

Ref. 1. ARA Order passed on dated 22.02.2019.

2. AAAR order passed on dated 07.10.2019

3. Order passed by the Hon'ble High Court dated 21.10.2024.

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai - 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. D. P. Gojamgunde, Joint Commissioner of State Tax, (Member)

(2) Ms. Priya Jadhav, Joint Commissioner of Central Tax, (Member)

ARN No.	AD271118001625B
GSTIN Number, if any/ User-id	27AACCH4231P1ZD
Legal Name of Applicant	M/s. H-Energy Gateway Pvt. Ltd.
Registered Address/Address provided while obtaining user id	12 th Floor, Knowledge Park, Hiranandani Business Park, Powai, Mumbai
Details of application	Original GST-ARA, Application No. 94 Dated 26.11.2018 restored for fresh order by Hon'ble High Court order dated 21.10.2024.
Concerned officer	Zone- Mumbai, Commissionerate- Navi Mumbai, Division-Division III, Range-Range-VI.
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Service Provision
B Description (in brief)	The Applicant has obtained registration and holding valid registration certificate issued under Central Goods and Service s Tax Act, 2017.
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	As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)



The applicant M/s. H-Energy Gateway Pvt. Ltd. filed an application for Advance Ruling dated 26.11.2018 for the following question:

Whether the applicant is eligible to avail ITC of GST paid on goods and services used for construction of Tie-in pipeline, for delivery of re-gasified LNG from FSRU to the National Grid?

The Advance Ruling Authority passed the order dated 22.02.2019 and answered this question as below:

"The applicants are not eligible to avail ITC of GST paid on goods and service used for construction of Tie-in pipeline, for delivery of re-gasified LNG from FSRU to the National Grid."

Aggrieved by this order, said applicant filed an application before the Appellate Authority for Advance Ruling (AAAR). The AAAR decided the matter and passed the order on 07.10.2019 and answered the question as below:

"We, Hereby, modify the ruling pronounced by the Advance Ruling Authority in so far the observation of the facts and legal provision are concerned and pass the order by holding that the Appellant is not entitled to avail the ITC of GST paid on goods and services used for construction of Tie-in Pipelines, from the FSRU to the National grid as per the provision laid out in section 17(5)(c) and 17(5) (d) of the CGST Act, 2017."

The applicant was not satisfied with the decision passed by the AAAR and filed petition before the Hon'ble Bombay High Court (Writ Petition no. 522 of 2020) and Hon. High Court passed the Order on 21.10.2024 as below.

Hon'ble High Court set aside the order dated 22.02.2019 made by the Authority for Advance Ruling ("AAR") and the order dated 07.12.2019 passed by the Appellate Authority and remanded the matter to the AAR for a fresh ruling in the light of the observations of the Hon'ble Supreme Court in the case of M/s. Safari Retreats Private Limited.

The application remanded back to the Advance Ruling Authority on date 12.12.2024. With respect to the liberty given by the Hon'ble High Court to the applicant to file a submission, the applicant files the submission before the Advance Ruling Authority dated 27.02.2025 as below:



1. FACTS AND CONTENTION - AS PER THE APPLICANT:

In the light of Hon. High Court judgment, applicant has submitted his additional submission on 26.02.2025.

1.1 M/s. Western Concessions Private Limited (formerly known as M/s. H-Energy Gateway Pvt. Ltd.) (hereinafter referred to as "the applicant") having its corporate head office at First Floor, 101, BG House, Hiranandani Business Park, Lake Boulevard Road, Orchard Avenue, Powai, Mumbai 400076 is, inter-alia, engaged in regasification of Liquefied Natural Gas and delivering the same to customers.

1.2 The applicant has obtained registration and holding valid registration certificate issued under Central Goods and Services Tax Act, 2017 ("CGST Act").

1.3 The applicant is setting up a Liquefied Natural Gas (LNG) re-gasification project at Jaigarh port in the state of Maharashtra (hereinafter referred to as "LNG Terminal").

1.4 The LNG Terminal consists of a Floating Storage Regasification Unit ('FSRU') with 4 MMTPA regasification capacity moored to jetty and has associated facilities like gas unloading arm, gas pipeline for delivering natural gas from the FSRU to the National Grid.

1.5 The re-gasified LNG is required to be inducted into the cross-country pipeline/National Grid in order to be supplied to the ultimate customer.

1.6 Therefore, the applicant is constructing a gas pipeline for delivering the high pressure from the FSRU to the National Grid.

1.7 The Development of the project consists of two legs as mentioned below:

- i. Setting up of infrastructure facility, i.e., jetty, onshore receiving facility close to the jetty, etc. for enabling FSRU to regasify the LNG; and
- ii. Connecting the Terminal with the cross-country gas pipeline to enable supply of re-gasified natural gas to customer (referred to as the "Tie-in Pipeline").



1.8 The re-gasified LNG is of no use unless the applicant is able to supply the gas to its customers. Given the nature of the commodity, i.e., high pressure natural gas, pipeline is the only technically viable and safe method of supply.

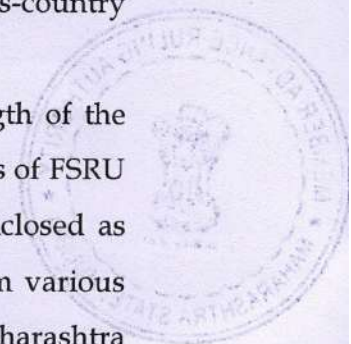
1.9 The same is a well-established principle under various Government of India Acts, Regulations and Rules (ex. Petroleum and Minerals Pipelines Act, PNGRB Act etc.) and Industry standards (ex. Oil Industry Safety Directorate (OISD) rules, Petroleum and Explosives Safety Organization (PESO) standards), which presuppose pipeline as the only means for transport of high-pressure gas over any distance. As a result, the pipeline is an inseparable and integral component for the activity being carried out by the applicant and without the pipeline, the applicant cannot carry on its business activities. The applicant states that supply of high-pressure gas using tankers would be unsafe (as gas is a highly explosive substance), highly expensive, technically and economically unviable for the project.

1.10 The Tie-in Pipeline is, therefore, not constructed to provide gas transportation service to the customers, but it connects the gas terminal to cross-country pipeline to enable further distribution of gas to the customers.

1.11 The Tie-in Pipeline would be laid under the ground and the length of the pipeline would be approximately 60 KMs. The sample photographs of FSRU and the pipeline to be constructed from FSRU to the grid are enclosed as Appendix-1. Further, the approval obtained by the applicant from various authorities such as Ministry of Environment and Forest, Maharashtra Pollution Control Board, Petroleum and Natural Gas Regulatory Board, etc.

1.12 Section 16 of the CGST Act deals with the eligibility of taking input tax credit ('ITC') and the conditions to be fulfilled by the registered person. Section 16(1), *inter alia*, states that a registered person shall be entitled to take ITC on goods and services used or intended to be used in the course or furtherance of his business. Section 16(1) is reproduced hereunder for ready reference:

"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."

...emphasis supplied

1.13 Further, Section 17(5) of the CGST Act provides that in certain cases, input tax credit will not be available even if the goods or services are used in the course or furtherance of business. The relevant portion of section 17(5) is extracted as under:

"(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (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."*

.. emphasis supplied

1.14 Thus, the restriction on availment of ITC under Section 17(5)(c) and 17(5)(d) is not applicable in case where the works contract services and goods or services are used for construction of Plant and Machinery or Plant or Machinery, respectively. However, as per the explanation to Section 17, Plant and Machinery does not include a pipeline laid outside the factory premises.

1.15 It is critical to note that the term Plant and Machinery is defined in the CGST Act, however, the term Plant or Machinery as used under Section 17(5)(d) is not defined. Accordingly, the underlying definition of Plant and Machinery and the appended explanation are not applicable for interpretation of the term



Plant or Machinery and reference needs to be taken based on the dictionary meaning of such terms.

1.16 The applicant's key activity is regasification of LNG, which inter alia includes delivery in a form and manner which is consumable, usable and saleable. Hence, the provision of the gas to the nearest practical delivery point i.e. National Grid, is an integral and essential part of the economic activity being carried out by the applicant.

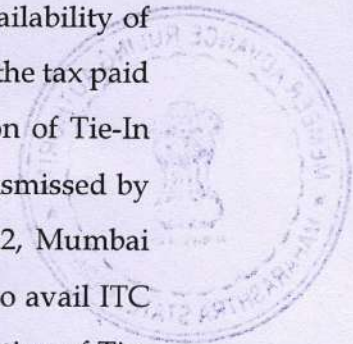
1.17 Therefore, the Tie-in Pipeline connecting the LNG terminal to the National Grid, which is immovable in nature, forms Plant and Machinery for the applicant. Further, the re- gasification activity would be undertaken by the applicant at the FSRU, which is not a factory per se.

1.18 Thus, the disallowance of ITC under section 17(5)(c) and 17(5)(d) would not be attracted in case of Tie-in Pipelines constructed by the applicants.

1.19 To reiterate, the Company had filed an application for Advance Ruling before your good office on 21st November, 2018, with respect to the availability of Input Tax Credit ('ITC') under Section 16 of the CGST Act, 2017 of the tax paid on Inputs / Input Services /Capital Goods used for construction of Tie-In Pipeline. However, the application made by the Company was dismissed by your good office *vide* the Order No. GST-ARA- 94/2018-19/B-22, Mumbai dated 22 February 2019 stating that the Company is not eligible to avail ITC with respect to GST paid on goods and services used for construction of Tie-In pipelines for delivery of regasified LNG from FSRU.

1.20 Being aggrieved by the order passed by your good office, the Company had filed an appeal with the Appellate Authority for Advance Ruling, Maharashtra ('AAAR') on 10 July 2019. However, AAAR dismissed the appeal filed by the Company *vide* Order No. MAH/AAAR/SS-RJ/09/2019-20 dated 07 October 2019 agreeing to the ruling provided by your good office.

1.21 In response to the Order passed by AAAR, the Company filed a writ petition challenging the legality and validity of the Order in as much as the said Order has been passed by the AAAR contrary to the provisions of Section 101(1) of



the CGST Act, 2017 and in gross violation of principles of natural justice by not giving an opportunity of hearing to the Company.

1.22 Now, the said matter was heard by the bench of Hon'ble Bombay High Court, wherein the said matter was remanded back to your good office for a fresh ruling considering the observations made by Hon'ble Supreme Court in the case of Chief Commissioner of Central Goods and Service Tax & Ors. Versus M/s Safari Retreats Private Ltd. & Ors. (Civil Appeal No. 2948 of 2023). Relevant extract of the order is captured below:

15. Accordingly, we set aside the order dated 22 February 2019 made by the Authority for Advance Ruling ("AAR") and the order dated 7 December 2019 made by the Appellate Authority and remand the matter to the AAR for a fresh ruling in the light of the observations made by the Hon'ble Supreme Court in its judgment and order dated 3 October 2024.

16. The Petitioner is granted the liberty to submit additional material to the AAR within four weeks of today. The AAR must decide the matter according to the law within four months of the Petitioner filing the additional material. All parties' contentions are left open.



1.23 Accordingly, taking guidance from the Bombay High Court judgement and its finding that the earlier AAR and AAAR stands set aside, and all the contentions are left open for fresh consideration, we are submitting this additional submission for fresh consideration on merits of the case.

1.24 Under the aforesaid peculiar circumstances, we request you to issue a ruling regarding the availability of ITC of GST paid on goods and services used for construction of Tie-in Pipelines and also grant us with a personal meeting to represent our case in detail.

2. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

2.1 Applicants understanding

2.1.1 Section 16 of the CGST Act deals with the eligibility of taking ITC and the conditions to be fulfilled by the registered person. Section 16(1) inter alia states that a registered person shall be entitled to take ITC on goods and services used or intended to be used in the course or furtherance of his business.

2.1.2 Section 17(5) of the CGST Act provides that in certain cases, input tax credit will not be available even if the goods or services are used in the course or furtherance of business.

2.1.3 The restriction on ITC is covered by the following two clauses:

- Clause (c) of Section 17(5) restricts availability of ITC in respect of works contract service used for construction of immovable property, except plant and machinery.
 - Clause (d) of Section 17(5) bars ITC in respect of goods or service used for construction of immovable property, except plant or machinery, on assessee's own account. - Covered by Safari Retreats judgement
- Both the above clauses operates independently in light of the guidance laid down by the Supreme Court in case of Safari Retreats judgment and accordingly our submissions are divided in terms of these two clauses below.

The relevant portion of section 17(5) is extracted as under:

"(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (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.

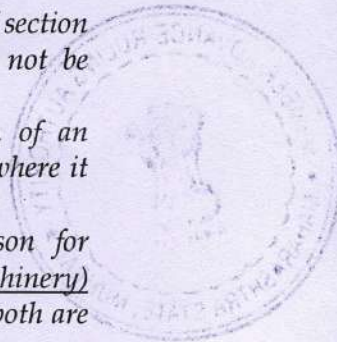
Explanation.- For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural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

- land, building or any other civil structures;*
- telecommunication towers; and*
- pipelines laid outside the factory premises."*

...

Emphasis Supplied

2.1.4 However, the above restriction on availment of input tax credit will not apply if the immovable property constructed is plant and machinery in terms of Section 17(5)(c) or Plant or Machinery in terms of Section



17(5)(d). The term "plant and machinery" is defined in the explanation to Section 17 as apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply but, *inter alia*, excludes pipelines laid outside the factory premises. While the term Plant or Machinery is not defined under CGST Act.

2.1.5 In the present case, the applicant is constructing a Tie-in Pipeline to deliver the re-gasified LNG to the cross-country pipeline/National Grid for further transportation to the customers. The said pipeline will be laid under the ground and the length of the pipeline would be approximately 60 KMs.

2.1.6 Since the pipeline in the present case is embedded in the earth, it would qualify as an immovable property and thus the construction of said pipeline amounts to a Works contract under Section 2(119) of the CGST Act. However, the applicant is of the understanding that the Tie-in Pipeline qualifies to be a "plant and machinery" as per explanation to Section 17 of the CGST Act, or "plant or machinery" and hence the restriction under Section 17(5)(c) and 17(5)(d) would not be attracted in respect of construction of the said pipeline.

2.1.7 The applicant submits that following two conditions have to be fulfilled for the Tie- in Pipeline to be regarded as plant and machinery in terms of explanation to Section 17 of CGST Act:

- The pipeline should be an apparatus, equipment or machinery used for making outward supply; and
- It should not be covered by the exclusion clause "pipeline laid outside the factory".

2.2 The Tie-in Pipeline is an apparatus, equipment or machinery used for making outward supply.

2.2.1 The terms 'apparatus', 'equipment' and 'machinery' are not defined under the CGST Act. It is settled position of law that in absence of definition in the statute, the words used in the statute should be understood in their



natural and ordinary sense. Accordingly, let us understand the meaning of the terms as understood in common parlance:

P Ramanatha Aiyar's Advanced Law Lexicon:

'Apparatus' is a compound instrument designed to carry out a specific function or for a particular use.

'Apparatus' means something which is inclusive of some other appliance.

'Apparatus' are the implements used in an operation or activity.

'Equipment' is an act of equipping or fitting, or the state of being equipped; to supply with whatever is necessary to efficient action in the way. 'Equipment' is a thing which is used for a particular purpose.

Webster Comprehensive Dictionary

'Apparatus' - A complex devise or machine for a particular purpose: an x-ray

apparatus. 'Apparatus'

-
An integrated assembly of tools, appliances, instrument, etc. operating to achieve a specified result.

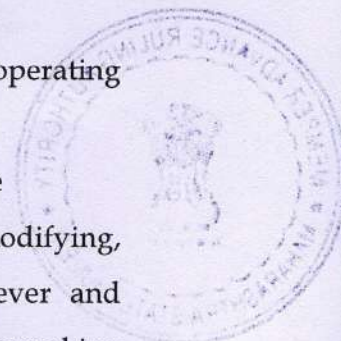
'Equipment' - Whatever constitute an outfit for special purpose

'Machine' - Any combination of mechanics for utilizing, modifying, applying, or transmitting energy, whether simple, as a lever and fulcrum, pulley, etc. or complex, as a Fourdrinier papermaking apparatus.

Black's Law Dictionary

'Equipment' - The articles or implements used for a specific purpose or activity. 'Machine' - A devise or apparatus consisting of fixed or moving parts that works together to perform some function. - Also termed apparatus.

2.2.2 Therefore, any instrument which is understood to be an apparatus, equipment or machine in common parlance and is permanently fixed to



the earth by foundation and structural support which is used for making outward supply will be treated as "plant and machinery".

2.2.3 The term equipment is defined in the dictionaries as a thing which is used for particular or special purpose. In the present case, the Tie-in Pipeline is used for delivery of natural gas from the terminal to the cross-country pipeline. Thus, the pipeline is used for the specific purpose of delivery. Further, as stated above, the delivery of gas up to the cross-country pipeline is an integral and essential part of the services provided by the applicant.

2.2.4 Thus, the Tie-in Pipeline is not merely a passive structure but is used for delivery of gas from the FSRU to the National Grid which in turn completes the outward supply of re-gasification services by the applicant. Accordingly, the Tie-in Pipeline will be treated as "plant and machinery" in terms of section 17(5)(c) of CGST Act.

2.2.5 Further, in order to understand the nature of the Tie-in Pipeline being constructed by the applicant, it is pertinent to understand the various components, equipment and devices forming part of the pipeline.

Pipes - These comprises of the hollow pipes laid underground from the Jaigarh Terminal to the National grid.

High pressure Un-loading Arm - The high pressure unloading arm installed at the Jaigarh terminal is a special equipment for unloading the high pressure Gas from FSRU into the Tie-in Pipeline.

Isolation valves, Check valves-Check valves are installed to ensure that the flow of Gas is unidirectional. Isolation Valves are installed on the pipeline for controlling flow (to restrict the flow or allow the flow).

Metering System - The metering system is installed to measure the quantity of gas supplied. This system is installed at the Jaigarh Terminal i.e. the starting point of pipeline and at Dabhol Terminal i.e. the end point of pipeline before it is connected to National Grid.

Pressure Regulating System - This system is installed at Dabhol Terminal to control the pressure at which such gas is supplied



Gas Chromatograph - Chromatograph is a special equipment fitted near the metering device which helps in determination of the composition of the natural gas re-gasified from the FSRU.

Pig Launcher/Pig Scraper - This equipment are used for cleaning the debris from inside the pipeline. This equipment also facilitate to monitor the inside condition of pipeline. These are located at the starting point and end point of the pipeline.

Bends- The bends is a part used to connect the two ends of the pipeline where there is turn or curve in the directions of the pipeline.

SV Station - The appellant has 3 SV stations at different point along the course of the pipeline. SV stations help in isolating one section of the pipeline from another section in case on any emergencies like leakage in pipeline etc.

SCADA Monitoring system - This system is installed for supervision and control of pipeline remotely and for data / parameters acquisition remotely.

Power Generation Systems (Diesel Generators & Solar Panels) -These are installed at Terminals and SV Stations for generation of secondary power or back up power.

Filtering- This equipment is located at the start point and end point of the pipeline for filtration of Gas thereby separating any debris or solid contamination.

Gas Detention/ Leak Detection system - The Gas and leak detection systems are used to identify whether any leak has occurred in any part of the pipeline network.

OFC cables - These are laid down alongside the pipeline for collection and transfer of data relating to the Tie-in Pipeline.

Gauges & Transmitters - These instruments are installed in pipeline for measuring and transmitting parameters like pressure and temperature of gas.



Cathodic Protection System - This system is installed in pipeline for controlling the corrosion of pipeline.

Sample contracts are attached with this application.

Sample extract of the contract executed with vendor - Engineers India Limited (Page 50 and 51) is as follows:

"High pressure Gas unloading arms will be used to transfer the gas from the FSRU through on-land gas pipeline connecting to Metering Station. Suitable pipeline will be provided with appropriate coating as primary anti-corrosion coating between FSRU and EPF. The EPF will thus consist of High Pressure Gas Unloading Arms, Connecting Pipeline, a Metering & Pressure/Flow Regulating Station, Utilities and Plant Control System. Utilities in the EPF will mainly consist of power generation and distribution for lighting and controls, instrument and plant air supply system (Consultant to suggest whether GOV's or instrument operated valves shall be used. In case of GOV's, the instrument and plant air system may not be required), freshwater and fire water system and drainage systems. The terminal will also have de-pressurization system with cold venting provision. Bidder is expected to develop the Supplementary FEED in Two Stages."

Sample extract of the contract executed with vendor - Pixcon Enterprises (Page 10) is as follows:

"Cleaning, calibration of the instruments including removal of instrument from reinstalled locations like panels, enclosures, racks, field etc., and fixing them back in respective places, new instruments stored at site, providing equipment, necessary test jig, Instrument Air, Nitrogen Cylinders, test reports, all consumable, etc. except for special imported test equipment for electronic instruments to be supplied by owner if available.

Cleaning, set pressure tests of CRV/PSV/PCV/SSV/etc. providing equipment, necessary test jig, Instrument Air, Nitrogen Cylinders, test reports, all consumable.

The validity of calibration need to be mentioned in the certificate after the calibration is completed."

Sample extract of the contract executed with vendor Sheetal Wireless Technologies Private Limited (Page 8) is as follows:

The Contractor's Scope of Services shall include but not limited Design, Engineering, Manufacturing, Procurement of VHF System & Bought-out Items, Assembly at shop, Inspection, testing at manufacturer's works, along with Third Party Inspection, Factory Acceptance Test, Documentation, Packing & forwarding, Preservation and Transportation on FOT SITE at Jaigarh, Dabhol and SV1, SV2 and SV3 locations (with



all accessories, Mandatory & commissioning Spare) including Transit Insurance etc, required for the completion of the Scope of Services

2.2.6 The aforesaid equipment and machineries allow the applicant to induct, control, manage and monitor the flow of gas in the Tie-in Pipeline and such equipment together comprise the Tie-in Pipeline, which acts a machinery for delivery of gas to National Grid.

2.2.7 Thus, the applicant submits that the Tie-in Pipeline qualifies as 'plant and machinery' as defined under Explanation to Section 17(5) of the CGST Act.

2.3 The exclusion clause in the Explanation to Section 17 i.e. "Pipelines laid outside the factory premises" is not applicable in present case.

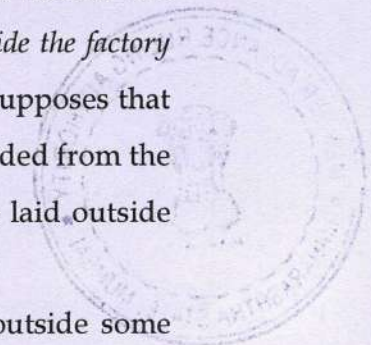
2.3.1 Clause (iii) of the explanation to Section 17 excludes '*pipelines laid outside the factory premises*' from the definition of "plant and machinery". Thus, ITC would be available only in respect of the pipelines which are laid inside a factory premises.

2.3.2 The applicant understands that the exclusion clause '*pipelines laid outside the factory premises*' does not mean that what is covered within the definition of plant and machinery is only '*pipelines laid inside the factory premises*'. The applicant submits that the above clause presupposes that there should be a factory premises, and in order to be excluded from the definition of plant and machinery, the pipeline should be laid outside such factory premises.

2.3.3 Therefore, the applicant submits that the pipelines laid outside some premises, which are not factory premises, will also be covered within the definition of the term "plant and machinery".

2.3.4 The applicant submits that the FSRU is not a factory premises and hence the Tie-in Pipeline laid outside FSRU will not be covered by the exclusion clause in the definition of "plant and machinery" given under Explanation to Section 17 of the CGST Act.

The Factories Act, 1948 is not applicable in the present case. The definition of factory given under The Factories Act, 1948 would not be applicable in the present case.



2.3.5 Section 2(m) of The Factories Act, 1948 which defines the term 'factory' reads as under-

"2. (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) Whereon twenty 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 without the aid of power, or is ordinarily so carried on, -

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952)] or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place."

2.3.6 The applicants state that the definition of the term "factory" given under the Factories Act, 1948 cannot be applied for ascertaining the meaning of the term 'factory premises' used in clause (iii) of explanation to Section 17(5) of the CGST Act.

2.3.7 The applicants submit that to interpret a word used in a statute by using the definition of said word in other statutes, when they are not dealing with the same subject, is bad interpretation. In this regard, the Hon'ble Supreme Court in the case of M/S. MSCO. Pvt. Ltd vs Union of India, 1985 AIR 76, held as under:

"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



2.3.8 Thus, in view of the aforesaid judgment, it is incorrect to adopt the meaning of 'factory' given in the Factories Act 1948 to interpret the term "factory premises" used in Explanation to Section 17(5) of the CGST Act.

2.3.9 Further, even Section 2(m) of the Factories Act, 1948 defined 'factory' as any "premises" where manufacturing activity is undertaken. As already stated in the submissions made in the preceding paragraphs, 'premises' can only mean either land or buildings comprising a factory. Hence, even if the definition given in Factories Act, 1948 is relied upon, the FSRU which is vessel would not qualify as a factory.

2.3.10 The Ld. AAAR earlier had accepted the applicant contention as above and considered the dictionary meaning of factory.

2.3.11 The term "factory" or "premises" is not defined under the CGST Act. Therefore, based on the judicial precedents it is pertinent to refer to some dictionary meaning of the term 'factory' and 'premises' which are extracted as under: -



Dictionary meaning of the term "Factory"

- (i) Oxford Encyclopedic Dictionary (The new Oxford Illustrated Dictionary) Building or range of buildings with plant for manufacture of goods.
- (ii) Collins internet-linked dictionary of Business - Third edition A business premise used by a firm in the production of goods.
- (iii) The New International Webster's Comprehensive Dictionary of the English Language pl. An establishment devoted to the manufacture of something, including the building or buildings and machinery necessary to such manufacture; a manufactory.

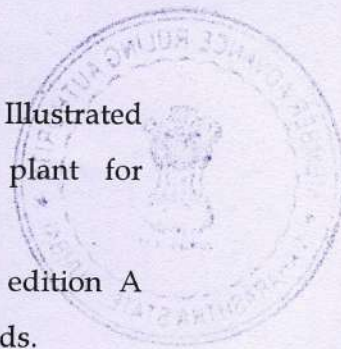
iv. Cambridge International Dictionary of English

A building or set of building where large amounts of goods are made using machines.

Dictionary meaning of terms 'premises' -

- (i) Illustrated Oxford Dictionary

2. (in pl.) a House, building, with grounds and appurtenances.



(ii) The New International Webster's Comprehensive Dictionary of the English Language

4. pl. A distinct portion of real estate; land or lands; land with its appurtenances, as buildings:

(iii) The Chambers Dictionary

(in pl) the aforesaid (property; law); hence, a building and its adjuncts, esp. a public house or place of business;

(iv) Black's Law Dictionary, V Edition

Premises.

In estate and property. Land and tenements; an estate, including land and buildings thereon; the subject-matter of the conveyance. F.F. Proctor Troy Properties Co. v. Dugan Store, 191 App.Div.685, 181 NYS 786. The area of land surrounding a house, and actually or by legal construction forming one inclosure with it. A distinct and definite locality and may mean a room, especially building or other definite area, or a distinct portion of real estate. Land and its appurtenances.

(v) Cambridge International Dictionary of English

(in pl) the land and building owned by someone, esp. by a company or organization.

(vi) The American Heritage Dictionary of English Language, III Edition

4. premises. a. Land and the building on it. b. A building or a part of building on it.

(vii) Wharton's Law Lexicon, 1976 Reprint Ed

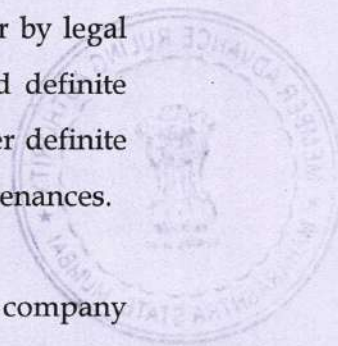
'premises' is often used as meaning 'land or houses'.

(viii) Cochran's Law Lexicon, IV Edition

'Premises' means 'houses or lands'.

(ix) Earl Jowitt, Dictionary of English Law

'Premises...from this use of the word, 'premises' has gradually acquired popular sense of land or buildings. Originally, it was only used in this sense by laymen, and it was never so used in well- drawn instruments, but it is now frequently found in instruments and in Acts



of Parliament as meaning land or houses, e.g., the Public Health Act, 1875. Sec. 4, where 'premises' includes measures, buildings, lands, easements, tenements and hereditaments, of any tenure...

(x) Ballentine, J.A., Law Dictionary with Pronunciation, II Edition

'Premises' - as applied to land, Webster's New International Dictionary defines the word as follows: The property conveyed in a deed; hence, in general, a piece of land or real estate; sometimes, especially in fire insurance papers, a building or buildings on land; the premises insured.

2.3.12 On perusal of the aforesaid dictionary meanings, a factory would mean any building or other place where goods are manufactured with machines. A building is generally considered as a permanent enclosed structure with roof and walls constructed over a plot of land. Further, the perusal of the dictionary meaning of the term "premises" shows that premises means land, house or building and any land surrounding such house or building.

2.3.13 Therefore, a conjoint reading of the term "factory" and "premises" makes it abundantly clear that the phrase 'factory premises' used in clause (iii) of explanation to Section 17(5) can only mean a factory building located on land. The said phrase has to be strictly interpreted by giving it the general meaning and cannot be stretched to cover FSRU, which is a vessel capable of navigating in oceanic waters.

2.3.14 The applicant places reliance on the decision of Tribunal in case of Sri Chaitanya Educational Committee Vs. C.C., C. E. & S.T., Guntur reported at 2016 (41) S.T.R. 241 (Tri. - Bang.). In the said case, while interpreting the definition of Commercial Training or Coaching Centre" under Section 65(27) of Finance Act, 1994, the Tribunal held that the exclusion clause of a definition must be strictly interpreted and the exclusion clause cannot be stretched to give a wider meaning. The relevant portion of the said decision is extracted as under-



"80. The definition of "Commercial Training or Coaching Centre" have both inclusive and exclusive part, i.e., it may include certain things and exclude others. The word "any", e.g., institute or establishment providing Commercial Training or Coaching in the main part of the definition, is a word having very wide meaning. It is noted that the definition also categorically includes "coaching or tutorial classes". The word "includes" in the definition makes it clear that the intention was to make it more extensive. In this perspective, the exclusion part of the definition suggests a very limited purpose to "pre-school coaching and training centre" and any institute or establishment, which issues any certificate or diploma recognized by law. The "coaching or tutorial classes" mentioned in the inclusive part of the definition and it cannot be covered in the exclusive portion of the definition. While interpreting the definition of "Commercial Training or Coaching Centre", the exclusion part must be strictly construed, what is being included in the definition cannot be excluded, unless it is specifically mentioned. In the present case, according to the appellant, they were offering coaching classes to the students of intermediate standard of their colleges and other colleges for appearing joint entrance examination of IIT, JEE, etc. In my considered view, when "coaching classes" have categorically included in the definition, then, it cannot be excluded by stretching the meaning of exclusion clause of the definition."

... emphasis supplied

2.3.15 In the present case, the applicant has a regasification unit (FSRU) which is a floating structure in water. Therefore, the applicant submits that the FSRU cannot be treated as a factory premises for the purpose of exclusion clause in the explanation to section 17. Accordingly, the Tie-in Pipeline will not amount to a 'pipeline laid outside factory premises' and hence ITC should be eligible.

2.3.16 Further, the applicant submits that while construing the aforesaid explanation to Section 17(5), Rule of Strict Interpretation should be applied. The applicant submits that the one of the principle objectives of implementation of the CGST Act was to allow seamless flow of Tax-credit to an assessee at each level of value addition and to avoid to blockage of the credit chain. Hence, the Rule of strict construction of statute would apply with great force to the GST legislation, especially to a provision which restricts the availability of ITC in the hands of the supplier.

2.3.17 The applicant submits that it is a settled law that a taxing statute has to be strictly construed and no additional meaning shall be given to the plain wordings used by the legislation. Reliance is placed on the decision of



Supreme Court in case of Sales Tax Commissioner v. Modi Sugar Mills reported at AIR 1961 SC 1047 wherein the Supreme court observed as under-

"In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions'. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed it Cannot imply anything which is not expressed it cannot import provisions in the statutes so as to supply any assumed deficiency."

2.3.18 Similar view was given in the decision of Supreme Court in case of A.V.

Fernandez v. State of Kerala reported at AIR 1957 SC 657. The relevant portion of the said judgment is extracted as under-

"....It is no doubt true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter..."

2.3.19 Thus, the applicant submits that the exclusion clause 'pipelines laid outside the factory premises' has to be strictly interpreted. The aforesaid exclusion clause presupposes that there should be a 'factory premises', and in order to be excluded from the definition of plant and machinery, the pipeline should be laid outside such 'factory premises'.

2.3.20 The contrapositive of 'pipelines laid outside factory premises' is not that only pipelines laid inside a factory would be covered under 'plant and machinery' and eligible for availing ITC. The exclusion provided to 'pipelines laid outside factory' only means that if there is a factory premises, then the pipelines laid outside such factory premises would not be a 'plant and machinery'. In case, where there is no factory premises, the exclusion clause (iii) of Explanation to Section 17(5) would not come into play, and in that case the pipeline would be covered under 'plant and machinery'.



2.3.21 Further, the applicant submit that an exclusion clause of a definition can only exclude something which is already covered by the main body of the provision. Therefore, the fact that 'pipelines laid outside factory premises' is excluded from the definition of "plant and machinery" given under explanation to Section 17(5), would itself mean that such pipelines would be otherwise covered under 'apparatus', 'equipment', or 'machinery' and hence qualify as 'plant and machinery' under explanation to Section 17(5).

2.3.22 In this regard, reliance is placed on the decision of Commissioner of Sales Tax, Bombay Vs. Ravi Trading Company reported at 2018 (9) G.S.T.L. 250 (Bom.). The relevant portion of the said decision is extracted as under -

"14. The aforesaid definition of "sale price" is capable of same interpretation of the expression "sale price" considered by the Apex Court in the judgment in Hindustan Sugar Mill's case, cited supra. The first part says that 'sale price' means the amount of valuable consideration paid or payable to a dealer for any sale made and the only relevant question to be asked in respect of it is, what is the amount payable by the purchaser to the dealer as consideration for sale and not as to what is the net consideration retainable by the dealer. The latter part of the definition of 'sale price' in the present case also contains a clause of exclusion of the amount of the cost of insurance for transit or of installation when such cost is separately charged. It will, therefore, have to be held that the exclusion clause does not operate as an exception to the first part of the definition and it merely enact an exclusion out of the inclusion clause and takes out something which would otherwise be within the inclusive clause. It has to be held that the exclusion clause can be availed of by the assessee only if the State seeks to rely on the inclusive clause for the purposes of bringing the particular amount within the definition of "sale price".

emphasis supplied

2.3.23 Further reliance is also placed on the decision of Supreme Court in case of Sardar Gurmej Singh Vs. Sardar Partap Singh Kairon reported at AIR 1960 (SC) 122 wherein the Supreme court observed as under-

"9. To accept this argument is to impute to the Legislature want of precision. The words "revenue officers", in whatever sense they are used, cannot obviously comprehend officers who are not revenue officers, and in that situation there is no necessity to exclude such officers from the group of revenue officers. The Legislative device of exclusion is adopted only to



exclude a part from the whole, which, but for the exclusion, continues to be part of it.

emphasis supplied

2.3.24 Hence, such Tie-in Pipeline will qualify as "plant and machinery" and the applicant will be eligible to avail input tax credit on the goods or services used in the construction of Tie-in Pipeline.

While the above submissions are in the context of whether the pipeline falls in the ambit of plant and machinery in terms of section 17(5) (c) of CGST Act and is not barred by the exclusion in terms of the explanation, the below submissions are in the context of the functionality test as laid down by the Supreme Court in case of Safari Retreats in terms of section 17(5) (d) of CGST Act.

Even though the impact of the above judgement seems to be negated by the proposed retrospective amendment to section 17(5)(d) of CGST Act wherein the term "plant or machinery" is to be replaced by the term "plant and machinery", we understand that it is still a proposal and not a law as on the date of making the additional submissions and personal hearing. Accordingly, we request your good self to decide the matter on merits of the case and the functionality test as laid down by the Supreme Court. Without prejudice to the above wherein the aspect of plant and machinery was discussed in terms of section 17(5) (c) of CGST Act, we are discussing below the application of functionality test in light of the guidance given by Supreme Court in terms of section 17(5)(d) of CGST Act.

2.4 Applicability of functionality test in light of the guidance laid down by the Hon'ble Supreme Court in the case of Safari Retreats judgement.

2.4.1 While we have commented upon the Tie-in Pipeline to be in the nature of plant and machinery, it is prudent to evaluate whether the same fits into the category of plant or machinery as mentioned under section 17(5)(d) of CGST Act.

2.4.2 As discussed above, the term plant or machinery is not defined under CGST Act, accordingly reference is warranted to the dictionary meaning of such terms. The same has been upheld by the Hon'ble Supreme Court

in case of Safari Retreats [2024 INSC 756]. Refer to para 41 of the said judgement below:

41. It is also necessary to bear in mind the philosophy of the GST regime, which is discussed in the case of Mohit Minerals. This Court held that the philosophy of the GST is to incorporate a consumption and destination-based test. The emphasis is on taxing supplies of goods and services. If we apply the well-settled principles on the interpretation of taxing statutes, as discussed in the earlier part of this judgment, there is no scope to give any meaning to clause (c) of Section 17(5) other than its plain and natural meaning. The expression "plant and machinery" has been specifically defined in the explanation of Section 17. Works contract service has been defined under the CGST Act. We cannot add anything to clause (c) or subtract anything from clause (c). ITC is a creation of legislature. Therefore, it can exclude specific categories of goods or services from ITC. Exclusion of the category of works contracts clause (c) will not, per se,, defeat the object of the CGST Act.

2.4.3 Given the above, it can be inferred that the explanation provided to 'plant and machinery' shall be the only meaning assigned to the term and the same shall be only applicable to clause (c) of Section 17(5) of the CGST Act.

2.4.4 Further, in para 46 of the judgement, the Hon'ble Supreme Court held that "the very fact that the expression immovable property other than "plant or machinery" is used shows that there could be a plant that is an immovable property. As the word 'plant' has not been defined under the CGST Act or the rules framed thereunder, its ordinary meaning in commercial terms will have to be attached to it."

2.4.5 In light of the above, the Supreme Court has recognized that the phrase 'plant or machinery' has not been defined under the CGST Act, 2017 and accordingly, the meaning has to be borrowed. Further, the Hon'ble Supreme Court in clause 1 of para 25 of the judgement has held as follows:

"When a word used in a taxing statute is to be construed and has not been specifically defined, it should not be interpreted in accordance with its definition in another statute that does not deal with a cognate subject. It should be understood in its commercial sense. Unless defined in the statute itself, the words and expressions in a taxing statute have to be construed in the sense in which the persons dealing with them understand, that is, as per the trade understanding, commercial and technical practice and usage."

2.4.6 In general parlance, the term plant means:

- (i) the Merriam-Webster dictionary defines 'plant' as follows:
 - a. the land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or an industrial business.
 - b. a factory or workshop for the manufacture of a particular product.
 - c. the total facilities available for production or service.
 - d. the buildings and other physical equipment of an institution.
- (ii) Further, the Britannica dictionary, defines 'plant' to include the following:
 - a. a building or factory where something is made
 - b. the land, buildings, and equipment of an organization

2.4.7 Based on the above definitions, we wish to highlight that the dictionary meaning to the term 'plant' defines 'plant' to include land and building provided it is used for carrying out trade.

2.4.8 Furthermore, in para 52 of the judgement, the Supreme Court has held that whether a building is a 'plant' or not, is a question of fact to be determined based on the functionality test. If it is found based on facts, that the building has been so planned and constructed as to serve the assessee's special technical requirements, it will qualify to be treated as a 'plant'. Further the court held that to give a plain interpretation to clause (d) of Section 17 (5), the word 'plant' will have to be interpreted by taking recourse to the functionality test. In order to ascertain whether the building qualifies as a 'plant', the Hon'ble Supreme Court while giving the aforementioned guidance, remanded the matter to this extent to the High Court as the same is a factual question.

2.4.9 The Hon'ble Supreme Court has specifically laid down the recourse of the functionality test to determine whether the building is constructed for special technical requirement of the assessee. In this regard, the applicant has highlighted below the specific functions of the pipeline constructed which serves to the special technical requirement of the applicant.



- **Function 1: Serves as an integral part of the FSRU:** The applicant has constructed the Tie-in Pipeline to induct the regasified gas into the cross-country pipeline/National Grid in order to be supplied to the customers. Given the nature of the high-pressure natural gas, pipeline is the only technically viable and safe method of supply. In the absence of the Tie-in Pipelines, the applicant would not be able to deliver the LNG in the form and manner which is consumable, useable and saleable. Hence, the pipelines serve as an integral part of the FSRU unit as the provision of the gas to the nearest practical delivery point i.e., the National Grid is an integral and essential part of the economic activity being carried out by the applicant.
- **Function 2: Specialized construction of Tie-in-Pipeline:** It is critical to note that the pipeline in question is not a normal pipeline which is installed in a day or two. Laying of natural gas pipeline is a highly sophisticated activity and requires multiple regulatory approvals apart from the technical feasibility studies of land, soil, water, air, etc. of the area in which the pipeline is constructed. Such pipelines require gas pressure (approx. 110 barg) from sending conduit should be higher than the receiving conduit (as Cross-country pipelines of GAIL typically have gas at 100 barg); else the gas instead of going to other conduit will come in the sending conduit; pipeline is the only means suited to sustain and manage this high pressure. As such the pipeline is constructed as per the special technical requirements. The same is also supported by the kind of equipment installed along with the pipeline such as SCADA systems, SV stations, Pig launcher, pressure valves/regulators, etc. Refer to the detailed list in Para C.5 above and the sample agreements as per Appendix 4.
- **Function 3: Towards ensuring mandatory compliance with laws and regulations:**
A Tie-in Pipeline is necessary for the applicant to run its business in compliance with laws and regulations viz. Petroleum and Minerals



Pipelines Act, PNGRB Act and industry standards like Oil Industry Safety Directorate (OISD) rules, Petroleum and Explosives Safety Organization (PESO) standards. The said laws presuppose that pipelines are the only means for transport of high-pressure gas over any distance. As a result, the applicant has constructed the pipeline for supply of the high-pressure gas which would be unsafe if transported otherwise. PNGRB vide its letter dated 18th May 2015, has authorized H-Energy Gateway Private Limited currently name changed to Western Concessions Private Limited under Regulation 21(1)(d) (i) of the PNGRB (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008 to lay the 60 km Tie-in Pipeline connectivity from Jaigarh LNG terminal to Dabhol.

2.4.10 In light of the above-mentioned functions, the pipelines form an inseparable and integral component for the activity being carried out by the applicant and without the pipeline, the applicant cannot carry on its business activities and hence the pipelines serves to the special technical requirement of the applicant in delivering the gas to the customers.

2.4.11 The Learned Tribunal in Reliance Gas Transportation Infrastructure Ltd. Versus C.S.T., Mumbai-II 2016 (45) S.T.R. 286 (Tri. - Mumbai) has also affirmed this position in the context of the cenvat credit eligibility under the CENVAT Credit Rules, 2004 as below:

"The main limb of the definition of input service provides qua a service provider stipulates that credit would be admissible in respect of any service used by a provider of output service for providing an output service. We are concerned here with credit of service that has been used for laying a pipeline, which by itself was used for providing the output service of transportation of gas through pipeline. There cannot be a more direct immediate nexus, between availing the input services and rendition of output service. It is beyond our comprehension as to how the appellant could have rendered its output service without availing of the services of the pipeline laying contractors. The said services in our view are clearly eligible to credit by virtue of the main limb of the definition of input services."



2.4.12 The Hon'ble Supreme Court's decision in CIT v. Taj Mahal Hotel [1971] 82 ITR 44, where sanitary and pipeline fittings in a hotel were considered "plant" due to their essential role in the hotel business. In para 6 of the said ruling, the Court had held that:

"6. Now it is well settled that where the definition of a word has not been given, it must be construed in its popular sense if it is a word of everyday use. Popular sense means "that sense which people conversant with the subject-matter with which the statute is dealing, would attribute to it". In the present case, Section 10(5) enlarges the definition of the word "plant" by including in it the words which have already been mentioned before. The very fact that even books have been included shows that the meaning intended to be given to "plant" is wide. The word "includes" is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, those words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include. The word "include" is also susceptible of other constructions which it is unnecessary to go into."

2.4.13 Further, the Hon'ble Supreme Court in the case of CIT v. Victory Aqua Farm Ltd. [2015] 379 ITR 335 (SC) rests the case on 'functional test' of the ponds wherein it was held that as the ponds were specially designed for rearing/breeding of the prawns, they have to be treated as tools of the business of the assessee and were considered as "plant".

2.4.14 Also, the Hon'ble Supreme Court's decision in CIT v. Karnataka Power Corporation [2001] 247 ITR 268 held that where the building has been so planned and constructed as to serve an assessee's special technical requirements, it will qualify to be treated as a "plant" for the purposes of investment allowance. Accordingly, the assessee's generating station building which is an integral part of its generating system was considered as "plant".

The above decisions has also been referred in case of Safari Retreats.

2.4.15 Accordingly, the pipeline constructed would fall under the ambit of plant and the restriction placed under Section 17(5)(d) on goods and services used for construction should not be applicable in light of the functionality test as



captured above. The applicant would be eligible for input tax credit on such construction of Tie-in-Pipeline.

Summary of the submissions as enumerated above for ease of reference:-

- The applicants are eligible to avail ITC of GST paid on goods and services used for construction of Tie-in Pipeline, for delivery of re-gasified LNG from FSRU to the National Grid.
- The Tie-in Pipeline is an apparatus, equipment or machinery used for making outward supply of regasification services and is an integral part of the overall facility. Without the pipeline in place the supply would not be completed and the business would not be feasible. Further, the pipeline has multiple components attached to it which makes it a comprehensive plant and machinery for operations.
- The exclusion clause in the Explanation to Section 17 i.e. "Pipelines laid outside the factory premises" is not applicable in present case as the Floating Storage Regasification Unit (FSRU) is an oceanic vessel capable of navigating in the water and should not qualify as factory. Factory in general terms is a structure on land with buildings and machines in which a new product is manufactured.
- In light of the functionality test as enumerated above, the pipeline is an integral part of the overall setup and is a specialized construction with high degree of technical requirements in terms of the permission accorded to the Company by regulatory authorities. As the pipeline passes the functionality test as laid down by the Supreme Court, accordingly, the same fits to qualify as a plant in terms of section 17(5)(d) of CGST Act.



PRAYER

1. We request your good self to consider the case on merits and allow the ITC on goods and services used for construction of Tie-in-pipeline.
2. We request the authority to consider our plea of non-applicability of exclusion clause in the Explanation to Section 17 i.e. "Pipelines laid outside the factory premises" in the present case.

3. We request the authority to consider our plea of qualification of Tie-in-pipeline as plant and machinery in terms of section 17(5) (c) of CGST Act and allow the ITC.
4. We request the authority to consider the applicability of functionality test as laid down by the Supreme Court in case of Safari Retreats in the present facts of the case and accordingly allow our plea of Tie-in-pipeline to be a plant in terms of section 17(5) (d) of CGST Act.

3. CONTENTION - AS PER THE JURISDICTIONAL OFFICER DATED 22.01.2025.

The Jurisdictional officer submitted that they stand by their submissions made of at the time of AAR in which, they had submitted that input tax credit on pipelines would not be available in view of the provisions in section 17(5)(c) and 17(5)(d).

4. HEARING

Applicant has submitted a letter regarding intimation of matter remanded back for fresh consideration along with order passed by Hon'ble High Court of Bombay on 21/10/2024 and made additional submission on 26.02.2025.

In this case, Advance Ruling Authority had passed order on 22/02/2019. Being aggrieved, applicant had filed appeal with the appellate authority for advance ruling and AAAR order had passed on 07/12/2019 confirmed the order passed by the Advance Ruling Authority. Then, applicant filed Writ Petition with Hon'ble High Court of Bombay (No. 522 of 2020). Hon'ble High Court of Bombay has passed the order on 21/10/2024 and set-aside the order dated 22/02/2019 made by authority for advance ruling and the order dated 07/12/2019 made by the appellate authority and remanded the matter to the Advance Ruling Authority for a fresh ruling in the light of observations made by the Hon'ble Supreme Court in its judgment and order dt. 03/10/2024 in the case M/s. Safari Retreat. Hon'ble High Court also granted the petitioner liberty to submit additional material to the advance ruling authority within 4 weeks from the date of order and AAR has to decide the matter within 4 months after filing the additional material. Then, final hearing was scheduled on 13.02.2025. Thereafter, Applicant has requested for adjournment via email dated 12.02.2025.



So, the Case was adjourned accordingly. Final hearing was again scheduled on 20.02.2025. The Authorized representative of the applicant, Mr. Shivrajan, Advocate and Ms. Bharati Juman, Superintendent, CGST for the department were present.

Mr. Shivrajan, (Advocate) after submitting trail of various orders passed in his case, he requested for two weeks' time for additional submissions. It was brought to his notice that, he was required to make additional submissions within 4 weeks from the date of Hon'ble High Court order dated 21/10/2024. It was further pointed to him that; the matter was already scheduled for final e-hearing on 13/02/2025. But, as per the applicant's request, the final hearing was adjourned for one week and scheduled on 27.02.2025.

Final E-Hearing dated 27.02.2025

Final hearing was held on 27.02.2025. Mr. Shivrajan, Authorized Representative of the applicant, appeared and made oral and written submissions. Jurisdictional Officer, Ms. Bharti Juman, Superintendent of CGST appeared. We heard both the sides.

5. OBSERVATIONS AND FINDINGS

5.1 We find that this case has been remanded back to the Advance Ruling Authority by the Hon'ble Bombay High Court in the light of the ruling and observations made by the Hon'ble Supreme Court in the case of Chief Commissioner of Central Goods and Service Tax & Ors. Vs. M/s. Safari Retreats Private Ltd. & Ors. (Civil Appeal No.2948 o 2023) with a direction to consider the fresh submissions made by the applicant in the light of the decision of the Hon'ble Supreme Court. The Hon'ble Bombay High Court has also directed to examine the issue on the basis of the functionality test espoused by the Hon'ble Supreme Court to consider whether the pipelines laid down by the applicant can be treated as a plant or machinery as the definition provided in explanation under Section 17 would not be applicable to clause (d) of Section 17 (5). The applicant has made further submissions vide their letter dated 26.2.2025. We have gone through the said submissions.

In the submission made by the applicant, it is argued that Tie-in Pipeline connecting FSRU to the National Grid is embedded in the earth and qualifies to be immovable property. It is further submitted that, this pipeline also qualifies to be 'plant and machinery'. It is further argued that, as FSRU is not 'factory premises', the said pipeline cannot be said to be pipeline laid outside the factory premises. Applicant has taken view that FSRU is a floating structure in water and hence cannot be treated as factory.

5.2 Clause (c) and (d) of sub-section (5) of Section 17 of CGST Act, 2017 is produced as under:

"17. (5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (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;

(e).....

(f).....

(6)....

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.*

The applicant has argued that though the pipeline is immovable, it is plant and machinery and is not covered by clause (iii) of explanation to section 17, 'pipelines laid outside the factory premises'. Hence, they will not



be hindered by Section 17(5) (c) or 17(5) (d) for availing input tax credit (ITC) in respect of construction of said pipeline.

5.3 The issue is whether the applicant is eligible to avail ITC on the construction of 'Tie- in pipelines' laid down by them to supply gas from the FSRU to the National Grid. In this regard, two issues need to be addressed.

1. Clause (d) of section 17(5) mentions 'plant or machinery'. Hence, based on the functionality test, if the said 'pipeline' falls under 'plant or machinery', then the explanation to section 17 which defines expression 'plant and machinery' would not be applicable.
2. Whether, the said pipeline gets covered by expression 'pipelines laid outside the factory premises'.

5.4 In regard to the provisions of Section 17(5), we find that the Government, vide clause 119 of the Finance Bill, 2025 has proposed retrospective amendment to the clause (d) of the Section 17(5) of the CGST Act 2017. The said clause 119 reads as under: -

119. In section 17 of the Central Goods and Services Tax Act, in sub-section (5), in clause (d), --

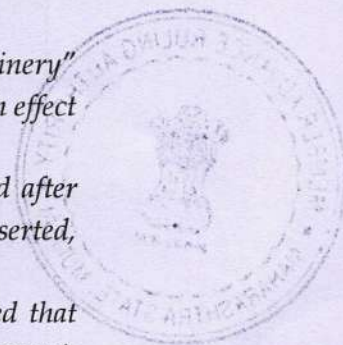
(i) for the words "plant or machinery" the words "plant and machinery" shall be substituted and shall be deemed to have been substituted with effect from 1st day of July, 2017.

ii) the Explanation shall be numbered as Explanation 1 thereof and after Explanation 1 as so numbered, the following Explanation shall be inserted, namely: --

'Explanation 2. For the purposes of clause (d), it is hereby clarified that notwithstanding anything to the contrary, contained in any judgement, decree or order of any court, tribunal or other authority, any reference to "plant or machinery" shall be construed and shall always be deemed to have been construed as a reference to "plant and machinery".'

Notes on clauses to the Bill in respect of Clause 119 reads as under: -

Clause 119 of the Bill seeks to amend clause (d) of sub section (5) of Section 17 of the Central Goods and Services Act, so as to substitute the expression "Plant or Machinery" with the expression "Plant and Machinery" to remove any ambiguity in interpretation for the purpose of availment of input tax credit in such cases. It further seeks to insert an explanation to clarify that the said amendment is made notwithstanding anything to the contrary contained in



any judgement, decree or order of any Court or any other authority. This amendment shall take effect retrospectively from 1st day of July, 2017.

Now the finance Act 2025 (no 7 of 2025) received the assent of the President on the 29th March, 2025 and is published in the Gazette of India dated 29th March 2025. In this Gazette, Chapter IV, Indirect Taxes, Central Goods & Services Tax, Section 124 is as under: -

124. Section 17 of the Central Goods and Services Tax Act, in sub-section (5), in clause (d), --

(i) for the words "plant or machinery" the words "plant and machinery" shall be substituted and shall be deemed to have been substituted with effect from 1st day of July, 2017.

ii) the Explanation shall be numbered as Explanation 1 thereof and after Explanation 1 as so numbered, the following Explanation shall be inserted, namely: --

'Explanation 2. For the purposes of clause (d), it is hereby clarified that notwithstanding anything to the contrary, contained in any judgement, decree or order of any court, tribunal or other authority, any reference to "plant or machinery" shall be construed and shall always be deemed to have been construed as a reference to "plant and machinery".

In view of the aforesaid amendment to the provisions of Section 17(5) of the Central Goods and Services Act, 2017, once the aforesaid amendment comes into force, it would become effective retrospectively from 01.07.2017. Then, the decision of the Hon'ble Supreme Court of India in the case of Safari Retreats Pvt. Ltd., & Ors, which was based on the fact that the explanation of the words "Plant and Machinery" provided in the said Section would be applicable to the words "plant and machinery" used in clause (c) of the said section and not to clause (d) of the said section where the words used were "Plant or Machinery", would not be applicable to that extent. It was based on the said position of law that the Hon'ble Supreme Court had rejected the explanation of 'Plant and Machinery' as provided in the statute for deciding what is 'plant or machinery' and espoused the test of functionality to determine whether the Input Tax Credit would be available to the petitioner on the 'plant or machinery' installed by the petitioner. However, after the retrospective amendment to the provisions of clause (d) of the Section 17(5), it is no longer necessary to reject the definition of 'Plant and Machinery'



provided in explanation to Section 17 (5) and to look into the other aspects of functionality to determine whether the pipelines laid down by the applicant outside the factory premises for supply of gas to the customer would qualify as 'plant and machinery' for the purpose of section 17(5) (c) and 17 (5)(d) of the CGST, Act, 2017. The applicant in his additional submission has proceeded to argue that the said pipeline is 'plant and machinery'.

5.5 Now, let's discuss if the said pipelines are covered by the clause 'pipelines laid outside the factory premises' as mentioned in explanation to section 17 regarding 'plant and machinery'.

(1) The Applicant, vide their above submission in the form of compilation of the dictionaries meaning of the term 'premises', has laid stress upon the argument that FSRU, a structure not being located on the land, will not be considered as building, and hence will not come under the meaning of factory as provided under various dictionaries. They have also underlined the meaning of the premises as provided under various dictionaries, highlighting that premises will cover the portion of land only, which are in nature of appurtenances to building, real estate etc. The applicant also argued, that the definition contained in Factories Act, 1948 should not be relied upon but only the dictionary meanings should be taken into consideration to define the term 'factory'. We do not agree with this contention of the applicant. When there is no definition of factory available in the GST Act, a definition given in some other Act passed by the legislature can always be relied upon. Accordingly, we are of the considered view that Section 2(m) of The Factories Act, 1948 which defines the term 'factory' should be considered which is reproduced as under: -

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

(i) Whereon then 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, of is ordinary so carried on, or



(ii) Whereon twenty 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 without the aid or power, or is ordinarily so carried on;

But does not include a mine subject to the operation of the Mines Act 1952 (35 of 1952)] or a mobile unit belonging to the armed forces of the Union, a railway runc shed or a hotel, restaurant or eating place"

It is clear from the above definition that a factory means any premises having workers who are involved in a manufacturing process. In the subject case the FSRU is a place where there are workers who are working and the process that takes place there, is one of conversion of LNG to gaseous form.

From the facts of the case, we find that the re-gasification of LNG used to take place on land earlier and even at present in many places. Now, to avoid costs of transportation of gas through pipelines over long distances under the sea, the gas is liquefied and transported in ships on the seas and when it reaches the destination port, the LNG is re-gasified on the ship itself and transported through pipelines to the users on the land. The production or manufacturing process may not be taking place on land but it is taking place on the ship (FSRU) and the same has to be considered as a factory in the subject case, as the process leads to production of natural gas which is then distributed by the grid for ultimate use of the consumer.

Therefore, the applicant's conclusion that there should be a 'building' to consider something as factory is not at all convincing because it is the production/manufacture of something that makes a factory and not the building. A building will not be called a factory if there is no production or manufacture of something. Merriam Webster defines factory as under:

"Factory" - An establishment devoted to the manufacture of something, including the building or buildings and machinery necessary to such manufacture; a manufactory.



As per the above definition quoted by the applicant himself, it is an establishment devoted to manufacture of something. Here 'production/manufacture' of something by an establishment is the critical aspect of a factory not just the building.

Thus, from the foregoing discussions, it is amply clear that the FSRU, where the re-gasification of LNG is carried out for delivery to the National Grid through the Tie-in pipeline proposed to be connecting the FSRU to the National Grid, can be rightly considered as factory premises.

- (2) The applicant also contends that the pipeline should be considered as the one which is 'not outside the factory' in as much as FRSU is not a factory. But as explained in the foregoing discussion we find that FRSU is a factory, and hence the pipeline laid for transporting re-gasified LNG from FRSU squarely falls within the meaning of a 'pipelines laid outside the factory premises'.

To argue further, a pipeline cannot exist in vacuum without a factory. The expression "pipelines outside the factory" signifies that the pipeline is to transport some product from the factory to the end user. In the instant case the LNG, re-gasified in the ship, is transported through the pipeline which is outside the factory ship. Hence, we are of the view that the said pipeline is a "pipeline outside the factory premises".

- 5.6 We find that the additional submissions made by the applicant vide their letter dated 26.2.2025 has nothing new to say in the matter. It is merely a repetition of the submissions made by them earlier. The basic function carried out by the pipeline is to transfer the gasified LPG from the FSRU to the National Grid. In order to carry out the said function, the pipelines use various techniques and technology and devices such as isolation valves, check valves, high pressure loading arms, metering system, pressure regulating system, pig launcher, S.V. Station, SCADA Monitoring system etc. However, it is necessary to understand that all these systems and devices are used by most pipelines carrying petroleum and other products and use of these systems and devices does not in any manner alter the fact that the basic structure is the



pipeline laid outside their factory premises and all these devices are part of the said pipeline system. The presence of such system may entitle them to fit in 'apparatus, equipment and machinery' but does not take them out of phrase 'pipelines laid outside the factory premises'. Hence, they would not be called as 'plant and machinery' for the purposes of section 17(5)(c) and 17(5)(d). The case laws cited by the applicant are not relevant to the facts of the case. The case of Reliance Gas Transportation Infrastructure Ltd., VS. CST Mumbai II was not in connection with the input tax credit under GST Act, 2017, and the definition of input services are not para-materia in both the laws. The case of CIT Vs. Taj Mahal Hotel has been given when there was no definition in the Income Tax law and therefore the court had to resort to the meaning of the word plant in the popular sense. That is not the case here as the CGST Act, 2017 provides precise definition of 'plant and machinery' for the purpose of availment of ITC.



Once it has been established that the premises of the FSRU can be justly considered as factory premises, then there is no doubt that the Tie-in pipeline, to be laid by the Applicant, which will join the FSRU to the National Grid, will be considered as pipeline laid outside the factory premises, and accordingly attract the applicability of the subject exclusion clause i.e. exclusion clause (iii) of the explanation to section 17 of CGST Act, 2017. As a result of this, Applicant will not be entitled to avail the ITC of GST paid on goods and services used for construction of Tie-in pipelines, from the FSRU to the National grid as per the provisions laid out in section 17(5)(c) and 17(5)(d) of the CGST Act, 2017.

6. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 94/18-19/2024-25/B- 209 Mumbai, dt. 29.04.2025

For reasons as discussed in the body of the order, the question is answered thus –

Question: - Whether the applicant is eligible to avail ITC of GST paid on goods and services used for construction of Tie-in pipeline, for delivery of re-gasified LNG from FSRU to the National Grid?

Answer: - *Applicant is not entitled to avail the ITC of GST paid on goods and services used for construction of Tie-in Pipelines, from the FSRU to the National grid as per the provision laid out in section 17(5)(c) and 17(5) (d) of the CGST Act, 2017, as amended by the Finance Act 2025.*



[Signature]
D.P. GOJAMGUNDE
(MEMBER)

[Signature]
PRIYA JADHAV
(MEMBER)

Place: Mumbai

DATE - 29.04.2025

Copy to: -

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint commissioner of State Tax, Mahavikas for Website.

Note: -An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai - 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.

