

**THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX**

**(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)**

**ORDER NO. MAH/AAAR/SS-RJ/09/2019-20 Date- 07.10.2019**

**BEFORE THE BENCH OF**

**(1) Smt. Sungita Sharma, MEMBER**

**(2) Shri Rajiv Jalota, MEMBER**

GSTIN Number	27AACCH4231P1ZD
Legal Name of Appellant	Western Concessions Private Limited
Registered Address	12th Floor, Knowledge Park, Hiranandani Business Park, Powai, Mumbai - 400 076.
Details of appeal	Appeal No. MAH/GST-AAAR-09/2019-20 dated 10.07.2019 against Advance Ruling No. GST-ARA- 94/2018-19/B-22 dated 22.02.2019
Jurisdictional Officer/Respondent	Asstt. Commissioner of CGST, Division-III, Navi Mumbai

**PROCEEDINGS**

**(Under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)**

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

The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by Western Concessions Private Limited (herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA-94/2018-19/B-22 dated 22.02.2019.





### Brief Facts of the Case

- A. M/s. Western Concessions Private Limited (hereinafter referred to as “the appellants”) having its corporate head office at 12th Floor, Knowledge Park, Hiranandani Business Park, Powai, Mumbai, is, *inter-alia*, engaged in regasification of Liquefied Natural Gas and delivering the same to customers.
- B. The appellants have obtained registration and holding valid registration certificate issued under Central Goods and Services Tax Act, 2017 (“CGST Act”).
- C. The appellants are setting up a Liquefied Natural Gas (LNG) re-gasification project at Jaigarh port in the state of Maharashtra (hereinafter referred to as “LNG Terminal”).
- D. The LNG Terminal consists of a Floating Storage Re-gasification Unit (‘FSRU’) with 4 MMTPA re-gasification 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.
- E. 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.
- F. Therefore, the appellants is constructing a gas pipeline for delivering the high pressure natural gas from the FSRU to the National Grid.
- G. 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 re-gasify 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"**).

H. The re-gasified LNG is of no use unless the appellants are 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.

I. 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.

J. 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 in the appeal paper-book. Further, the approval obtained by the appellants from various authorities such as Ministry of Environment and Forest, Maharashtra Pollution Control Board, Petroleum and Natural Gas Regulatory Board, etc. are collectively enclosed.

K. 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

L. 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**

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

N. The appellants' key activity is re-gasification 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 appellants.

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

#### **Application for Advance Ruling**

P. The appellants filed an application for Advance Ruling before the Learned Authority for Advance Ruling, Maharashtra (hereinafter referred to as "Ld. AAR") for obtaining an Advance Ruling on the issue as to whether the appellants would be eligible 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.





**Advance Ruling passed by Ld. AAR, Maharashtra**

Q. The Ld. AAR, considered the application filed by the appellants and passed Advance Ruling No. GST-AAR-94/2018-19/B-22 dated 22.2.2019 denying the ITC of GST paid on goods and services used for construction of the tie-in pipeline and held as follows –

- i. Since the term 'factory' is not defined under the CGST Act, a definition given in another statute can always be relied upon. As per the Ld. AAR, the FSRU is covered under the definition of 'factory' under Section of 2(m) of the Factories Act, 1948.
- ii. According to the Ld. AAR, the existence of land or building is not necessary for anything to qualify as 'factory', but it is the manufacturing or production of something that makes a 'factory'.
- iii. The Ld. AAR has relied on the decision of **Porritts and Spencer (Asia) Ltd. Vs. State of Haryana [1979 AIR 300]** to state that the meaning of 'factory' should not be restricted only to a building on land, but would also include the FSRU vessel where the activity of re-gasification of LNG takes place in the present case.
- iv. The various equipment fitted to tie-in pipeline constructed by appellants would not make it an 'apparatus', 'equipment' or 'machinery', as every pipeline would be fitted with such equipment. Hence, it would not qualify as 'plant and machinery' under Explanation to Section 17(5) of the CGST Act and thus the ITC





in respect of goods and services used for construction of pipeline would not be available to the appellants.

- R. Aggrieved by the above ruling passed by the Ld. AAR, the appellants are filing the present appeal, inter alia, on the following grounds which are without prejudice to each other.

#### **GROUND OF APPEAL**

1. **The tie-in pipeline constructed by the appellants would qualify as 'plant and machinery'. Further, since the pipeline is not laid outside a 'factory premises', it would not be covered under the exclusion clause of explanation to section 17(5). Thus, the restriction provided under Section 17(5)(c) and 17(5)(d) would not be attracted.**

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.

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.

1.3. Clause (c) of section 17(5) restricts availability of ITC in respect of works contract service used for construction of immovable property, except in case where it is an input service for further supply of works contract service. Clause (d) of Section 17(5) bars ITC in respect of goods or service used for construction of immovable property on assessee's own account.





1.4. However, the above restriction on availment of input tax credit will not apply if the immovable property constructed is plant and machinery. 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. 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**





1.5. 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. Further, for the reason mentioned in the foregoing paragraphs of this appeal, the tie-in pipeline qualifies to be a “plant and machinery” as per explanation to section 17 of the CGST Act.

1.6. Further, since the FSRU which is a vessel would not amount to a ‘factory premise’, the tie-in pipeline connecting the FSRU to the grid would not be covered under the exclusion clause of the aforesaid explanation.

1.7. Thus, the appellants submit that the restriction provided under Section 17(5)(c) and 17(5)(d) would not be attracted in respect of construction of the said pipeline. Hence the impugned ruling is liable to be set aside on this ground alone.

2. **The wordings used in the Explanation Clause should be strictly interpreted. The exclusion clause of Explanation to Section 17(5) of the CGST Act 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. In absence of factory premise, the exclusion clause would not be applicable.**

2.1 The appellants submit that while construing the aforesaid explanation to Section 17(5), Rule of Strict Interpretation should be applied. The appellants submit 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.

- 2.2 The appellants submit 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 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..."*





2.4 Thus, the appellants submit 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'.

2.5 The contra positive 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 premise, 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'.

2.6 The words 'factory' or 'premises' is not defined under the CGST Act. Therefore, it is pertinent to refer to some dictionary meaning of the term 'factory' and 'premises' which are extracted as under –

**Dictionary of the term "Factory"**

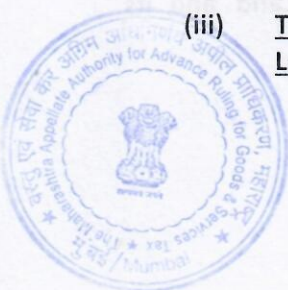
(i) **Oxford Encyclopedic Dictionary (The new Oxford Illustrated Dictionary)**

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 enclosure 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.

2.7 On perusal of the aforesaid dictionary meanings, a Factory would mean any building or other place where goods are manufactured with machines. 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.

2.8 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.

2.9 The Ld. AAR, in the impugned ruling, has held that the a 'pipeline outside the factory' means a pipeline used to transport some product from factory to end user and hence the tie-in pipeline which is outside the FSRU i.e. a 'factory', would be covered by the said exclusion clause.

2.10 The appellants submit that the aforesaid finding of the Ld. AAR is not correct as the Ld. AAR has stretched the meaning of the exclusion clause to cover FSRU which is a vessel, within the meaning of a factory. The appellants place 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**

2.11 In view of the above, the appellants submit that the wording used in exclusion clause of explanation to Section 17(5) must be strictly interpreted. Hence, in absence of a 'factory premise', the ITC on goods and services used for construction of the tie-in pipeline would be available to the appellants.

2.12 Thus, the impugned ruling given by the Ld. AAR is liable to be set aside.





3. The FSRU does not qualify as a 'factory premises'. In absence of a specific definition of the term 'factory' under the CGST Act, the definition of factory as given under Factories Act 1948 cannot be relied upon.

3.1 The restriction on availment of input tax credit will not apply if the immovable property constructed amounts to 'plant and machinery' as defined under explanation to section 17(5). The 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 premises"

3.2 In the present case, the appellants are 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.

3.3 For the reasons mentioned in the foregoing part of this appeal, the tie-in pipeline qualifies to be a "plant and machinery" as per explanation to section 17 of the CGST Act.





3.4 Further, the term 'factory' has not been defined under the CGST Act. Therefore, the term 'factory' shall be given the same meaning by which it is understood in common parlance. In common parlance, a 'factory' is understood to be a building or similar structure constructed on land, where some manufacturing activity is undertaken. This is also clear from the various dictionary meanings of 'factory' as extracted in para 1.11 above.

3.5 Thus, the appellants submit that in absence of a specific definition of 'factory' in CGST Act, the FSRU which is a vessel, would not qualify as 'factory premises'. Hence, the exclusion clause under explanation to section 17(5) would not be applicable in the present case.

3.6 The appellants further submit that in absence of definition of 'factory' under CGST Act, the definition given under any other statute cannot be imported to extend the scope of the term 'factory premises' to a FSRU vessel wherein the re-gasification activity would be undertaken.

3.7 The Ld. AAR, in impugned order dated 22.2.2019, has held that when the definition of the 'factory' is not available in CGST Act, a definition given in some other statute can always be relied upon. Accordingly, the Ld. AAR has relied on the definition of 'Factory' under Section 2(m) of the Factories Act, 1948.

3.8 The appellants submit that the aforesaid finding given by the Ld. AAR is incorrect. The appellants submit 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.

3.9 The appellants 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. Misco. 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

3.10 In the present case, the term 'factory' has not been defined under CGST Act. Thus, in view of the ratio laid down by 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.

3.11 The appellants submit that the Ld. AAR has not given any specific finding on the aforesaid submission made by the appellants. The Ld. AAR has merely made a passing remark that in absence of a specific definition in the CGST Act, the definition of 'factory' given under other statute (Factories Act) can be always relied upon. The Ld. AAR has not produced any case law to support the aforesaid finding.





3.12 Thus, the definition of 'factory' given under Section 2(m) of the Factories Act 1948 cannot be applied to interpret the term "factory premises" used in Explanation to Section 17(5) of the CGST Act.

3.13 The appellants further place reliance on the decision of Supreme Court in case of **P.C. Cheriyan Vs. Barfi Devi** reported at **1980 AIR 86**. In the said case, the Supreme Court was concerned with the question as to whether lease of premises granted for carrying on the business of retreading of tyres would amount to a lease for "manufacturing purpose" under the Transfer of property Act, 1882. In the said case, the term "manufacturing purpose" was not defined under the Transfer of property Act, 1882.

3.14 The Supreme court held that in absence of a specific definition under the Transfer of property Act, 1882, the term "manufacturing purpose" should be construed in its popular sense. Accordingly, the court held that the process of retreading of tyres carried on by the lessee did not result in any new commercially different product and hence the said lease could not be said to be for 'manufacturing purpose'. Further, the Supreme court specifically stated, that in such a case, definition of "manufacture" given under other statutes such as Central Excise Act, 1944 or Factories Act, 1948 cannot be relied upon to interpret the term 'manufacturing purpose' under Transfer of Property Act. The relevant portion of the aforesaid judgment is extracted as under-

"The expression "manufacturing purposes" has not been defined in the Transfer of Property Act. It has therefore, to be construed in its popular sense.





...

The old tyre retains its basic structure and identity. The courts below were therefore, right in holding that the lease in the present case was not for manufacturing purposes, and the tenancy had been rightly terminated by thirty days notice.

Before parting with this judgment, we may sound a note of caution, that definitions of "manufacture" given in other enactments, such as, in the Factories Act or the Excise Act should not be blindly applied while interpreting the expression "manufacturing purposes" in Section 106, of the Transfer of Property Act. In some enactments, for instance in the Excise Act, the term "manufacture" has been given an extended meaning by including in it "repairs", also."

... emphasis supplied.

3.15 In view of the above, the appellants submit that the definition of 'factory' given under the Factories Act, cannot be relied upon in the present case. Hence, the finding given by the Ld. AAR in this regard is not sustainable.

3.16 Therefore, the appellants submit that the impugned ruling dated 22.2.2019 is liable to be set aside.

4. Even if the definition given in Factories Act, 1948 is relied upon, the FSRU which is vessel would not qualify as a factory.

4.1 Without prejudice to the submissions made in the preceding paragraph, even if the definition of 'factory' given under the Factories Act is borrowed, the FSRU would not be covered under the said definition. 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."

4.2 Thus Section 2(m) of the Factories Act, 1948 defines 'factory' as any "premises" where manufacturing activity is undertaken. In other words, the aforesaid definition given under the Factories Act presupposes the existence of a "premises".

4.3 Since the term 'premises' is not defined under the Factories Act, 1948, it is pertinent to refer to the dictionary meaning of the term 'premises'.

4.4 The perusal of the dictionary meaning of the term "premises" as extracted in para 1.11 above, shows that premises would only mean land, house or building and any land surrounding such house or building. Hence, even if the definition of 'factory' given in the Factories Act, 1948 is relied upon, the FSRU, which is vessel and not a structure on land, would not qualify as a factory.

4.5 The Ld. AAR, in the impugned ruling dated 22.2.2109, has held that *"The production or manufacturing process may not be taking place on land but it is taking place on ship (FSRU) and the same has to be considered as a factory unit in*





the subject case, as the process leads to production of natural gas .....". Further, according to the Ld. AAR "it is the production of something that makes a factory, and not the building".

4.6 The appellants submit that the aforesaid finding of the Ld. AAR is incorrect. The appellants submit that the Ld. AAR has overlooked the essential condition of existence of a 'premises' given under Section 2(m) of Factories Act, 1948. The appellants submit that only an establishment or facility on land, where any manufacturing activity takes place, would qualify as 'factory' under Section 2(m) of the Factories Act, 1948.

4.7 The Ld. AAR in the impugned ruling has also relied on the decision of Supreme Court in case of **Porritts and Spenser (Asia) Ltd. Vs. State of Haryana** reported at **1979 AIR 300**. The relevant portion of the said decision which has been relied by the Ld. AAR in the impugned order is reproduced as under-

*"But it must be remembered that the concept or 'textiles' is not a static concept. It has, having regard to newly developing materials, methods, techniques and processes, a continually expanding content and new kinds of fabric may be invented which may legitimately, without doing any violence to the language, be regarded as 'textiles'."*

4.8 In view of the above, the Ld. AAR has held that even factory should not be given a restricted meaning. Considering the development in trade and commerce, factory should not only mean a building situated on land but would also include a vessel (FSRU in the present case) if any manufacturing activity is undertaken onboard such vessel.





4.9 The appellants submit that the reliance placed by the Ld. AAR on the aforesaid decision to state that FSRU shall be considered as a factory is not correct in law.

The appellants submit that the said decision is rather in favor of the appellants.

4.10 In the aforesaid case, the question for consideration before the Supreme Court was whether the 'dryer felt' manufactured by the appellant-assessee would qualify as 'textile', to fall under Item 30 of Schedule B of Punjab General Sales Tax Act, 1948 (hereinafter referred to as "Punjab Sales Tax Act"), and thereby eligible for exemption from payment of sales tax. The term 'Textile' was not defined anywhere under the Punjab Sales Tax Act.

4.11 In that case, the Supreme Court held that where a word used in a Taxing statute has a scientific/technical meaning and an ordinary meaning used in common parlance, such word shall be interpreted in the light of the meaning given to it in common parlance. The relevant portion of the said decision is extracted as under-

3. Now, the word **'textiles' is not defined in the Act, but it is well settled as a result of several decisions of this Court** of which we may mention only a few, namely, Ramavatar Budhaiprasad v. Assistant Sales Tax officer, Akola and M/s Motipur Jamindary Co. Ltd. v. State of Bihar (2) and the State of West Bengal v Washi Ahmed **that in a taxing statute words of every day use must be construed not in their scientific or technical sense but as, understood in common parlance.**

.....

5. There can, therefore, be no doubt that the word **'textiles' in Item 30 of Schedule 'B' must be interpreted according to its popular sense, meaning "that scene which people conversant with the subject-matter with which the statute is dealing would attribute to it".**

.....





6. ... Dryer felts' are, therefore, clearly woven fabrics and must be held to fall within the ordinary meaning of the word 'textiles'. We do not think that the word 'textiles' has any narrower meaning in common parlance other than the ordinary meaning given in the dictionary, namely, a woven fabric. There may be wide ranging varieties of woven fabric and they may go on multiplying and proliferating with new developments in science and technology and inventions of new methods" materials and techniques, but nonetheless they would all be textiles. .... Where a word has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the Legislature. The reason is that as pointed out by Story, J., in 200 Chest. (of Tea (supra), the Legislature does "not suppose our merchants to be naturalists, or geologists, or botanists". But here the word 'textiles' is not sought by the assessee to be given a scientific or technical meaning in preference to its popular meaning. It has only one meaning, namely, a woven fabric and that is the meaning which it bears in ordinary parlance. It is true that our minds are conditioned by old and antiquated notions of what are textiles and, therefore, it may sound a little strange to regard 'dryer felts' as 'textiles'. But it must be remembered that the concept or 'textiles' is not a static concept."

... emphasis supplied

4.12 Even in the present case, the word 'factory' has not been defined under the CGST Act. Thus, in view of the aforesaid decision of Supreme Court relied upon by the Ld. AAR, the term 'factory' used in Explanation to section 17(5) should be understood in accordance with the meaning given to it in common parlance and should not be interpreted in light of the technical definition given under the Factories Act, 1948.

4.13 The appellants submit that Ld. AAR has selectively relied only on a portion of the aforesaid judgment, without appreciating the ratio laid down by the Supreme Court, which in the present case supports the contention of the appellants. Thus, the finding given by the Ld. AAR is incorrect to that extent.





4.14 Thus, the impugned ruling dated 22.2.2019 is liable to be set aside.

5. **The tie-in pipeline being created by the appellants indeed qualifies as a 'plant and machinery'**

5.1 As per the Explanation to Section 17(5) of the CGST Act "plant and machinery" means any-

- apparatus,
- equipment, and
- machinery

which is fixed to earth by foundation or structural support and is used for making outward supply.

5.2 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 meaning. The dictionary meaning of the aforesaid terms are as under:

**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**.

5.3 The appellants submit that the tie-in pipeline being constructed by the appellants is not merely a passive structure, but a machinery for transportation of gas from the FSRU to the national grid.





5.4 In order to understand the nature of the Tie-pipeline being constructed by the appellants, it is pertinent to understand the various components, equipment and devices forming part of the pipeline.

- i. **Pipes** – These comprises of the hollow pipes laid underground from the Jaigarh Terminal to the National grid.
- ii. **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.
- iii. **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).
- iv. **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.
- v. **Pressure Regulating System** – This system is installed at Dabhol Terminal to control the pressure at which such gas is supplied
- vi. **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.
- vii. **Pig Launcher/Pig Scrapper** – This equipment are used for cleaning the debris from inside the pipeline. These equipment also facilitate to monitor the inside condition of pipeline. These are located at the starting point and end point of the pipeline.





- viii. **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.
- ix. **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.
- x. **SCADA Monitoring system** – This system is installed for supervision and control of pipeline remotely and for data / parameters acquisition remotely.
- xi. **Power Generation Systems (Diesel Generators & Solar Panels)** –These are installed at Terminals and SV Stations for generation of secondary power or back up power.
- xii. **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.
- xiii. **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.
- xiv. **OFC cables** - These are laid down alongside the pipeline for collection and transfer of data relating to the tie-in pipeline.
- xv. **Gauges & Transmitters**– These instruments are installed in pipeline for measuring and transmitting parameters like pressure and temperature of gas.
- xvi. **Cathodic Protection System** – This system is installed in pipeline for controlling the corrosion of pipeline.





5.5 The aforesaid equipment and machineries allow the appellants 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 transportation of gas to national grid.

5.6 Thus, the appellants submit that the tie-in pipeline qualifies as 'plant and machinery' as defined under Explanation to Section 17(5) of the CGST Act.

5.7 The Ld. AAR in the impugned ruling has held that the pipeline is not a apparatus, equipment or machinery since every pipeline is fitted with various equipment and the pipeline constructed by appellants is not an exception. The Ld. AAR has further held that since a specific description of 'pipeline' is available, it cannot be brought under the meaning of 'apparatus', 'equipment', or 'machinery'.

5.8 The appellants submit that the aforesaid finding of Ld. AAR is incorrect and not sustainable in law. The appellants submit that the various parts mentioned above are highly sophisticated equipment which are designed and installed for the purpose of transportation of high pressure gas. The pipeline constructed by the querist cannot be compared with a typical pipeline for carrying water, which would not contain the aforesaid equipment.

5.9 Further, the appellants 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).

5.10 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 some thing 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

5.11 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**

5.12 Thus, in view of the above, the appellants submit that the exclusion clause to Section 17(5) would itself mean that a pipeline would be otherwise covered under 'apparatus', 'equipment', or 'machinery' and hence qualify as 'plant and machinery' under explanation to Section 17(5).

5.13 Thus, the appellants submit that the impugned order of AAR is liable to be set aside.

#### **Personal Hearing**

6. We had granted personal hearing to the Appellant, in the present matter, on 04.10.2019. Accordingly, the letter informing the Appellant about the date and time of the personal hearing to be conducted, had been issued on 27.09.2019. The said letter informing the schedule of the personal hearing was also communicated to the Appellant through e-mail, and the receipt of the same was also confirmed telephonically from them.

7. However, the Appellant sought adjournment in the matter vide their letter sent via e-mail dated 03.10.2019. Here, it is pertinent to mention section 101(2) of the CGST Act, 2017, which provides as under:





*"the order referred to in sub-section (1) shall be passed within a period of ninety days from the date of filing of the appeal under section 100 or a reference under sub-section (5) of section 98.*

8. Thus, on perusal of the above provision, it is revealed that any order in the appeal filed before the Appellate Authority for Advance Ruling has to essentially to be issued within the period of 90 days and not beyond that under any circumstances whatsoever it may be. Hence, bound by the above provision of the act, we were not in a position to adjourn the above said personal hearing, which was scheduled on 04.10.2019 due to the dearth of time.
9. In view of the above, we proceed to discuss the subject matter of the appeal on the basis of the written submissions, records, and documents filed by the Appellant, and which are available on record before us.

#### **Discussion and Findings**

10. We perused the entire written submissions filed by the Appellant, which included the facts of the case and various grounds of the appeal, challenging the impugned Advance Ruling pronounced by the Authority for Advance Ruling (AAR). We also perused the impugned advance ruling, wherein the Authority had held that the Appellant was not eligible to avail ITC of the GST paid on goods and services used for the construction of the Tie-in pipeline for delivery of re-gasified LNG from FSRU to the National Grid. The ruling made <sup>by</sup> the AAR was primarily based on the following observations:
- (a) that the FSRU is factory and that the pipeline under question is to laid outside the factory premises;
  - (b) that the said pipelines does not qualify to be an equipment, apparatus or machinery for the purpose of claiming ITC;
  - (c) hence, the restriction on availment of ITC under Section 17(5)(c) and 17(5)(d) is rightly applicable in the present case.





11. However, the Appellant vide their written submissions, beset with various case laws and contentions in their favor, which they filed before us challenged the ruling pronounced by the Advance Ruling Authority, and has prayed to set aside the impugned advance ruling.

12. On perusal of the entire case records available with us, the moot issues before us are as under:

(i) Whether FSRU, where the re-gasification of the LNG is carried out for delivery to the National grid, will be construed as factory or otherwise.

(ii) In case the same is held as factory, whether the tie-in pipeline which is to be laid can be construed to be the pipeline laid out side the factory premises or otherwise.

13. It is a matter of fact that the factory has not been defined anywhere in the CGST Act. Therefore, we proceed to explore the meaning of factory as understood in the *ordinary parlance*. Accordingly, we will resort to the meaning provided to the term 'factory' in the various dictionaries. In this way, we concur with the contention put forth by the Appellant in so much as they have advocated for the adoption of the meaning of the factory as understood in the common parlance, for which they have relied upon the meaning of the term factory provided in the various dictionaries. As regards the AAR interpretation of the term factory, wherein they have adopted the definition provided under the Factories Act, 1948 in absence of the definition of the impugned term 'factory', it is opined that Hon'ble Supreme Court, vide its judgment in the case of **M/s. Misco. Pvt. Ltd vs Union Of India, 1985 AIR 76**, which has been cited and relied upon by the Appellant in their defense, has abundantly clarified against the adoption of the definition or meaning of any term, which has not been defined under a particular statute with which the impugned matter is concerned, from another statute containing the definition or meaning of that very term. The relevant extract of the aforesaid judgment is being reproduced herein 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.

14. Thus, it is observed that the AAR interpretation of the term 'factory', on the basis of the definition provided under the Factories Act, 1948 is contrary to the afore said Supreme Court ruling, and hence not tenable.
15. Now, coming back to the dictionary meaning of term 'factory', which is also advocated by the Appellant, first we would like to visit the dictionary meaning of the term 'factory' as provided under the various dictionaries. The submission made by the Appellant in this regard is reproduced herein under:

**Dictionary 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.

16. On perusal of the above meaning of the factory provided under the abovementioned dictionaries, it is revealed that for any structure to be considered as factory, the following two parameters needs to be met with:





- (i) First, it should be building, a set or range of buildings, a business premises, or an establishment;
  - (ii) There should be some manufacturing activities being carried out at these places.
17. Now, to decide "what constitutes building, a set or range of buildings, a business premises, or an establishment, we will again resort to the dictionary meaning of the terms building, business premises, and establishment, as the same are also not defined under the CGST Act.

**Dictionary meaning of the term 'Building':**

**As per the Cambridge Dictionary:**

A structure with walls and a roof, such as a house or factory.

**As per Merriam Webster Dictionary:**

a usually roofed and walled structure built for permanent use (as for a dwelling)

18. Thus, on perusal of the above dictionary meaning of the term 'Building', it is abundantly clear that any structure with the walls and roofs would be considered as Building. Further, in the above definition, there is no such constraint that such structure should be situated on the land only. Thus, by looking at the photographs of Floating Storage Re-gasification Unit ('FSRU'), submitted by the Appellant, where this re-gasification of the LNS is carried out by the Appellant, may very well be considered as the building as there are enough structures with walls and roofs, which have been built on this processing unit, which clearly indicates that the FSRU encompasses many buildings, where the re-gasification of the LNG is carried out for delivery of the same to the National grid with the aid of the tie-in pipelines under question.

19. **Dictionary meaning of the term 'establishment':**

**As per the Cambridge Dictionary:**

a business or other organization, or the place where an organization operates:

**As per Merriam Webster Dictionary:**

a place of business or residence with its furnishings and staff;

20. Thus, on perusal of the above dictionary meaning of the term 'establishment', it is crystal clear that the establishment is a place from where any organization operates. Here also, there is no such restriction that such place should be located on the land only. It may be any where including the water bodies, such as sea, oceans etc.





21. In view of the above discussions, it is clearly established that the FSRU, the place in question, can be considered as building, or establishment. Further, there is no dispute, by the Appellant, over the activities, carried out at the FSRU, where the re-gasification of the LNG is taking place, being in the nature of the manufacturing activity. Therefore, we would not go into the details of the activities carried out at the FSRU, as the same is accepted as manufacturing activities.
22. Thus, the impugned FSRU satisfies both the aforementioned essential conditions of the Factory, and accordingly will be construed as factory.
23. Now, we proceed to the definition of the 'premises' provided under the various dictionaries. The submissions made by the Appellant in this regard is reproduced herein under for discussion:

**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 enclosure 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.





24. The Appellant, 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.

25. Now, before setting out to interpret the term 'premises', we will first take a look into the context into which this term 'premises' has been used. It is pertinent to mention that this impugned advance ruling revolves around the single core issue of interpretation of the exclusion clause i.e. "pipelines laid outside the factory premises" pertaining to the explanation to the Section 17(5)(c) and 17(5)(d) of the CGST Act, 2017, which is being reproduced 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.”

26. Now, it is a well settled principle in law that any legislation must be read in its entirety, and that texts used in the legislation should be construed in terms of context, in which these are used. Now, coming to the issue of the interpretation of the meaning ‘premises’, it is seen that the term ‘premises’ has been used adjacent to the term ‘factory’. Thus, in a way the term ‘factory’ is acting as a qualifier to the term ‘premises’, and hence it is inferred that premises need not be restricted to the land, rather it can be construed even beyond the land and may transcend to the establishment like FSRU. Thus, under the present exclusion clause, the contextual meaning of the premises will prevail over the literal meaning, as advocated by the Appellant.
27. 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.
28. 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 Appellant, which will join the FSRU to the National Grid, will be considered as pipeline laid outside the factory premises, and accordingly attract





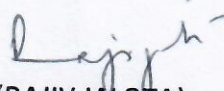
the applicability of the subject exclusion clause i.e. exclusion clause (iii) of the explanation to section 17(5)(c) and section 17(5)(d) of the CGST Act, 2017. As a result of this, the tie-in pipeline under question will not be construed as plant and machinery, and hence the Appellant will not be entitled 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 provision laid out in section 17(5)(c) and 17(5)(d) of the CGST Act, 2017.


29. We will not labor over the other submissions including the case laws cited by the Appellant, as we do not rely upon those submissions of the Appellant.

In view of the above discussion, we modify the ruling pronounced by the Advance Ruling Authority and pass the following order:

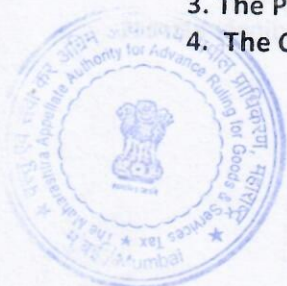
#### ORDER

We, hereby, modify the ruling pronounced by the Advance Ruling Authority in so far the observation of the facts and legal provisions 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.

  
(RAJIV JALOTA)  
MEMBER

  
(SUNGITA SHARMA)  
MEMBER

- Copy to- 1. The Appellant  
2. The AAR, Maharashtra  
3. The Pr. Chief Commissioner, CGST and C.Ex., Mumbai  
4. The Commissioner of State Tax, Maharashtra





5. The Jurisdictional Officer

7. The Web Manager, [WWW.GSTCOUNCIL.GOV.IN](http://WWW.GSTCOUNCIL.GOV.IN)

8. Office copy

