Government" in detail whereas similar proofs that Ordnance Factory Bhandara is a "Central Government" were provided to AAR, Maharashtra during hearing proceedings.

14. Kindly also take note of the fact that the AAR, Maharashtra during hearing proceedings had orally agreed to on the basis of the facts of the case that Ordnance Factory Bhandara is "Central Government". However, it ruled to the contrary in its final order.

15. Also, AAR, Maharashtra should have clearly spelt out the status of Ordnance Factory Bhandara in its order, that is, if AAR, Maharashtra ruled that Ordnance Factory Bhandara is not "Government", then what should be the status of Ordnance Factory Bhandara as AAR, Maharashtra should have mentioned in its order which was not so done.

16. It is worth mentioning here that the PAN of Ordnance Factory Bhandara is also a proof of the legal status of Ordnance Factory Bhandara. The PAN of Ordnance Factory Bhandara is "AAAGG0001Q", that is, the 4th letter of the PAN is "G" which stands for "Government." Accordingly, the constitution of business as mentioned in GST registration of Ordnance Factory Bhandara is "Government Department."

17. Also, worth mentioning here is an appeal filed in the office of the Hon. Commissioner (Appeals), Customs, Central Excise & GST, Nagpur by Ordnance Factory Bhandara against the order-in-original of Assistant Commissioner, CGST and Central Excise, Division – Bhandara relating to erstwhile law of Service Tax. Para no. 19 of the order-in-appeal (that is enclosed herewith) of the Hon. Commissioner (Appeals), Customs, Central Excise & GST, Nagpur bearing order no. NGP/EXCUS/000/APPL/367/18-19/2544 dtd. 28/12/2018, relying upon the facts of the case stated that-

"As regards the imposition of penalty, I find that the appellant is a Govt. of India organization working under the Ministry of Defence. As per the various judgments of the judicial forums, mens rea cannot be attributed to a **Govt. body** and hence I feel that no penalty is imposable on the appellant."

Thus, the order-in-appeal of the Hon. Commissioner (Appeals) treats Ordnance Factory Bhandara to be a Govt. body, which is a further proof in our claim that Ordnance Factory Bhandara is "Government."

18. Kindly also note that a certificate was issued by the Jt. Secretary, Ministry of Defence, Department of Defence Production dtd. 18/04/2006 for Sales Tax purposes in which it was stated as follows: -

"It is certified that the Indian Defence Forces and Indian Ordnance Factories are integral part of the Ministry of Defence, Government of India. Funds for meeting the expenditure on salaries and wages, stores etc. are drawn from the Defence Services Estimates of the Union Budget."

Thus, it can be seen from the above that the Ministry of Defence has certified that Indian Ordnance Factories are integral part of the Government of India which in other words means that Ordnance Factory Bhandara is "Government" for all practical purposes.

In light of all of the above, the appeal against the ruling pronounced for the sub-questions in Question No. 1 is as follows: -

19. **Being a part of the Ministry of Defence, Government of India, whether our organisation Ordnance Factory Bhandara is liable to pay GST on the following supply of services: -**

a) **Liquidated damages deducted from the payments to be made to suppliers in case of delayed delivery of goods or services: -**

Ordnance Factory Bhandara deducts liquidated damages (L.D) from the payments to be made to its suppliers in case of delayed delivery of goods or services. As per para 5(e) of Schedule II to the CGST Act, 2017, "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" is an activity that shall be treated as a supply of service.

However, Sr. No. 62 of the exemption list on supply of services as per notification no. 12/2017- Central tax (Rate)(enclosed herewith) specifies that, "Services provided by the Central Government, State Government, Union territory or local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract" shall attract NIL rate of tax. The AAR, Maharashtra had ruled that the said exemption is not applicable to Ordnance Factory Bhandara since it is not "Government". However, as explained above, Ordnance Factory Bhandara is "Central Government" and hence the aforementioned exemption in respect of payment of GST to "Central Government" on services provided by it by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government should be applicable to Ordnance Factory Bhandara and hence Ordnance Factory Bhandara need not pay GST on the Liquidated Damages deducted from the payments to be made to suppliers in case of delayed delivery of goods or services.

b) Amount of Security deposit forfeited of suppliers due to non-fulfillment of certain contract conditions: -

Ordnance Factory Bhandara also forfeits security deposit of its suppliers due to non-fulfillment of certain contract conditions. Such forfeiture though not in the form of L.D, it can be considered as a form of 'fine' that is recovered from suppliers' dues in the form of forfeiture of their deposit. Thus, exemption as per aforementioned Sr. No. 62 of the exemption list on supply of services as per notification no. 12/2017- Central tax (Rate) should be applicable on such forfeiture of deposit and hence Ordnance Factory Bhandara need not pay GST on the Liquidated Damages deducted from the payments to be made to suppliers in case of delayed delivery of goods or services as Ordnance Factory Bhandara is

"Central Government". The AAR, Maharashtra had ruled that the said exemption is not applicable to Ordnance Factory Bhandara since it is not "Government".

c) **Security deposit left unclaimed by the suppliers and recognised as income after 3 years: -**

No appeal is preferred against the ruling prescribed in sub-question c) of Question No. 1.

d) **Food and beverages supplied at industrial canteen inside the factory premises: -**

As per Clause 6 of Schedule II to the CGST Act, 2017, "supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration" shall be treated as a supply of services. There is an industrial canteen inside the factory premises that serves food and beverages to employees of the factory. Neither is alcoholic liquor served in the industrial canteen nor is the industrial canteen air conditioned. Nominal charges for such food and beverages are recovered from the employees on no profit basis in order to cover the day-to-day expenditure of the canteen. Such industrial canteen is run by the factory itself and no outdoor caterer is involved in providing services related to supply of food and beverages. Thus, such supply of food and beverages by the factory to factory employees inside the industrial canteen falls within the category of 'services' as per the aforementioned clause 6 of Schedule II to the CGST Act, 2017. However, in terms of the aforementioned Sr. No. 6 of the exemption list on supply of services as per notification no. 12/2017- Central Tax (Rate), supply of services by the Central Government to non-business entities attract 'NIL' rate of tax. Thus, since such supply of food and beverages is done to factory employees that are non-business entities, the charges recovered by the factory from such employees for such supply attracts 'NIL' rate of tax since Ordnance Factory Bhandara is "Central Government" as explained above. The AAR, Maharashtra had ruled that the said exemption is not applicable to Ordnance Factory Bhandara since it is not "Government".

e) **Community hall provided on rental basis to employees of the factory:**

There is a community hall within the factory estate that is let to be used by the factory to its employees for their personal purposes like family gatherings, marriages, other social functions etc. Charges in terms of monetary consideration are recovered by the factory from its employees in lieu of such use. As per clause (zz) of the definitions contained in notification no. 12/2017-Central tax (Rate), "Renting in relation to immovable property" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property. Thus, the service provided by the factory to its employees for letting them use cultural hall for their personal purposes falls within the definition of "Renting in relation to immovable property". However, keeping in view the above discussed Sr. No. 6 of the exemption list on supply of services as per notification no. 12/2017- Central tax(Rate), such services provided by Ordnance Factory Bhandara attract 'NIL' rate of tax since the provider of service (Ordnance Factory Bhandara) is "Central Government" and the recipient of services(factory employees) are non-business entities. The AAR, Maharashtra had ruled that the said exemption is not applicable to Ordnance Factory Bhandara since it is not "Government".

f) **School bus facility provided to children of the employees:**

Ordnance Factory Bhandara provides the service of pick and drop of the children of its employees from school located outside the factory via bus owned by the factory. Charges in terms of monetary consideration are recovered by the factory from its employees in lieu of such service provided to them. So, keeping in view the above discussed Sr. No. 6 of the exemption list on supply of services as per notification no. 12/2017- Central tax(Rate), such services provided by Ordnance Factory Bhandara attract 'NIL' rate of tax since the provider of service (Ordnance Factory Bhandara) is "Central Government" and the recipient of services(factory employees) are non-business entities. The AAR, Maharashtra had ruled that the said exemption is not applicable to Ordnance Factory Bhandara since it is not "Government".

g) **Conducting exams for various vacancies in the factory:**

For conducting examinations to fill up various staff vacancies in Ordnance Factory Bhandara, it collects fees from the candidates who wish to appear in such

examinations. So, keeping in view the above discussed Sr. No. 6 of the exemption list on supply of services as per notification no. 12/2017- Central tax (Rate), such services of conducting examinations provided by Ordnance Factory Bhandara attract 'NIL' rate of tax since the provider of service (Ordnance Factory Bhandara) is "Central Government" and the recipient of services(candidates) are non-business entities. The AAR, Maharashtra had ruled that the said exemption is not applicable to Ordnance Factory Bhandara since it is not "Government".

h) <u>Rent recovered from residential quarters of employees:</u>

No appeal is preferred against the ruling prescribed in sub-question h) of Question No. 1.

20. **<u>Appeal against ruling pronounced for Question No. 2: -</u>**The Question No.2 that was asked for in Form ARA-01 is as follows: -

Whether Input Tax Credit on expenditure on the goods and services consumed by our organisation in following activities shall be available: -

a) Maintenance of garden inside the factory premises.

b) Maintenance and upkeep activities relating to gardens, parks, playground, factory school for children of employees, hall for recreational activities, residential quarter buildings of employees, roads, footpaths, street lightings and other parts of estate area that are located outside the factory premises but within the factory estate.

c) Medicines purchased by the hospital maintained by our organisation and used for treatment of factory employees and their dependents. Expenditure on maintenance, upkeep and other activities relating to such hospital.

d) Expenditure related to maintenance and upkeep of guest houses maintained by organisation.

e) Expenditure related to purchase of LPG cylinders used within industrial canteen.

The AAR, Maharashtra ruled that Input Tax Credit on all of the above shall not be available to Ordnance Factory Bhandara except sub-question e), that is, expenditure related to purchase of LPG cylinders used within industrial canteen.

The explanation that AAR, Maharashtra gave for denying such credit was that the goods/services used in such activities are not used or intended to be used by Ordnance Factory Bhandara in furtherance of its business.

21. Input Tax Credit in relation to sub-question e), that is, expenditure related to purchase of LPG cylinders used within industrial canteen was allowed by AAR, Maharashtra on the pretext that the output supply of food and beverages to employees in industrial canteen is taxable.

22. We wish to counter the ruling of AAR, Maharashtra denying the Input Tax Credit on such activities on the following grounds: -

The basic question that is being asked here is that whether the following goods/services received by the factory are covered under the definition of "input" and "input services" as per section 2(59) & 2(60) of the CGST Act, 2017 respectively & whether such goods/services can be considered to be falling within the scope of "used or intended to be used in the course or furtherance of business" as per section 16(1) of the CGST Act, 2017 so as to entitle Ordnance Factory Bhandara to avail Input Tax of the said goods/services. It is worthwhile to note here that Hon. Finance Minister of India stated at paragraph 5(b) of the Statement of Objects & Reasons while introducing the Central Goods & Services Tax ("CGST") Bill, 2017 in the Parliament as under: -

"5. The Central Goods and Services Tax Bill, 2017, inter alia, provides for the following, namely: —

(b) to broad base the input tax credit by making it available in respect of taxes paid on any supply of goods or services or both used or intended to be used in the course or furtherance of business."

Hence a clear intent to broad base the input tax credit is evident from the above. Also, the term "used or intended to be used in the course or furtherance of business" has been used to expand the scope of inputs & input services to those activities that have some direct or indirect nexus to business of the supplier.

23. So, it requested to the Hon. Appellate Authority for Advance Ruling to decide upon the admissibility of Input Tax Credit in relation to the following services keeping in view the aforementioned intention of the Hon. Finance Minister of broadening the Input Tax Credit base. Even in the erstwhile laws relating to

Excise Duty & Service Tax, the essential requirement of a service to be considered as "Input Service" for availing CENVAT Credit of the same as per Rule 2(l) of the CENVAT Credit Rules, 2004, was that such service should be used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products. There is a plethora of decisions by various High Courts &various benches of Tribunal (CESTAT) in which it was adjudged that CENVAT Credit of Service Tax in relation to the following services was allowable on the pretext that such services were used by the manufacturer, whether directly or indirectly, in or in relation to the business of manufacture of final products.

In the case of Coca Cola India Pvt. Ltd. vs. CCE reported in 2009, a Division Bench of the Hon. Bombay High Court held that the expression 'activities in relation to business' in the inclusive part of the definition of 'input service' further widens the scope of input service so as to cover all services used in the business of manufacturing the final products and that any service used in relation to the business of manufacturing the final product would be an eligible input service for availing CENVAT Credit. It was also held that the cost of any input service that forms part of value of final products would be eligible for CENVAT credit. Thus, it can be construed to mean from such decision that where the input service used is integrally connected with the business of manufacturing the final product and the cost of that input service forms part of the cost of the final product, then credit of service tax paid on such input service would be allowable. Therefore, applying the same logic, in the GST regime, the said following services can be said to be satisfying the twin necessities for availing Input Tax Credit of GST in respect of expenditure on the said services; that is "input services" and "used or intended to be used in the course or furtherance of business" since as per section 2(17) of the CGST Act, 2017, the term "business" includes "manufacture". In fact, the scope of availing Input Tax Credit has been further widened under the GST regime to include all inputs and input services used in the course or furtherance of business vis-a-vis erstwhile CENVAT Credit Rules where admissibility of CENVAT Credit was restricted to input services used directly or indirectly, in or in relation to manufacture of final product.

a) Maintenance of garden inside the factory premises: -

Here 'factory premises' means plant area where manufacturing activity is carried out and administrative building. The services of maintenance & upkeep of gardens that are located within the factory premises should be considered to be an "input service" as per section 2(60) of the CGST Act, 2017 and should also be considered to be "used or intended to be used in the course or furtherance of business" as per section 16(1) of the CGST Act, 2017 and Input Tax Credit should be available in respect of expenditure done on such services on the following counts:-

i) Gardening is essential & mandated by Maharashtra Pollution Control Board to maintain quality of ambient air & prevent air& water pollution and also a condition precedent as laid down by the said Board, without which Ordnance Factory Bhandara cannot resort to its business activity of manufacturing.

ii) Garden creates better atmosphere and environment which increases working efficiency and thus its maintenance is essential in the course of business for better running & furtherance of business.

iii) Cost of such 'gardening expenses' forms part of the cost of the final products and thus forms part of the value of taxable supply.

iv) Reliance is placed on the following judicial pronouncements of the Tribunal (CESTAT) & various High Courts, wherein it was adjudged that CENVAT Credit of Service Tax was allowable on expenditure related to maintenance & upkeep of gardens in the factory: -

In M/s. Rane TRW Steering System Ltd. vs The Commissioner of Central Excise and Central Tax (2018), the Hon. Madras High Court held that garden maintenance service would fall within the definition of input service, in terms of Rule 2 (l) of the Cenvat Credit Rules, 2004.

In Mukand Ltd's case Vs. Commissioner of Central Excise, Belapur {2016 (42) STR 88 (Tri-Mumbai)}, it was held by the Hon. Tribunal that the credit on 'gardening expenses' is fully allowable as the same is required for maintaining the good atmosphere in the manufacturing area and also a condition precedent as laid down by the State Pollution Control Board, without which the appeliant cannot resort to manufacturing Activity.

In HCL Technologies Ltd., Vs. Commissioner of Central Excise, Noida {2015 (4) STR 369 (Tri-Del), it was held by the Hon. Tribunal that Garden Maintenance Services qualify as input services.

In Lifelong Meditech Ltd., Vs. Commissioner of Central Excise and Service Tax, Gurgaon II {2016 (44) STR 626 (Tri-Chan)}, it was held by the Hon. Tribunal that "horticulture services are directly related to the manufacturing activity by the appellant as without maintaining the garden, the appellant cannot run their factory. Therefore, I hold that the appellant is entitled to avail CENVAT Credit for horticulture services."

In M.s, Orient Bell Ltd., Vs. Commissioner of Central Excise, Noida, reported in 2016 SCC Online CESTAT, 7923, it was held by the Hon. Tribunal that So far as garden maintenance is concerned, the same is input service as it is a pollution control requirement and improves the aesthetics and overall atmosphere and thus is an expenditure in or in relation to manufacture.

In Commissioner of Central Excise, Delhi III, Suzuki Motor Cycle India Private Limited {2017 (47) STR 85 (Tri-Chan), it was held by the Hon. Tribunal that the assessee is entitled to avail the credit of gardening service.

All the aforementioned arguments and case laws were presented before the AAR, Maharashtra. Even the Department agreed to the admissibility of such Input Tax Credit on maintenance of garden inside the factory premises in its legal submission to AAR, Maharashtra. However, AAR, Maharashtra ruled that "maintenance of garden is not a supply that can be considered as a supply used or intended to be used in the course of furtherance of business of the applicant which is to manufacture Propellants and Explosives. Hence the applicant is not eligible to avail ITC of the tax paid by them on the same. The services availed in relation to plantation and gardening within the plant area will not qualify for Input Tax Credit. In an appeal filed by the Commissioner of Commercial Taxes and GST, Odisha against an order of the AAR, Odisha, the Hon. AAAR, Odisha held that availing input tax credit for services in relation to plantation and gardening within the plant area, including mining area and the premises of other business establishments is allowed. Thus, it is our contention against the order of AAR, Maharashtra that availment of Input Tax Credit in relation to maintenance of garden inside the factory premises should be allowed.

b) **Maintenance and upkeep activities relating to gardens, parks, playground, factory school for children of employees, hall for recreational activities, residential quarter buildings of employees, roads, footpaths, street lightings**

and other parts of estate area that are located outside the factory premises but within the factory estate: -

As explained above, the term 'factory estate' has been used to describe the area that falls within the boundaries of Ordnance Factory Bhandara and are so controlled by Ordnance Factory Bhandara but such area is outside the precincts of the area where factory & administrative building is there. Such area comprises of establishments such as residential quarters of employees of Ordnance Factory Bhandara & allied organisations, market area, places for worship of God, shops that are given on lease rental basis for commercial purposes, gardens, parks, playgrounds, swimming pool, factory school for children of employees, hall for recreational activities, footpaths, street lightings, inter-connected roads between all such establishments and factory premises and land that is currently not used for any purpose whatsoever.

The services of maintenance, upkeep, repair, housekeeping, cutting of trees & grass, civil construction, hiring of manpower for attending school bus, security services, garbage collection, sewage treatment, sweeping &cleaning etc. procured in relation to such establishments within the factory estate should be considered to be an "input service" as per section 2(60) of the CGST Act, 2017 and should also be considered to be "used or intended to be used in the course or furtherance of business" as per section 16(1) of the CGST Act, 2017. Thus, input Tax Credit should be available in respect of expenditure done on such services in so far as they are not disallowed under any other provisions of the CGST Act, 2017. Let us analyze each establishment one by one for admissibility of Input Tax Credit: -

i) **Residential quarters of employees of Ordnance Factory Bhandara & allied organisations, market area, places for worship of God, gardens, parks, playgrounds, swimming pool, footpaths, street lightings, factory school for children of employees, hall for recreational activities: -**

Services like maintenance, upkeep, repair, providing security, garbage collection, sewage treatment, civil construction, sweeping & cleaning etc. are procured in relation to the aforementioned establishments. The specific transactions in respect of which ruling on entitlement of input tax credit is required is specified

in the enclosed "Annexure A". We wish to submit that all such services are used by the employees of the factory. The Ordnance Factory Board decided to develop such residential facilities within the factory estate since the factory is located at a remote area and employees from different parts of the country are recruited to work over here in Ordnance Factory Bhandara. The residential colony is an 'industrial township' and the appellant is responsible to provide all types of municipal services in the colony. If the employees are not provided a proper residential colony with all the aforementioned facilities and establishments, there would be no availability of proper staff and labor required for continuous manufacturing activities. Thus, such services procured in relation to such establishments are necessary for furtherance of business of our organisation since these services help in maintaining the basic living standard of the employees who in turn are responsible for running the day-to-day business of the factory. Cost of such services forms part of the cost of the final products and thus forms part of the value of taxable supply. Reliance is placed on the following judicial pronouncements of various High Courts & Tribunals wherein it was adjudged that CENVAT Credit of Service Tax was allowable on expenditure related to services procured in relation to residential colony for the employees: In the case of CCE vs ITC Ltd. in the year 2012, the Hon. Andhra Pradesh High Court held that CENVAT credit of service tax paid on the taxable services used in the residential complex shall be available to the manufacturer. The relevant paragraph of the said judgment is extracted herein below.

"The Commissioner's Order-in-Appeal dated 27-5-2008 reflects that he accepted that the efficiency of the employees of an organization would be dependent on various factors, one such being the provision of a housing colony. He further conceded that these facilities would contribute to the enhancement of the productivity of the organization. Having stated so, the appellate authority surprisingly took the view that maintenance of the residential colony by the respondent-Company was only an obligatory activity owing to situational exigencies and was not connected either directly or indirectly to the manufacture of its final products. This inherent contradiction in the Order-in-Appeal was noted by the CESTAT, which opined that if accommodation was not provided by the respondent-Company to its employees at this remote location, it would not be

feasible for it to carry on its manufacturing activity. The finding of the Commissioner that providing a colony to the employees was not directly or indirectly connected with the manufacturing activity of the respondent-Company was therefore, not borne out on facts. The staff colony, provided by the respondent-Company, being directly and intrinsically linked to its manufacturing activity could not therefore, be excluded from consideration. Consequently, the services which were crucial for maintaining the staff colony, such as lawn mowing, garbage cleaning, maintenance of swimming pool, collection of household garbage, harvest cutting, weeding, etc., necessarily had to be considered as 'input services' falling within the ambit of Rule 2(l) of the CENVAT Rules, 2004."

In the case of MANGALAM CEMENT LTD VERSUS COMMISSIONER OF C. EX. & S.T., JAIPUR-I, the Hon. Delhi bench of Tribunal held that the residential colony was constructed adjacent to the factory because of the reason that the factory manufacturing cement is located at a place which is away from the city. Unless the residential colony is constructed near the factory, the appellant will not be in a position to get the proper/adequate manpower for running its plant activities and thus set aside the order passed by the ld. Commissioner (Appeals) of denying CENVAT credit of service tax taken by the appellant on maintenance and repair work of their residential colony.

In the case of CCE Meerut vs M/s Bajaj Hindustan Ltd., the dispute was in relation to allowance of CENVAT Credit of Service Tax paid on construction services to the respondent for construction of residential colony/dormitory located in the precinct of the factory. The Hon. New Delhi bench of the Tribunal held that construction of residential colony/dormitory adjacent to the factory premises was the necessity because of the location of the factory in a remote area, where if the accommodation is not provided to staff/workers, the continuous/round the clock manufacturing activity will hamper. Further, the cost towards such construction has also been considered as expenditure in the books of accounts of the respondent. Therefore, such construction activity was held to be relation

to the business of the respondent and therefore CENVAT Credit was allowed in relation to such services.

In the case of Reliance Industries Ltd. vs CCE & ST, Mumbai, the dispute was in relation to allowance of CENVAT Credit of Service Tax in respect of services like construction services, repairs and maintenance services, security service, manpower recruitment and supply services, works contract services etc. It was noticed by the lower authorities that these services on which credit was availed of service tax paid were received in their residential township constructed for the employees. It was held by the Mumbai Bench of the Tribunal that the expenses which were incurred by the appellant for the setting up of the township/colony for their employees are expenses which are in relation to the business activity of the appellant which is manufacturing of petroleum products. It was also noted that while arriving at the price of the finished goods manufactured in these factory premises, appellant has considered the expenses incurred towards the residential township/colony as expenses and included the same while arriving at the cost of production of the final products manufactured in the factory premises and accordingly CENVAT Credit was allowed in relation to such services.

(ii) Shops that are given on rental basis for commercial purposes: -

In general, services related to establishment, repair and maintenance of such shops is procured. Such shops are used for commercial purposes & commercial lease rent is recovered from the tenants of such shops on which GST is collected by Ordnance Factory Bhandara. Thus, the Input Tax Credit related to such services in relation to such shops should be admissible as such expenditure is directly related to the business of renting of immovable property unless otherwise blocked under any other provisions of the CGST Act, 2017.

(iii) Inter-connected roads between various establishments and factory premises: -

The specific transactions in respect of which ruling on entitlement of input tax credit is required is specified in the enclosed "Annexure B". In general, services

related to construction, repair and maintenance of such roads is procured. Roads connect the various establishments within the factory premises; that is factory where manufacturing activity is done and administration building with various other establishments within the factory estate like residential quarters, market area and other establishments mentioned above. Thus, the Input Tax Credit related to expenses mentioned in "Annexure B" in relation to such inter-connected roads should be admissible on the following grounds: -

a) The road ranging from the main entrance gate from where the factory estate begins up to the factory premises is used for inward and outward transportation of raw materials & finished goods and is thus used in the course or furtherance of business.

b) The roads within the factory estate; that is the establishments like residential quarters, hospital, guest houses, market area and all other establishments as mentioned above are also used for the purpose of business of Ordnance Factory Bhandara since as argued above all such establishments are there for the benefit of employees of the factory& thus such roads are used in the course of business of Ordnance Factory Bhandara.

c) The cost of such services forms part of the cost of the final products and thus forms part of the value of taxable supply.

(iv) Land that is currently not used for any purpose whatsoever: -

The specific transactions in respect of which ruling on entitlement of input tax credit is required is specified in the enclosed "Annexure C". In general, services related to maintenance of such land are procured. Such land is located within the factory estate and consists of mainly wild grass, trees & other vegetation. It is adjacent to the roads that are used for commutation. Input Tax Credit related to expenses mentioned in "Annexure C" in relation to such land should be admissible on the following grounds: -

a) It is necessary to cut wild grass & other vegetation that grows in such area on regular basis in order to maintain the factory estate area neat & clean and ensure that such vegetation does not spill over to and obstruct the roads used for commutation within the factory.

b) Another reason is that such wild grass & other vegetation increases the bacteria count in the environment, factory and finished product that adversely affects the manufacturing process & the quality of the final product & the environment and hence it is necessary to maintain such wild grass & other vegetation.

c) The cost of such services forms part of the cost of the final products and thus forms part of the value of taxable supply.

d) Reliance is placed on the following judicial pronouncement of the Tribunal (CESTAT), wherein it was adjudged that CENVAT Credit of Service Tax was allowable on expenditure related to jungle cutting services to keep environment, factory and finished product bacteria free: -

In the case of L'Oréal India Pvt. Ltd. vs. CCE (2011) 22 STR 89 (Tri. – Mum.), the Hon. Mumbai bench of the Tribunal held that CENVAT credit of service tax paid on jungle cutting services to keep environment, factory and finished product bacteria free are to be allowed as they have nexus with business activity of Appellant.

All the aforementioned arguments and case laws were presented before the AAR, Maharashtra.

However, the AAR, Maharashtra ruled that "the activities listed by the applicant are carried out outside the factory premises. These activities at best can be termed as weifare or social activities and they are not carried out in furtherance of the business and have no nexus to their manufacturing activity. Since these activities are not used or intended to be used by the applicant in furtherance of business, ITC on the same are not available to them."

We wish to appeal against such ruling of AAR, Maharashtra based on the aforementioned arguments and case laws and contend that availment of Input Tax Credit on maintenance and upkeep activities relating to gardens, parks, playground, factory school for children of employees, hall for recreational activities, residential quarter buildings of employees, roads, footpaths, street lightings and other parts of estate area that are located outside the factory premises but within the factory estate should be allowed.

c) **Medicines purchased by the hospital maintained by our organisation and used for treatment of factory employees and their dependents. Expenditure on maintenance, upkeep and other activities relating to such hospital: -**

The specific transactions in respect of which ruling on entitlement of input tax credit is required is specified in the enclosed "Annexure D". Hospital is run by Ordnance Factory Bhandara and is also located within the factory estate but outside the precincts of the area where factory & administrative building is there. The medicines and other facilities are provided to employees of the factory without any consideration. Input Tax Credit on the inputs like medicines and others mentioned in "Annexure D" purchased by the factory for the hospital and expenditure on maintenance, upkeep and other activities also mentioned in "Annexure D" relating to such hospital should be admissible on the following grounds: -

i) Hospital helps in keeping the employees fit and healthy, so that they can contribute for furtherance of business of Ordnance Factory Bhandara.

ii) As a part of welfare measure, it is necessary to provide the employees basic medicinal facilities within the factory estate itself since the factory is located at a remote location.

iii) Cost of such medicines and expenditure on maintenance, upkeep and other activities relating to such hospital forms part of the cost of the final products and thus forms part of the value of taxable supply.

iv) Reference to the judicial pronouncements mentioned in above questions can be drawn in so much so that hospital has been set up for the benefit of the employees and it too forms a part of residential colony of Ordnance Factory Bhandara.

All the aforementioned arguments and case laws were presented before the AAR, Maharashtra.

However, the AAR, Maharashtra ruled that – "we find that hospital/dispensary maintained by the applicant for its employees and their dependents come within the definition of "clinical establishment" as defined under the said Notification at definition mentioned at Sr. No. 2(s) and such supply of service is exempted under Sr. No. 74, heading 9993 of the Notification No. 12/2017- Central Tax(Rate)

dated 28th July, 2017. Thus, ITC on such exempted supply of services is not available to applicant under sub-section (2) of Section 17 of the CGST Act, 2017 in respect of services and goods procured for maintenance of hospitals and pharmacy outlet as such services, being nil rated, fall under exempt supplies."

Kindly also note that as per section 9 of the CGST Amendment Act, 2018, that is in force from 01/02/2019, an amendment in section 17(5) (b) of the principal CGST Act, 2017 has been brought about where input tax credit shall not be available in respect of suppiy of health services except where the same is obligatory for an employer to provide to its employees under any law for the time being in force.

It is submitted that as per Ordnance Factory Medical Regulations, it is mandatory for Ordnance Factories to provide occupational health services through Factory Hospital.

Thus, as per the amended section 17(5) (b) of the principal CGST Act, 2017, Input Tax Credit in respect of medicines purchased in factory hospital and other inputs and input services used in factory hospital should be allowed since such inputs and input services are used in respect of supply of health services to employees and their families that are mandatory to be provided under Ordnance Factory Medical Regulations.

We wish to appeal against such ruling of AAR, Maharashtra based on the aforementioned arguments and case laws and contend that availment of Input Tax Credit on medicines purchased by the hospital maintained by our organisation and used for treatment of factory employees and their dependents and expenditure on maintenance, upkeep and other activities relating to such hospital should be allowed.

d) **Expenditure related to maintenance and upkeep of guest houses maintained by organization: -**

The specific transactions in respect of which ruling on entitlement of input tax credit is required is specified in the enclosed "Annexure E". Guest houses are run by Ordnance Factory Bhandara and is also located within the factory estate but outside the precincts of the area where factory & administrative building is there. Guest houses are used to provide accommodation services to various

guests including employees on duty/deputation. Room charges are recovered from such guests for their stay on per day basis that are different for such different guest houses. So, inward supply of inputs and input services that are used for maintenance and upkeep of such guest houses should also be considered to be for the purpose of furtherance of business of Ordnance Factory Bhandara and Input Tax Credit should be admissible on the following grounds: -

i) Such guests visit Ordnance Factory Bhandara for various purposes that are related to business of our organisation and thus such guest houses are used in the course or furtherance of business of Ordnance Factory Bhandara.

ii) The management, maintenance and repair service obtained from the service providers in respect of guest houses has direct benefit to the business operations of the factory& has thus direct nexus with the core business of the factory.

iii) Cost of such inputs and input services relating to such guest houses forms part of the cost of the final products and thus forms part of the value of taxable supply.

iv) Reliance is placed on the following judicial pronouncement of the Tribunal (CESTAT), wherein it was adjudged that CENVAT Credit of Service Tax was allowable on various expenditure related to guest houses maintained by the assessee: -

In the case of **ISMT LTD. VERSUS COMMR. OF CUS. & C. EX., AURANGABAD [2015 (40) S.T.R. 596 (Tri. - Mumbai)], it was held that** security service provided to the guest house in the factory is admissible input service since guest house is used for the stay of employees and auditors which has direct nexus with factory which produces excisable goods therefore CENVAT credit is admissible to the appellant.

In the case of L'Oréal India Pvt. Ltd. Vs. Commissioner of C. Ex., Pune-I[2011 (22) S.T.R. 89 (Tri.- Mumbai)], it was held that the appellant is eligible for credit of guest house maintenance services since such services have nexus or integral connection with the business of manufacturing of the final product.

In the case of Commissioner of C. Ex., Visakhapatnam Vs. Hindustan Zinc Ltd. [2009 (16) S.T.R. 704 (Tri. – Bang.)], it was held that Guest House is used for

businessmen during visit to the company in connection with the business. It is indeed related to business activity. The appellants are rightly entitled for credit.

All the aforementioned arguments and case laws were presented before the AAR, Maharashtra.

However, the AAR, Maharashtra ruled that – "we find that provision of guest houses is a perquisite for their employees and therefore tax paid on maintenance and upkeep of guest houses cannot be allowed as ITC. Guest houses are generally used for temporary accommodation of employees as well as outsiders. Such provision of guest house cannot be treated as an activity in course or furtherance of its business and related to the applicant's business. Further, we find that the goods, or services, or both pertaining to Guest House are used for personal consumption of the employees/guests and are not used or intended to be used in the course of furtherance of business. As such in view of provisions of section 17(5)(g), no ITC is available to the applicant. Hence, we hold that they are not eligible for ITC on taxes paid for maintenance and upkeep of guest houses."

We wish to appeal against such ruling of AAR, Maharashtra based on the aforementioned arguments and case laws and contends that availment of Input Tax Credit on expenditure related to maintenance and upkeep of guest houses maintained by Ordnance Factory Bhandara should be allowed.

e) **Expenditure related to purchase of LPG cylinders used within industrial canteen: -**

The AAR, Maharashtra ruled that – "we have to state that we have already held that their canteen is providing services related to supply of food and beverages to their employees and also charging consideration for the same and therefore such service is taxable under GST regime. The LPG cylinders are used to provide such services related to supply of food and beverages to their employees and therefore we are of the opinion that they are eligible to avail ITC on the purchase of LPG cylinders."

We contend that allowing the availment of ITC on the aforementioned grounds by AAR, Maharashtra is incorrect in the light of the fact that Ordnance Factory Bhandara is "Central Government" and hence eligible for 'NIL' rate of tax on such

supply of food and beverages done to factory employees that are non-business entities as explained in question no. 1(d) above.

It should be note here that As per section 9 of the CGST Amendment Act, 2018 that is in force from 01/02/2019, an amendment in section 17(5) (b) of the principal CGST Act, 2017 has been brought about where input tax credit shall not be available in respect of supply of food and beverages except where the provision of such goods or services or both is obligatory for an employer to provide to its employees under any law for the time being in force.

As per section 46 of the Factories Act, 1948, the State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

It is submitted that more than 2500 persons have been employed by Ordnance Factory Bhandara and thus the aforementioned provision relating to maintenance of canteen is obligatory for Ordnance Factory Bhandara to provide to its employees under the Factories Act, 1948. So, an industrial canteen has been provided by Ordnance Factory Bhandara for its employees within the factory where the employees have food and beverages by paying a nominal amount of money on no-profit-no-loss basis.

Also, as per section 16(1) of the CGST Act, 2017, "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."

Thus, Input Tax Credit in relation to LPG cylinders that are re-filled for use in industrial canteen should be allowed as per amended section 17(5) (b) & 16(1) of the CGST Act, 2017.

24. **Appeal against ruling pronounced for Question No. 6: -**The Question No.6 that was asked for in Form ARA-01 is as follows: -

Whether proportionate Input Tax Credit has to be reversed in cases where lesser payment is made to the supplier due to deduction on account of liquidated damages from supplier's dues?

As per the provisions of GST law, Input Tax Credit on receipt of goods/services is available only when payment in respect of such receipts is made to the suppliers of such goods/services. When lesser amount is paid to the suppliers, then proportionate credit is available.

This matter had been raised before the AAR, Maharashtra to check whether lesser amount paid to suppliers due to deduction of liquidated damages from payment to be made to such suppliers shall also get covered under the aforementioned circumstances of lesser payment made to suppliers.

Ordnance Factory Bhandara had put forth in its submission that deduction of L.D is a manner of compensating the supplier for his dues and hence such deduction should not fall under the purview of said circumstances of "lesser payment." It was also submitted that taxable value of goods/services does not change due to L.D deduction and the supplier shall have to pay tax on the entire taxable amount and not on the amount after deduction of L.D.

25. The department had put forth in its submission that as per the provisions of section 16 of the CGST Act, 2017, the ITC is available to recipient subject to actual payment equal to supply of goods made to such supplier. If the recipient makes lesser payment towards liquidated damages from supplier, the recipient is eligible to take ITC proportionally equal payment made to such supplier. Hence, applicant is required to reverse ITC to that extent.

26. The AAR, Maharashtra ruled that L.D deduction will be construed as amount received as compensation for tolerating non-performance of supplier on account of delay in delivery of goods or services and is an activity to be treated as a supply of service as per clause 5(e) of Schedule II to the CGST Act, 2017 on which the Ordnance Factory Bhandara will have to discharge GST.

27. It also ruled that "ultimately Ordnance Factory Bhandara would be paying a lesser amount to their suppliers against supply of goods received, which would result in lesser payment being made by the supplier towards GST. Hence Ordnance Factory Bhandara will be eligible to take ITC proportionally equal

payment made to such suppliers and is therefore required to reverse ITC accordingly."

28. We find that both the contentions and rulings of AAR, Maharashtra are factually and legally incorrect.

Firstly, AAR, Maharashtra stated in its ruling that Ordnance Factory Bhandara shall have to pay GST on Liquidated Damages deducted from the payments to its suppliers. However, it is once again re-iterated that Ordnance Factory Bhandara is "Government" and hence it is eligible to claim exemption in respect of payment of GST to "Central Government" on services provided by it by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government as stated in aforementioned sub-question a) of Question No. 1 of the application.

Secondly, AAR, Maharashtra also stated that "ultimately Ordnance Factory Bhandara would be paying a lesser amount to their suppliers against supply of goods received, which would result in lesser payment being made by the supplier towards GST." This is contention of AAR Maharashtra is factually incorrect on following two grounds: -

a) **Ordnance Factory Bhandara would be paying a lesser amount to its suppliers against supply of goods received: -**

Lesser payment in respect of L.D cases is made due to deduction of L.D from supplier's payment. Deduction of L.D is an act of tolerating non-performance of supplier on account of delay in delivery of goods or services and is as such a manner of compensating the supplier for his dues and not lesser payment against supply of goods/services received.

We wish to confirm that Ordnance Factory Bhandara does not make lesser payment of taxable amount and GST amount to the supplier in L.D cases with the following two illustrations: -

1) Ordnance Factory Bhandara procured certain raw material from a supplier by the name of "Lakshmi Ishwar Industries" vide Tax Invoice no. 1 dated 09/04/2018 of the supplier. The taxable amount of the Tax Invoice was Rs. 5,50,200/-, IGST amount levied was Rs. 99,036/- and thus the total invoice amount was Rs. 6,49,236/-.

Due to non-fulfillment of certain contractual conditions, Liquidated Damages @ 10% of the total invoice amount were deducted while making payment to the supplier in respect of the said invoice. Thus, 10% of Rs. 6,49,236/-, that is, Rs. 64,924/- were calculated as Liquidated Damages to be deducted from supplier's payment.

However, while passing the accounting entry in the books of Ordnance Factory Bhandara for the transaction of paying the supplier, full amounts of Rs. 5,50,200/- & Rs. 99,036/- were recorded as taxable amount & IGST amount respectively. Rs. 64,924/- was shown as a deduction in respect of Liquidated Damages from the payment to be made to the supplier. Enclosed herewith is a copy of voucher for such transaction. The code head 01/806/01 is used for recording the taxable amount & IGST amount and the code head 01/802/01 is used for recording the L.D amount in the enclosed copy of the transaction voucher.

2) Ordnance Factory Bhandara procured certain raw material from a supplier by the name of "K. P Instruments" vide Tax Invoice no. 57 dated 20/12/2017 of the supplier. The taxable amount of the Tax Invoice was Rs. 4,69,320/-, CGST & SGST amount levied were Rs. 42,239/- each and thus the total invoice amount was Rs. 5,53,798/-.

Due to non-fulfillment of certain contractual conditions, Liquidated Damages @ 10% of the total invoice amount were deducted while making payment to the supplier in respect of the said invoice. Thus, 10% of Rs. 5,53,798/-, that is, Rs. 55,380/- were calculated as Liquidated Damages to be deducted from supplier's payment.

However, while passing the accounting entry in the books of Ordnance Factory Bhandara for the transaction of paying the supplier, full amounts of Rs. 4,69,320/- & Rs. 42,239/- were recorded as taxable amount & CGST/SGST amounts respectively. Rs. 55,380/- was shown as a deduction in respect of Liquidated Damages from the payment to be made to the supplier. Enclosed herewith is a copy of voucher for such transaction. The code head 01/806/01 is used for recording the taxable amount, CGST amount and SGST amount and the code head 01/802/01 is used for recording the L.D amount in the enclosed copy of the transaction voucher.

Thus, the accounting entries for both these transactions where L.D was deducted proves that full taxable amount and GST amounts were paid to the supplier by Ordnance Factory Bhandara and L.D is merely a deduction from suppliers' payments and a manner of penalizing the supplier for non-fulfillment of contractual obligations.

b) Such lesser payment to supplier would result in lesser payment being made by the supplier towards GST: -

The taxable value of goods/services does not change due to L.D deduction. The supplier shall have to pay tax on the entire taxable amount and not just only on the amount after deduction of L.D.

In the two illustrations enumerated in a) above, both the invoices are appearing in GSTR-2A of Ordnance Factory Bhandara with filed status and no credit notes have been raised by the supplier in respect of these two invoices which means that even the supplier understands that the taxable amount does not decrease due to deduction of L.D and the supplier does not intend to pay lesser amount to the GST Department by issuing credit notes in respect of deduction of L.D from such invoices.

Another matter that should be thought about is that if such supplier of Ordnance Factory Bhandara is being audited by the Department under GST regime, then would the Department be okay with the fact that the supplier has made lesser payment of GST to the Department due to deduction of L.D by Ordnance Factory Bhandara and wouldn't the Department consider it as a case of short payment of GST? The answer to such question would be that the Department would consider it to be a case of short payment of tax by the supplier since the Department would contend that deduction of L.D does not decrease the taxable value of goods and hence GST should be paid on the original taxable value of goods.

Thus, it is re-iterated that such deduction of L.D from payment of suppliers towards supply of goods or services or both cannot be classified as "failing to pay to the supplier, the amount towards the value of supply along with the tax payable thereon." In fact, on the contrary, such **deduction of L.D is a manner of compensating the supplier towards his dues** in respect of supply of goods or services or both to Ordnance Factory Bhandara.

In cases where the supplier makes short delivery of goods or services or both to Ordnance Factory Bhandara and Ordnance Factory Bhandara deducts payment of its supplier due to such short delivery goods/services, then in such cases it can be said that lesser payment has been made to the supplier in respect of supply of goods/services but not in cases where L.D is deducted from payment of supplier due to delay in supply of goods/services.

So, it requested to kindly look into this matter with generosity otherwise it may lead to loss of genuine Input Tax Credit to Ordnance Factory Bhandara.

29. **Appeal against ruling pronounced for Question No. 7:** -The Question No.7 that was asked for in Form ARA-01 is as follows: -

Being a part of the Ministry of Defence, Government of India, whether the following notifications are applicable to our organisation and what shall be the impact of such notifications: -

a) Notification No. 2/2018- Central Tax (Rate), in relation to services by an arbitrator or an advocate to our organisation.

b) Notification No. 3/2018- Central Tax (Rate), in relation to services supplied by our organisation by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017.

c) Notification No. 36/2017 – Central Tax (Rate), in relation to payment of tax on reverse charge mechanism on sale of used vehicles, seized and confiscated goods, old and used goods, waste and scrap to a GST registered person.

The AAR, Maharashtra answered in the negative for all the three aforementioned sub-questions of question no. 7 of the application by contending that the notifications are not applicable to Ordnance Factory Bhandara since it is not "Government".

30. We wish to appeal against such ruling of AAR, Maharashtra based on the facts and explanations given for Question No.1 that Ordnance Factory Bhandara is indeed "Government" and hence all the three aforementioned notifications in Question No. 7 to the application should be applicable to Ordnance Factory Bhandara.

Applicant's Supplementary Submissions dt.12.10.2019

31. **Further proof that Ordnance Factory Bhandara is "Central Government" since it is established under Ministry of Defence by Government of India:**

Enclosed herewith for your kind reference is a press release by Ministry of Defence, Government of India dated 15/07/2019 regarding Establishment of Ordnance Factories in India in which it is seen that Ordnance Factory Bhandara was established under Ministry of Defence by Government of India in the year 1964.

This serves as a further proof that Ordnance Factory Bhandara is "Central Government" department.

32. **Tax Invoices of suppliers attached for appeal filed in respect of Question no.6: -**

Enclosed herewith are Tax Invoices of suppliers referred to in appeal filed against Questionno.6 for your kind reference.

33. **Notifications for Question no. 7: -**

Notification No. 2/2018- Central Tax (Rate), Notification No. 3/2018- Central Tax (Rate) &Notification No. 36/2017 – Central Tax (Rate) referred to in appeal filed against Question no. 7 are enclosed herewith your kind ready reference.

Respondent's Submission dt.11.10.2019

34. **Question-(1)- Being a part of the Ministry of Defence, Government of India, whether they are liable to pay GST on the following supply of services: -**

a. Liquidated damages deducted from the payments to be made to suppliers in case of delayed delivery of goods or services: -

Submission by Department: -

In the present case, the appellant submitted that the ordnance factory is functioning under Govt. of India and hence their organization is covered under the definition of "Government" defined under section 2(53) of the CGST Act, 2017. Hence, they are not liable to pay GST. The Indian Ordnance Factories is an industrial organization, functioning under the Department of Defence Production of Ministry of Defence, Government of India. It is

engaged in research, development, production, testing, marketing and logistics of a comprehensive product range in the areas of air, land and sea systems. This is the Apex board having industrial status functioning under the control of Ministry of defence. However, the Govt. of India is a union Govt. created by the constitution of India as the legislative, executive and judicial authority of the union of India of states and union territories of the constitutionally democratic republic. On the above facts, though ordnance factory is functioning under the Ministry of defence, Govt. of India, the organization shall not be treated as "Government" defined under section 2(53) of the CGST Act,2017, since the organization is having Apex Body and industrial status. Hence, the contention of appellant that their organization is 'Government" is not legal and correct.

As per Sr. No. 62 (heading 9991 or 9997) of Notification No. 12/2017Central Tax(Rate) dated 28th June 2017 provide NIL rate of Tax in respect of services provided by the Central Government, State Government, Union Territory or Local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union Territory or local authority under such contract.

Hence, the ordnance factory is not liable to get exemption under Notification No. 12/ 2017-Centra1 Tax (rate) dated 28-06-2017.

b. Amount of Security deposit forfeited of suppliers due to non-fulfillment of certain contract condition.

Submission by Department: -

As per the provisions of section 15 (2) (d) of CGST Act, the value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply.

Further, as per the Section 2(31) of CGST Act, "consideration" means any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the central Govt. or state Govt.

It is noticed that the appellant has forfeited Security deposited of suppliers due to non-fulfillment of certain contract conditions, which is nothing but the additional "consideration" received by the appellant. Hence, the appellant is liable to pay on such additional consideration being the part of the value of supply of goods as defined under section 15(2) of the CGST Act,2017.

c. ***Security deposit left unclaimed by the suppliers and recognized as income after 3 years.***

No appeal preferred by the appellant against this question.

d. Food and beverages supplied at industrial canteen inside the factory premises.

Submission by Department: -

As clarified in revenue submission mentioned in question I(a) the ordnance factory functioning under the Ministry of defense, Govt. of India, shall not be treated as "Government" defined under section 2(53) of the CGST Act,2017, since the organization is having Apex Body and industrial status. The fact of the appellant organization having industrial status has already been mentioned in their present advance ruling application and there is no need to establish separately that the appellant's organization shall not be treated as Government.

It is also noticed that, the appellant has not clarified the fact that whether they themself engage in supply of food and beverages at the canteen for their employees or they have engaged any contractor for the supply of food and beverage. They have also not clarified whether they are charging money from their employee for supply of such food and beverage in their industrial canteen. Hence in absence of such clarification, liability cannot be ascertained at this stage.

However, as per the notification 11/2017-CT dated 28.06.2017 amended by notification No. 46/2017 dated 14.11.2017, the supply of food and beverages is covered under the category of catering services, which is taxable under GST regime.

The taxability of GST on supply of food and beverages in the premises of industrial units/offices has also been confirmed by the Authority of Advance Ruling Chennai vide order No. 9/AAR/ 2018 dated 30.08.2018. Copy of same is enclosed for the ready reference.

e. Community hall (Multipurpose Hall) provided on rental basis to employees of our organization.

Submission by Department: -

As per the schedule II (Section 7) of CGST Act 2017, renting of immovable property shall be treated as supply of service. In the appellant's own case, they have provided Community hall (Multipurpose Hall) on rental basis to their employees shall be covered under the definition of supply of services as defined in CGST Act 2017 and hence they are liable to pay GST on the amount charged by them from their employee towards the renting of their community hall. The appellant is not entitled for any exemption under Notification No. 12/2017-Central Tax(rate) dated 28-06-2017, since their organization is not defined under government since the organization is having Apex body and Industrial status.

f. School bus facility provided to children of the employees.

Submission by Department: -

As per Sr. No. 66 (heading 9992) of the Notification No. 12/2017-Central Tax (Rate) dated 28th June 2017-no GST liability on Transportation of students, faculty and staff. Hence as per the said provisions, the appellant is not liable to pay GST on such taxable services.

g. Conducting of exams for various vacancies.

Submission by Department: -

For conducting any examination by the organization, no exemption available from payment of GST on examination fee charged from candidates.

h. Rent recovered from residential quarters of employees.

No appeal preferred by the appellant against this question.

35. **Question: -2) whether Input tax credit on expenditure on the goods and services consumed by our organization in following activity shall be available:**

a. Maintenance of garden inside the factory premises.

Submission by Department: -

As per the section 16 of the CGST Act, every registered person shall be entitled to take credit of input tax charged on any supply of goods and services or both by him which are used or intended to be used in the course of furtherance of his business and said amount will be credited to the electronic credit ledger of such person. However, the appellant has received services from the service provider

towards the Maintenance of garden inside the factory premises of the appellant. Such taxable service received by the appellant is not covered under the negative list of Section 18(5) and hence input tax credit shall be available to them.

b. ***Maintenance and upkeep activities relating to gardens, parks, playground, factory school for children of employees, halt for recreational activities. residential quarter building of employees, roads footpaths, street lightings and other parts of the estate area that are located outside the factory premises but within the factory estate.***

Submission by Department:

As per the section 16 of the CGST Act, every registered person Shall be entitled to take credit of input tax charged on any supply of goods and services or both by him which are used or intended to be used in the course of furtherance of his business and said amount will be credited to the electronic credit ledger of the such person. However the appellant has received services from the service provider towards the maintenance and upkeep activities relating to gardens, parks, playground, Factory school for children of employees, hall for recreational activities residential Quarter buildings of employees, roads, footpaths, street lightings and other parts of estate area that are located outside the factory premises but within the factory estate have no nexus to the manufacturing activity undertaken by the appellant. The said activities are neither relating to business nor relating to manufacture of final products and its supply. The said activity may be welfare activity undertaken while carrying on the business but to qualify as input service, the activity must have nexus with the business of appellant. The expression "in course or furtherance of business" appearing in section 16(1) of GST Act refers to activities which are integrally related to the business activity and not welfare activity. Hence, no ITC is available on such supplies of services.

c. ***Medicines purchased by the hospital maintained by our organization and used for the treatment of factory employees and their dependents. Expenditure on maintenance, upkeep and other activities relating to such hospital.***

Legal Submission by Department: -

The hospital/ dispensary maintained by the appellant for its employees and their dependents come within the definition of "Clinical Establishment" and such supply of service is exempted under Sr. No. 74, heading 9993 of the Notification no. 12/2017-Central Tax (Rate) dated 28th June 2017. Consequently, the input tax credit on such exempted supply of services is not available to appellant under sub section (2) of Section 17 of the CGST Act,2017.

d. Expenditure related to maintenance and upkeep of guest houses maintained by organization.

Submission by Department: -

As per the Section 16 of the CGST Act, every registered person shall be entitled to take credit of input tax charged on any supply of goods and services or both by him which are used or intended to be used in the course of furtherance of the business and said amount will be credited to the electronic credit ledger of the such person. However, the appellant has received services from the service provider towards the maintenance of guest houses maintained by organization within the factory estate. The said activities are neither relating to business nor relating to manufacture of final products and its supply. The said activities may be welfare activity undertaken while carrying on the business but to qualify as input service, the activity must have nexus with the business of appellant. The expression "in course or furtherance of business" appearing in section 16(1) of GST Act refers to activities which are integrally related to the business activity and not welfare activity. Hence, no ITC is available on such supplies of services.

e. Expenditure related to purchase of LPG cylinders used within the industrial canteen.

Legal Submission by Department: -

As per the section 16 of the CGST Act, every registered person shall be entitled to take credit of input tax charged on any supply of goods and services or both by him which are used or intended to be used in the course of furtherance of his business and said amount will be credited to the electronic credit ledger of the such person. However, if the appellant has purchased LPG cylinders for using in their office for the preparation of foods and beverages for their employee. The said activities are nether relating to business nor relating to manufacture of

final products and its supply. The said activities may be welfare activity undertaken while carrying on the business, but to qualify as input service the activity must have nexus with the business of appellant. The expression "in course or furtherance of business" appearing in section 16(1) of GST Act refers to activities which are integrally related to the business activity and not welfare activity. Hence no ITC is available on purchase of LPG cylinder.

36. **Question: -6) Whether proportionate Input Tax Credit has to be reversed in cases where lesser payment is made to the supplier due to deduction on account of liquidated damages from supplier's dues: -**

Legal Submission by Department:

As per the provisions of section 16 of CGST Act,2017, the ITC is available to recipient subject to actual payment equal to supply of goods made to such supplier. If the recipient makes lesser payment towards liquidated damages from supplier, the recipient is eligible to take ITC proportionally equal to actual made to such supplier. Hence, the appellant is required to reverse ITC to that extent.

37. **Question: -7)**

a. Being a part of the Ministry of Defence, Government of India, what is the impact of the Notification No.2/2018 Central Tax (Rate), in relation to services by an arbitrator or an advocate to their organization.

Legal Submission by Department: -

As per Sr.No.45 of the Notification No. 12/2017 Central Tax (Rate) dated 28th June,2017 as amended by Notification No. 02/2018-CT(rate) dated 25-01-2018, the services provided by an arbitral tribunal to (i) any person other than a business entity or (ii) a business entity with an aggregate turnover up to twenty lakh rupees (ten lakh rupees in the case of special category states) in the preceding financial year, will be NIL in respect of intra- State Supply of Service. The said exemption is to be verified with the actual services received from advocate considering the fact that said advocate are other than a senior advocate and not having any business entity. The Ordnance Factory, Bhandara is having a specific status of business organization having annual turnover of more

than Rs.100 Crs. and hence the appellant is liable to pay GST on supply of services under reverse charge. As per applicable rate of GST.

b. Being a part of the Ministry of Defence, Government of India, what is the impact of the Notification No.3/2018. Central Tax (Rate), in relation to services supplied by our organisation by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017.

Legal Submission by Department: -

As per the schedule II (Section 7) of CGST Act 2017, renting of immovable property shall be treated as supply of service. In the appellant 's own case, they are providing non-residential property on rental basis to a registered person under the Act 2017, which shall be covered under the definition of supply of services as defined COST Act 2017 as supply of real estate services other than renting of residential dwellings and will be chargeable to tax under the GST regime.

c. Being a part of the Ministry of Defence, Government of India, what is the impact of the Notification No. 36/2017 —— Central Tax (Rate), In relation to payment of tax on reverse charge mechanism on sate of used vehicles, seized and confiscated goods, old and used goods, waste and scrap to a GST registered person.

Legal Submission by Department: -

As per Notification No. 4/2017-Central Tax (Rate) dated 28th June 2017 as amended vide Notification No. 36/2017-Central Tax (Rate) dated 13th October,2017, the recipient of supply shall pay tax on reverse charge basis. Hence appellant is liable to pay GST on sale of used vehicles, seized and confiscated goods, old and used goods, waste and scrap to a GST registered person.

It is further submitted that the Advance Ruling Authority, Mumbai vide order No. GST-ARA-79/2018-19/B-168 dated 24-12-2018 already decided that the M/S Ordnance Factory, Bhandara has not been treated as Govt. as defined under Section 2(53) of the CGST Act, 2017.

Also, the Hon'ble Central Excise and Service Tax Appellate Tribunal (CESTAT), New Delhi vide its final Order No. 50646/2017 dated 06.02.2017 in respect of

Service Tax Appeal No. ST/ 50007/2014- [DBJ in the matter of M/s. Mukesh Kalway V/s C.C.E, Bhopal has held at Para 09 that: -

"Regarding tax liability on cleaning activities under taken by the appellant in the premises of ordnance factory, we note that the definition covers industrial building and premises thereof. Ordnance factory premises are covered by industrial building. Even otherwise clause (ii) of the definition clearly mentions factory as one of the premises covered for tax liability. The factory in the present case is not in relation to agriculture, horticulture, animal husbandry or for dairying. As such in the absence of any exclusion from the statutory definition, we find the appellants are liable to service tax on this account."

Even, another bench of Delhi Authority for Advanced Ruling, State Goods and Service Tax, Delhi vide Advanced Ruling No. 06/DAAR/2018 dated 23.04.2018 in the case of VPSSR Facilities, 124, 1st Floor, Jaina Tower-I, District Centre, Janakpuri, New Delhi- 110058 has also held that *"the cleaning services supplied by the applicant to the Northern Railways are not exempted under S.No. 3 of the Notification No. 09/2017- Integrated Tax (Rate) dated 28.06.2017, as amended by Notification No 2/2018/- Integrated Tax (Rate) dated 25.01.2018 and parallel Notification No. CGST and SGST."*

Hence, no comments on the above additional submission made by the appellant.

Personal Hearing

38. A personal Hearing in the matter was conducted on 14.10.2019, which was attended by Shri Sagar Sahajwani, C.A., on behalf of the Appellant, wherein he reiterated the written submissions, and relied upon various legal provisions and judicial pronouncement in support of their contentions. In the aforesaid hearing, the Department was represented by Shri Hrishikesh Deep, Asst. Commissioner, who also reiterated the written submissions, filed before us.

Discussions and Findings

39. We have gone through the facts of the case, documents placed on record, and the entire submissions made by both the appellant as well as jurisdictional officer. We have also perused the ruling pronounced by the Advance Ruling Authority, wherein the AAR inter alia observed that the Appellant cannot be construed as Central Government on the ground that the same had not been created by the Constitution of India as a legislative, executive or judicial authority of the country.

40. On perusal of the above, one of the moot issues, before us, is whether the Appellant, i.e. Ordnance Factory Bhandara, can be construed as "the Central Government" in light of the various legal provisions and documentary evidences, relied upon by the Appellant.

41. The Appellant challenged the aforesaid observation made by the Advance Ruling Authority by putting forth the following contentions:

42. As regards the advance ruling observation in as much as Ordnance Factory Bhandara is not "Government" since it is not created by Constitution of India as a "legislative, executive or judicial authority" of the country, it was contended by the Appellant that AAR, Maharashtra did not take cognizance of the fact that the Constitution of India need not "create" the organisations intended for functioning of the country. They further submitted that the Constitution only lays down the framework demarcating fundamental political code, structure, procedures, powers, and duties of government institutions and sets out fundamental rights, directive principles, and the duties of citizens. They further argued that the responsibility & decision of formation of organisations like Ordnance Factory Board & the associated Ordnance Factories under the Board is of the Union Government of India and that the executive power of the Union Government is vested in the President in terms of Article 53 of the Constitution and the same shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, in terms of Article 77 of the Constitution, all executive actions of the Government of India shall be expressed to be taken in the name of the President. Therefore, the Central Government means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President

and in the name of the President. They further pointed out that AAR, Maharashtra had ruled that Ordnance Factory Bhandara is not "Government" since it is engaged in research, development, production, testing, marketing and logistics of a comprehensive product range in the areas of air, land and sea systems and is having an industrial status and functions under Ministry of Defence.

43. The Appellant further argued in this regard that nowhere under law is it mentioned that "Government" cannot undertake activities relating to "research, development, production, testing, marketing and logistics of a comprehensive product range in the areas of air, land and sea systems". They further contended that "Having an industrial status" is the result of the nature of activities carried out by Ordnance Factory Bhandara, and "functioning under the Ministry of Defence and being controlled by an apex body (Ordnance Factory Board)" is a result of the organizational structure put in place to govern the functioning of Ordnance Factories. So, these aspects should not be taken into consideration while analyzing whether Ordnance Factory Bhandara is "Government" or not as they are totally irrelevant.

44. They further argued that the only important factor to be analyzed is that whether Ordnance Factory Bhandara falls into the definition of "Central Government" as per the aforementioned **clause (8) of section 3 of the General Clauses Act, 1897 read with Article 53 & Article 77 of the Constitution of India.**

"As per clause (8) of section 3 of the General Clauses Act, 1897, the 'Central Government' shall, in relation to anything done or to be done after the commencement of the Constitution, means the President. As per Article 53 of the Constitution, the executive power of the Union shall be vested in the President and shall be exercised by him either directly or indirectly through officer's subordinate to him in accordance with the Constitution. Further, in terms of Article 77 of the Constitution, all executive actions of the Government of India shall be expressed to be taken in the name of the President. Therefore, the Central Government means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of the President."

45. The Appellant further accentuated that all the powers provided to Ordnance Factory Bhandara's officers and decisions taken in Ordnance Factory Bhandara are on behalf of the President of India. Even the recruitments in the Indian Ordnance Factories as a Group A gazette officers are appointed through union public service commission on behalf of President of India.

46. The Appellant further stressed that Ordnance Factory Board Procurement Manual is a manual issued by the Ordnance Factory Board for procurement of stores for production in Ordnance Factories. This has been finalized by MoD in consultation with Integrated Defence Finance and has the approval of Hon'ble Raksha Mantri.

Para 7.25 of the "Ordnance Factory Board Procurement Manual" states that-

"All defence contracts are in the name, and on behalf of the President of India."

They have also furnished a copy of a Supply Order placed to a vendor wherein the Supply Order has been placed on & signed on behalf of the President of India by the concerned officer of Ordnance Factory Bhandara.

47. The Appellant have also produced an appointment letter of an officer of Ordnance Factory Bhandara to manifest that the recruitments of the officers in the Ordnance Factory Bhandara are done on behalf of the President of India.

48. Thus, the Appellant contended that all the executive functions of Ordnance Factory Bhandara like recruitment, procurement etc. are done on behalf of the and in the name of the President of India while exercising the executive powers of the Union vested in the President, thereby submitting that Ordnance Factory Bhandara is not merely a Government organization, it is "Central Government" itself since as explained above, it satisfies the conditions of being called "Central Government" as per the aforementioned provision of the section 2(53) of the CGST Act, 2017 read with clause (8) of section 3 of the General Clauses Act, 1897 read with Article 53 & Article 77 of the Constitution of India.

49. Further, the Appellant for the purpose of justifying their legal status as 'Government', has highlighted the constitution of their PAN allotted to them, which is "AAAGG0001Q", wherein the 4th letter is "G", which stands for "Government."

50. Further, the certificate, which was issued by the Jt. Secretary, Ministry of Defence, Department of Defence Production dtd. 18/04/2006 for Sales Tax

purposes, wherein it was certified that the Indian Defence Forces and Indian Ordnance Factories are integral part of the Ministry of Defence, Government of India, and funds for meeting the expenditure on salaries and wages, stores etc. are drawn from the Defence Services Estimates of the Union Budget, clearly showcase this fact that the Ministry of Defence has certified that Indian Ordnance Factories are integral part of the Government of India, which in other words means that Ordnance Factory Bhandara is "Government" for all practical purposes.

51. In this regard, we completely agree with the submissions and contention put forth by the Appellant, wherein they have claimed themselves as the Central Government, as it is evident that they are fulfilling all the conditions stipulated for the Central Government, provided under clause (8) of section 3 of the General Clauses Act, 1897 read with Article 53 & Article 77 of the Constitution of India. Since, the Appellant is functioning under the Department of the Defence Production, Ministry of Defence, Government of India, and all its activities including administrative, executive, etc. are carried out for and on behalf of the President of India, the facts which have been established by the various documents like the Appointment letter of the Group A Gazetted Officer of the Ordnance Factory, OFB Procurement Manual. OFB Procurement Manual clearly shows that all defence contracts are in the name and on behalf of the President of India only. Further, the signatures on the supply order placed to the Vendors, the Acceptance of the Tender, etc., clearly exhibits that all these executive works are being carried out in the name, and on behalf of the President of India. Thus, it is adequately evident that the Ordnance Factory Bhandara, the Appellant, is nothing but 'the Central Government' in accordance with the provision of section 2(53) of the CGST Act, 2017 read with clause (8) of section 3 of the General Clauses Act, 1897 read with Article 53 & Article 77 of the Constitution of India. We also agree with the Appellant's contention, wherein they averred that nowhere under law was it mentioned that "Government" cannot undertake activities relating to "research, development, production, testing, marketing and logistics of a comprehensive product range in the areas of air, land and sea systems"; and that "Having an industrial status" was the result of the nature of activities carried out by Ordnance Factory Bhandara, and "functioning under the

Ministry of Defence and being controlled by an apex body (Ordnance Factory Board)" is a result of the organizational structure put in place to govern the functioning of Ordnance Factories. Further, the PAN i.e. "AAAGG0001Q", wherein the 4th letter, which signifies the status of the PAN Holder, is "G", which stands for "Government" is expressly indicating the constitution and legal status of the Appellant as the "Government".

52. Hence, in view of the above discussions, we are of the opinion that the observation made by the AAR on account of these aspects is erroneous and arbitrary, and hence the same warrants to be set aside.

53. Now, that it has been established that the Appellant can be construed as Central Government, we will examine the applicability of GST on the various transactions/activities carried out by the Appellant as described under Question 1 of the Advance Ruling application, earlier filed by the Appellant.

54. As regards the questions 1(a) and 1(b) asked by the Appellant, wherein the Appellant had asked as to (a) whether Liquidated damages deducted from the payments to be made to suppliers in case of delayed delivery of goods or services, and (b) Whether Amount of Security deposit forfeited by the suppliers due to non-fulfillment of certain contract conditions, it is observed that the aforementioned transactions/activities carried out by the Appellant would squarely get covered under the scope of Sr. No. 62 (heading 9991 or 9997) of Notification No. 12/2017-Central Tax(Rate) dated 28th June 2017, which stipulates that ***"Services provided by the Central Government, State Government, Union territory or local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract" shall attract NIL rate of tax.*** Since the Appellant, which has been established as **'Central Government'** as described herein above, is supplying the services of tolerating the non-performance of a contract against the Liquidated Damages and security deposit forfeited by the suppliers, which are covered under the aforementioned Sr. No. 62 of the Exemption Notification No. 12/2017-C.T. (Rate) dated 28.06.2017 attracting Nil rate of GST. Hence, GST will not be applicable to the aforesaid

transactions/activities carried out by the Appellant, as have been described under question 1(a) and 1(b) of the Advance Ruling application.

55. Since, the Appellant has not appealed against the ruling pronounced in respect of the question 1 (c) of the Advance Ruling Application filed by them, the same is not being considered here for the discussion and ruling thereupon.

56. Now, we will examine question 1(d) asked by the Appellant as to whether Food and beverages supplied at industrial canteen inside the factory premises will attract GST or not. In this regard, the Appellant has submitted as under:

As per Clause 6 of Schedule II to the CGST Act, 2017, "supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration" shall be treated as a supply of services. There is an industrial canteen inside the factory premises that serves food and beverages to employees of the factory. Neither is alcoholic liquor served in the industrial canteen nor is the industrial canteen air conditioned. Nominal charges for such food and beverages are recovered from the employees on no profit basis in order to cover the day-to-day expenditure of the canteen. Such industrial canteen is run by the factory itself and no outdoor caterer is involved in providing services related to supply of food and beverages. Thus, such supply of food and beverages by the factory to factory employees inside the industrial canteen falls within the category of 'services' as per the aforementioned clause 6 of Schedule II to the CGST Act, 2017. However, in terms of the aforementioned Sr. No. 6 of the exemption list on supply of services as per notification no. 12/2017- Central Tax (Rate), supply of services by the Central Government to non-business entities attract 'NIL' rate of tax. Since such supply of food and beverages is being made to factory employees, who are in the nature of non-business entities, the charges recovered by the factory from such employees for such supply attracts 'NIL' rate of tax since Ordnance Factory Bhandara is "Central Government" as explained above. The AAR, Maharashtra had ruled that the said exemption is not applicable to Ordnance Factory Bhandara since it is not "Government"

57. Since, it has been established that Appellant can be construed as Central Government and the activities carried out by the Appellant by way of the supply

of foods or drinks in the canteen, located inside the factory premises shall be treated as supply of services in terms of clause 6(b) of the Schedule II to the CGST Act, 2017, it may adequately be inferred that the aforementioned activities described under question 1(d) of the Advance Ruling Application, i.e. supply of foods or drinks in the canteen, located inside the factory premises, will get covered under the scope of activities described at Sr. No. 6 of the Notification No. 12/2017-C.T. (Rate) dated 28.06.2017,and accordingly will attract Nil rate of GST, as the said services are being provided by the Appellant to their employees, who are certainly non- business entities.

58. Now, we will examine question 1(e) asked by the Appellant as to whether Community hall provided on rental basis to employees of the factory will attract GST or otherwise. In this regard, the Appellant has submitted as under:

There is a community hall within the factory estate that is let to be used by the factory to its employees for their personal purposes like family gatherings, marriages, other social functions etc. Charges in terms of monetary consideration are recovered by the factory from its employees in lieu of such use. As per clause (zz) of the definitions contained in notification no. 12/2017-Central tax (Rate), "Renting in relation to immovable property" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property. Thus, the service provided by the factory to its employees for letting them use cultural hall for their personal purposes falls within the definition of "Renting in relation to immovable property". However, keeping in view the above discussed Sr. No. 6 of the exemption list on supply of services as per notification no. 12/2017- Central tax(Rate), such services provided by Ordnance Factory Bhandara attract 'NIL' rate of tax since the provider of service (Ordnance Factory Bhandara) is "Central Government" and the recipient of services(factory employees) are non-business entities. The AAR, Maharashtra had ruled that the said exemption is not applicable to Ordnance Factory Bhandara since it is not "Government".

59. As regards the above question raised by the Appellant, we refer to the observations made in the above para 56 and conclude that the Appellant, being

'the Central Government' is providing services of renting of immovable property to its employees, which are non-business entities, hence such services rendered by the Appellant will not be subject to GST in accordance with the provisions of Sr. No. 6 of the Notification No. 12/2017-C.T. (Rate) dated 28.06.2017.

60. Now, we will examine question 1(f) asked by the Appellant as to whether School bus facility provided to the children of the employees will be subject to GST or not. In this regard, the Appellant's submissions are as under:

Ordnance Factory Bhandara provides the service of pick and drop of the children of its employees from school located outside the factory via bus owned by the factory. Charges in terms of monetary consideration are recovered by the factory from its employees in lieu of such service provided to them. So, keeping in view the above discussed Sr. No. 6 of the exemption list on supply of services as per notification no. 12/2017- Central tax(Rate), such services provided by Ordnance Factory Bhandara attract 'NIL' rate of tax since the provider of service (Ordnance Factory Bhandara) is "Central Government" and the recipient of services (factory employees) are non-business entities. The AAR, Maharashtra had ruled that the said exemption is not applicable to Ordnance Factory Bhandara since it is not "Government".

61. As regards the above question raised by the Appellant, we refer to the reasoning made in the above para 56 and conclude that the Appellant, being 'the Central Government' is providing services of transportation to the children of its employees, which are clearly non-business entities. Hence such services rendered by the Appellant will not be subject to GST in accordance with the provisions of Sr. No. 6 of the Notification No. 12/2017-C.T. (Rate) dated 28.06.2017.

62. Now, we will examine question 1(g) asked by the Appellant as to whether Conducting exams for various vacancies in the factory will be subjected to GST. In this regard, the Appellant's submissions are as under:

For conducting examinations to fill up various staff vacancies in Ordnance Factory Bhandara, it collects fees from the candidates who wish to appear in such examinations. So, keeping in view the above discussed Sr. No. 6 of the exemption list on supply of services as per notification no. 12/2017- Central tax (Rate), such services of conducting examinations provided by Ordnance Factory Bhandara

attract 'NIL' rate of tax since the provider of service (Ordnance Factory Bhandara) is "Central Government" and the recipient of services(candidates) are non-business entities.

The AAR, Maharashtra had ruled that the said exemption is not applicable to Ordnance Factory Bhandara since it is not "Government".

63. As regards the above question raised by the Appellant, again we refer to the reasoning made in the above para 56 and conclude that the Appellant, being 'the Central Government' is providing services to the candidates, who are undoubtedly the non-business entities, by way of conducting exams for various vacancies in the factory, hence such services, rendered by the Appellant to such non-business entities, will not be subject to GST in accordance with the provisions of Sr. No. 6 of the Notification No. 12/2017-C.T. (Rate) dated 28.06.2017.

64. Since no appeal has been preferred against the ruling pronounced in respect of the question 1(h) of the advance ruling application filed by the Appellant, the same has not been considered here for any discussions or rulings in connection thereto.

65. Now, we will examine the question 2 of the Advance Ruling application filed by the Appellant. The question asked by the Appellant was whether Input Tax Credit on expenditure on the goods and services consumed by our organisation in following activities shall be available or not.

(a)Maintenance of garden inside the factory premises.

(b) Maintenance and upkeep activities relating to gardens, parks, playground, factory school for children of employees, hall for recreational activities, residential quarter buildings of employees, roads, footpaths, street lightings and other parts of estate area that are located outside the factory premises but within the factory estate.

(c)Medicines purchased by the hospital maintained by our organisation and used for treatment of factory employees and their dependents. Expenditure on maintenance, upkeep and other activities relating to such hospital.

(d)Expenditure related to maintenance and upkeep of guest houses maintained by organisation.

(e)Expenditure related to purchase of LPG cylinders used within industrial canteen.

66. The AAR, Maharashtra ruled that Input Tax Credit in respect of any of the above shall not be available to Ordnance Factory Bhandara except sub-question e), that is, expenditure related to purchase of LPG cylinders used within industrial canteen.

67. The explanation that AAR, Maharashtra gave for denying such credit was that the goods/services used in such activities are not used or intended to be used by Ordnance Factory Bhandara in furtherance of its business.

68. Input Tax Credit in relation to sub-question e), that is, expenditure related to purchase of LPG cylinders used within industrial canteen was allowed by AAR, Maharashtra on the pretext that the output supply of food and beverages to employees in industrial canteen is taxable.

69. The Appellant has challenged the above said ruling of AAR, Maharashtra on the following grounds: -

70. The basic question that is being asked here is that whether the following goods/services received by the factory are covered under the definition of "input" and "input services" as per section 2(59) & 2(60) of the CGST Act, 2017 respectively & whether such goods/services can be considered to be falling within the scope of "used or intended to be used in the course or furtherance of business" as per section 16(1) of the CGST Act, 2017 so as to entitle Ordnance Factory Bhandara to avail Input Tax of the said goods/services. It is worthwhile to note here that Hon. Finance Minister of India stated at paragraph 5(b) of the Statement of Objects & Reasons while introducing the Central Goods & Services Tax ("CGST") Bill, 2017 in the Parliament as under: -

"5. The Central Goods and Services Tax Bill, 2017, inter alia, provides for the following, namely: —

(b) to broad base the input tax credit by making it available in respect of taxes paid on any supply of goods or services or both used or intended to be used in the course or furtherance of business."

71. Hence a clear intent to broad base the input tax credit is evident from the above. Also, the term "used or intended to be used in the course or furtherance of

business" has been used to expand the scope of inputs & input services to those activities that have some direct or indirect nexus to business of the supplier.

72. So, it requested to the Hon. Appellate Authority for Advance Ruling to decide upon the admissibility of Input Tax Credit in relation to the following services keeping in view the aforementioned intention of the Hon. Finance Minister of broadening the Input Tax Credit base.

73. Even in the erstwhile laws relating to Excise Duty & Service Tax, the essential requirement of a service to be considered as "Input Service" for availing CENVAT Credit of the same as per Rule 2(l) of the CENVAT Credit Rules, 2004, was that such service should be used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products. There is a plethora of decisions by various High Courts &various benches of Tribunal (CESTAT) in which it was adjudged that CENVAT Credit of Service Tax in relation to the following services was allowable on the pretext that such services were used by the manufacturer, whether directly or indirectly, in or in relation to the business of manufacture of final products.

74. In the case of Coca Cola India Pvt. Ltd. vs. CCE reported in 2009, a Division Bench of the Hon. Bombay High Court held that the expression 'activities in relation to business' in the inclusive part of the definition of 'input service' further widens the scope of input service so as to cover all services used in the business of manufacturing the final products and that any service, used in relation to the business of manufacturing the final products, would be an eligible input service for availing CENVAT Credit. It was also held that the cost of any input service that forms part of value of final products would be eligible for CENVAT credit.

75. Thus, it can be construed to mean from such decision that where the input service used is integrally connected with the business of manufacturing the final product and the cost of that input service forms part of the cost of the final product, then credit of service tax paid on such input service would be allowable.

76. Therefore, applying the same logic, in the GST regime, the said following services can be said to be satisfying the twin necessities for availing Input Tax Credit of GST in respect of expenditure on the said services; that is "input services" and "used or intended to be used in the course or furtherance of business" since as

per section 2(17) of the CGST Act, 2017, the term "business" includes "manufacture".

77. In fact, the scope of availing Input Tax Credit has been further widened under the GST regime to include all inputs and input services used in the course or furtherance of business vis-a-vis erstwhile CENVAT Credit Rules where admissibility of CENVAT Credit was restricted to input services used directly or indirectly, in or in relation to manufacture of final product.

78. Maintenance of garden inside the factory premises: -

79. Here 'factory premises' means plant area where manufacturing activity is carried out and administrative building. The services of maintenance & upkeep of gardens that are located within the factory premises should be considered to be an "input service" as per section 2(60) of the CGST Act, 2017 and should also be considered to be "used or intended to be used in the course or furtherance of business" as per section 16(1) of the CGST Act, 2017 and Input Tax Credit should be available in respect of expenditure done on such services on the following counts:-

80. Gardening is essential & mandated by Maharashtra Pollution Control Board to maintain quality of ambient air & prevent air& water pollution and also a condition precedent as laid down by the said Board, without which Ordnance Factory Bhandara cannot resort to its business activity of manufacturing.

81. Garden creates better atmosphere and environment which increases working efficiency and thus its maintenance is essential in the course of business for better running & furtherance of business.

82. Cost of such 'gardening expenses' forms part of the cost of the final products and thus forms part of the value of taxable supply.

83. Reliance is placed on the following judicial pronouncements of the Tribunal (CESTAT) & various High Courts, wherein it was adjudged that CENVAT Credit of Service Tax was allowable on expenditure related to maintenance & upkeep of gardens in the factory: -

84. In M/s. Rane TRW Steering System Ltd. vs The Commissioner of Central Excise and Central Tax (2018), the Hon. Madras High Court held that garden maintenance service would fall within the definition of input service, in terms of Rule 2 (l) of the Cenvat Credit Rules, 2004.

85. In Mukand Ltd's case Vs. Commissioner of Central Excise, Belapur {2016 (42) STR 88 (Tri-Mumbai)}, it was held by the Hon. Tribunal that the credit on 'gardening expenses' is fully allowable as the same is required for maintaining the good atmosphere in the manufacturing area and also a condition precedent as laid down by the State Pollution Control Board, without which the appellant cannot resort to manufacturing Activity.

86. In HCL Technologies Ltd., Vs. Commissioner of Central Excise, Noida {2015 (4) STR 369 (Tri-Del), it was held by the Hon. Tribunal that Garden Maintenance Services qualify as input services.

87. In Lifelong Meditech Ltd., Vs. Commissioner of Central Excise and Service Tax, Gurgaon II {2016 (44) STR 626 (Tri-Chan)}, it was held by the Hon. Tribunal that "horticulture services are directly related to the manufacturing activity by the appellant as without maintaining the garden, the appellant cannot run their factory. Therefore, I hold that the appellant is entitled to avail CENVAT Credit for horticulture services."

88. In M.s, Orient Bell Ltd., Vs. Commissioner of Central Excise, Noida, reported in 2016 SCC Online CESTAT, 7923, it was held by the Hon. Tribunal that So far as garden maintenance is concerned, the same is input service as it is a pollution control requirement and improves the aesthetics and overall atmosphere and thus is an expenditure in or in relation to manufacture.

89. In Commissioner of Central Excise, Delhi III, Suzuki Motor Cycle India Private Limited {2017 (47) STR 85 (Tri-Chan), it was held by the Hon. Tribunal that the assessee is entitled to avail the credit of gardening service.

90. All the aforementioned arguments and case laws were presented before the AAR, Maharashtra. Even the Department agreed to the admissibility of such Input Tax Credit on maintenance of garden inside the factory premises in its legal submission to AAR, Maharashtra.

91. However, AAR, Maharashtra ruled that "maintenance of garden is not a supply that can be considered as a supply used or intended to be used in the course of furtherance of business of the applicant which is to manufacture Propellants and Explosives. Hence the applicant is not eligible to avail ITC of the tax paid by them on the same. The services availed in relation to plantation and gardening within the plant area will not qualify for Input Tax Credit.

92. In an appeal filed by the Commissioner of Commercial Taxes and GST, Odisha against an order of the AAR, Odisha, the Hon. AAAR, Odisha held that availing input tax credit for services in relation to plantation and gardening within the plant area, including mining area and the premises of other business establishments is allowed.

93. Thus, it is our contention against the order of AAR, Maharashtra that availment of Input Tax Credit in relation to maintenance of garden inside the factory premises should be allowed.

94. On perusal of the above submissions made by the Appellant including the various judicial pronouncements cited by the Appellant, wherein it was categorically held by the courts that Cenvat Credit in respect of the input services used in the maintenance of the gardens in the factory premises is admissible, it is opined that ratio of these judicial pronouncements is clearly applicable in the instant subject matter as the facts and circumstances of the instant subject matter is similar to the facts and circumstances of the above cited Madras High Court case of M/s. Rane TRW Steering System Ltd. vs The Commissioner of Central Excise and Central Tax (2018), wherein the Appellant had contended on the ground that the maintenance of the garden inside the factory premises is a mandatory condition imposed by the Tamil Nadu Pollution Control Board for the setting up and operation of the factory. In the present case also, it is mandated by the Maharashtra Pollution Control Board to maintain the garden in the factory premises of the Appellant. Further, the definition of the Input services provided under section 2(60) of the CGST Act, 2017 is comparatively wider than the earlier definition of input services, which were provided under Rule 2(l) of the erstwhile Cenvat Credit Rules, 2004, owing to the presence of the phrase "used or intended to be used in the course or furtherance of business" under the present GST Law. Further, the Department, in this case the respondent, has also not opposed to the admissibility of the ITC in respect of the input services used by the Appellant in the maintenance of the gardens inside the factory premises.

95. Hence, in view of the above discussions, it is reasonably concluded that the Appellant is eligible to avail the ITC in respect of the input services used to maintain the gardens inside the factory premises.

96. Now, we will discuss the issue of admissibility of ITC, raised by the Appellant in

question 2(b) of the advance ruling application, in respect of the various input services like Maintenance and upkeep activities relating to gardens, parks, playground, factory school for children of employees, hall for recreational activities, residential quarter buildings of employees, roads, footpaths, street lightings and other parts of estate area that are located outside the factory premises but within the factory estate.

The Appellant's submissions in this regard is as under:

As explained above, the term 'factory estate' has been used to describe the area that falls within the boundaries of Ordnance Factory Bhandara and are so controlled by Ordnance Factory Bhandara but such area is outside the precincts of the area where factory & administrative building is there. Such area comprises of establishments such as residential quarters of employees of Ordnance Factory Bhandara & allied organisations, market area, places for worship of God, shops that are given on lease rental basis for commercial purposes, gardens, parks, playgrounds, swimming pool, factory school for children of employees, hall for recreational activities, footpaths, street lightings, inter-connected roads between all such establishments and factory premises and land that is currently not used for any purpose whatsoever.

The services of maintenance, upkeep, repair, housekeeping, cutting of trees & grass, civil construction, hiring of manpower for attending school bus, security services, garbage collection, sewage treatment, sweeping &cleaning etc. procured in relation to such establishments within the factory estate should be considered to be an "input service" as per section 2(60) of the CGST Act, 2017 and should also be considered to be "used or intended to be used in the course or furtherance of business" as per section 16(1) of the CGST Act, 2017. Thus, input Tax Credit should be available in respect of expenditure done on such services in so far as they are not disallowed under any other provisions of the CGST Act, 2017. Let us analyze each establishment one by one for admissibility of Input Tax Credit: -

(i) **Residential quarters of employees of Ordnance Factory Bhandara & allied organisations, market area, places for worship of God, gardens, parks,**

playgrounds, swimming pool, footpaths, street lightings, factory school for children of employees, hall fo. recreational activities: -

Services like maintenance, upkeep, repair, providing security, garbage collection, sewage treatment, civil construction, sweeping & cleaning etc. are procured in relation to the aforementioned establishments. The specific transactions in respect of which ruling on entitlement of input tax credit is required is specified in the enclosed "Annexure A". We wish to submit that all such services are used by the employees of the factory. The Ordnance Factory Board decided to develop such residential facilities within the factory estate since the factory is located at a remote area and employees from different parts of the country are recruited to work over here in Ordnance Factory Bhandara. The residential colony is an 'industrial township' and the appellant is responsible to provide all types of municipal services in the colony. If the employees are not provided a proper residential colony with all the aforementioned facilities and establishments, there would be no availability of proper staff and labor required for continuous manufacturing activities. Thus, such services procured in relation to such establishments are necessary for furtherance of business of our organisation since these services help in maintaining the basic living standard of the employees who in turn are responsible for running the day-to-day business of the factory. Cost of such services forms part of the cost of the final products and thus forms part of the value of taxable supply. Reliance is placed on the following judicial pronouncements of various High Courts & Tribunals wherein it was adjudged that CENVAT Credit of Service Tax was allowable on expenditure related to services procured in relation to residential colony for the employees: In the case of CCE vs ITC Ltd. in the year 2012, the Hon. Andhra Pradesh High Court held that CENVAT credit of service tax paid on the taxable services used in the residential complex shall be available to the manufacturer. The relevant paragraph of the said judgment is extracted herein below.

"The Commissioner's Order-in-Appeal dated 27-5-2008 reflects that he accepted that the efficiency of the employees of an organization would be dependent on various factors, one such being the provision of a housing colony. He further conceded that these facilities would contribute to the enhancement of the productivity of the organization. Having stated so, the appellate authority

surprisingly took the view that maintenance of the residential colony by the respondent-Company was only an obligatory activity owing to situational exigencies and was not connected either directly or indirectly to the manufacture of its final products. This inherent contradiction in the Order-in-Appeal was noted by the CESTAT, which opined that if accommodation was not provided by the respondent-Company to its employees at this remote location, it would not be feasible for it to carry on its manufacturing activity. The finding of the Commissioner that providing a colony to the employees was not directly or indirectly connected with the manufacturing activity of the respondent-Company was therefore, not borne out on facts. The staff colony, provided by the respondent-Company, being directly and intrinsically linked to its manufacturing activity could not therefore, be excluded from consideration. Consequently, the services which were crucial for maintaining the staff colony, such as lawn mowing, garbage cleaning, maintenance of swimming pool, collection of household garbage, harvest cutting, weeding, etc., necessarily had to be considered as 'input services' falling within the ambit of Rule 2(l) of the CENVAT Rules, 2004."

In the case of MANGALAM CEMENT LTD VERSUS COMMISSIONER OF C. EX. & S.T., JAIPUR-I, the Hon. Delhi bench of Tribunal held that the residential colony was constructed adjacent to the factory because of the reason that the factory manufacturing cement is located at a place which is away from the city. Unless the residential colony is constructed near the factory, the appellant will not be in a position to get the proper/adequate manpower for running its plant activities and thus set aside the order passed by the ld. Commissioner (Appeals) of denying CENVAT credit of service tax taken by the appellant on maintenance and repair work of their residential colony.

In the case of CCE Meerut vs M/s Bajaj Hindustan Ltd., the dispute was in relation to allowance of CENVAT Credit of Service Tax paid on construction services to the respondent for construction of residential colony/dormitory located in the precinct of the factory. The Hon. New Delhi bench of the Tribunal held that construction of residential colony/dormitory adjacent to the factory premises

was the necessity because of the location of the factory in a remote area, where if the accommodation is not provided to staff/workers, the continuous/round the clock manufacturing activity will hamper. Further, the cost towards such construction has also been considered as expenditure in the books of accounts of the respondent. Therefore, such construction activity was held to be in relation to the business of the respondent and therefore CENVAT Credit was allowed in relation to such services.

In the case of Reliance Industries Ltd. vs CCE & ST, Mumbai, the dispute was in relation to allowance of CENVAT Credit of Service Tax in respect of services like construction services, repairs and maintenance services, security service, manpower recruitment and supply services, works contract services etc. It was noticed by the lower authorities that these services on which credit was availed of service tax paid were received in their residential township constructed for the employees. It was held by the Mumbai Bench of the Tribunal that the expenses which were incurred by the appellant for the setting up of the township/colony for their employees are expenses which are in relation to the business activity of the appellant which is manufacturing of petroleum products. It was also noted that while arriving at the price of the finished goods manufactured in these factory premises, appellant has considered the expenses incurred towards the residential township/colony as expenses and included the same while arriving at the cost of production of the final products manufactured in the factory premises and accordingly CENVAT Credit was allowed in relation to such services.

96.1 We have carefully considered the above submissions made by the Appellant, which also included the above cited case laws. It is not forthcoming from any of the above cited judgments as to whether the manufacturers involved in the aforementioned cases is charging some amount/rent for providing the accommodation facility to its staffs in the residential colony maintained by them. Thus, the facts and circumstances of the above cited cases are different form the instant case, where the Appellant is charging some rent/consideration from their employees for providing accommodation facility in the residential colony maintained by it, which renders the said activity of the Appellant as supply of

residential services, which is an exempt supply in itself in terms of the provisions made at Sr. 12 of the Notification No. 12/2017-C.T. (Rate) dated 28.06.2017. Further, the education services provided by the factory school to the children of the employees, renting of the recreational halls to the employees for organizing some family functions against certain considerations are exempt supply as discussed while replying to the question 1 of the advance ruling application of the Appellant.

Since, all the aforementioned supplies made by the Appellant are exempt supply, any inputs or input services viz. maintenance, upkeep, repair, providing security, garbage collection, sewage treatment, civil construction, sweeping & cleaning, etc., pertaining to the residential quarters of employees of Ordnance Factory Bhandara & other allied organisations, market area, places for worship of God, gardens, parks, playgrounds, swimming pool, footpaths, street lightings, which are used inside the residential colony will not be available to the Appellant for ITC in accordance with the provision of Section 17(2) of the CGST Act, 2017.

(ii) Shops that are given on rental basis for commercial purposes: -

In general, services related to establishment, repair and maintenance of such shops is procured. Such shops are used for commercial purposes & commercial lease rent is recovered from the tenants of such shops on which GST is collected by Ordnance Factory Bhandara. Thus, the Input Tax Credit related to such services in relation to such shops should be admissible as such expenditure is directly related to the business of renting of immovable property unless otherwise blocked under any other provisions of the CGST Act, 2017.

96.2 On perusal of the above submissions made by the Appellant, it is opined that as per the provision of section 16(1) of the CGST Act, 2017, the Appellant is entitled to avail ITC in respect of expenditures incurred on the input services used in the taxable supply of the renting of immovable property for commercial purposes.

(iii) Inter-connected roads between various establishments and factory premises: -

The specific transactions in respect of which ruling on entitlement of input tax credit is required is specified in the enclosed "Annexure B". In general, services

related to construction, repair and maintenance of such roads is procured. Roads connect the various establishments within the factory premises; that is factory where manufacturing activity is done and administration building with various other establishments within the factory estate like residential quarters, market area and other establishments mentioned above. Thus, the Input Tax Credit related to expenses mentioned in "Annexure B" in relation to such inter-connected roads should be admissible on the following grounds: -

d) The road ranging from the main entrance gate from where the factory estate begins up to the factory premises is used for inward and outward transportation of raw materials & finished goods and is thus used in the course or furtherance of business.

e) The roads within the factory estate; that is the establishments like residential quarters, hospital, guest houses, market area and all other establishments as mentioned above are also used for the purpose of business of Ordnance Factory Bhandara since as argued above all such establishments are there for the benefit of employees of the factory& thus such roads are used in the course of business of Ordnance Factory Bhandara.

f) The cost of such services forms part of the cost of the final products and thus forms part of the value of taxable supply.

96.3 On perusal of the above submissions made by the Appellant, it is observed that the construction and maintenance of the roads in the factory estate is mandatory for the Appellant to carry out their business operation. Without the proper road, the transportation of inputs, capital goods, and the finished products of the Appellant will not be able to take place. Thus, as per section 16(1) of the CGST Act, 2017, the expenditures incurred on the construction and maintenance of the road from the factory's main gate to the factory premises where the manufacturing activities take place is eligible for ITC, since the same is incurred on the input services, which are used in the course or furtherance of business.

However, the construction and maintenance of the roads within the residential complex of the factory estate are in relation to the supply of the accommodation facility to the employees in the residential colony maintained by the Appellant, which are an exempt supply as discussed above, therefore, ITC in respect of such

expenditures on the construction and maintenance of road inside the residential colony will not be available to the Appellant in accordance with the provision of section 17(2) of the CGST Act, 2017.

(iv) Land that is currently not used for any purpose whatsoever: -

The specific transactions in respect of which ruling on entitlement of input tax credit is required is specified in the enclosed "Annexure C". In general, services related to maintenance of such land are procured. Such land is located within the factory estate and consists of mainly wild grass, trees & other vegetation. It is adjacent to the roads that are used for commutation. Input Tax Credit related to expenses mentioned in "Annexure C" in relation to such land should be admissible on the following grounds: -

e) It is necessary to cut wild grass & other vegetation that grows in such area on regular basis in order to maintain the factory estate area neat & clean and ensure that such vegetation does not spill over to and obstruct the roads used for commutation within the factory.

f) Another reason is that such wild grass & other vegetation increases the bacteria count in the environment, factory and finished product that adversely affects the manufacturing process & the quality of the final product & the environment and hence it is necessary to maintain such wild grass & other vegetation.

g) The cost of such services forms part of the cost of the final products and thus forms part of the value of taxable supply.

h) Reliance is placed on the following judicial pronouncement of the Tribunal (CESTAT), wherein it was adjudged that CENVAT Credit of Service Tax was allowable on expenditure related to jungle cutting services to keep environment, factory and finished product bacteria free: -

In the case of L'Oréal India Pvt. Ltd. vs. CCE (2011) 22 STR 89 (Tri. – Mum.), the Hon. Mumbai bench of the Tribunal held that CENVAT credit of service tax paid on jungle cutting services to keep environment, factory and finished product bacteria free are to be allowed as they have nexus with business activity of Appellant.

96.4. After careful consideration of the above submissions and case law cited by the Appellant, it is opined that the Appellant is entitled to avail ITC in respect of expenditure incurred on the maintenance of such unused land in the factory

estate, as the same is essential for keeping the factory surroundings bacteria free, and keeping the roads adjacent to such lands commutation worthy, which is important for smooth business operation of the Appellant. Thus, the said maintenance services like cutting of the wild grass and other vegetation are being used in the course or furtherance of business, hence these services may be construed as input services, accordingly are eligible for ITC.

Now, let us examine the issue of admissibility of ITC, raised by the Appellant in question 2(c) of the advance ruling application, in respect of the various inputs like medicines and others mentioned in "Annexure D" , purchased by the factory for the hospital and expenditure on input services like maintenance, upkeep and other activities also mentioned in "Annexure D" relating to such hospital. It has been submitted by the Appellant that a hospital is run by Ordnance Factory Bhandara and is also located within the factory estate but outside the precincts of the area where factory & administrative building is located; and that the medicines and other facilities are provided to employees of the factory without any consideration. The Appellant further submitted that Input Tax Credit on the inputs like medicines and others mentioned in "Annexure D" purchased by the factory for the hospital and other expenditures incurred on maintenance, upkeep and other activities also mentioned in "Annexure D" relating to such hospital should be admissible on the following grounds: -

(a) Hospital helps in keeping the employees fit and healthy, so that they can contribute for furtherance of business of Ordnance Factory Bhandara.

(b) As a part of welfare measure, it is necessary to provide the employees basic medicinal facilities within the factory estate itself since the factory is located at a remote location.

(c) Cost of such medicines and expenditure on maintenance, upkeep and other activities relating to such hospital forms part of the cost of the final products and thus forms part of the value of taxable supply.

(d) Reference to the judicial pronouncements mentioned in above questions can be drawn in so much so that hospital has been set up for the benefit of the employees and it too forms a part of residential colony of Ordnance Factory Bhandara.

(e) Reference may also be drawn to section 9 of the CGST Amendment Act, 2018, that is in force from 01/02/2019, wherein an amendment in section 17(5) (b) of the principal CGST Act, 2017 has been brought about where input tax credit shall not be available in respect of supply of health services except where the same is obligatory for an employer to provide to its employees under any law for the time being in force.

(f) That as per the amended section 17(5) (b) of the principal CGST Act, 2017, Input Tax Credit in respect of medicines purchased in factory hospital and other inputs and input services used in factory hospital should be allowed since such inputs and input services are used in respect of supply of health services to employees and their families that are mandatory to be provided under Ordnance Factory Medical Regulations.

With respect to the above issue, it was ruled by AAR, Maharashtra that the hospital/dispensary maintained by the applicant to its employees and their dependents is to be categorized as "clinical establishment" as defined at Sr. No. 2(s) of the Notification No. 12/2017-C.T. (Rate) dated 28.6.2017, and supply of health care service by such clinical establishment is exempted under Sr. No. 74 bearing heading 9993 of the Notification No. 12/2017- Central Tax(Rate) dated 28th June, 2017, hence ITC on such exempted supply of services is not available to applicant under sub-section (2) of Section 17 of the CGST Act, 2017 in respect of services and goods procured for maintenance of hospitals and pharmacy outlet as such services, being nil rated, fall under exempt supplies.

97. We have perused the aforesaid submissions made by the Appellant, wherein they have placed their emphasis on section 9 of the CGST Amendment Act, 2018, which is in effect from 01.02.2019, which provides that input tax credit shall not be available in respect of supply of health services except where the same is obligatory for an employer to provide to its employees under any law for the time being in force. The Appellant here has referred to the Ordinance Factory Medical Regulations in terms of which it is mandatory for the Ordnance Factory Bhandara to provide the medical facility to the employees and their dependents free of cost. Thus, it was submitted by the Appellant that they are falling under the exception clause inserted in section 17(5)(b) of the CGST Act, 2017 vide section 9 of the CGST Amendment Act, 2018 w.e.f. 01.02.2019, which provides

that input tax credit shall not be available in respect of supply of health services except where the same is obligatory for an employer to provide to its employees under any law for the time being in force.

98. Here, we intend to agree with the Appellant's submissions in light of section 9 of the CGST Amendment Act, 2018, which amends section 17(5)(b) of the CGST Act, 2017 as stated above. Hence, we are of the opinion that Appellant are rightfully entitled to avail the ITC in respect of all the inputs like medicines, equipment, furniture, etc. consumed in the hospitals and input services like maintenance and upkeep of the hospitals, etc., to provide the health services to its employees and their dependents as per the terms of the Ordnance Factory Medical Regulation, which may be construed as the law for the time being in force as mentioned in the amended in section 17(5)(b) of the CGST Act, 2017. Section 9 of the CGST Amendment Act, 2018, which is in effect from 01.02.2019, has inserted this condition, wherein the ITC in respect of health services will be available to the employer provided such health services are obligatory for the employer to provide to its employees under any law for the time being in force, which, prior to this amendment act, was not available to any registered person under section 17(5)(b) of the CGST Act, 2017.

99. As regards the ruling of the AAR, we observe that the impugned ruling is lucidly contrary to the provision of the CGST Amendment Act, 2018, which clearly says that the ITC in respect of the health services are available to a registered person subject to the condition that the employer i.e. the registered person, is under obligation to provide such health services to its employees in terms of the provisions of any law for the time being in force. In the present case, it is obligatory for the Appellant to provide the health services to its employees and their dependents as per the Ordnance Factory Medical Regulation. Hence, the ruling pronounced by the AAR in this regard is erroneous, and warrants to be set aside.

100. Now, let us examine the issue of admissibility of ITC, raised by the Appellant, in question 2(d) of the advance ruling application, wherein they had asked as to whether they were eligible to avail ITC in respect of input services pertaining to maintenance and upkeep of guest houses maintained by them. Here, it was held by AAR, Maharashtra that the Appellant were not entitled to avail the ITC in

respect of the input services pertaining to the maintenance and upkeep of the Guest houses owned and controlled by the Appellant as the provisions of the guest house facility to the employees are not in the course or furtherance of business, and also the said services of the guest house facility were being consumed personally by the Appellant and its employees, therefore, ITC in respect of the inputs or input services related to the upkeep and maintenance of the guest houses are not available to the Appellant in terms of the provision of section 17(5)(g) of the CGST Act, 2017. The Appellant has challenged this ruling of AAR, and to support their contention, they have cited various case laws, which are as under:

(a) **ISMT LTD. VERSUS COMMR. OF CUS. & C. EX., AURANGABAD [2015 (40) S.T.R. 596 (Tri. - Mumbai)]**
(b) **L'Oréal India Pvt. Ltd. Vs. Commissioner of C. Ex., Pune-I[2011 (22) S.T.R. 89 (Tri.- Mumbai)]**
(c) **Commissioner of C. Ex., Visakhapatnam Vs. Hindustan Zinc Ltd. [2009 (16) S.T.R. 704 (Tri. – Bang.)]**

101. We have carefully considered the above cited judgments, which have been relied upon by the Appellant to substantiate their submissions regarding the admissibility of ITC in respect of the inputs and input services pertaining to the maintenance and upkeep of the guest houses. The Hon'ble CESTAT, Mumbai in the case of L'Oréal India Pvt. Ltd. Vs. Commissioner of C. Ex. (Supra) inter alia held that ***the appellants are entitled for input service credit on outdoor catering service/housekeeping service except for the portion of their service for which they have recovered some amount from the persons staying in guest house.***

102. Thus, it is clearly revealed from the above tribunal judgment that ITC in respect of the portion of input/input services pertaining to the guest houses, for which some consideration has been received from the persons availing the guest house facility, are not available. In the present case, it has been submitted by the Appellant that they are recovering the room charges from the guests occupying the guest house. Hence, by applying the ratio of the above discussed CESTAT Judgment in the facts and circumstances of the present case, we conclude that the ITC in respect of any of the inputs or input services pertaining to the guest house is not available to the Appellant as the Appellant themselves have submitted that they are recovering room rent for availing guest house facilities. Thus, the above discussed CESTAT Mumbai Order, cited by the Appellant in

support of their contention has emerged out to be rather adverse for their contention, and has instead supported the ruling pronounced by AAR, wherein the ITC under question has been denied.

103. Further, as the Appellant is charging rent from the guests availing the guest house facilities, which may be considered as exempt supply in terms of Sr. No. 6 of the Notification no. 12/2017- Central Tax-(Rate) dated 28.06.2017 as the Appellant, as discussed above, has been held to be the Central Government. Therefore, No ITC is available against the said exempt supply in terms of the provision of section 17(2) of the CGST Act, 2017. Therefore, the ITC in respect of the inputs and input services pertaining to the guest houses will not be available to the Appellant.

104. Now, let us examine the issue of admissibility of ITC, raised by the Appellant, in question 2(e) of the advance ruling application, wherein they had asked as to whether they were eligible to avail ITC in respect of the expenditure related to purchase of LPG cylinders used within industrial canteen. Here, it was ruled by the AAR, Maharashtra that since their canteen is providing services related to supply of food and beverages to their employees and also charging consideration for the same, thereby rendering such services leviable to GST regime, therefore, ITC in respect of LPG cylinders being used to provide such taxable services related to supply of food and beverages to their employees are available to the Appellant.

105. However, the Appellant have contended that allowing the availment of ITC on the aforementioned grounds by AAR, Maharashtra is incorrect in the light of the fact that Ordnance Factory Bhandara is "Central Government" and hence eligible for 'NIL' rate of tax on such supply of food and beverages made to the factory employees that are non-business entities in terms of Sr. 6 of the Notification No. 12/2017-C.T. (Rate) dated 28.06.2017. They, further, submitted that as per section 9 of the CGST Amendment Act, 2018 that is in force from 01/02/2019, an amendment in section 17(5) (b) of the principal CGST Act, 2017 has been brought about where input tax credit shall not be available in respect of supply of food and beverages except where the provision of such goods or services or both is obligatory for an employer to provide to its employees under any law for the time being in force. Now, as per section 46 of the Factories Act, 1948, the State

Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers. In this connection, it is submitted here that more than 2500 persons have been employed by Ordnance Factory Bhandara and thus the aforementioned provision relating to maintenance of canteen is obligatory for Ordnance Factory Bhandara to provide to its employees under the Factories Act, 1948. So, an industrial canteen has been provided by Ordnance Factory Bhandara for its employees within the factory where the employees have food and beverages by paying a nominal amount of money on no-profit-no-loss basis.

106. Also, as per section 16(1) of the CGST Act, 2017, "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."

Thus, Input Tax Credit in relation to LPG cylinders that are re-filled for use in industrial canteen should be allowed as per amended section 17(5) (b) & 16(1) of the CGST Act, 2017.

107. Here, we would like to refer to our earlier observation made in respect of the question 1(d) of the Advance Ruling application, wherein we held that the Appellant's activities of the supply of Food and beverages at the industrial canteen inside the factory premises would attract NIL rate of GST, that is the said supply was held to be exempt supply in terms of Sr. No. 6 of the Notification no. 12/2017- Central Tax-(Rate) dated 28.06.2017. Since the subject supply has been held to be exempt supply by the Appellant, the ITC in respect of the LPG cylinders used in the factory canteen of the Appellant will not be available in terms of section 17(2) of the CGST Act, 2017.

108. Now, let us examine the question 6 of the advance ruling application, wherein the Appellant has asked as to whether proportionate Input Tax Credit has to be reversed in cases where lesser payment is made to the supplier due to deduction on account of liquidated damages from supplier's dues. As regards this issue, the AAR Maharashtra firstly inter alia ruled that Ordnance Factory Bhandara shall

have to pay GST on Liquidated Damages deducted from the payments to its suppliers. AAR further ruled that ultimately Ordnance Factory Bhandara would be paying a lesser amount to their suppliers against supply of goods received, which would result in lesser payment being made by the supplier towards GST."

109. The Appellant has challenged the aforesaid AAR ruling by arguing that since they are central government as have been contended by them throughout the submissions made in the subject appeal, they are not liable to pay GST on the liquidated damages deducted from the payment made to the suppliers in terms of the provision of Sr. No. 62 of the Notification No. 12/2017-C.T. (Rate) dated 28.06.2017. They further submitted that the impugned ruling under question, wherein the AAR has held that ultimately Ordnance Factory Bhandara would be paying a lesser amount to their suppliers against supply of goods received, which would result in lesser payment being made by the supplier towards GST, is factually incorrect attributable to the following reasons: -

(i) Lesser payment in respect of L.D cases is made due to deduction of L.D from supplier's payment. Deduction of L.D is an act of tolerating non-performance of supplier on account of delay in delivery of goods or services and is as such a manner of compensating the supplier for his dues and not lesser payment against supply of goods/services received.

(ii) It was submitted that Ordnance Factory Bhandara does not make lesser payment of taxable amount and GST amount to the supplier in L.D cases. They have substantiated this claim with the illustration by two sample invoices and the corresponding entries in their books of account. By the said illustration of these sample invoices, and the corresponding transaction vouchers exhibiting the actual taxable value of the goods equal to that recorded in the corresponding invoices and GST thereon, which is also equal to the GST amounts mentioned in the corresponding Tax Invoices, they have strenuously emphasized that they are not paying less taxable amount or GST thereon to their suppliers in the L.D. cases. Further, they emphasized that they are maintaining separate accounts for Liquidation Damages, whose accounting code is different from those used for recording the taxable amount, CGST amount and SGST amount or IGST amount, as the case may be. Thus, they strive to contend that the

Deduction of L.D. is separate transactional event from the receipt of the goods and payment made in respect thereof, after deducting L.D. from the dues of the respective suppliers.

110. As regards the observation of the AAR in as much as the lesser payment being made to the suppliers would result in lesser payment of GST by the concerned suppliers, it was submitted by the Appellant that the taxable value of goods/services does not change due to L.D deduction. They inter alia submitted that the supplier shall have to pay tax on the entire taxable amount and not just only on the amount after deduction of L.D. They have corroborated this contention with the copies of GSTR-2A of the Appellant, wherein the above mentioned two sample invoices are being reflected. They further submitted that no credit notes have been raised by the supplier in respect of these two invoices which means that even the supplier understands that the taxable amount does not decrease due to deduction of L.D; and that the supplier does not intend to pay lesser amount to the GST Department by issuing credit notes in respect of deduction of L.D from such invoices.

111. On perusal of the submissions and documentary evidences put forth by the Appellant, it is amply revealed that deduction of Liquidation Damages from the dues of the suppliers on account of delayed delivery of goods or services has no bearing, whatsoever, on the actual taxable amount and GST leviable thereon mentioned in the tax invoices, as the transaction of L.D. is separate from the transaction of the receipt of the goods or services. It is manifest from the two separate accounting codes, maintained by the Appellant, one for the receipt of goods and another for deduction of L.D. from the suppliers' due, that taxable value of the goods or services even in L.D. cases are being recorded in their respective accounts having its value equal to those mentioned in the tax invoices raised by the suppliers of the Appellant. The transaction related to L.D. is being recorded in separate accounting code. Maintenance of such accounting codes by the Appellant clearly shows that the Appellant is paying the actuai taxable amount and GST thereon to its suppliers, as mentioned in the tax invoices raised by its suppliers. Further, the reflection of the illustrated sample invoices in the GSTR -2A of the Appellant further substantiates the Appellant's claim that the suppliers are also aware of their liability to pay the actual GST and not the lesser

amount of GST are being paid by the suppliers, even in the cases where there is deduction of liquidation damages from the payment made to such suppliers.

112. Thus, in view of the above, it is observed that the Appellant was rightful in challenging the ruling pronounced by AAR in this regard, and accordingly, they are not required to reverse the ITC on account of the deduction of L.D. from the payment made to the suppliers.

113. Now let us examine the final issue of the appeal, which had been raised in question 7 of the advance ruling application, wherein the Appellant had asked as to being a part of the Ministry of Defence, Government of India, whether the following notifications are applicable to our organisation and what shall be the impact of such notifications: -

(a) Notification No. 2/2018- Central Tax (Rate), in relation to services by an arbitrator or an advocate to our organisation.
(b) Notification No. 3/2018- Central Tax (Rate), in relation to services supplied by our organisation by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017.
(c) Notification No. 36/2017 – Central Tax (Rate), in relation to payment of tax on reverse charge mechanism on sale of used vehicles, seized and confiscated goods, old and used goods, waste and scrap to a GST registered person.

The AAR, Maharashtra answered in the negative for all the three aforementioned sub-questions of question no. 7 of the application by contending that the notifications are not applicable to Ordnance Factory Bhandara since it is not "Government".

114. The Appellant has contended the aforementioned ruling of the AAR on the basis of facts and explanations given for Question No.1 that Ordnance Factory Bhandara is indeed "Government" and hence all the three aforementioned notifications in Question No. 7 to the application should be applicable to Ordnance Factory Bhandara.

115. In this regard, we are of the opinion that since the Appellant has been held to be "the Central Government" as per the discussions and findings carried out herein above, hence all the three aforementioned notifications in Question No. 7 to the application should be applicable to Ordnance Factory Bhandara.

116. Now, before going into the operative part of the Order, it would be much providential to summarize the above discussions and findings in the tabular form, which is being inserted herein under:

Questions asked by the Appellant	Discussions and Findings
1. **Being a part of the Ministry of Defence, Government of India, whether our organization Ordnance Factory Bhandara is liable to pay GST on the following supply of services: -** (a) Liquidated damages deducted from the payments to be made to suppliers in case of delayed delivery of goods or services. (b) Amount of Security deposit forfeited of suppliers due to non-fulfilment of certain contract conditions. (d) Food and beverages supplied at industrial canteen inside the factory premises. (e) Community hall (Multipurpose Hall) provided on rental basis to employees of our organization. (f) School bus facility provided to children of the employees. (g)Conducting exams for various vacancies.	On perusal of the submissions made by the Appellant, it is observed that they are fulfilling all the conditions stipulated for the Central Government, provided under clause (8) of section 3 of the General Clauses Act, 1897 read with Article 53 & Article 77 of the Constitution of India. Since, the Appellant is functioning under the Department of the Defence Production, Ministry of Defence, Government of India, and all its activities including administrative, executive, etc. are carried out for and on behalf of the President of India, the facts which have been established by the various documents like the Appointment letter of the Group A Gazetted Officer of the Ordnance Factory, OFB Procurement Manual. OFB Procurement Manual clearly shows that all defence contracts are in the name and on behalf of the President of India only. Further, the signatures on the supply order placed to the Vendors, the Acceptance of the Tender, etc., clearly exhibits that all these executive works are being carried out in the name, and on behalf of the President of India. Thus, it is adequately evident that the Ordnance Factory Bhandara, the Appellant, is nothing but 'the Central Government' in accordance with the provision of section 2(53) of the CGST Act, 2017 read with clause (8) of section 3 of the General Clauses Act, 1897 read with Article 53 & Article 77 of the Constitution of India. In view of the above, the Appellant is **not** liable to pay GST on the following services supplied by them: (a)Liquidated damages deducted from the payments to be made to suppliers in case of delayed delivery of goods or services. (b) Amount of Security deposit forfeited of suppliers due to non-fulfilment of certain contract conditions. (d) Food and beverages supplied at industrial canteen inside the factory premises. (e)Community hall (Multipurpose Hall) provided on rental basis to employees of our organization.

	(f) School bus facility provided to children of the employees. (g)Conducting exams for various vacancies.
Question: 2) Whether Input Tax Credit on expenditure on the goods and services consumed by our organisation in following activities shall be available: - (a) Maintenance of garden inside the factory premises.	**Findings in respect of Q. 2(a):-** On perusal of the submissions made by the Appellant including the various judicial pronouncements cited by the Appellant, wherein it was categorically held by the courts that Cenvat Credit in respect of the input services used in the maintenance of the gardens in the factory premises is admissible, it is opined that ratio of these judicial pronouncements is clearly applicable in the instant subject matter as the facts and circumstances of the instant subject matter is similar to the facts and circumstances of the above cited Madras High Court case of M/s. Rane TRW Steering System Ltd. vs The Commissioner of Central Excise and Central Tax (2018), wherein the Appellant had contended on the ground that the maintenance of the garden inside the factory premises is a mandatory condition imposed by the Tamil Nadu Pollution Control Board for the setting up and operation of the factory. In the present case also, it is mandated by the Maharashtra Pollution Control Board to maintain the garden in the factory premises of the Appellant. Further, the definition of the Input services provided under section 2(60) of the CGST Act, 2017 is comparatively wider than the earlier definition of input services, which were provided under Rule 2(l) of the erstwhile Cenvat Credit Rules, 2004, owing to the presence of the phrase "used or intended to be used in the course or furtherance of business" under the present GST Law. Further, the

	Department, in this case the respondent, has also not opposed to the admissibility of the ITC in respect of the input services used by the Appellant in the maintenance of the gardens inside the factory premises. **Appellant is eligible to avail the ITC in respect of the input services used to maintain the gardens inside the factory premises.**
(b) Maintenance and upkeep activities relating to gardens, parks, playground, factory school for children of employees, hall for recreational activities, residential quarter buildings of employees, roads, footpaths, street lightings and other parts of estate area that are located outside the factory premises but within the factory estate.	**Findings in respect of Q. 2(b): -** On careful consideration the above submissions made by the Appellant, which also included the above cited case laws. It is not forthcoming from any of the above cited judgments as to whether the manufacturers involved in the aforementioned cases is charging some amount/rent for providing the accommodation facility to its staffs in the residential colony maintained by them. Thus, the facts and circumstances of the above cited cases are different form the instant case, where the Appellant is charging some rent/consideration from their employees for providing accommodation facility in the residential colony maintained by it, which renders the said activity of the Appellant as supply of residential services, which is an exempt supply in itself in terms of the provisions made at Sr. 12 of the Notification No. 12/2017-C.T. (Rate) dated 28.06.2017. Further, the education services provided by the factory school to the children of the employees, renting of the recreational halls to the employees for organizing some family functions against certain considerations

	are exempt supply as discussed while replying to the question 1 of the advance ruling application of the Appellant. Since, all the aforementioned supplies made by the Appellant are exempt supply, any inputs or input services viz. maintenance, upkeep, repair, providing security, garbage collection, sewage treatment, civil construction, sweeping & cleaning, etc., pertaining to the residential quarters of employees of Ordnance Factory Bhandara & other allied organisations, market area, places for worship of God, gardens, parks, playgrounds, swimming pool, footpaths, street lightings, which are used inside the residential colony will not be available to the Appellant for ITC in accordance with the provision of Section 17(2) of the CGST Act, 2017.
(c) Medicines purchased by the hospital maintained by our organisation and used for treatment of factory employees and their dependents. Expenditure on maintenance, upkeep and other activities relating to such hospital.	**Findings in Q. 2(c)** we intend to agree with the Appellant's submissions in light of section 9 of the CGST Amendment Act, 2018, which amends section 17(5)(b) of the CGST Act, 2017. Hence, we are of the opinion that Appellant are rightfully entitled to avail the ITC in respect of all the inputs like medicines, equipment, furniture, etc. consumed in the hospitals and input services like maintenance and upkeep of the hospitals, etc., to provide the health services to its employees and their dependents as per the terms of the Ordnance Factory Medical Regulation, which may be construed as the law for the time being in force as mentioned in the amended section 17(5)(b) of the CGST Act, 2017. Section 9 of the CGST Amendment Act, 2018, which is in effect from 01.02.2019, has inserted this condition,

	wherein the ITC in respect of health services will be available to the employer provided such health services are obligatory for the employer to provide to its employees under any law for the time being in force, which, prior to this amendment act, was not available to any registered person under section 17(5)(b) of the CGST Act, 2017. In view of this deliberation, the Appellant are rightfully entitled to avail the ITC in respect of all the inputs like medicines, equipment, furniture, etc. consumed in the hospitals and input services like maintenance and upkeep of the hospitals, etc., to provide the health services to its employees and their dependents as per the terms of the Ordnance Factory Medical Regulation.
(d) Expenditure related to maintenance and upkeep of guest houses maintained by organisation.	**Findings in Q. 2(d): -** As the Appellant is charging rent from the guests availing the guest house facilities, which may be considered as exempt supply in terms of Sr. No. 6 of the Notification no. 12/2017- Central Tax-(Rate) dated 28.06.2017 as the Appellant, as discussed above, has been held to be the Central Government. Therefore, No ITC is available against the said exempt supply in terms of the provision of section 17(2) of the CGST Act, 2017.
(e) Expenditure related to purchase of LPG cylinders used within industrial canteen.	**Findings in Q. 2(e): -** Since, the Appellant's activities of the supply of Food and beverages at the industrial canteen inside the factory premises would attract NIL rate of GST, that is the said supply was held to be exempt supply in terms of Sr. No. 6 of the Notification no. 12/2017- Central Tax-(Rate) dated 28.06.2017. Since the subject supply

	has been held to be exempt supply by the Appellant, the ITC in respect of the LPG cylinders used in the factory canteen of the Appellant **will not** be available in terms of section 17(2) of the CGST Act, 2017.
Question: 6) Whether proportionate Input Tax Credit has to be reversed in cases where lesser payment is made to the supplier due to deduction on account of liquidated damages from supplier's dues.	<u>Findings in Q. 6: -</u> On perusal of the submissions and documentary evidences put forth by the Appellant, it is amply revealed that deduction of Liquidation Damages from the dues of the suppliers on account of delayed delivery of goods or services has no bearing, whatsoever, on the actual taxable amount and GST leviable thereon mentioned in the tax invoices, as the transaction of L.D. is separate from the transaction of the receipt of the goods or services. It is manifest from the two separate accounting codes, maintained by the Appellant, one for the receipt of goods and another for deduction of L.D. from the suppliers' due, that taxable value of the goods or services even in L.D. cases are being recorded in their respective accounts having its value equal to those mentioned in the tax invoices raised by the suppliers of the Appellant. The transaction related to L.D. is being recorded in separate accounting code. Maintenance of such accounting codes by the Appellant clearly shows that the Appellant is paying the actual taxable amount and GST thereon to its suppliers, as mentioned in the tax invoices raised by its suppliers. Further, the reflection of the illustrated sample invoices in the GSTR -2A of the Appellant further substantiates the Appellant's claim that the suppliers are also aware of their liability to pay the actual GST and not the lesser amount of GST are being paid by the suppliers, even in the cases

	where there is deduction of liquidation damages from the payment made towards such suppliers. In view of this discussions, it is observed that the Appellant was rightful in challenging the ruling pronounced by AAR in this regard, and accordingly, they are not required to reverse the ITC on account of the deduction of L.D. from the payment made to the suppliers.
Question: 7) Being a part of the Ministry of Defence, Government of India, whether the following notifications are applicable to our organisation and what shall be the impact of such notifications: - **a) Notification No. 2/2018-Central Tax (Rate), in relation to services by an arbitrator or an advocate to our organisation.** **b) Notification No. 3/2018-Central Tax (Rate), in relation to services supplied by our organisation by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017.** **c) Notification No. 36/2017 – Central Tax (Rate), in relation to payment of tax on reverse charge mechanism on sale of used vehicles, seized and confiscated goods, old and used goods, waste and scrap to a GST registered person.**	**Findings in Q. 7: -** Since the Appellant has been held to be "the Central Government" as per the discussions and findings carried out herein above, hence all the three aforementioned notifications in Question No. 7 to the application should be applicable to Ordnance Factory Bhandara.

117. Hence in view of the above discussions and findings, we set aside the ruling pronounced by the AAR, Maharashtra and pass the following order:

ORDER

For the reasons recorded in the body of the order, the questions against which the Appellant has preferred appeal against the ruling of the AAR, Maharashtra, are being answered as under:

Question: 1) Being a part of the Ministry of Defence, Government of India, whether our organization Ordnance Factory Bhandara is liable to pay GST on the following supply of services: -

a) Liquidated damages deducted from the payments to be made to suppliers in case of delayed delivery of goods or services.
b) Amount of Security deposit forfeited of suppliers due to non-fulfillment of certain contract conditions.
(d) Food and beverages supplied at industrial canteen inside the factory premises.
(e)Community hall (Multipurpose Hall) provided on rental basis to employees of our organization.
(f) School bus facility provided to children of the employees.
(g)Conducting exams for various vacancies.

Answer: The Appellant is not liable to pay GST in any of these abovementioned activities/transactions carried out by them.

Question: 2) Whether Input Tax Credit on expenditure on the goods and services consumed by our organisation in following activities shall be available: -

a) Maintenance of garden inside the factory premises.
b) Maintenance and upkeep activities relating to gardens, parks, playground, factory school for children of employees, hall for recreational activities, residential quarter buildings of employees, roads, footpaths, street lightings and other parts of estate area that are located outside the factory premises but within the factory estate.
c) Medicines purchased by the hospital maintained by our organisation and used for treatment of factory employees and their dependents. Expenditure on maintenance, upkeep and other activities relating to such hospital.
d) Expenditure related to maintenance and upkeep of guest houses maintained by organisation.
e) Expenditure related to purchase of LPG cylinders used within industrial canteen.

Answer: ITC in respect of the following input services are available to the Appellant:

(a) Maintenance of garden inside the factory premises;
(c) Medicines purchased by the hospital maintained by our organisation and used for treatment of factory employees and their dependents. Expenditure on maintenance, upkeep and other activities relating to such hospital.

ITC in respect of the following input services are not available to the Appellant:
(b) Maintenance and upkeep activities relating to gardens, parks, playground, factory school for children of employees, hall for recreational activities, residential quarter buildings of employees, roads, footpaths, street lightings and other parts of estate area that are located outside the factory premises but within the factory estate.

(d) Expenditure related to maintenance and upkeep of guest houses maintained by organisation.
(e) Expenditure related to purchase of LPG cylinders used within industrial canteen.

Question: 6) Whether proportionate Input Tax Credit has to be reversed in cases where lesser payment is made to the supplier due to deduction on account of liquidated damages from supplier's dues.

Answer: No, the Appellant is not required to reverse any proportionate Input Tax Credit in cases where lesser payment is made to the supplier due to deduction on account of liquidated damages from supplier's dues.

Question: 7) Being a part of the Ministry of Defence, Government of India, whether the following notifications are applicable to our organisation and what shall be the impact of such notifications: -

d) Notification No. 2/2018- Central Tax (Rate), in relation to services by an arbitrator or an advocate to our organisation.
e) Notification No. 3/2018- Central Tax (Rate), in relation to services supplied by our organisation by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017.
f) Notification No. 36/2017 – Central Tax (Rate), in relation to payment of tax on reverse charge mechanism on sale of used vehicles, seized and confiscated goods, old and used goods, waste and scrap to a GST registered person.

Answer: Yes, all the three aforementioned notifications will be applicable to Ordnance Factory Bhandara.

(RAJIV JALOTA)
MEMBER

(SUNGITA SHARMA)
MEMBER

Copy to- 1. The Appellant
2. The AAR, Maharashtra
3. The Pr. Chief Commissioner, CGST and C.Ex., Mumbai
4. The Commissioner of State Tax, Maharashtra
5. The Respondent.
6. The Web Manager, WWW.GSTCOUNCIL.GOV.IN
7. Office copy