

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



ADVANCE RULING NO. GUJ/GAAR/R/2025/11
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2024/AR/22)

Date 25/03/2025

Name and address of the applicant	:	M/s. Gujarat Narmada Valley Fertilizers & Chemicals Limited, P.O. Narmadanagar, Dist-Bharuch, Gujarat-392015
GSTIN of the applicant	:	24AAACG8372Q1Z2
Jurisdiction Office	:	Center Commissionerate – Vadodara-II Division – VI- Bharuch Range - IV
Date of application	:	14.08.2024
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(d)
Date of Personal Hearing	:	23.01.2025
Present for the applicant	:	Shri Hardik Shah, Ms Heena Patel and Rakesh Kumar B Kayastha

Brief facts:

M/s. Gujarat Narmada Valley Fertilizers & Chemicals Limited, P.O. Narmadanagar, District Bharuch, Gujarat-392015, (for short - 'applicant') is engaged in the manufacturing of fertilizers and chemicals. The applicant is registered with the department and their registration No. is 24AAA8372Q1Z2.

2. Briefly, the details as submitted by the applicant are as under:

- that the applicant, is a public limited company as per the Companies Act, 2013 and its shares are listed on the stock exchange;
- that they had initiated a share buyback programme¹ in December 2023;
- that they are eligible for ITC on the expenditure incurred towards buyback of its shares; that the buyback of shares is an activity undertaken in the course or furtherance of business.

3. The applicant has further stated that buyback of shares improves company's financial standing, creates value for shareholders, contributes prestige & promotes the Company's image, reduces equity capital, leads to

¹ A buyback signifies a company repurchasing its own shares from existing shareholders. This process is governed by regulation stipulated in the Companies Act, 2013 and the Securities and Exchange Board of India Regulations, 2018.

improved shareholders return; that it is a simple way to pay off investors & reduce the overall cost of capital. Thus, buyback extends beyond just acquiring shares.

4. As per the applicant, the buyback of shares was the owing to the following viz

- Government of Gujarat passed a Government Resolution dated 24.4.2023, directing all SPSUs² to strengthen their financial management in the form of capital restructuring to realize potential for market capitalization;
- as a part of the capital restructuring exercise, Government also directed to undertake buyback of shares;
- that the applicant initiated buyback post issuance of GR dated 24.4.2023.

5. The applicant has given the below mentioned averment to substantiate their eligibility for ITC on expenses incurred towards buy back of shares, viz

- that since the buyback is in the course or furtherance of the business activity, the ITC on expenses incurred towards the buyback process should be considered as an eligible expenditure for the purpose of ITC;
- that since buyback of the shares qualifies to be business expenditure, the applicant believes they are entitled to claim ITC on GST paid on expenses related to buyback of shares³;
- a harmonized reading of the terms 'in the course'³ and 'furtherance'⁴, implies that furtherance of business would mean advancement of business or promotion of business; that any activity carried on with a purpose to achieve business objectives, business principles, business continuity and stability would *per se* amount to an activity in course or furtherance of business;
- that the buyback program constitutes a business activity undertaken to achieve its core objectives; that the definition of 'Business' u/s 2(17) of the CGST Act, 2017, depicts that the definition is inclusive and encompassing various activities.
- that clause (b) of the definition of 'business' encompasses activity like buyback of share or issue of shares' by a limited company as these activities are incidental or ancillary to the core business operation outlined in clause (a), *ibid*;
- consequently the applicant believes that taxes charged on professional fees, legal fees, arrangement of buyback fees etc. incurred for buyback process are eligible for ITC under section 16(1), *ibid*;
- that in terms of the definition of 'Input Services' u/s 2(60), *ibid*, professional fees, advertising costs and other incidental expenses are directly linked to the company's business objective, qualifying them as input services;
- that while buyback process doesn't directly result in immediate outward supply, it is an essential step towards optimizing financial health and ultimately increase its ability to make taxable supplies;
- that they wish to rely on the judgement in the case of Coca-Cola India (P.) Ltd.⁵

² State public sector undertaking

³ 'In the course' generally means something in the progress of or process of

⁴ 'Furtherance' as per the Black's law dictionary: 6th edition 11th reprint 1997, is 'Act of furthering, helping forward, promotions, advancement or progress. Dictionary meaning of the term furtherance' implies advancement, promotion of scheme, etc

⁵ 2009] 22] STT 130 (BOM.)

- that the meaning of the expression 'transaction in securities' u/s 17(3), *ibid*, is very wide & should be read in conjunction with the value of 'exempt supply' & not independently;
- that under buy-back of shares, there is no sale and purchase transaction; that the shares bought back have to be cancelled by the company after buy-back within the prescribed time-frame;
- that ITC is eligible in case of issuance of fresh shares & hence ITC should be eligible in the case of buy back of share as well.
- that they wish to rely on the case of *Kretztechnik* pronounced by European Court of Justice.

6. In view of the foregoing, the applicant has sought a ruling on the below mentioned question viz:

"whether the expenditure incurred by the applicant, a listed entity, for the buyback of its shares in the course of furtherance of business, is eligible for Input Tax Credit (ITC) under the GST regime?"

7. Personal hearing was granted on 23.01.2025, wherein Shri Hardik Shah, Ms Heena Patel and Rakesh Kumar B Kayastha, on behalf of the applicant and reiterated the submission already made in the application.

Discussion and findings

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

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

10. The question to be decided in the present application is as to whether applicant is eligible to avail ITC on the expenditure incurred for the buyback of its shares.

11. Before dwelling on to the questions on which the applicant has sought ruling, it would be prudent to reproduce the relevant sections, for ease of understanding viz[relevant extracts]

Central Goods and Services Tax Act, 2017

➤ **Section 2. Definitions.-**

In this Act, unless the context otherwise requires,-

(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

(102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

(101) "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

Securities Contracts (Regulation) Act, 1956 (42 of 1956)

➤ **Section 2. Definitions.-**

(h):- "securities" include-

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;]

(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;]

(id) units or any other such instrument issued to the investors under any mutual fund scheme;]

(ii) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and

(iii) rights or interest in securities;

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

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

➤ **Section 17. Apportionment of credit and blocked credits.-**

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

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under

the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

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

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

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

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

12. Broadly, in terms of sections 16 & 17 of the CGST Act, 2017, every registered person is entitled to take ITC on any supply of goods or services or both used or intended to be used in the course or furtherance of business subject to the prescribed conditions and restrictions. Where the goods or services or both are used by the said registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax, as is attributable to the purposes of his business. The availment is subject to the ITC blocked u/s 17, *ibid*.

13. The facts having been mentioned in detail *supra* is not being repeated for the sake of brevity. However, to recap, the applicant, a listed entity, has sought a ruling as to whether they are eligible for ITC on the expenditure incurred for the buyback of its shares. The applicants primary contention is that the expenditure towards buyback is in the course of business & therefore they are eligible for the same.

14. We find that the applicant has erred in assuming that they are eligible for ITC. This is more so since section 16(1) of CGST Act 2017, reproduced *supra*, states that every registered person shall be entitled to take credit of **ITC charged on any supply of goods or services or both** used or intended to be used in the course or furtherance of business. Now a conjoint reading of the definitions as provided in section 2(52), 2(101) and (102), *ibid*, states that the activity undertaken, i.e. buy back of shares by the applicant is neither a supply of goods nor supply of services. Therefore, in terms of section 16(1), we find that the applicant is not eligible for availing ITC on the expenditure incurred for

the buyback of its shares, it neither being goods nor services, a primary condition for availment of ITC. The applicant is therefore out of the ambit of section 16, *ibid* and is therefore not eligible to avail ITC on the expenditure incurred for buyback of its shares.

15. The thrust of the applicant's argument is that the expenses incurred towards the buyback of shares is in the course or furtherance of the business activity & therefore, should be considered as eligible expenditure for the purpose of ITC. This averment needs to be examined only if the expenditure incurred is towards **goods** or **services**. The term 'securities' is excluded from both goods and services. The primary requirement for availment of ITC, not having been met, we do not intend to go into the averment as to whether the same is in the course or furtherance of business activity or otherwise, since it would only be an academic exercise.

16. In view of above, we rule as under:

RULING

The applicant is not eligible to avail the ITC involved in the expenditure incurred for buyback of its share and also required to reverse the ITC on common inputs and input services used in relation to the expenditure incurred for buyback of share.


(Kamal Shukla)
Member (SGST)


(P.B. Meena)
Member (CGST)



Place: Ahmedabad
Date: 25.03.2025