

GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/2023/19
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/57)

Date: - 12.05.2023

Name and address of the applicant	:	Colourband Dyestuff P Ltd Block No. 243, At & Post Ekalbara, Tal. Padra, Ekalbara, Vadodara, Gujarat 391 440.
GSTIN of the applicant	:	24AAACC9898F1ZC
Date of application	:	24.11.2022
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(d)
Date of Personal Hearing	:	23.3.2023
Present for the applicant	:	Advocate Vipul Shah, Shri Pankaj Dhamecha and Shri Devendra Patel.

Brief facts:

Colourband Dyestuff P Ltd, Block No. 243, At & Post Ekalbara, Tal. Padra, Ekalbara, Vadodara, [for short-‘applicant’] is registered under GST and their GSTIN is 24AAACC9898F1ZC.

2. The applicant is engaged in the activity of manufacturing of dyes. The applicant procures intermediate as raw material in crude form which is chemically processed & through HAG machineries ie Hot Air Generation, Liquid raw material is being converted into powder form which is known as dyes ie finished product which is applied to textile products.

3. The applicants plant is located at Ekalbara,, Ta. Padra, Vadodara. They are expanding & have acquired new land viz plot no. 109/110 at GIDC Sykha, Dist. Bharuch. The applicant intends to set up the factory at one premise using both the plots & have started setting up of the new factory.

4. The manufacturing process flow chart is provided as Annexure 1 to their application. For manufacturing Dyes, they require various plant and machinery [for short – ‘P&M’], primary being Sand Mill and spray dyer and HAG machine.



These machines are required to be fixed on earth by foundation or various structural supports which are of MS steel/foundation structure.

5. The applicant in his application has fairly admitted that the ITC on works contract utilized in Administration building and Warehouse would be treated as blocked credit. However, he is before us seeking a ruling on the eligibility of ITC on works contract services & material procured and utilized towards foundation for setting up of the following machineries

- Sand mill and spray dryer
- HAG plant
- ETP as well as having tank farm and fire tank and
- DG set.

6. In view of the foregoing, the applicant has filed this application seeking advance ruling on the below mentioned questions viz

- Whether the applicant can avail ITC on

[a] WCS taken for structure on which machineries are fixed to earth by foundation and services taken for setting up plant ie MS steel structure along with roof which has been created mainly to protect machineries being supported by the said foundation.

[b] Steel [TMT bar] being procured by the applicant company and used while taking works contract services for making the said foundation to fix machineries to earth.

7. Additional Commissioner(Tech), Vadodara-I Commissionerate, vide his letter no. IV/16-23/Tech/AR/M/s. Colourband Dyestuff /2022-23 dated 3.2.2023, received by the registry on 5.4.2023, has offered the following comments viz

- that the activity is an ongoing activity;
- that the questions raised is not pending or decided in any proceedings against the applicant;
- that ITC can be availed on plant and machinery as defined in the explanation to section 17; any services or goods used for setting up plant ie MS steel structure along with roof are explicitly excluded from the definition of P&M as per explanation to 17(5), ibid;
- As far as ITC on Steel (TMT) bar is concerned, goods or services received for construction of immovable property other than P&M appears to be inadmissible.

8. Personal hearing was granted on 28.2.2023, wherein they sought time to submit revised certificate from chartered engineer as to what part of the structure is foundation and structure support to substantiate their case towards eligibility of ITC. Thereafter personal hearing was granted on 23.3.2023 wherein Advocate



Vipul Shah, Shri Pankaj Dhanecha and Shri Devendra Patel, appeared on behalf of the applicant and reiterated the facts as stated in the application. During the course of personal hearing they submitted additional submission along with photographs to substantiate their case that they are eligible for the credit.

Discussion and findings

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

10. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made during the course of personal hearing and the departmental comments received in the matter. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

11. Before advertng to the submissions made by the applicant, we would like to reproduce the relevant provisions, competing tariff entries, etc for ease of reference:

Section 17. Apportionment of credit and blocked credits.-

*(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:-*

²[(a) motor vehicles for transportation of persons]

(aa) vessels and aircraft except when they are used-

(i) for making the following taxable supplies, namely:-

- (A) further supply of such vessels or aircraft; or*
- (B) transportation of passengers; or*
- (C) imparting training on navigating such vessels; or*
- (D) imparting training on flying such aircraft;*

(ii) for transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or (aa);

(aa):



Provided that the input tax credit in respect of such services shall be available-

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged-

(I) in the manufacture of such motor vehicles, vessels or aircraft; or

(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;]

(b) ³[the following supply of goods or services or both-

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.]

(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 clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

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

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.



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.

12. The applicant's primary contention while contending that they are eligible for ITC is that

- the structure & building are independent & separate;
- that the foundation is being built to support the P&M & other equipments; that it is to be installed on its deep foundation;
- that the foundation is to make the plant immovable & hence the foundation does not amount to immovable property;
- that for making outward supply of dyes [their finished product], raw material has to pass through different chemical process from one civil structure to another.

13. The applicant in respect of the four machinery, has stated as follows :

➤ Sand Mill and Spray Dryer

- this machine plays a crucial & vital role in the manufacture of finished products;
- they are huge, heavy & bulky;
- it cannot be installed on pre-designed independent civil or steel structure & needs a customized structure to hold it;
- a deep foundation is required having load bearing pillars which travel upto foundation;
- that both vertical MS structural support and horizontal civil structural support is required to carry the load of the machine & equipment;
- each floor has MS steel flooring & is covered with MS roof;
- at some places structure is created to support the P&M;
- the civil & MS steel structure gets merged with the machine & equipment.

➤ HAG [Hot Air Generating machine and equipment]

- it provides hot air, temperature is controlled which converts liquid into crude & in turn into powder form;
- they are huge heavy & bulky; it cannot stand independently;
- MS steel structure along with roof is created to protect HAG machine;
- for maintaining temperature at consistent level & to protect the machine from weather, fabricated roof is required;
- foundation to earth is made as per load requirement;
- that in the entire structure there is no walls, no separate office arrangement, no washroom etc..

➤ ETP [Effluent Treatment Plant]

- ETP is a mandatory requirement as per Pollution Control Board;
- it comprises of various tanks made of civil structure; this civil structure is the plant;
- it converts waste crude & liquid which is to be flowed outside the premises;

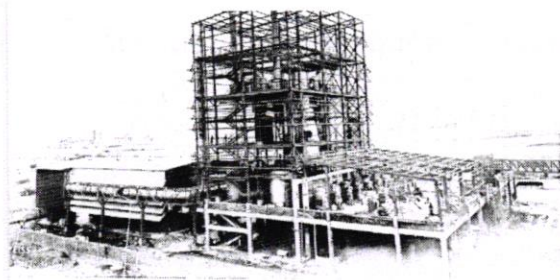


- to store liquid chemical waste, ETP is constructed through various box structure only.

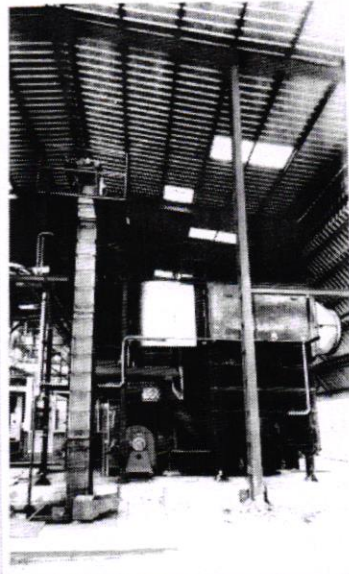
➤ Transformer

- DG set is independently and separately appearing on structure fixed to earth by foundation;
- Near adjoining sub-station building of civil structure is created to cover electric control panel.

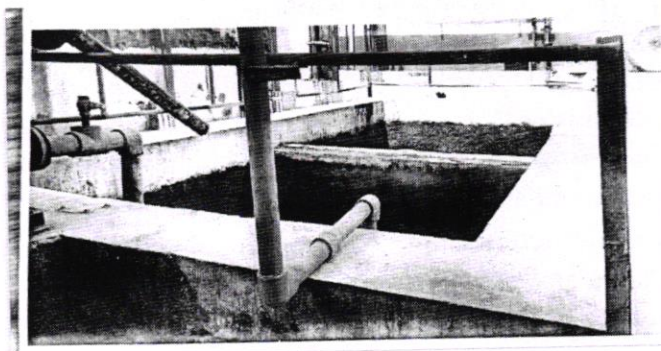
14. The applicant has submitted the photographs of the structure. The same is scanned & reproduced below for ease of reference:



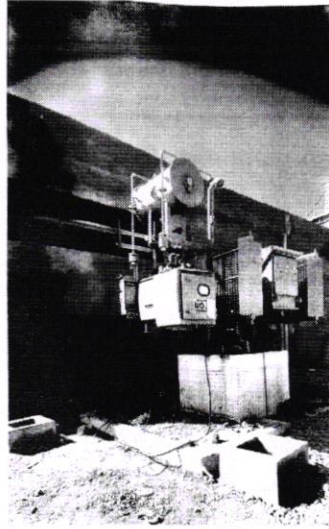
SAND MILL & SPRAY DRYER



HOT AIR GENERATING MACHINE



EFFLUENT TREATMENT PLANT



TRANSFORMER

15. The applicant has in his additional submissions, submitted certificate dated 13.3.2023 by Padaria Consultants (P) Ltd, Chartered Engineer. The relevant observations as per the certificate states as follows:

• **Sand Mill and Spray Dryer Machineries & Equipments**

- that customized structure is to be designed to hold the said machineries and equipments;
- that capacity of foundation to earth is made as per load requirement & therefore 8 meters foundation has been created.
- that there are load bearing pillars which travel upto foundation;
- that around 28 meters vertical MS structural support and around 1895 square meters horizontal civil structural support is required to carry perpendicular load of machineries and equipments.
- that the machineries and equipments cannot stand alone and cannot be operated without horizontal as well as vertical civil and steel structural support.
- that the said structure is to be destroyed & demolished if the machineries and equipments are of no use.

• **HAG (Hot air Generating Machineries & Equipments**

- that customized structure is to be designed to hold the said machineries & equipments;
- that there are heavy MS steel structure which can rest on strong support of foundation;
- that around 10.2 meters vertical MS structural support is required to carry perpendicular load of machineries and equipments
- that for maintaining temperature at consistent level & to protect if from weather fabricated roof is also required.
- That the said structure is to be destroyed and demolished if the machineries and equipments are of no use.

16. On a bare reading of section 17(5) of the CGST Act, 2017, we find that

- it starts with a non obstante clause with respect to sections 16(1) & 18(1);



- it explicitly states that ITC shall **not be available** in respect of works contract services when supplied for construction of an immovable property (**other than plant and machinery**) with an exception;
- in terms of sub-clause (d), ITC shall not be available for goods or services or both received for construction of an immovable property (**other than plant or machinery**) even when used in the course or furtherance of business.
- the first of the two explanations, states that "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property.
- the second explanation states that **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.

17. Further, we find that as per the definition, "Plant and Machinery" means :

- apparatus, equipment, and machinery, which is
 - 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 -
- land, building or any other civil structures;
 - telecommunication towers; and
 - pipelines laid outside the factory premises.

18. On examining the contention of the applicant, read with the certificate of the chartered engineer, a bare look at the photographs provided by the applicant when seen in conjunction to what is mentioned in section 17 *ibid*, which deals with apportionment of credit and blocked credits, we find that the law is unambiguous as far as ITC is concerned in respect of the P&M. ITC is **not available** in respect of works contract services when supplied for construction of an immovable property. Further, ITC is not available for goods, services or both received for construction of an immovable property even when used in the course or furtherance of business. However, the sub-clauses specifically exclude in both the cases, plant and machinery. Noteworthy is fact that the second explanation which defines plant and machinery [for the purposes of chapter V and VI] to mean apparatus, equipment & machinery fixed to earth by foundation and structural support & explicitly includes such foundation and structural supports with exclusion of land, building & other civil structures.



19. We will now examine the claim one after the other in respect of each of the items viz

19.1 Sand Mill and Spray Dryer

19.1.1 On going through the two photographs we find that claim of ITC by the applicant in so far as the foundation and structural support for the Sand mill & Spray dryer is covered by the explanation 2 to Section 17(5) and hence, the applicant is eligible for the ITC provided it is not capitalized. However, the eligibility is only in respect of the foundation and the structural support. The photograph reveals a structure/shed, erected on the left side of the Sand mill and spray dryer. This structure/shed would clearly fall within the ambit of civil structure and stands excluded from the expression 'plant and machinery'. Hence, the ITC in respect of this structure/shed is blocked in terms of section 17(5) of the CGST, 2017.

19.2 HAG [Hot Air Generating machine and equipment]

19.2.1 On going through the photograph we find that claim of ITC by the applicant in so far as the foundation and structural support in respect of the HAG is concerned is covered by the explanation 2 to Section 17(5) and the applicant is eligible for the ITC provided it is not capitalized. However, the eligibility is only in respect of the foundation and the structural support for the HAG machine only. The photograph clearly depicts that there is a roof overhead the machine. This roof and its supports would clearly fall within the ambit of civil structure and stands excluded from the expression 'plant and machinery'. Hence, the ITC in respect of this structure/shed [ie roof and its supports] is blocked in terms of section 17(5) of the CGST, 2017.

19.3 ETP [Effluent Treatment Plant]

19.3.1 On going through the four photographs, we find that these are basically tanks which are civil structure. Now in terms of the discussion *supra*, expression 'plant and machinery' excludes civil structure. Therefore, when the ETP itself has been held to be a civil structure, the question of allowing ITC in respect of its foundation and structural support does not arise. Therefore we hold



that the applicant is not eligible for the ITC in respect of the foundation made to install the ETP [effluent treatment plant].

19.3.2 Our above view is substantiated by the ruling in the case of Synergy Global Steel Pvt. Ltd. [reported at 2021 (48) G.S.T.L. 286 (A.A.R. - GST - Haryana)], wherein it was held as under

4.6 *The explanation to Section 17(5)(d) of the GST Act reads as under :-*

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

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

In the explanation given above, it is clear that “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but with some exclusions as above. In the present case the applicant admits that the Sewage Treatment Plant is attached with the civil structure of the building. Thus, it is clear that it is a part of the civil structure of the building and part of the building so constructed. Therefore the applicant’s contention that the Sewage Treatment Plant is covered under the definition of “plant and machinery” is rejected because it is covered under the exclusion (i) of the explanation given above.

19.3.3 Our view is further substantiated by the ruling in the case of Tarun Realtors Pvt. Ltd. [2020 (35) GSTL 438(App. AAR-GST-Kar)] wherein under para 23 it was held as follows:

23. *In respect of the Water treatment Plant and Sewage Treatment Plant, as can be seen from the photographs, they form part of the civil structure of the immovable property. Civil structures are specifically excluded from the definition of “Plant and machinery”. So also, the DG Set and Transformer - they are procured as independent items and their installation becomes part of the civil structure of the immovable property. Therefore, we hold that the appellant is not eligible of the credit of the taxes paid on the procurement of the Water Treatment Plant, Sewage Treatment Plant, DG Set and Transformer. In view of the above, we hold that the ruling given by the lower Authority is correct in law.*

We find that the analogy of the water treatment plant, sewage treatment plant is applicable even to ETP.

19.4. Transformer

As far as ITC in respect of the foundation/structural support in respect of Transformer is concerned, the applicant has stated as follows viz



- DG set is independently and separately appearing on structure fixed to earth by foundation;
- Near adjoining sub-station building of civil structure is created to cover electric control panel.

Following the ratio of the ruling in the case of Tarun Realtors Pvt. Ltd. [2020 (35) GSTL 438(App. AAR-GST-Kar)], we hold that the applicant is not eligible for ITC on works contract services taken for making foundation structure on which DG set is fixed to earth by foundation.

20. In the light of the above, we rule as under:

RULING

- [a] WCS taken for structure on which machineries are fixed to earth by foundation and services taken for setting up plant i.e. MS steel structure is eligible subject to findings from para 19 onwards. ITC on structure/shed, erected on the left side of the Sand mill and spray dryer and the ITC on the structure/shed [i.e. roof and its supports] is not eligible. ITC in respect of foundation and support structure in respect of ETP and Transformer is blocked in terms of Section 17(5) of the CGST Act, 2017.
- [b] Steel [TMT bar] being procured by the applicant company and used while taking works contract services for making the said foundation to fix machineries to earth is eligible subject to findings recorded in para 19 onwards.

(MILIND KAVATKAR)
MEMBER (SGST)



(AMIT KUMAR MISHRA)
MEMBER (CGST)

Place: Ahmedabad

Date: 12 /05/2023