

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

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

Members present are:

1. Thiru Senthilvelavan B., I.R.S Member/ Additional Commissioner,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -34
2. Tmt. T. Padmavathi., Member/ Joint Commissioner (ST)/
Authority for Advance Ruling, Tamil Nadu, Chennai-600 003.

ORDER No. 25/AAR/2021 DATED: 30.07.2021

GSTIN Number, if any / User id		33AAACI5569D1ZR
Legal Name of Applicant		INOX AIR PRODUCTS PVT LTD
Registered Address/Address provided while obtaining user id	66-1A1B2B1B1A1A2, Manali Express Highway, Sathangadu, Tiruvallur, Tamilnadu 600 068	
Details of Application		ARA-01 No. 16/2021/ARA dated 23.04.2021
Concerned Officer		Center: North Commissionerate State: Assistant Commissioner(ST) Manali Assessment Circle.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Manufacturing
B	Description (in Brief)	
Issue/s on which advance ruling required		Admissibility of Input Tax Credit of tax paid or deemed to have paid
Question(s) on which advance ruling is required		Whether INOX would be entitled to avail and utilize ITC of GST Charged by IPL if such transaction is considered to be a supply

Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling,

Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

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

M/s. INOX Air Products Pvt Ltd., 66-1A1B2B1B1A1A2, Manali Express Highway, Sathangadu, Tiruvallur, Tamilnadu 600068 are registered under GST with GSTIN 33AAACI5569D1ZR (hereinafter referred to as INOX or the applicant). The applicant has sought Advance Ruling on:

Whether INOX would be entitled to avail and utilize ITC of GST Charged by IPL if such transaction is considered to be a supply

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

2.1 The applicant has stated that they are engaged in the business of manufacture and supply of industrial & Medical gases, including oxygen (both Industrial & Medical Grade), nitrogen, argon etc (in both liquid and gaseous form).; State Industrial Promotion Corporation of Tamilnadu (hereinafter referred as SIPCOT) had entered into an agreement dated 22.07.1993 with India Pistons Limited(hereinafter referred to as IPL) for lease of an area of land in Hosur for a period of 99 years for the purpose of setting up a piston manufacturing industry.; INOX had approached IPL for transfer of the leasehold rights for the remainder period of 72 years in respect of part of the property for setting up of State-of-the-art medical and industrial gases plant, i.e. Air Separation Unit (ASU) for manufacture and supply of Industrial gases.; INOX and IPL entered into a Memorandum of Understanding for transfer of leasehold rights(MOU) dated 20.11.2020.; SIPCOT vide Order No. P-II/SICH/II/IPL/146/2012 dated 28.12.2020 had accorded its approval for transfer of leasehold rights to INOX. Accordingly, SIPCOT has

amended its original lease agreement vide a modified lease deed on 12.01.2021 in order to lease the part property to INOX. In terms of Clause 2 of MOU, IPL has agreed to transfer the leasehold rights in the part property to INOX for a total consideration of Rs. 15,00,00,000/-.

2.2 INOX has stated that IPL has sought an Advance Ruling on whether the transfer of leasehold rights in the part property amounts to supply and accordingly whether GST would be leviable on the consideration receivable from INOX.; that in the event where the authority rules that the transfer of leasehold rights to INOX is a supply and leviable to GST, they require to understand the admissibility of Input Tax Credit(ITC) of GST chargeable on such supply

2.3 On the interpretation of law, they have referred to Section 16(1), 2(17), 2(62), 2(63), 17(5)(d) of the CGST Act 2017. They have stated that for the purposes of GST laws, it can be construed that ITC of tax charged on any supply of goods or services can be availed qua activities in relation to the business.; they are engaged in the business of manufacture and supply of Industrial gases and in order to undertake manufacturing of gases, they had acquired the leasehold rights and will be setting up an ASU plant on the leased property to manufacture the industrial gases.; After manufacturing of gases through an ASU plant, the gases which are supplied to customers qualifies as taxable outward supply under GST.; As the leasehold rights are acquired for setting-up an ASU for rendering taxable outward supplies, ITC of GST chargeable on transfer of leasehold rights should be eligible in terms of Section 16 of the CGST Act as the same is to be used in the course or furtherance of business; Section 17(5)(d) of the CGST Act provides for restriction on availment of ITC qua the goods and/or services received by a taxable person for construction of an immovable property on his own account including when such goods or services or both are used in the course or furtherance of business; However, the said provision carves out a specific exception for construction of 'Plant and Machinery'. ; test of movability/immovability is immaterial to determine the eligibility of ITC once the items in question qualify as 'Plant and machinery'; As ASU is used for manufacture and supply of industrial gases by them, it qualifies as a 'Plant and Machinery'; ASU once fully constructed, will be capitalized as a 'Plant and machinery' in their Books of Accounts; ASU does not result in construction of any land, building, civil structure and it is also not a telecommunication tower or pipeline, hence do not fall under any of the exclusion category stipulated under the

definition of 'Plant and machinery'; As ASU qualifies as a 'Plant and machinery', GST chargeable, if any, of transfer of leasehold rights is rightly admissible to them as the bar placed under Section 17(5)(d) of the CGST Act do not apply in a case where goods and/or services are procured for construction of a 'Plant and machinery'.

3. Due to the prevailing PANDEMIC situation and in order not to delay the proceedings, the applicant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital media. The applicant consented and the hearing was held on 16.07.2021 virtually. The Authorised representative Shri.Rohit Jain, Advocate appeared for the hearing. He reiterated the submissions made in their application. He further stated that their only question is whether they are eligible for ITC in case the transfer of leasehold rights by M/s. IPL to M/s. INOX is found to be a supply of service. He stated that Section 17(5) of the CGST Act 2017 will not bar them from availing ITC as there is no construction activity involving as immovable property in this case. Pictures of the entire area, plant and machinery, cooling towers, etc were displayed for reference.

4. The applicant is under the administrative control of the Central Jurisdiction. The central jurisdictional authority vide their letter F.No. GEXCOM/TECH/MISC/1303/2021-TECH-O/O Pr. Commr-CGST-Chennai(N) dated 04.06.2021 has submitted that there are no proceedings pending in the case of the applicant.

5. The State jurisdictional authority has not furnished any comments and it is construed that there are no proceedings pending on the issue raised by the applicant.

6. We have carefully examined the statement of facts, supporting documents filed by the Applicant along with application, submissions made at the time of Virtual hearing and the comments of the Jurisdictional Authority. The applicant has proposed to set up a state of art Ultra High Purity Cryogenic Liquid and Medical and Industrial Oxygen Plant and had entered into an agreement with Government of Tamilnadu. INOX had approached IPL who were allotted land by SIPCOT at Hosur(phase-II) and was having leasehold of the land which remained

un-utilized by them to transfer the un-utilised portion of land measuring 5.00 acres for a sum of Rs. 15 Crores for agreeing to grant the leasehold rights in their favour. INOX has stated that IPL had applied seeking ruling as to whether the activity of agreeing to partwith the leasehold right held by them, for a consideration is a supply under GST and in the event of the activity being ruled to be taxable under GST, the applicant requires to understand whether they are eligible to avail and utilize the GST paid to IPL as ITC. The ruling sought is on the following questions:

Whether INOX would be entitled to avail and utilize ITC of GST Charged by IPL if such transaction is considered to be a supply

The question raised as above requires ruling as to whether the applicant is eligible to avail Input Tax Credit of GST Paid on the supply received by them. The question raised is within the ambit of this authority as per Section 95/97(2) of GST Act and therefore the application is admitted.

7.1 From the facts of the case as available before us, it is seen that INOX had approached IPL to partwith the leasehold and facilitate transfer of un-utilized portion of the allocated land to the extent of 5.00 acres, the leasehold of which was held by IPL, for setting up a state of the art Ultra High Purity Cryogenic Liquid Medical and Industrial Oxygen Plant. A Memorandum of Understanding (MOU) has been entered into between IPL and INOX on 20.11.2020 enabling transfer of leasehold rights for the remaining period of lease from IPL to INOX subject to the approval of SIPCOT in respect of the land measuring 5.00 acres. The applicant claims that if the supply made by IPL to them is a taxable supply, they would be eligible to avail the tax paid as Input tax Credit. Their contention are that

- they are setting-up an ASU Plant on the leased property to manufacture the industrial gases which are taxable outward supply under GST;
- ASU once fully constructed, will be capitalized as a 'Plant and machinery' in their books of accounts
- Section 16(1) entitles a registered person to take credit of input tax charged on the supplies received and intended to be used for furtherance of the business
- ASU does not result in construction of any land, building, civil structure and it is also not a telecommunication tower or pipeline, hence it does not fall under the exclusion under Section 17(5)(d) of the CGST Act

7.2 Before proceeding further, the relevant statutory provisions are examined as under:

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

Section 16(1) of CGST Act:

"Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person."

Section 17(5) of CGST Act:

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

(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.

7.3 From the above provisions, it is evident that

- Capital goods are those which are capitalized in the books of accounts and which are intended to be used in the course or furtherance of business;
- Credit of tax paid on goods and services received is eligible as credit when such goods or services are used in the course or furtherance of business;

- Credit of tax paid on goods or services received on own account, for construction of immovable property is available only when such immovable property is a 'Plant and Machinery'
- Plant and Machinery
 - are apparatus, equipment, machinery fixed to earth by foundation or structural support;
 - are that which are used for making outward supply of goods or services;
 - includes such foundation and structural supports;
 - excludes land, building or any other civil structures;

7.4 In the case at hand, it is seen that INOX had paid 'consideration' to IPL, for agreeing to part with their rights in the leasehold held by IPL, on the land required by the applicant. IPL had consented against such consideration and applied for withdrawing the leasehold held by them in favour of the applicant and on approval by SIPCOT, the applicant has entered into a lease agreement with SIPCOT on payment of necessary charges as required and acquired the leasehold rights for the land. Thus, it is evident that the amount paid is towards acquiring their entitlement to take on lease the land required for putting up a State of the art Ultra High Purity Cryogenic Liquid Medical and Industrial Oxygen Plant. The land is acquired in the course of business and by definition 'business' under GST(section 2(17) of the Act), includes services in connection with the commencement of business, therefore the transaction is in the course or furtherance of business. The applicant is a registered person and therefore is entitled to avail credit of the supplies received by them in the course or furtherance of business as per Section 16(1) of the Act. The applicant has stated that as the 'Air Separation Unit(ASU)' which is put up on the land leased is a 'Plant and Machinery', the restriction at Section 17(5)(d) is not applicable in respect of the goods and services used for the construction of such Plant and Machinery.

7.5 Section 17(5) of the Act, starts with the Non-obstante clause, '*Notwithstanding anything contained in sub-section (1) of section 16*', which indicates that the provisions under Section 17(5) prevails over section 16(1) of the Act. From the explanation of 'Plant and Machinery', it is evident that while 'Plant and Machinery' includes foundation and structural supports required to fix apparatus, equipment, machinery on the earth, land building or other civil structures are

specifically excluded. From the pictures shared during the hearing and furnished by them, it is seen that in the leased land, Main Air Compressor & Nitrogen Compressor Shed, Compauder Box, TSA Bed, OM Plant, SMR Unit, Hydrogen Compressor & Back up Quad shed, LNG area, Admin Building, etc which makes a complete manufacturing plant is put up. The service received from IPL is towards facilitating the lease acquisition of the land by the applicant. Therefore, the ASU, even if it qualifies as a 'Plant and Machinery' (we do not discuss whether ASU per se is a 'Plant and Machinery' and refrain extending any conclusion in this context), the 'land' leased is not a 'Plant and Machinery' because of the explicit, specific exclusion provided in the GST Law in the Explanation to 'Plant and Machinery'. The services availed from IPL is in relation to acquiring lease of the land. By the specific exclusion in the definition of 'Plant and Machinery', as land stands excluded from 'Plant and Machinery', the services availed and utilized for acquiring such land on lease is restricted under Section 17(5)(d) of the CGST Act 2017, though the activity is in the course or furtherance of the business of the applicant and the credit of GST if payable on such supply is not eligible as credit to the applicant.

8. In view of the above, we rule as under:

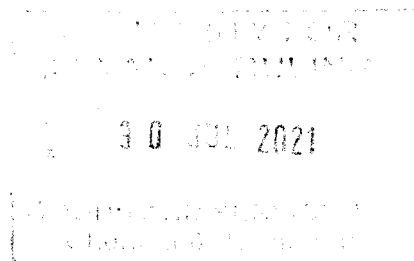
RULING

The applicant is not entitled to avail and utilize ITC of GST charged by IPL as the same is restricted under Section 17(5)(d) of the CGST/TNGST Act 2017, if such transaction is considered to be a supply.

6/4/2024
Smt. T. Padmavathi
(Member SGST)

30/07/24
Shri B. Senthilvelavan
(Member CGST)

To
M/s. Inox Air Products Pvt Ltd //By RPAD//
66-1A1B2B1B1A1A2, Manali Express Highway,
Sathangadu, Tiruvallur,
Tamilnadu- 600 068



Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.

2. The Principal Secretary/Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.

Copy to:

3. The Commissioner of GST & Central Excise,
Chennai North Commissionerate,
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4. The Assistant Commissioner (ST),
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5. Master File/ Spare-2

