

GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
---	---

ADVANCE RULING NO. GUJ/GAAR/R/2024/18
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2023/AR/36)

Date: 02.07.2024

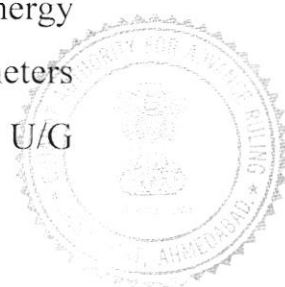
Name and address of the applicant	:	M/s Elixir Industries Private Limited, Plot No. 101, GIDC Palej Industrial Estate, Palej, Bharuch, Gujarat- 392 220
GSTIN of the applicant	:	24AAGCE70331ZV
Jurisdiction Office	:	Center Commissionerate – Vadodara-II Division - VII Range -V
Date of application	:	22/09/2023
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(d)
Date of Personal Hearing	:	28/05/2024
Present for the applicant	:	Shri Mukesh Soni (Advocate), Shri Pawan Modi

Brief facts

M/s Elixir Industries Private Limited, Plot No. 101, GIDC Palej Industrial Estate, Palej, Bharuch, Gujarat- 392 220 (for short "applicant") is engaged in the manufacture of various products falling under chapter 56 of the Customs Tariff Act, 1975. The applicant is registered with the GST Department & their GSTIN No. is 24AAGCE70331ZV.

2. The applicant is an 100% EOU who has been been granted letter of permission [LoP] dated 11.4.2022 by the Development Commissioner, Kandla SEZ, Gandhidham, for manufacture of hydro entangled (spun lace) non-woven products.

3. For its electricity/HT power connection at the plant, the applicant requires 1000 KVA power demand on 66 KV system voltage. For this, they need to install a 66 KV feeder bay at substation of GETCO [Gujarat Energy Transmission Corporation Ltd] under deposit scheme & also lay a 750 meters new 66 KV S/cable (3+1) , 630 mm square aluminum corrugated sheath U/G



cable line from 66 KV Palej substation of GETCO to their switchyard at their Palej factory.

4. For the aforementioned requirement of laying a new 66 KV line, GETCO has offered two options viz

- i. either carry out above work from GETCO itself;
- ii. to do the above work on their own [as per option 3 of GETCO estimate for 1000 KVA] under supervision of GETCO.

The applicant chose the second option as mentioned *supra*. Thus, as per the requirements provided by GETCO, they have to purchase materials for installation of 1000 KVA facility & handover the same to GETCO who will provide installation and supervision service. It will be maintained by GETCO & all the goods and equipment used in the said line which will be installed outside the factory premises will be a property of GETCO.

5. The applicant further states that they purchased the goods/materials from M/s. H M Electrical, Bharuch, Gujarat, the details of which are as under:

Particulars	Supply of material	Installation work	Total (Rs.)
Basic Value	95,41,500	32,80,750	1,28,22,250
GST @ 18%	17,17,470	5,90,535	23,08,005
Total (Rs.)	1,12,58,970	38,71,285	1,51,30,255

GETCO, in addition to the above will charge supervision charges of Rs. 37,45,948 + GST @ 18% ie Rs. 6,74,271/-.

6. It is further informed by the applicant that the aforementioned expenditure will be borne by them & subsequently will be transferred to GETCO through an agreement on a Rs. 300 stamp paper at zero value & that it will be a property of GETCO.

7. It is the applicant's claim that they have satisfied all the four conditions in terms of section 16 of the CGST Act, 2017, viz (i) that they are in possession of the tax invoice issued by the supplier; (ii) that they have received the goods and service; (iii) that the tax charged has been paid to the Government & that the return has been furnished u/s 39, *ibid*; (iv) that the payment [i.e. value and GST] has been made to the supplier within 180 days.



8. The applicant further states that they have capitalized the basic value of the supply of material and installation charges of Rs. 1,28,22,250/- & that the GST value will be availed as ITC credit.

9. The applicant feels that they are eligible to avail the ITC credit in view of the foregoing and more so since it is not blocked under section 17 of the CGST Act, 2017.

10. In view of the foregoing, the applicant has raised the following question seeking a ruling viz

1. Whether or not a manufacturer is eligible to take ITC on the capital goods in the form of wires/cables electrical equipment etc used for transmission of electricity from power station of the DISCOM to the factory premises of the registered person which are installed outside factory premises as per rules and policy of GETCO, Government of Gujarat Electricity distribution company.

11. Personal hearing in the matter was held on 28.5.2024 wherein Shri Mukesh Soni, Advocate and Shri Pawan Modi appeared on behalf of the applicant. They submitted additional submission dated 28.5.2024 during the course of personal hearing. On being asked, it was informed that they have availed and reversed the ITC.

12. The applicant vide his additional submission dated 28.5.2024, reiterated the submission made in their application for advance ruling. He further submitted as under:

- that the ITC is not blocked u/s 17(5) of the CGST Act, 2017;
- that 17(5), *ibid*, blocks ITC in respect of buildings & construction goods and services to the extent capitalized under land and building, but allows ITC on 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;
- that the only exception in respect of plant and machinery are
 - (i) land, building or any other civil structures;
 - (ii) telecommunication towers; and
 - (iii) (iii) pipelines laid outside the factory premises;
- that they would like to rely on the below mentioned judgements viz
 - ¹M/s. Prism Cement Ltd

¹ 2017(3) TMI 1283-CESTAT New Delhi.



- ²Ms. Calcom Cement India Ltd
- ³M/s. Hindustan Coca Cola Beverages P Ltd.

Discussion and findings

13. 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.

14. We have considered the submissions made by the applicant in their application for advance ruling as well as the oral submissions & additional submissions made during the course of personal hearing. 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.

15. Before setting out the contentions and our findings thereto, it would be prudent to reproduce the concerned sections, relevant to the issue viz

Section 16. Eligibility and conditions for taking input tax credit.-

(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.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

¹[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37];

(b) he has received the goods or services or both.

*²[**Explanation.-** For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-*

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

² 2017 (9) TMI 274 CESTAT New Delhi.

³ 2017 (6) TMI 846 CESTAT Ahmedabad.



(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;]

³[(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;]

(c) subject to the provisions of⁴[section 41 ⁵[***]], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be ⁹[paid by him along with interest payable under section 50], in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him ¹⁰[to the supplier] of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the ⁶[thirtieth day of November] following the end of financial year to which such invoice or ⁷[****] debit note pertains or furnishing of the relevant annual return, whichever is earlier.

⁸[**Provided** that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]

Section 17. Apportionment of credit and blocked credits.-

(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.



(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

¹[**Explanation.**- For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III. ⁴[except,—

(i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and

(ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule.];]

(4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of subsection (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

(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 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;

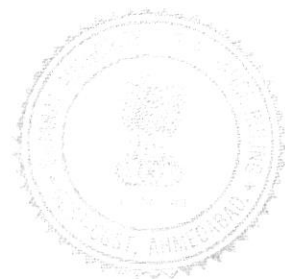
Explanation.- For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural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

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises.

16. Further, before advertng on to the averments raised, we find that the applicant has also enclosed copy of the agreement with GETCO [a DISCOM]. The extracts of the agreement, relevant to the present ruling, is reproduced below for the ease of reference viz



TERMS AND CONDITIONS [OPTION-3]

7. The line so erected by consumer will be handed over to the GETCO concerned field Superintending Engineer and it will be maintained by the GETCO. However, you have to guarantee the performance of line and equipment for the period of one year from the date of commissioning of the same. The failure of equipment of material will be made good at your cost.

8. As mentioned in the supply code the service line, "notwithstanding that a portion of the cost has been paid for by the consumer, shall be and remain the property of the GETCO by whom it is to be maintained.

17. We find that the applicant is seeking a ruling on the eligibility of ITC on capital goods viz cables/wires, equipment viz 750 meters new 66 KV S/Cable (3+1), 630 mm square aluminium corrugated sheath/G cable line for installation of 66 KV feeder bay at sub-station of GETCO, purchased by them. The applicant has further informed that these goods have been capitalized only on the basic value and installation charges; that they will avail credit of the ITC; that they subsequently have to transfer it to GETCO in terms of an agreement on a stamp paper; that the goods will be the property of GETCO.

18. Section 16 of the CGST Act, 2017 which deals with eligibility and conditions for availing ITC [input tax credit] states as follows:

- every registered person shall, be entitled to take credit of ITC charged on any supply of goods or services which are used or intended to be used in the course or furtherance of his business;
- that ITC shall be entitled if he is in possession of a tax invoice raised by a supplier registered under this Act; that the details of the invoice has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice; that he has received the goods or services
- that details of ITC in respect of the said supply communicated to such registered person under section 38 is not restricted;
- that return is furnished under section 39, *ibid*;
- that the amount towards the value of supply along with tax has been paid within a period of one hundred and eighty days from the date of issue of invoice.

It is the applicant's case that the conditions specified under section 16, supra, stands fulfilled. The applicant's averment to this extent appears to be correct.

19. Likewise, section 17 of the CGST Act, 2017, deals with apportionment of credit and blocked credit. From what is relevant, we find that ITC is blocked in the following cases [relevant to the issue on which ruling is sought] viz



- where the goods or services are used partly for the purpose of any business and partly for other purposes or exempt supply, the amount of credit shall be restricted to what is attributable for business;
- that the value of exempt supply shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of schedule II, sale of building;
- that ITC shall not be available in respect of 17(5)(c) and (d), which is reproduced supra in paragraph 15 above.

The explanation to the clauses (c) and (d) of section 17, *ibid*, further states that "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property and 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 excludes-(i) land, building or any other civil structures; (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises.

20. The applicant's averment is that they are not hit by 17(5)(c), *ibid*. The applicant further states that they have capitalized the basic value as capital goods and the tax portion is being availed as ITC. Therefore, it is not hit even by the explanation. As far as 17(5)(d) is concerned, the applicant states that they are covered by the explanation which defines plant and machinery and that they are also not hit by the three exclusions listed in the explanation. The ITC that the applicant wishes to avail is on capital goods viz cables/wires, equipment viz 750 meters new 66 KV S/Cable (3+1), 630 mm square aluminum corrugated sheath/G cable line for installation of 66 KV feeder bay at sub-station of GETCO. On a specific query raised during the course of personal hearing, it was stated by the representative of the applicant that though these are underground cables, they are not fixed to earth; that they are kept in a duct and can be removed/opened as and when any maintenance is required to be done on these goods. Even on this count, the ITC sought by the applicant is not blocked by sub-sections 17(5)(c) & (d), *ibid*.

21. What is left to be examined now is whether the transfer of the service line to GETCO under an agreement, on a stamp paper of Rs. 300/- at zero value [as claimed by the applicant], which even in terms of the agreement with GETCO [as reproduced supra], would remain the property of GETCO, would have any bearing on the availment of ITC.



22. We find that there is no provision under the CGST Act, 2017 which bars availment of ITC by the applicant if subsequently the capitalized goods are handed over to GETCO/others. However, we would like to point out to the applicant of the liability cast on him, in such situations in terms of section 18(6) of the CGST Act, 2017. We do not wish to further delve into the same, since the issue is not before us. We restrict ourselves to the question raised before us.

23. As far as the reliance on case laws are concerned, we do not find the same applicable in the GST regime. Hence, reliance on the case laws is not tenable.

24. In view of the foregoing, we pass the below mentioned ruling:

RULING

1. The applicant is eligible to take ITC on the capital goods in the form of wires/cables electrical equipment etc [viz 750 meters new 66 KV S/Cable (3+1), 630 mm square aluminum corrugated sheath/G cable line for installation of 66 KV feeder bay at sub-station of GETCO] used for transmission of electricity from power station of the DISCOM to the factory premises of the applicant.

(MILIND KAVATKAR)
MEMBER (SGST)

(AMIT KUMAR MISHRA)
MEMBER (CGST)

Place: Ahmedabad
Date: 02/07/2024

