

AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32,
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI - 600 003.

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.

Members present are:

1. Thiru Senthilvelavan B., I.R.S Member/ Additional Commissioner,
Office of the Commissioner of GST & Central Excise, Chennai -34
2. Thiru KurinjiSelvaan V.S., M.Sc., (Agri.), M.B.A., Member/ Joint Commissioner (ST)
Authority for Advance Ruling, Tamil Nadu, Chennai-600 003.

ORDER No. 10/AAR/2021 DATED: 31.03.2021

GSTIN Number, if any / User id		33AACCS8676D1Z9
Legal Name of Applicant		M/s. SHV Energy Private Limited
Registered Address /Address provided while obtaining user id		M/s. SHV Energy Private Limited, LPG Storage Terminal, (Near Red Gate), New Harbour, Tuticorin - 628 004.
Details of Application		GST ARA- 01 Application Sl.No.17/2020 ARA dated: 22.07.2020
Concerned Officer		State: Assistant Commissioner (ST) Sriperumbudur Assessment Circle, Centre: Chennai Outer Commissionerate.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		Factory / Manufacturing
A	Category	Wholesale Business
B	Description (in Brief)	Main Business - Supply of LPG
Issue/s on which advance ruling required		Admissibility of input tax credit of tax paid or deemed to have been paid.
Question(s) on which advance ruling is required		1. Whether the applicant is eligible for availment of input tax credit of GST paid on goods and services for laying of transfer pipeline and the foundation and structural support for such pipeline

	<p>which is intended for unloading Propane/Butane from the Vessel/Jetty to the Terminal?</p> <p>2. Whether the applicant is eligible for availment of input tax credit of GST paid on goods and services used for setting up refrigerated storage tank and input credit of goods and services used for foundation and structural support for such tanks?</p> <p>3. Whether the applicant is eligible for availment of input tax credit of GST paid on goods and services for setting up of Fire Water reservoir (tank) and input credit on goods and services used for foundation and structural support for such reservoir?</p>
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Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

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

M/s. SHV Energy Private Limited, LPG Storage Terminal, (Near Red Gate), New Harbour, Tuticorin - 628 004.. (hereinafter called the Applicant) are registered under GST with GSTIN. 33AACCS8676D1Z9. The applicant Company(hereinafter referred to as SHV) is registered in India and the primary business comprises of supply of Liquefied Petroleum Gas (LPG) in Bulk and in cylinders to domestic/ other Business' segments under the brand name of "SUPER GAS". SHV also supply bulk LPG for Industrial and Auto LPG. SHV is the subsidiary of SHV Energy N.V., a Dutch Multinational Company in Netherlands.

They import LPG from outside India and store/ processes the same at various terminals located in India. The terminals are in Tuticorin (Tamil Nadu), Porbandar (Gujarat) and Mumbai (Maharashtra). SHV operates in 16 states in India through 3 terminals, 4 Regional offices, 24 filling plants and 6 depots in India. The applicant has sought Advance Ruling on the following questions:

- 1) Whether the applicant is eligible for availment of input tax credit of GST paid on goods and services for laying of transfer pipeline for transporting Propane/Butane from Jetty to the Terminal.
- 2) Whether the applicant is eligible for availment of input tax credit of GST paid on goods and services for construction of refrigerated storage tank at Terminal.
- 3) Whether the applicant is eligible for availment of input tax credit of GST paid on goods and services for construction of Fire Water reservoir which is a part of firefighting system.
- 4) Whether the applicant is eligible for availment of input tax credit of GST paid on goods and services procured for construction of foundation/structural support through piling.

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The applicant has stated that their Tuticorin terminal is contemplating expansion to increase the LPG capacity from 3,50,000 Metric Tons Per Annum (MTPA) to 12,00,000 MTPA. The expansion will involve suitable augmentation of existing facilities including Utilities and Offsite systems. The following expenditure is proposed to be incurred by them in the process of expansion amongst others:

1. Construction of transfer Pipeline - The existing unloading arms and transfer Pipelines shall continue to be available for unloading LPG from ships. As part of proposed expansion, new Propane and Butane unloading arms (one each) designed to handle 500 MT/hr each of refrigerated Propane and Butane shall be installed at jetty. The approximate linear length of each new pipeline shall be 4.1 km and shall be installed adjacent to the existing piping corridor. Propane and Butane shall be received in refrigerated ship tankers with their own refrigerated system in parcel sizes of 22,500 MT at

Port jetty of Tuticorin. The refrigerated liquid cargo shall be pumped by ship's pumps at a rate of 500 MT/h of Propane and Butane in each loading arm. This will be done through two marine unloading arms of 12" diameter and transferred to the storage tank via 16" diameter pipelines each having a total length of about 4.0 to 4.7 kms. The above mentioned is the process of transportation of Propane/ Butane from Jetty to the Terminal by using transfer pipeline, as transportation through tankers is cumbersome process.

2. Construction of refrigerated atmospheric storage tank - Post expansion of the terminal, they envisage unloading of Propane and Butane from the ship using pipelines and storing in two refrigerated storage tanks of 15,000 MT capacity each. The tank normal operation pressure shall be 700 mm WC at a temperature of approximately (-) 450 C in case of propane and (-) 50 C in case of Butane these tanks are constructed for specific usage of storage of Propane and Butane. These storage tankers cannot be used for any common storage.

3. Construction of water tank which is a part of firefighting system - The current expansion project is proposed to have firefighting system in compliance with Oil Industry Safety Directorate (OISD) standards 236. Water is stored to meet the requirement of firefighting for 4 hours duration, with pumps of adequate capacity. Hence two tanks of capacity 4000KL each is proposed. Further, water stored in the tanks will be used for direct fire extinguishing, cooling down surrounding structures & equipment as water curtain to complete cut-off of fire zones. Thus, water reservoir (tank) is integral part of firefighting system which is connected with Hydrant lines sprinklers and water curtain.

4. Construction of foundation/ structural support through piling - As their Project site is located close to the sea, the soil is filled up with clay with a very high ground water table (<1 m), this would mean that the load bearing capacity (weight per sqm the soil can withstand) is very low. Since the tanks are quite heavy, they need to increase this load bearing capacity. Once the location of the piles has been identified, a hydraulic rig shall dig a hole up to the required depth, once the depth has been achieved a reinforcement cage(prefabricated) shall be placed inside the borehole and then filled up with concrete of required grade. These piles are finished at ground level. Since the storage tanks need an elevated base, the piles are further extended

to another 1.5m above the ground level upon which a pile cap/ concrete foundation is made joining all the piles together to form a load bearing platform.

2.2 On their interpretation of law, they have stated the following grounds, each of which is taken in the alternative and without prejudice to the others:

1. **Eligibility of taxes paid on laying of transfer pipelines:** Reading the provisions of Section 16(1) of CGST Act 2017, Section 2(59) of CGST Act, Section 2 (19) of CGST Act, Section 17(5)(c),(d) and the Explanation to Section 17(5) of the of CGST Act for the instant case, it could be concluded that in order to avail the credit the procurement transaction has to pass the following tests:

A. Blocking of input tax credit under Section 17 (5) shall apply to pipelines used for outward supply of goods;

➤ Decoding the provision at S.17(5) and the Explanation, following inference can be drawn:

- The provision restricts the input tax credit on immovable property other than plant and machinery;
- Plant and Machinery means any equipment fixed to earth by foundation or structural support; and
- The provision excludes the credit on pipeline laid outside the factory premise which is used for making outward supply of goods

➤ In the current scenario, they receive Propane and Butane through refrigerated ship tankers with their own refrigerated systems. The refrigerated liquid cargo shall be pumped by ship's pumps at a rate of 500 MT/hr each of refrigerated Propane and Butane in each loading arm. This will be done through two marine unloading arms installed at Jetty and transfers the refrigerated Propane and Butane to SHV's refrigerated storage tanks at Terminal via 16" diameter transfer pipelines each having a total length of about 4.3 kms from Jetty to the Terminal. The above referred process of procurement of Propane and Butane from Jetty to SHV's terminal through transfer pipeline is the unique mode of transportation without which the appellant cannot manufacture LPG which is their outward supply.

- The provision under Section 17 (5) restricts pipelines laid outside the factory premise which are used for making outward supply of goods or services not inward supply of goods or services. Hence, they believe that the transfer pipelines laid outside the factory premise for procurement of Propane and Butane is eligible for availing credit.

B. Transfer Pipelines are used or intended to be used in the course or furtherance of business.

- The Pipelines in question are used in the course or furtherance of business. The main objective and purpose of laying of pipeline is for unloading of Propane/ Butane. Propane/ Butane are the key raw material the process of manufacture of LPG. It is clear from the above that laying of pipeline constitutes an integral and inseparable part in the manufacturing process in as much as without the aforesaid activity of transportation of Propane/Butane for which pipelines are used, there cannot be manufacturing of LPG.

Based on above, the applicant has submitted that pipelines are used in course of or furtherance of business.; The pipelines constitute an integral part of the manufacture carried out by the Applicant; credit of taxes paid by the Applicant should be eligible to the Applicant. They have placed Reliance in this regard on the following case laws:-

- *Jaypee Rewa Cement Vs Commissioner of Central Excise, M.P.* [2001 (133) E.L.T. 3 (S.C.)]
- *Commissioner of C. Ex., Belgaum Vs Bellary Steel and Alloys Ltd.* 2008 (226) E.L.T. 280 (Tri. - Bang)
- *Central Excise and Service Tax, Ahmedabad-III* 2014-TIOL-2217-CESTAT-AHM.
- Further, transporting Propane/Butane from Jetty to the Terminal for manufacture of final product is to be considered as used within the factory. In the regard, they rely upon the decisions in the following cases:
 - *J.K. Udaipur Udyog Ltd. Vs Commissioner of C. Ex., Jaipur-II* 2002 (147) E.L.T. 996 (Tri. - Del)
 - *M/s Birla Corporation Ltd Vs Commissioner of Central Excise* 2005-TIOL-99-SC-CX.
 - *Commissioner v. GSPL India Transco Ltd* [2016 (43) S.T.R. J23 (Guj.)]

- Based on above, they have concluded that transportation of Propane/Butane is not possible without laying of pipeline for transport. Therefore, laying of pipelines is an integral part of applicant's business operations and hence used in course of furtherance of the business. Further to the above, it can be concluded that laying of pipeline for transport of Propane/Butane from Jetty to Terminal is eligible for input tax credit under Section 16 of CGST Act, 2017 and credit should not to be restricted under Section 17 of CGST Act, 2017.
- The essence of the test is to determine whether the transfer pipeline is eligible for credit under Section 16 of CGST Act, 2017. It is to be noted that the transfer pipeline laid down from the Terminal up to the Jetty is for inward transportation of the inputs (Propane/ Butane) and not for outward transportation of the final product (LPG). Since the transfer pipeline is facility integrated for transportation of Propane and Butane to the Terminal and not for outward supply and are used for furtherance of business. It safely infers that the credit cannot be restricted under Section 17 of CGST Act, 2017 and therefore, the applicant is eligible for input tax credit under Section 16 of CGST Act, 2017.

2. Eligibility of taxes paid on construction of refrigerated storage tank, foundation and structural support through piling;

- The issue is whether inputs and input services used for construction of refrigerated atmospheric storage tank and foundation and structural support through piling is eligible for Input Tax Credit under CGST Act, 2017. In this regard the Applicant has stated that the main objective and purpose of construction of refrigerated storage tank is for storing, processing and maintaining of Propane/Butane which is for outward transportation of finished product i.e LPG. Storage Tank is integral part and inseparable in the manufacturing process. Without the aforesaid activity of storing of Propane/ Butane in refrigerated atmospheric storage tank where blenders are installed to blend Propane and Butane in the desired portion to meet varied customer requirements, there cannot be manufacture of LPG.

Therefore, refrigerated storage tank used for storage of Propane/ Butane are used in course of or furtherance of business.

- Below are the major components required for construction of refrigerated storage tanker:
 - ✓ Low Temperature Carbon Steel (LTCS), Rock wool and ceramic fiber insulation
 - ✓ Piles, platforms and staircase
 - ✓ In-tank pumps, level indicator, Transmitters
 - ✓ Pipelines (LTCS) and sprinkle system (MS)
- Further on laying of foundation and structural support through piling, they have stated that as their Project site is located close to the sea, the soil is filled up with clay with a very high ground water table (<1 m), this would mean that the load bearing capacity (weight per sqm the soil can withstand) is very low. Since the tanks are quite heavy, they need to increase this load bearing capacity. Therefore, the foundation by way of piling is must. The input and input services used for laying foundation and structural support of plant and machinery, therefore is eligible for input tax credit. The detailed explanation for the eligibility of the input tax credit are stated in the foregoing paras.
- Reading the provisions of Section 16(1) of CGST Act, Section 2(59), Section 2(19) of the Act together, the essential requirement for availing the credit of the input taxes paid in respect of the inward supplies of goods and services, is that the said supplies shall be **used** or **intended to be used** in the **course or furtherance of the business**.
- Further, in view of the restrictions as per Section 17(5) of the Act, the input tax credit on goods and services is restricted if the same is used for construction of an immovable property unless that immovable property results in a "plant and machinery" as defined in the Explanation. Input tax credit of goods or service used for construction of "Plant & Machinery" therefore is eligible. Further, inputs and input services used for laying **foundation and structural support** of Plant and Machinery is also eligible for input tax credit.
- In the light of the aforesaid context, it is important to evaluate whether refrigerated Storage tanks will qualify as a "plant and

machinery" as defined in the Explanation above. The definition of the term "plant and machinery" in the Explanation to Section 17(5) has a means clause and then an exclusion clause. To qualify something as a plant and machinery it should satisfy "the means" clause and should not fall under any of the exclusion mentioned in the definition.

- Plant and machinery means **"Apparatus, equipment or machinery fixed to earth by foundational or structural support used for making outward supply"**. There is no specific provision in the Act which defines apparatus, equipment or machinery. Common definition of Equipment is "a set of equipment or tools or a machine that is used for a particular purpose".
- Further, the meaning of the above term, 'Apparatus', from different dictionaries as under:
 - It is a collection or set of materials, instruments, appliances or machinery designed for a particular use (Mav. Web. Dic). A compound instrument designed to carry out a specific function. (Mc Graw Hill Dic. of Sc. & Tech. Terms).
- Webster's Encyclopedic Unabridged Dictionary of the English Language which reads as under:
 - a group or aggregate of instruments, machinery, tools, materials etc., having a particular function or intended for a specific use.
 - any complex instrument or machine for a particular purpose.
 - any system or systematic organization of activities, functions, processes, etc., directed toward a specific goal; the apparatus of government; espionage apparatus.
 - Physio, a group of structurally different organs working together in the performance of a particular function: the digestive apparatus.
- **Ramanatha Aiyar's Legal Lexicon:** The word apparatus would certainly mean the compound instrument or chain of series of instruments designed to carry out specific function or for a particular use (Commer. Of Customs v. C-NET Communication (1) (P) Ltd., (2007) 12 SCC 72, 82-83, para 36).
- Apparatus is a compound instrument designed to carry out a specific function or for a particular use. I.C.B. (P) Ltd. v. CCE, 1997 (95) ELT 239 (T).

- **Equipment:** *Equipment is a thing which is used for a particular purpose. (Collins Cobuild Dictionary, as referred in O.K. Play (India) Ltd. v. CCE, (2005) 2 SCC 460, 468, para 29)*
- The definition of Capital Goods under Modvat Regime and definition of Plant and Machinery under GST is exactly same.
- The Propane/Butane is stored, processed and maintained in refrigerated storage tanks before being dispatched to the end customers as per their requirements. Refrigerated storage tanks are constructed in a manner which can facilitate storage of Propane/ Butane and maintain its characteristics. It is built with certain equipment along with the concrete inputs to enable it to perform the said functions. The refrigerated storage tanks are built for a specific purpose of safe storage of Propane/ Butane. Therefore, refrigerated storage tanks may qualify as an apparatus or an equipment.
- In terms of the above definition, foundation and structural support through piles is a group of instruments, tools, materials etc., having a particular function or intended for a specific use for providing foundation and support to construct tanks. Therefore, the same rightly get covered under the definition of Plant and Machinery.
- The definition of "plant and machinery" excludes:
 - (i) **Land, building or any other civil structures**
 - (ii) Telecommunication towers; and
 - (iii) Pipelines laid outside the factory premises
- It is ample clear that the foundation and structural support and construction of storage tank will not fall under the purview of "Telecommunication towers". Therefore, they have examined the clause (i) which provides for land, building or other civil structure. The exclusion is for land, building or any other civil structure. Since, foundation and structural support and storage tanks will not fall under land and building, the term 'any other civil structure' must be evaluated. In the absence of any specific definition of the term "civil structure" the meaning of the word must be understood from the two of the previous words used in that sentence by applying the principles of Eiusdem Generis. Hence the phrase "any other civil structures" has to be read in conjunction with land and building and therefore any civil structure in the nature of land and building will ordinarily be

a place from where the business is being carried on and not a structure used in the process of manufacture for making outward supply of goods/services.

- The concept of input tax credit under GST is identical and wider than the concept of Cenvat Credit Rules, 2004 prevailing in pre-GST regime. The definition of Capital Goods in terms of Rule 2(A) of Cenvat Credit Rules, 2004 specifically included "storage tanks" and therefore was held as eligible for Cenvat Credit. It is to be noted that any other immovable property such as factory building/office buildings have not been included in the said definition of Capital Goods whereas storage tank being an integral part of manufacturing process have been brought under the definition of Capital Goods. It infers from this that Storage tanks were not treated as Immovable property even for the purpose of Cenvat Credit under the earlier regime. From the combined reading of definition of Inputs, Input Service and Capital Goods, it is evident that the intention was to restrict credit of Input and Input services used for construction of Immovable Property. The raw materials used in the manufacture of capital goods are entitled to credit under the definition of inputs under Rule 2(k) of CCR, 2004. As storage tank is specifically included in the definition of Capital goods, the same is not in the nature of Immovable Property and is Plant and Machinery and Inputs and Input Services used for its fabrication was allowed.
- Without prejudice to the above, as per Explanation to Section 17(5) of CGST Act, definition of Plant and Machinery includes *machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports.*
- Reading all the above provisions together, the essential elements for availing the credit of the input taxes paid in respect of the inward supplies of goods and services, the said supplies shall be used or intended to be used in the course or furtherance of the business. The equipment, plant and machinery and the tanks need a stable base, without proper foundation and structural support they cannot have a stable base which can take the weight of entire equipment, Plant and Machinery and the tanks with the product in it.

- They further rely on part C of Schedule II to the Companies Act, 1956, wherein the rates of depreciation provided for "Storage tank" is categorized under the head plant and machinery. Therefore, it can be said that storage tanks will qualify as plant and machinery and meets the test of qualifying as plant and machinery. Thus, the credit would be eligible.
- They had relied on the following case laws:
 - M/s. Deevya Shakti Paper Mills Pvt Ltd vs. CCE, [2017-TIOL-1134-CESTAT-HYD]
 - M/s Ultratech Cement Ltd [2017-TIOL-2442-CESTAT-BANG]
 - M/s The KCP Limited vs. CCE [2008-TIOL-2184-CESTAT-BANG]
 - Commissioner of Income Tax v. Mahant Oil industries Pvt Ltd, 1992 193 ITR 620 Karn
- Based on the above citation and submissions, they have concluded that even as per Companies Act and Income Tax Act, storage tank is construed as Plant and Machinery and therefore credit on the same is eligible.

3. Eligibility of taxes paid on construction of water tank which is a part of firefighting system

- The main objective and purpose of construction of water storage reservoir is to follow the fire protection measure at Terminal. The water is stored in tankers to meet the firefighting requirement for 4 hour duration with pumps of adequate capacity. Below are the major components required for construction of Water reservoir:
 - Mild steel with good quality paint
 - Piles, platforms and staircase
 - Level indicators, Transmitters
 - Connecting pipelines (MS)
- Further, the water reservoirs are constructed as part of firefighting system. Water is stored to meet the requirement of firefighting with pumps of adequate capacity. This will be used for direct fire extinguishing, cooling down surrounding structures & equipment and as water curtain to complete cut-off of fire zones. Thus, water tanks are integral part of firefighting system which is connected to Hydrant lines sprinklers and water curtain. The main application of water is to

use as firefighting and for other miscellaneous purpose, as minimum fire protection measure is required to be taken at the terminal as per the Oil Industry Safety Directorate requirement (OISD). Therefore, water tanker may qualify as an apparatus or an equipment and falls within the definition of plant and machinery. Basing the above submissions, it can be arrived that the inputs used in the construction of water tank as part of firefighting systems is eligible for availing input tax credit.

- Without prejudice to the submissions made, in addition according to the Income Tax Act, Plant includes ships, vehicles, books, scientific apparatus and surgical equipment **used for the purposes of the business or profession**. Whereas under GST, the definition of plant is restricted to apparatus, equipment or machinery fixed to earth by foundational or structural support used for making outward supply. However, the underlying principle of satisfaction of **functional test** remains same both under GST and Income Tax. The essence of the test to determine whether an asset can be called a plant is to ascertain whether it can be treated as an apparatus which is used, by a businessman for carrying on business and whether with that asset he carries on the trade as opposed to the place in which the trade is carried-on. Therefore, to consider whether the structure is Plant and Machinery it has to be determine whether the asset is used for carrying on trade or whether it is a structure in which business is carried on.
- As discussed above, an item used for the purposes of carrying on the business activities of the taxpayer does not qualify as plant if the business uses it as the premises (or part of the premises) or place from where the business is conducted. On the basis of the above submissions, the applicant requested a favorable ruling.

3.1 Due to the prevailing pandemic, the applicant was extended an opportunity for hearing virtually, which was acceded to by the applicant. The authorized representative appeared for the hearing virtually on 10.12.2020. They stated that they modify the question raised in their application is as much as the eligibility on the foundation made at Q.no.4 is taken up along with Q.No.1 to 3 and these are the questions for which ruling is sought. They undertook to furnish the shared

submissions which was reiterated in hearing. Copies of Bill of entry for import of goods, literature on the process undertaken in the factory, copies of purchase order for the goods/services relating to the application, Statutory requirements for fire hydrant facility. He stated that the project of storage and processing for which the ruling is sought is yet to be setup. The storage tank is inside the premises and the pipeline is partly inside and outside the premises.

3.2 The applicant furnished the submissions shared during the hearing. The applicant apart from the submissions already made has inter-alia, stated that

- They crave leave of the Hon'ble Bench to reframe their question on the issues raised in their application as follows:
 1. Whether the applicant is eligible for availment of input tax credit of GST paid on goods and services for laying of transfer pipeline and the foundation and structural support for such pipeline which is intended for unloading Propane/Butane from the Vessel/Jetty to the Terminal?
 2. Whether the applicant is eligible for availment of input tax credit of GST paid on goods and services used for setting up refrigerated storage tank and input credit of goods and services used for foundation and structural support for such tanks?
 3. Whether the applicant is eligible for availment of input tax credit of GST paid on goods and services for setting up of Fire Water reservoir(tank) and input credit on goods and services used for foundation and structural support for such reservoir?
- As part of proposed expansion, new Propane and Butane unloading arms(one each) shall be installed at jetty and new transfer pipelines shall be laid
- Unlike a typical pipeline where there is an end to end node, this is a disconnected pipeline. When ship/vessel arrives the pipeline gets connected to both the ends to discharge the Propane/Butane. It is rather called as discharge pipe. This is the unique mode of transportation without which they cannot process and supply LPG
- The expression "Pipeline" used in the explanation to Section 17(5) should be understood as long-distance cross-country pipelines to transport liquids and fluids. In their case, the approximate linear length of each new pipeline shall be 4.3 km and shall be installed adjacent to the existing piping corridor and hence credit is eligible

- When the expression 'factory' is not defined under the GST Act, a definition given in some other Act passed by the legislature can always be relied upon. Accordingly, they are of the considered view that Section 2(m) of the Factories Act, 1948 which defines the term 'factory' should be considered which is as under:

(m) "factory" means any premises including the precincts thereof-

(i) whereon ten or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii).....

Dictionary meaning of the term "Precincts"

Cambridge International Dictionary of English "area around building"

Collins English Dictionary "the surrounding region or an area"

Merriam Webster "the region immediately surrounding a place"

- On perusal of aforesaid meanings, precinct would mean an area around building or a place. Factory means any premise including the precincts. A conjoint reading of the term "factory" and "Precincts" makes it abundantly clear that the factory includes the surrounding areas which is pipeline laid from jetty to Terminal. Therefore, pipeline shall be regarded as available within the premise of the factory and hence eligible for credit.
- The expression used in the explanation to Section 17 of GST Act refers "plant and machinery" to mean which are used for making outward supply of goods or services or both and hence if the pipelines are to be excluded from the meaning of "Plant and machinery" only such pipelines used for outward supply should be denied credit
- The pipeline cannot be regarded as laid outside the factory and on the contrary, they are very much part of factory premises and do not fall under the exclusion given in the explanation of "Plant and machinery"
- The main objective and purpose of setting up of refrigerated storage tank is for storing, processing and maintaining of propane / Butane. Storage Tank is integral part and inseparable in the manufacturing process. Without the aforesaid activity of storing Propane/Butane in refrigerated atmospheric storage tank where blenders are installed to blend Propane and Butane in the desired portion to meet varied customer requirements, without which there cannot be manufacture of LPG

- The main objective and Purpose of setting up of water storage reservoir is to follow the fire protection measure at Terminal. Water is stored to meet the requirement of firefighting with Pumps of adequate capacity. This will be used for – direct fire extinguishing; cooling down surrounding structures & equipment and as water curtain to complete cut-off of fire zones. Thus water tanks are integral part of fighting system which is connected to Hydrant lines sprinklers and water curtain. The main application of water is to use as firefighting and for other miscellaneous purpose, as minimum fire protection measure is required to be taken at the terminal as per the Oil Industry Safety Directorate requirement (OISD) Standards-Standard 236.
 - They are constructing all the above by laying a foundation and structural support through piling as their project site is located close to the sea, the soil is filled up with clay with a very high ground water table(<1 m), which would mean that the load bearing capacity is very low. Since the tanks are quite heavy, the applicant needs to increase this load bearing capacity. Therefore, the foundation by way of piling is must. The input and input services used for laying foundation and structural support of plant and machinery, therefore is eligible for input tax credit.
- 3.3 The applicant has also furnished the following:
- Photographs of Pipeline Exhibits, Water Tank Exhibit and Storage Tank Exhibits; copy of Draft OISD Std 236
 - The decisions relied upon by them
 - *Jaypee Rewa Cement Vs Commissioner of Central Excise, M.P.* [2001 (133) E.L.T. 3 (S.C.)]
 - *Commissioner of C. Ex., Belgaum Vs Bellary Steel and Alloys Ltd.* 2008 (226) E.L.T. 280 (Tri. – Bang)
 - *Central Excise and Service Tax, Ahmedabad-III* 2014-TIOL-2217-CESTAT-AHM
 - *J.K. Udaipur Udyog Ltd. Vs Commissioner of C. Ex., Jaipur-II* 2002 (147) E.L.T.996 (Tri. – Del)
 - *M/s Birla Corporation Ltd Vs Commissioner of Central Excise* 2005-TIOL-99-SC-CX.
 - *Commissioner of C.Ex., Belgaum Vs. M/s. Hindalco Industries Ltd* [C.E.A. No. 209/2008 in High Court of Karnataka]
 - *Commissioner of Central Excise, Salem Vs. M/s. Chemplast Sanmar Ltd* [T.C.No. 1380 of 2006 of High Court of Madras]

- *Jayaswal Neco Ltd Vs Commissioner of Central Excise, Raipur / 2015 (319) E.L.T. 247 (S.C.)*
- *Commissioner of Central Excise, Coimbatore & Ors Vs. Jawahar Mills Ltd & Ors./ C.A. 619-626 of 2000*
- Process Description of LPG processing and supply after unloading the propane and Butane with Process Flow Diagram
- Bills of Entry for Propane and Butane at Porbandar Port
- Purchase Order issued by them for
 1. 2 nos of Refrigerated Storage Tanks(EPC) with PO No. 4500405026 dated 11.03.2020 on Sharp Tanks and Structural Pvt Ltd, Mumbai
 2. Mech, Elec & Instrumentation work for Bullets; Civil & Structural work for Mounded Bullet with PO Number 4500405045 dated 11.03.2020 on Sharp Tanks and Structural Pvt Ltd, Mumbai
 3. Agreement for Piling works for Tuticorin Terminal Expansion Project with PO No. 4500401679 dated 10.02.2020 on Geo Foundations & Structures Private Ltd
 4. Civil & Structural works for CCPL with PO Number 4500407286 dated 22.04.2020 on S.R. Selvaraj & Sons, Thoothukudi
 5. 2 Nos Fire Water Tanks (EPC) with PO No. 4500405071 dated 11.03.2020 on Sharp Tanks and Structural Pvt Ltd, Mumbai
 6. 6" Pipe,SMLS,LTCS for 3,643 M; 10"Pipe, WLD, LTCS for 12 M; 16" Pipe, WLD,LTCS for 598 M; 16" Pipe, WLD, LTCS for 6,680 M with PO No. 45000407798 dated 08.05.2020 on Maharashtra Seamless Limited, Raigad

4. The State jurisdictional officer has submitted his remarks are as follows:

Issue No. 1: ITC on pipe lines: As per item No (iii) of Explanation to section 17 of the TNGST Act, 2017, pipe lines outside the factory premises are excluded from the definition of 'Plant & Machinery' . Hence, it is opined humbly that, ITC shall not be eligible on the pipelines for transporting propane/butane from jetty.

Issue No.2: ITC on refrigerated storage tank at terminal: As per clause (d) to sub section (5) of section 17 of the TNGST Act, 2017, goods or services or both received for construction of an immovable property (other than plant and machinery) on his own account, ITC is not eligible even if used in the course of furtherance of business. Further, item No (i) of Explanation to section 17 of the

TN GST Act, 2017 rules out other civil structures' from the ambit of plant & machinery. Hence, it is opined humbly that, ITC shall not be eligible on the refrigerated storage tank built in the terminal.

Issue No.3: ITC on Fire Water reservoir: As per clause (d) to sub section (5) of section 17 of the TN GST Act, 2017, goods or services or both received for construction of an immovable property (other than plant and machinery) on his own account, ITC is not eligible even if used in the course of furtherance of business. Further, item No (i) of Explanation to section 17 of the TNGST Act, 2017 rules out 'other civil structures' from the ambit of plant & machinery. Hence, it is opined humbly that, ITC shall not be eligible on the fire water reservoir in their premises.

Issue No.4: ITC on construction of foundation/structural support through piling: As per clause (d) to sub section (5) of section 17 of the TN GST Act, 2017, goods or services or both received for construction of an immovable property (other than plant and machinery) on his own account, ITC is not eligible even if used in the course of furtherance of business. Further, item No (i) of Explanation to section 17 of the TNGST Act, 2017 rules out 'other civil structures' from the ambit of plant & machinery. Hence, it is opined humbly that, ITC shall not be eligible on construction of foundation/structural support through piling in their premises.

5. The Centre jurisdictional authority informed that there is no pending proceedings under Section 98(1) of GST Act against the applicant.

6. We have carefully examined the Statement of facts; supporting documents filed by the Applicant, submissions made after hearing and the comments of the Jurisdictional Officers. The applicant has stated that they are contemplating expansion to increase the LPG capacity from 3,50,000 Metric Tons Per Annum (MTPA) to 12,00,000 MTPA at their Tuticorin Terminal. As part of proposed expansion, new Propane and Butane unloading arms(one each) are to be installed at jetty and new transfer pipelines laid; refrigerated storage tank for storing, processing and maintaining of propane / Butane and water storage reservoir to follow the fire protection measure at Terminal are to be set up. The applicant has sought ruling on the following questions:

1. Whether the applicant is eligible for availment of input tax credit of GST paid on goods and services for laying of transfer pipeline and the

foundation and structural support for such pipeline which is intended for unloading Propane/Butane from the Vessel/Jetty to the Terminal?

2. Whether the applicant is eligible for availment of input tax credit of GST paid on goods and services used for setting up refrigerated storage tank and input credit of goods and services used for foundation and structural support for such tanks?
3. Whether the applicant is eligible for availment of input tax credit of GST paid on goods and services for setting up of Fire Water reservoir(tank) and input credit on goods and services used for foundation and structural support for such reservoir?

7.1 The applicant in their submissions has furnished the Process Description of LPG processing and Supply after unloading the propane and butane from which it is seen that the process are as under:

LPG Unloading - Propane & Butane is received in ship tankers of 22,500 MT capacity at Port jetty of Tuticorin. Refrigerated Liquid Propane and Butane is unloaded through two dedicated Marine unloading arms, simultaneous unloading of 500 MT/h Propane & 500 MT/h Butane takes place through 16" new dedicated cross country pipelines to new storage tanks & unloading of 250 MT/h Butane through existing 10" line to existing storage tank

Propane & Butane Storage - Propane & Butane is stored in Double walled refrigerated storage tanks each of 15000 MT capacity at a temperature of -45° C in case of propane & -5° C in case of butane; Vapours generated during ship unloading and normal boil off operation from storage tanks are compressed through dedicated compressors, liquefied in condensers and sent to 2 Nos of Mounded bullets of each 100 MT capacity using condensate receiver and pumps

Propane & Butane Loading - For loading of LPG to trucks, Propane & Butane are pumped through submerged in tank pumps from respective tanks and heated to 10° C in Air Heating System. Static Blender is used to mix heated propane and butane in certain ratios for multiple grades of LPG. Condensate from Mounded Bullets is also mixed in static blender to produce LPG. LPG is dosed with mercapton before loading into road tankers with mercapton dosing unit. The blended LPG is sent to Tanker gantry consists of new 8 no. loading bays & existing 3 no loading bays via Tanker loading arms filled into road tankers.

7.2 The applicant was asked to furnish Bill of Entry in respect of import of Propane and Butane by them. It is seen that the applicant has furnished the 'Bill of Entry' in respect of SHV Energy Pvt Ltd, Porbandar Gujarat and not pertaining to them.

7.3 The applicant has furnished the Purchase Orders issued by them for the various supply of Goods and Services for which their eligibility to avail the GST element on such Pos as Input Tax Credit is sought before this authority. The details of the said POs are discussed as under:

1. PO No. 4500405026 dated 11.03.2020 on Sharp Tanks and Structural Pvt Ltd, Mumbai - for 2 nos of Refrigerated Storage Tanks (EPC) with SAC 995442. The service details under this P.O. are- Completion of Engineering, Supply of Major raw materials, Supply of Bottom Insulation, Installation of Bottom Insulation, Supply of Outer Insulation, Installation of outer Insulation, Pre-fabrication, Erection, Fitup, Welding and Testing, Completion of all Nozzels & Piping, Completion of Pre-Commissioning activity, Completion of Electrical & Instrumentation, Mechanical Completion, Successful demonstration of PG parameter- This PO is issued for undertaking the construction service involving Engineering, supply, Installation, Pre-fabrication, Erection, etc of 2 nos of refrigerated storage tanks. i.e, the work starts with complete Engineering and covers supply, installation, pre-fabrication, erection, completion of E&I, etc and includes successful demonstration of Performance Guarantee parameter. The supply as per this PO is a composite supply of various goods and services and GST is calculated @18% on the entire value of the works.

2. PO Number 4500405045 dated 11.03.2020 on Sharp Tanks and Structural Pvt Ltd, Mumbai - for Mech, Elec & Instrumentation work for Bullets; Civil & Structural work for Mounded Bullet with SAC 995442. The service details under this PO are -

- under Mech, Elec & Instrumentation work -Completion of Engineering, Supply of Major Raw materials, Pre-Fabrication, Erection, Fitup, Completion of all nozzels & piping, Completion of Hydrotest, Painting, Completion of Pre-commissioning activity, Electrical & Instrumentation Works, Mechanical Completion, Successful demonstration of PG parameters;

- under Civil & Structural work for Mounded Bullet – Excavation in ordinary soil, Backfilling in foundation pits, Transporting & Stacking the rock, Providing & filling gravel NS, Filling inside the retaining walls, providing, mixing, etc Plain CC (Grade M10) Providing mixing RCC ground level, Providing mixing RCC upto 6m, Providing mixing RCC for walkway, Providing mixing smooth formwork, (grndlvl, upto 6m) Providing pockets, blockouts in concrete, Providing & Mixing integral corrosion, Providing erecting etc SS Handrail, Corrossion resistnt steel bars, Providing erecting, etc structural steel, Supply & Fixing PVC downtake Pipe, Providing & applying hot dipped galvanizing,, Provide & Laying stone pitching, Providing & laying UPVC Sheet, Providing & laying Geotextile sheet terrain, Mobilisation of rigs, tools, tackles etc, Provide construct stone columns, Carry out load tests on singe columns, carry out vertical plate load test.

This PO is issued for Mechanical, Electrical & Instrumentation works and Civil & Structural works for for Bullets and is also a composite supply of various goods and services and GST is calculated @18%on the entire value of the works.

3. PO No. 4500401679 dated 10.02.2020 on Geo Foundations & Structures Private Ltd – for Piling works for Tuticorin Terminal Expansion Project with SAC 995413. The service details under this PO includes Mobilisation & Demobilisation, Vertical Piles by boring, Empty boring for vertical pile, Supply, transport &fixing steel in RCC, Extending piles abv cutoff level, Excavation upto 2m depths, carting away, stacking & spreading bore, Cyclic vertical load tests, Pull out load tests, Routine cyclic vertical load tests, Pile Integrity test, Routine lateral vertical load test, Routine pull out load test- This PO is issued for piling works and is a composite supply of goods and services and GST is calculated @ 18% on the entire value of the works.

4. PO Number 4500407286 dated 22.04.2020 on S.R. Selvaraj & Sons, Thoothukudi – for Civil & Structural works for CCPL with SAC 995413. The service details under this PO are Excavation in ordinary soil, boulders/rock, supply of black fill earth, Laying of thick layers of rock boulders,crushed stone, mixing placing concrete, fixing wrought timber formwork concrete, cement grouting for base plates, anchor,etc- This PO is issued for the civil &

structural works as a composite supply and GST is calculated @ 18% for the entire value.

5. PO No. 4500405071 dated 11.03.2020 on Sharp Tanks and Structural Pvt Ltd, Mumbai – for 2 Nos Fire Water Tanks (EPC) with SAC 995442. The service details under this PO are Completion of Engineering, Supply of all materials, Erection, fitup, Welding & testing, Completion of all nozzels & piping, completion of painting, completion of Pre-commissioning activity, Hydrotesting, Mechanical completion- This PO is issued for undertaking the construction service involving Engineering, supply, Installation, Pre-fabrication, Erection, etc of 2 nos of Fire water Tanks. i.e, the work starts with complete Engineering and covers supply, installation, pre-fabrication, erection & completion. The supply as per this PO is a composite supply of various goods and services and GST is calculated @18% on the entire value of the works.

6. PO No. 45000407798 dated 08.05.2020 on Maharashtra Seamless Limited, Raigad- for supply of 6" Pipe, SMLS, LTCS for 3,643 M; 10" Pipe, WLD, LTCS for 12 M; 16" Pipe, WLD, LTCS for 598 M; 16" Pipe, WLD, LTCS for 6,680 M with SAC 7304 and GST@18%

From the above, it is seen that the

- Refrigerated storage tanks and Fire water Tanks are got constructed/ Erected & Installed along with the related foundation works as **'Works Contract'** vide PO No. 4500405026 dated 11.03.2020 and PO No. 4500405071 dated 11.03.2020 respectively issued on Sharp Tanks and Structural Pvt Ltd, Mumbai;
- Pipes are sourced vide PO No. 45000407798 dated 08.05.2020 issued on Maharashtra Seamless Limited, Raigad;
- Civil Structural works for laying such pipes across the jetty and the terminal is covered under PO Number 4500407286 dated 22.04.2020 issued on S.R. Selvaraj & Sons, Thoothukudi; and
- Pile foundation works for the project is covered under PO No. 4500401679 dated 10.02.2020 issued on Geo Foundations & Structures Private Ltd

From the above, it is further seen that the construction of Refrigerated Storage Tanks and Fire Water Tanks are undertaken by the vendors of the applicant as 'Works Contract'. The vendors as per the Purchase Orders are to undertake the construction as an EPC and is to handover after successful demonstration of Performance Guarantee (PG) parameter. In respect of 'Pile foundation works' for

the project site, it is seen that the entire work is undertaken by the vendor as 'Works Contract' as the scope of work includes the entire spectra of activity from Mobilisation to loadtest. The civil & structural works for CCPL is again executed as 'Works Contract'. The applicant seeks the tax paid for the services executed as 'Works Contract' in respect of Refrigerated Storage Tanks; Fire Water Tanks and the Pile foundation works as Input Tax Credit. Further, they also claim that they are eligible to credit of tax paid on the supply of Pipes (goods) sourced by them on own account and to be used for Cross Country Pipe Line(CCPL) proposed to be laid from the jetty to the terminal.

7.4 The contention of the applicant in general is that the above are used in the course or furtherance of business and are 'Plant and Machinery' excluded by the restrictive Section 17(5) and in particular,

- In respect of the pipelines
 - They are unique mode of transportation used to bring the inputs;
 - constitute an integral and inseparable part in the manufacturing process;
 - to be considered as part of the factory;
 - Expression used in the explanation to Section 17 of the Act refers "Plant and machinery" to mean which are used for making outward supply of goods or services or both and hence only such pipelines used for outward supply should be denied credit
- In respect of Refrigerated Storage Tanks
 - These are integral part and inseparable in the manufacturing process
 - Cannot be considered as a 'civil structure' excluded in the definition of 'Plant and machinery'
 - "Storage tanks" have been specifically included in the definition of "Capital Goods" in the erstwhile Cenvat Credit Rules
- In respect of Water Tanks
 - These are integral part of firefighting system;
 - Minimum fire protection measure is required to be taken at the terminal as per the Oil Industry Safety Directorate Requirement Standards-Standard 236
 - Cannot be considered as a 'civil structure' excluded in the definition of 'Plant and Machinery'

8.1 With the above facts, before taking up the contentions of the applicant, the Input Tax Credit provisions relating to the present case are examined as under:

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

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

Section 16(1) of CGST Act:

"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."

Section 17(5) of CGST Act:

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

(c) Works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) Goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.— For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

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

8.2 From the above provisions, it is evident that

- Inputs are those which are not capitalized in the books of accounts and which are used or intended to be used in the course or furtherance of business;
- Capital goods are those which are capitalized in the books of accounts and which are intended to be used in the course or furtherance of business;
- Credit of tax paid on goods and services received is eligible as credit when such goods or services are used in the course or furtherance of business;
- Credit of tax paid on 'Works contract service' is available only when it is supplied for construction of an immovable property which is 'Plant and Machinery' or when such works contract service is an input service for further supply of Works Contract Service;
- Credit of tax paid on goods or services received on own account, for construction of immovable property is available only when such immovable property is a 'Plant and Machinery'
- Plant and Machinery
 - are apparatus, equipment, machinery fixed to earth by foundation or structural support;
 - are that which are used for making outward supply of goods or services;
 - includes such foundation and structural supports;
 - excludes land, building or any other civil structures;
 - excludes Pipelines laid outside the factory premises

8.3 Applying the above, to the case at hand, it is seen that the applicant sources Pipes on their own account for getting it laid and the said pipes are laid as a 'Works Contract' including the foundation and structural supports; the Storage Tanks and water tanks along with the foundation are sourced as 'Works Contract'; the pile foundation for the entire project site is sourced as 'Works Contract'. It is not in dispute that the Pipelines, storage tanks and water tanks are put in place for furtherance of their business and thereby the tax paid on these becomes eligible credit subject to limitations under Section 17(5) of the Act as these are constructed under 'Works Contract' and the resultant is an immovable property. The applicability of the limitations at Section 17(5) of the Act, to the items on which credit is sought is taken up for consideration in the foregoing paras.

9.1 With respect to goods and services for laying of transfer pipeline and the foundation and structural support for such pipeline, it is seen that the applicant sources Pipes on own account and the same is laid as a 'Works Contract' including the foundation. Section 17(5) restricts the credit on such goods received for construction & Works Contract service received except when such 'goods/Works Contract' services are availed in respect of 'Plant and Machinery' and Explanation, which defines 'Plant and Machinery' restricts credit on the 'Pipelines laid outside the factory'.

9.2 We find the applicant has contended that the exclusion is applicable only to those pipelines laid outside the factory premises which are used to make outward supply, whereas in the case at hand the pipelines are laid for inward transmission; and that definition of 'factory' as per factories act, states that 'factory' means any 'premises including the precincts thereof', hence the factory includes the surrounding areas, which is pipeline laid from jetty to Terminal and therefore the pipeline shall be regarded as available within the premise of the factory and eligible for credit.

9.3 We find the Explanation specifies that apparatus, equipment, and machinery fixed to earth by foundation, used for making outward supply of goods is 'Plant and Machinery' and there are specific exclusions, which include 'Pipelines laid outside the factory premises'. The Act clearly states what constitutes 'Plant and Machinery' and in that what is excluded i.e, apparatus, equipment, machinery used for making outward supplies and fixed to earth by foundation or structural support constitutes 'Plant and Machinery' and the 'Pipelines laid outside the factory premises' are excluded from the ambit of 'Plant and Machinery' for the purposes of eligible Credit. We find that the interpretation of the applicant that 'Pipeline laid outside the factory premises and used for making outward supply' are alone excluded has no merit and we do not agree with this interpretation. The construction of this Explanation is straight in as much as it defines what constitutes 'Plant and Machinery' and what is excluded. While it says that those apparatus, equipment, machinery which are embedded to earth used for providing outward supply are 'Plant and Machinery', it excludes the pipelines laid outside the factory premises. If the intention of the statute is to exclude only those 'Pipelines laid outside the factory for outward transmission', the explanation does not reveal the same.

9.4 It is pertinent at this juncture to refer to the discussions of the GST Council meetings. GST council is a constitutional body and after discussions, the council recommends the Government on the LAW, rates, etc for implementation of GST. The draft Law was discussed by the council, the minutes of which are available in the council's website www.gstcouncil.gov.in. Reference to the said minutes provides the intentions of the provisions as the same definitely has a referential value, though not binding. The minuted discussions relevant to extension of Credit to 'Pipelines' as discussed are extracted under:

10th GST council meeting, wherein it is minuted as follows:

9.2. Sl. No. 18 (Section 16- Eligibility and conditions for taking input tax credit): The Hon'ble Minister from Kerala stated that the definition of 'capital goods' under Section 16(1) was too wide and needed to be looked into again. He stated that in the VAT law, there was a clear negative list of goods on which input tax credit was not permitted. The Commissioner (GST Policy Wing), CBEC explained that the Council in its 7th Meeting (held on 22-23 December, 2016) had decided not to extend the benefit of input tax credit on pipelines and telecom towers and the deletion of the proviso to Section 16(1) and the Explanation to Section 16(4) was carried out to give effect to this decision. Shri Rajan Khobragade, CCT, Kerala stated that even after deleting the words 'pipelines' and 'telecom towers' in Section 16, there could still be an interpretation that input tax credit on these two items could be taken. CCT, Gujarat explained that the presently drafted definition of capital goods in the Model GST Law needed re-examination as the present explanation below Section 16(4) of the Model GST Law made any apparatus, equipment or machinery fixed to the earth and used for making outward supply of goods or services eligible for input tax credit and this could potentially cover pipelines and telecom towers. Shri P. K. Mohanty, Consultant (GST), CBEC stated that the concern of the States was that the definition of the term 'plant and machinery' was very wide and observed that one way to address this concern was to restrict the meaning of 'plant and machinery' to certain specified chapters of the Harmonised System of Nomenclature (HSN), namely chapters 84 (mechanical machinery), 85 (electrical machinery) and 90 (apparatus and equipment) on which the benefit of input tax credit could be given and by this method, input tax credit to a product like pipeline falling under chapter 73 of the HSN would not be available. The Secretary stated that another option could be to specifically exclude pipelines and telecom towers from the definition of capital goods. CCT, Gujarat stated that even railway tracks and road could get covered in the definition of capital goods as they were fixed to earth and used for supply of goods or services. The Secretary stated that railway tracks should not be excluded from the definition of capital goods and that the major issue was the telecom towers.

9.2.1. Commissioner, GST Council stated that it was difficult to define plant and machinery and that in most of the VAT laws of the world, the terms machinery, equipment, and apparatus were used. He explained that the difficulty in giving a chapter wise listing of capital goods eligible for input tax credit would be that the list would become too long. He further stated that in case input tax credit was allowed only for goods falling under certain specified chapters of HSN, then many goods used as plant and machinery but not falling within those specified chapters would become ineligible for input tax credit. He therefore suggested to use generic expression and to list out the items on which input tax credit was not to be given. The Council agreed that the Law Committee of officers should re-examine the definition of 'capital goods'.

Minutes of 11th GST Council Meeting given below:

6.2. Shri Upender Gupta, Commissioner (GST Policy Wing), Central Board of Excise & Customs (CBEC) broadly explained the changes made in the CGST Law between the draft of 26 November 2016 (which was the most recent version of the Draft Laws put in public domain) and the draft of 1 March 2017 presented as an Agenda Note for the 11th Meeting of the Council. These broad changes are recorded in **Annexure 3** and were circulated to the Council members during the meeting.

Annexure 3

Changes in Model GST Law (Between 26th Nov 2016 draft to 1st March 2017 draft)

Input Tax Credit

1. The definition of aggregate value of turnover has been amended in section relating to Input Service Distributor, in order to enable distribution of GST credit in the ratio of turnover of GST and Non-GST supplies (petroleum etc.) for every State (Section 20).
2. The term "plant and machinery" has been amended so as to specifically exclude pipelines laid outside the factory premises and telecommunication towers (Section 17).

On a cogent reading of the above, it is evident that the intention of the GST Law is to exclude 'Pipelines laid outside the factory premises' from the definition of 'Plant and Machinery'. In the case at hand, the applicant has stated that the pipelines approximate length of around 4.1 Km are to be laid from jetty to the Terminal and accordingly, we hold without any hesitation that the credit of Pipes and Pipelines laid outside the factory is not available for the applicant. The decisions relied upon by the applicant is based on the earlier laws and do not have any application while considering the GST Provisions, in as much as the GST law has clearly defined what is to be considered as 'capital goods', 'Plant and Machinery' and the specific exclusions.

9.5 With respect to the claim of the applicant that as per the definition of 'factory' under factories act, the precincts are part of the factory and therefore the pipelines are part of the factory, we find that adoption of the definition under another Act (proposed for a different purpose) is not tenable as held by Hon'ble Supreme Court in the case of M/s. MSCO.Pvt.Ltd Vs. Union of India, 1985 AIR 76, wherein the Apex Court has held as follows:

"But while construing a word which occurs in a statute or a statutory instrument in the absence of any definition in that very document it must be given the same meaning which it receives in ordinary parlance or understood in the sense in which people conversant with the subject matter of the statute or statutory instrument understand it. It is hazardous to interpret a word in accordance with its definition in another statute or statutory instrument and more so when such statute or statutory instrument is not dealing with any cognate subject."
...emphasis supplied

Also, under GST Law, when the applicant takes registration of the place of business including all the additional place of business, provides the details of the premises and the applicant has not furnished any evidence or claim before us, that the pipelines are being laid within the declared premises and therefore we hold this contention as not substantiated.

9.6 In view of the above, we hold that the applicant is not eligible for availment of input tax credit of GST paid on goods and services for laying of transfer pipeline and the foundation and structural support for such pipeline for transporting propane/Butane from jetty to the Terminal as pipelines laid outside the factory premises as being restricted under Section 17(5) of the act read with the Explanation thereof.

10.1 In respect of Refrigerated storage tanks, it is seen that the same are sourced as 'Works contract' and the applicant claims that the 'Storage tanks' are 'Plant and Machinery' and therefore the availment of credit on the taxes paid on the putting up of storage tanks along with the foundation and structural works are not restricted under Section 17(5). They have also stated that in the earlier law, 'Storage Tank' was specifically mentioned under 'Capital Goods' and have claimed that as per the Company's Act and the Income Tax Act, Storage Tanks are 'Capital Goods'. It is not in dispute that the refrigerated storage tanks are set up in the course or furtherance of business. The Explanation in Section 17 of the Act defines, 'Plant and Machinery' as an apparatus, equipment, machinery fixed to earth by the foundation or structural support used for making outward supply and excludes land building and civil structure. So, we find that the moot point to be decided is whether the 'refrigerated storage tank' falls under the class of apparatus, equipment, machinery and the proposed foundation or structural support claimed falls under the 'foundation' or 'civil structure'.

10.2 From the submissions it is seen that, the Propane/Butane is stored, processed and maintained in refrigerated storage tanks before being dispatched to the end customers as per their requirements. Refrigerated storage tanks are constructed in a manner which can facilitate storage of Propane/ Butane and maintain its characteristics. It is built with certain equipment along with the concrete inputs to enable it to perform the said functions. Therefore, it is clear that these tanks are used for making outward supply.

10.3 The GST Act does not define apparatus, equipment, machinery, foundation, civil structure. Therefore, the general parlance understanding of the above terms is to be considered.

Apparatus is the technical equipment or machinery needed for a particular activity or purpose;

Equipment most commonly refers to a set of tools or other objects commonly used to achieve a particular objective

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

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

Equipment: Equipment is a thing which is used for a particular purpose. (*Collins Cobuild Dictionary*, as referred in *O.K. Play (India) Ltd. v. CCE*, (2005) 2 SCC 460, 468, para 29)

In the case at hand, the applicant has stated that the refrigerated storage tanks are built for a specific purpose of safe storage of Propane/ Butane for outward supply on blending in the required proportions. Therefore, we concur with the claim of the applicant that the refrigerated storage tanks may qualify as an apparatus or an equipment, as long as the applicant capitalizes these tanks and accounts these tanks under 'Plant and Machinery' in their books of accounts and not as 'Immovable property'.

10.4 The applicant has furnished the drawing of the representative Refrigerated Tank with elevated base along with their application, wherein it is seen that a pile foundation is made in the site, on which a concrete foundation is made on which the refrigerated storage tanks are constructed/fabricated. From the Purchase Order, issued to M/s. Sharp Tanks and Structural Pvt Ltd Mumbai vide PO No. 4500405026 dated 11.03.2020 (copy of which is furnished), it is seen that the entire refrigerated storage tank along with the foundation and structural support are covered under the scope of this PO. Therefore, we hold that the applicant is eligible for availing credit of tax paid on the setting up of 2 nos of the Refrigerated storage tank ordered vide Purchase Order No. 4500405026 dated 11.03.2020, in as much as such tanks stands accounted as 'Plant and Machinery' in their books of accounts and the structural support to such tanks is as per the scope of the said Purchase Order.

10.5 It is further seen from the representative diagram furnished that the concrete foundation is made on the 'Pile foundation'. 'Pile Foundation' is a 'civil Structure' and cannot be attributed as a foundation or structural support for an

equipment/apparatus. From the Purchase Orders furnished, we observe that the 'Pile Foundation' for the Project site is vested with 'Geo Foundations & Structures Private Ltd' as a separate work. This by itself shows that the 'Pile foundation' is not a structural support or foundation for the storage tanks under consideration. The 'Pile foundation' as stated by the applicant is made considering the geophysical nature of the area to strengthen the load bearing capacity and is not a structural support for the Tanks under consideration. These 'Pile foundations' clearly fall under the class of 'Other Civil Structures' excluded from the ambit of 'Plant and Machinery'. While the provision is by itself explicitly clear, even by applying the principle of Eiusdem Generis, we find, the 'Pile foundation' are more aligned with the 'Land', which stands excluded, than the 'structural support for an equipment' which is stated as 'Plant and Machinery' in the 'Explanation' to Section 17 of the GST Act. Therefore, credit on such 'Pile foundation' are not available, they being 'other civil structures' and excluded in the explanation to 'Plant and Machinery'.

10.6 The case laws referred are in the context as to whether the storage tanks are capital goods though they are fixed to earth in the context of the provisions of the earlier law. The relied upon cases being specific interpretations of the existed law are not of much use to the case at hand and therefore we are not going into specifics, while we acknowledge the generally held decision that 'Storage tanks' though become 'immovable property' still are eligible for credit as 'Plant and Machinery', which we have held.

10.7 In view of the above, we hold that the applicant is eligible for availment of input tax credit of GST paid on goods and services used for setting up refrigerated storage tank including the structural support thereon as per the Purchase Order No. 4500405026 dated 11.03.2020 subject to the condition that the tanks are capitalized in their books of accounts as 'Plant and Machinery' and not as 'Immovable Property' and the applicant are not eligible to avail input credit of goods and services used for 'Pile foundation' as per the Purchase Order No. 4500401679 dated 10.02.2020.

11.1 The final issue to be decided is the eligibility of credit of tax paid on construction of water tank to follow the fire protection measure at Terminal. The applicant has stated that water tanks are part of fire fighting system which are required to be maintained as per Draft OISD standard-236(copy enclosed). In Page

No. 24 of said standard, 'Fire Water System' is prescribed under 'Fire protection system for LPG Terminal'. 'Water Storage' is stated as main component of 'Fire Water Systems'. Thus, we find that the water storage tanks with the necessary tools/equipment are to be maintained in the Terminal as a 'Fire Protection System for LPG Terminal' and therefore they are constructed in the course of business. These Tanks are constructed as 'Works Construct' as seen from the Purchase Order No. 4500405071 dated 11.03.2020 issued on Sharp Tanks and Structural's Private Ltd. The important point, therefore to decide on the eligibility to credit on the works received based on this Purchase Order is whether the 'Water Storage Tanks' are 'Plant and Machinery' as per the Explanation to Section 17 of the Act.

11.2 As brought out in para 10.3 above, an equipment/apparatus is one used for a particular purpose. Considering this definition of equipment/apparatus and the requirement of the applicant to maintain such a water Storage system we are inclined to hold the 'Water Storage Tanks' in the case of applicant, as 'Plant and Machinery' provided, the said tanks are accounted as 'Plant and Machinery' and not as 'Immovable Property-Land and Building' in their books of accounts.

11.3 Having found as above, we again see that the applicant in this instance also, claims the credit of 'Pile Foundation' made upon which the Water storage tanks are constructed with necessary foundation /structural support. We find that the applicant vide the PO No. 4500405071 dated 11.03.2020 has entrusted the entire work of construction/fabrication of the water storage tanks along with the required structural support or foundation required for such water tank, while the 'Pile foundation' of the site is entrusted as separate work, which by itself goes to prove that the 'Pile foundation' are not the foundation required for the Water Storage Tanks and are not part of 'Plant and Machinery', the fact of which has already discussed in detail in Para 10.5 above.

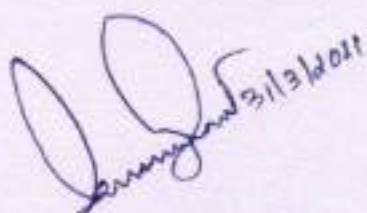
11.4 In view of the above, we hold that the applicant is eligible for availment of input tax credit of GST paid on goods and services for setting up of Fire Water reservoir(tank) including the structural support thereon as per the Purchase Order No. 4500405071 dated 11.03.2020 subject to the condition that the tanks are capitalized in their books of accounts as 'Plant and Machinery' and not as 'Immovable Property' and the applicant are not eligible to avail input credit of

goods and services used for 'Pile foundation' and input credit on goods and services used for such pile foundation.

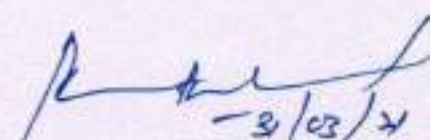
12. In view of the above, We rule as under:

RULING

1. The applicant is not eligible for availment of input tax credit of GST paid on goods and services for laying of transfer pipeline and the foundation and structural support for such pipeline which is intended for unloading Propane/Butane from the Vessel/Jetty to the Terminal for the reasons discussed in Para 9 above.
2. The applicant is eligible for availment of input tax credit of GST paid on goods and services used for setting up refrigerated storage tank including the structural support thereon as per the Purchase Order No. 4500405026 dated 11.03.2020 subject to the condition that the tanks are capitalized in their books of accounts as 'Plant and Machinery' and not as 'Immovable Property' and the applicant are not eligible to avail input credit of goods and services used for 'Pile foundation' as per the Purchase Order No. 4500401679 dated 10.02.2020 for the reasons discussed in Para 10 above
3. The applicant is eligible for availment of input tax credit of GST paid on goods and services for setting up of Fire Water reservoir(tank) including the structural support thereon as per the Purchase Order No. 4500405071 dated 11.03.2020 subject to the condition that the tanks are capitalized in their books of accounts as 'Plant and Machinery' and not as 'Immovable Property' and the applicant are not eligible to avail input credit of goods and services used for 'Pile foundation' and input credit on goods and services used for such pile foundation for the reasons discussed in Para 11 above.



Shri Kurinji Selvaan V.S.,
Member, TNGST



Shri. Senthilvelavan. B
Member, CGST



To

M/s. SHV Energy Private Limited,
LPG Storage Terminal, (Near Red Gate),
New Harbour, Tuticorin - 628 004.

//By RPAD/premal@supergas.com//

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2. The Principal Secretary/Commissioner of Commercial Taxes/Member,
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Copy to:

3. The Commissioner of GST & Central Excise,
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