

**AUTHORITY FOR ADVANCE RULING
TAMILNADU ADVANCE RULING AUTHORITY
PAPJM Buildings, II Floor, No.1, Greams Road, Chennai-600 006.**

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

Members present are:

1. Ms. Manasa Gangotri Kata IRS., Joint Commissioner/Member,
Office of the Commissioner of GST & Central Excise,
Chennai – 600 034.
2. Thiru Kurinji Selvaan V.S., M.Sc., (Agri.), M.B.A.,
Joint Commissioner (ST) / Member
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6

ORDER No.32 /AAR/2019 DATED: 25.07.2019

GSTIN Number, if any / User id		33AAALC0025B1Z9
Legal Name of Applicant		M/s. CHENNAI PORT TRUST
Registered Address/Address provided while obtaining user id		No.1, Rajaji Salai, Chennai-600001.
Details of Application		GST ARA-01 Applications Sl. No. 30/2018 dated 20.06.2018
Concerned Officer		State: The Assistant Commissioner(ST), Harbour Assessment Circle, Centre: Chennai North Commissionerate-Division - Egmore
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service provision
B	Description (in Brief)	The Applicant is engaged in supply of port services and incidental supply of goods like disposal of discarded assets.
Issue/s on which Advance Ruling required		Admissibility of input tax credit of tax paid or deemed to have paid and determination of time and value of supply of services
Question(s) on which Advance Ruling is required		Whether the applicant is entitled to take credit of input tax charged on the following inward supply of goods or services or both which are used or intended to be used in the course or furtherance of the business of the applicant i. Medical and diagnostic equipment ii. Medical apparatus & instruments, medical

	<p>consumables & disposable items and other machinery installed in the in house hospital</p> <p>iii. Spares for the medical and diagnostic equipment, medical apparatus & instruments and other machinery installed in the in-house hospital</p> <p>iv. Repairing Services of medical and diagnostic equipment, medical apparatus & instruments and other machinery installed in the in-house Hospital.</p> <p>Subject to fulfillment of (1) such conditions and restrictions as may be prescribed in CGST Rules 2017 particularly in rules 36 to 45 (both inclusive), (2) such conditions stipulated in sub-sections(2) to(4) of section 16, (3) in the manner specified in section 49 and on the presumption that these queried inward supply of goods or services or both does not fall under the blocked credit under Section 17(5)(e), Section 17(5)(h) and Section 17(5)(i) of the Act?</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. Chennai Port Trust , No.1, Rajaji Salai, Chennai-600001, (hereinafter called the Applicant) is engaged in supply of port services and incidental supply of goods like disposal of discarded assets . They are Registered under GST with GSTIN 33AAALC0025B1Z9. They have preferred an Applications seeking Advance Ruling on the following questions :

1. Whether the applicant is entitled to take credit of input tax charged on the following inward supply of goods or services or both which are used or

intended to be used in the course or furtherance of the business of the applicant

- i. Medical and diagnostic equipment
- ii. Medical apparatus & instruments, medical consumables & disposable items and other machinery installed in the in house hospital
- iii. Spares for medical and diagnostic equipment, medical apparatus & instruments and other machinery installed in the in-house hospital
- iv. Repairing Services of medical and diagnostic equipment, medical apparatus & instruments and other machinery installed in the in-house hospital. Subject to fulfillment of (1) such conditions and restrictions as may be prescribed in CGST Rules 2017 particularly in rules 36 to 45 (both inclusive), (2) such conditions stipulated in sub-sections(2) to(4) of section 16, (3) in the manner specified in section 49 and on the presumption that these queried inward supply of goods or services or both does not fall under the blocked credit under Section 17(5)(e), Section 17(5)(h) and Section 17(5)(i) of the Act?

The Applicant has submitted the copy of application in Form GST ARA – 01 and also submitted the copy of Challans evidencing payment of Application Fees of Rs.5,000 per application - each under Sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017. The application filed by the applicant are taken up together for consideration and passing of Rulings.

2. The Applicant has stated that they are engaged in supply of port services and incidental supply of goods like disposal of discarded assets. They are notified as a major port by the Central Government under Section 3(8) of Indian Ports Act 1908 r.w.s. 2(m) of Major Port Trusts Act, 1963 vide notification No. GST(E) dt 01.02.1975. The affairs of the applicant are administered by a Board constituted by the Central Government from time to time as per the provisions of Major Port Trusts Act, 1963. The applicant is functioning under the administrative control and supervision of Ministry of shipping of Government of India. The Statement of facts on the questions raised by the applicant are as under:

3. The applicant in application ARA No. 30, has stated that the applicant is providing health and medical cover to its employees and pensioners. For this purpose, the Central Government has notified the following two regulations under section 124(1) r.w.s 132(1) of Major Port Trusts Act, 1963.

i. Chennai Port Trust Employees (Contributory Outdoor and Indoor Medical Benefit After Retirement) Regulations, 1989- notified vide Notification No. GSR 605 (E) dated 08.06.1989.

ii. Chennai Port Trust Employees (Medical Attendance in the Trust's Hospital and reimbursement of Hospital Charges) Regulations 1994- notified vide Notification No. GSR 51(E) dt.01.02.1994.

The applicant is maintaining an in-house hospital within its port premises for providing these health and medical cover exclusively to its employees and pensioners. The hospital is only a cost centre and no services are provided by this in-house hospital for any consideration. The applicant has further stated that No apportionment as stipulated in Section 17(1) to (4) is required on them and that the inwards supply of goods or services or both are not blocked credits under Section 17(5) of the GST Acts

4. The Applicant was granted personal hearing on 24.09.2018 in respect of application. The applicant represented through authorized representative. The submissions during the hearing are as under:

The learned representative stated that medicines are being given to the employees free of cost and the medicinal equipments are used to render health benefits to the employees which are part of the package to the employee. They stated that they will submit a sample contract with the employee. They claimed these are used for the furtherance of business of the applicant.

They stated that they will submit all the documents in two weeks and also requested for further hearing.

4.1 The applicant through their authorized representative furnished the following documents on 26.10.2018. The details of the documents furnished ARA wise are as under:

Invoice pertaining to AMC for Medical Equipment (VI: 2015-16:20 dated 10.10.2015); AMC for Ventilators (AMC_302 dated 22.09.2010); AMC for Monitor (AMC_303 dated 22.09.2010); R & M for hospital equipment (11/012 dated 08.10.2009); Spares for medical equipment (ITB5011 &ITB 5012 both dated 02.06.2010)

Further, the applicant furnished CESTAT, Mumbai Bench order in case Hindustan Coca Cola Beverages(P) Ltd Vs Commissioner of Central Excise, Nashik

wherein the Tribunal has held that the outdoor catering services provided by an employer to employee is qualified to avail CENVAT credit

5.1 As requested by the applicant and on account of change in the SGST Member of the authority, another personal hearing was extended on 22.02.2019. The applicant appeared through their Authorized Representative and stated as follows:

They have a hospital facility inside the Chennai Port Trust which is used by employees. They will furnish the details of the Hospital regarding the registration of the same, employee contract, documents/invoices for provision of health services for employee and kin, financial documents, balance sheets, statements showing how income from hospital is accounted in the Chennai Port Trust.

The applicant undertook to submit the documents in 2 weeks. The State jurisdictional officer appeared and submitted written comments on the ARA.

5.2 The applicant vide their letter dated 21.05.2019, furnished the following documents: (1) Write up on the Chennai Port Trust Hospital; (2) Details of the trail of Treatment of Employees/dependents. They have a written submission in which they stated that that the Chennai Port Trust Hospital was started originally as a Dispensary in 1939. Based on the Industries (Development and Regulation) Act 1951, the hospital started functioning as a full-fledged hospital. In 1985, a surgical block was also added. The hospital caters only to the employees, their dependents, pensioners, their spouses for in-patient and out-patient treatments. There is a casualty, intensive care, laboratory, wards and out-patient sections. The employees, their dependents, pensioners, family pensioners and CISF employees and their dependents posted in Chennai Port are issued medical identity cards. Pensioners and family pensioners are entitled for treatment on payment of one-time contribution i.e. last basic pay of the retiring month. Medicines are supplied free of cost at the pharmacy and in case not available they are purchased and distributed free of cost to the patients. Free food to the patients is supplied from hospital kitchen. Employees/pensioners are entitled to medical reimbursement at CGHS rates subject to production of all original case records in emergency cases in case of inpatients. Employees can recommend outsider as patients but the payment for treatments is deducted from salary of the employee who recommended. In case patients are critical can be referred to empanelled hospitals.

In such a case, the bills are received from the empanelled hospital and paid by the applicant after due verification.

6. The remarks of the State Jurisdictional Officer on the questions raised by the applicant in the ARA application are detailed below:

Providing medical services by using equipments to their employees and pensioners are not part of their business activity and such provision is being done only under service rules. The applicant has also stated that the medical services were provided without any consideration i.e. free of service. In view of the above facts, the applicant is not eligible to claim Input Tax Credit on inward purchases of medicines to be supplied to their employees and pensioners for the reason that this activity is not part and parcel of their main business activity and supply of medicines without consideration amount to free supply and hence the applicant is not eligible for ITC.

7. We have carefully considered the submissions made by the applicant in the advance ruling application, the additional submissions made during the personal hearings and the comments furnished by the State Jurisdictional Officer. The applicant has stated that the Chennai Port Trust Hospital was started originally as a dispensary in 1939. Based on the Industries (Development and Regulation) Act 1951, the hospital started functioning as a full-fledged hospital. The applicant has an in house hospital for its employees, their dependents, pensioners and family pensioners for in-patient and out-patient treatments. They are governed by Two regulations under Section 124(1) read with section 132(1) of Major Port Trusts Act 1963, which are (i) Chennai Port Trust Employees' (Contributory Outdoor and Indoor Medical Benefit After retirement) Regulations, 1989; (ii) Chennai Port Trust Employees' (Medical Attendance in the Trust's Hospital and Reimbursement of Hospital Charges) Regulations 1994. The treatments, food for in patients and medicines are provided free of charge to them. The hospital has a 24x7 casualty and Intensive Care unit, High end laboratory, State of art operation theatre, computed Radiography and imaging technology in addition to wards and outpatient sections. The hospital is a cost center and the inward supply of medicine is provided to the employees and pensioners without charging any separate consideration. The hospital also procures medical, diagnostic equipment, apparatus, instruments, consumables, disposables, spares and repairing services for these. No outsiders are treated except on recommendation by employees and

the payment for that is recovered from the salary of such employees. In the case the employees are referred to empanelled hospitals, the costs are borne by the applicant themselves. The retired employees and dependents are eligible only on payment of a nominal lump sum after retirement and the expenditure for providing the medical benefit will be met from the Chennai Port Trust Employees Welfare Fund to this these lump sum amounts are paid into.

8.1 Before determining whether the applicant is eligible for Input Tax credit for the inward supply of medical, diagnostic equipment, apparatus, instruments, consumables, disposables, spares and repairing services for these, the relevant statutory provisions are referred to as under:

Section 16(1) to (4) of CGST Act 2017 & TNGST Act 2017 provides the “Eligibility and conditions for taking Input tax credit” of is as follows:

16. (1) 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 the Act, which blocks/restricts certain credits, states as under:

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

.....

(g) Goods or services or both used for personal consumption;

8.2 In the instant case, the applicant has their own in-house hospital for use by the employees, retirees and their dependents. This is a free center where all the services and medicines are provided free to the employees. No consideration is charged from the employees for this. This provision of free medical care is mandatory as per the Regulations made under Major Ports Act. These are mandated to be provided to the applicant’s employees, their dependents, pensioners and family pensioners for their own in-patient and out-patient treatments. These treatments includes the use of medical, diagnostic equipment, apparatus, instruments, consumables, disposables, spares and repairing services for these. These goods and services are used for providing personal medical care to the individuals who are the employees and pensioners of the applicant. They are in

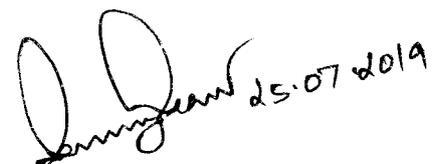
effect used for personal consumption of the employees, pensioners and dependents. Therefore, as per Section 17(5) (g) of CGST/TNGST ACT, input tax credit is not available for medical, diagnostic equipment, apparatus, instruments, consumables, disposables, spares and repairing services for these which the applicant is procuring for the consumption of its employees and pensioners and their dependents. The applicant has stated in their application that these are not "goods or services used for personal consumption" as the applicant pays for the same. The argument does not hold. The fact of who pays for the goods and services here is irrelevant to the usage of the said goods and services. They are used by the employees and dependents and hence are for personal consumption and the applicant is ineligible to take input tax credit on the inward supply of medical, diagnostic equipment, apparatus, instruments, consumables, disposables, spares and repairing services for these used to provide health facilities to its employees in its hospital.

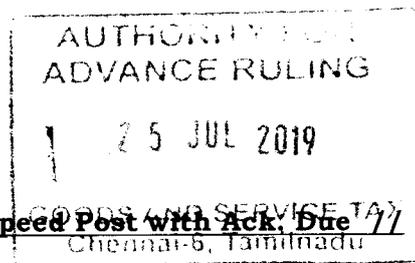
9. In view of the foregoing, we rule as under:

RULING

The applicant is not entitled to take credit of input tax charged on the inward supply of medical, diagnostic equipment, apparatus, instruments, consumables, disposables, spares and repairing services for these, which are used to provide medical facilities to the employees, pensioners and dependents in the in-house hospital.


Ms. Manasa Gangotri Kata,
Member, CGST


Shri. Kurinji Selvaan.V.S.,
Member, TNGST



To

M/s. Chennai Port Trust.
No. 1, Rajaji Salai,
Chennai - 600 001

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Additional Chief Secretary/Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.

Copy to:

3. The Commissioner of GST & C.Ex.,
Chennai North Commissionerate,
4. The Assistant Commissioner (ST),
Harbour Assessment Circle,
No.116, Angappa Naicken Street,
Kanniga Parmeshwari Buildin
Chennai- 600 001.
5. Master File/ Spare

