

**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/2025/46**  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2024/AR/19)

**Date: 03/11/2025**

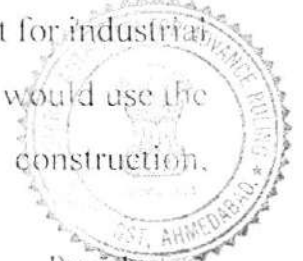
Name and address of the applicant	:	M/s. Agratas Energy Storage Solutions Pvt Ltd. Revenue Survey No. 2, Northkotpura, Sanand GIDC, Ahmedabad, Gujarat-382170
GSTIN of the applicant	:	24AAYCA3941M1Z3
Jurisdiction Office	:	Office of the Assistant Commissioner of State Tax, Unit-11, Range-3, Division-1, Ahmedabad.
Date of application	:	13.08.2024
Clause(s) of Section 97(2) of CGST/IGST Act, 2017, under which the question(s) raised.	:	(d)
Date of Personal Hearing	:	19.08.2025, 3.01.2025
Present for the applicant	:	(1) Shri Ishan Bhatt, Advocate, (2) Shri Rajesh Shukla, Sr. Gen Manager, Tata Motors Global Services Ltd. (3) Vinod Rai, Gen Manager, Agratas Energy Storage Solutions Pvt Ltd

**Brief facts:**

M/s. Agratas Energy Storage Solutions Pvt Ltd., Revenue Survey No. 2, Northkotpura, Sanand GIDC, Ahmedabad, Gujarat-382170 [for short – ‘applicant’] is registered under GST and their GSTIN is 24AAYCA3941M1Z3.

2. The applicant has stated that they are a newly set up company for undertaking the business of manufacturing of battery cells for motor vehicles. They are a wholly owned subsidiary of Tata Sons.

3. The applicant has entered into a lease agreement with the Government of Gujarat for a duration of 50 years for the period from 26 June 2024 to 25 June 2074. They have been granted lease hold rights from the Gujarat Government for industrial use to a net plot area of admeasuring 321 acres approx. The applicant would use the land for carrying out their business activities including industrial construction.



erection, repair or demolition of construction of the concerned purpose etc. In consideration for the grant of lease, the applicant has agreed to pay annual lease rental at the rate of 6% of the total Market price (market price at the time of allotment of land) to the Government of Gujarat with an escalation of 10% of lease rent every five years.

4. The said '*grant of the long term lease of land*' by the Government of Gujarat to the applicant amounts to '*supply of service*' in terms of Section 7 read with Section 2(102) and Clause No. 2(a) of Schedule II to the CGST Act, 2017. Further, in terms of Sr. No. 5A of Notification No. 13/2017 (R) dtd. 28.06.2017 as amended, the applicant is liable to discharge GST under the Reverse Charge Mechanism (RCM) in terms of Section 9(3) of the Act, *ibid*, in respect of the services supplied by the Government of Gujarat by way of grant of the long-term lease of land.

5. In view of the above facts, the applicant is seeking the following advance ruling :-

*(1) Whether the Applicant would be eligible to avail the ITC of the GST charged on the lease rental, where the factory building would be constructed on lease land?*

*(2) Without prejudice to the above, whether the ITC of GST charged on the lease rental paid would be available in the following periods:*

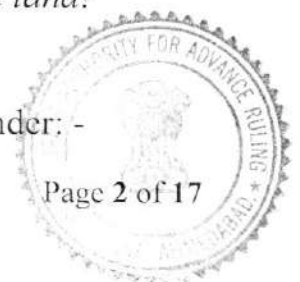
*(i) For the period prior to initiation of the construction of the factory building*

*(ii) For the period after construction of the factory building*

*(3) Without prejudice to the above, whether ITC of GST paid on lease rental would be available when the repairs, maintenance and renovation activities are undertaken on the factory building?*

*(4) Without prejudice to the above, whether ITC of GST paid on lease rental would be available with respect to the area of the land on which no immovable property is constructed i.e. vacant portion of the land?*

6. The applicant has submitted their interpretation of law as under: -



(a) The applicant is eligible to avail the ITC of GST charged on the lease rental as the lease of land is not '*for construction*' of immovable property. The term '*for*' used in section 17(5)(d) of the Act i.e. '*for construction*' should be applicable only to those goods and services which are directly used in the construction of factory building and would not cover supplies indirectly/remotely related to construction activities. This can cover goods/services viz. cement, steel, construction contractor, electrical, plumbing, engineering, architect etc. Reliance is placed on the judgement of the Supreme Court in the case of *CCE, Pune Vs Tata Engineering and Locomotives Ltd* [2003(158) ELT (SC)], which has put a restrictive meaning on the word '*for*'. If the intention of the law makers was to restrict the ITC in relation to construction activity, they would have used the term '*in relation to*' instead of '*for*'.

(b) Restriction under Section 17(5)(d) of the CGST Act should be read in the context of Section 17(5)(c) of the CGST Act. Section 17(5)(c) only restricts ITC with respect to works contract services wherein the service element does not include land, therefore, the transaction related to land (such as lease) cannot be said to be covered under the service part of Section 17(5)(d) of CGST Act.

(c) There cannot be differential tax treatment on the basis of the manner/periodicity of payment.

(d) Treatment of upfront premium and periodic payment would be different if the ITC on periodic premium payment is not allowed. Notification No. 12/2017-CT (R) dtd. 28.06.2017 exempts upfront premium paid for services involving the grant of long-term leases of industrial plots or plots for infrastructure development from GST if they are provided by certain government owned entities. However, this exemption is not available for annual lease payments, which are subject to GST. The differential treatment between upfront premium payments and annual lease may lead to inequitable outcomes for taxpayers engaging in similar lease transactions if the ITC on periodic lease premiums is disallowed.

(e) Without prejudice to the above, the applicant would be eligible for ITC of GST charged on the lease rental paid for the period pre and post the activity of construction, as the land would not be used '*for construction*' of immovable property. Further, the portion of land on which construction



activity would not be undertaken, is not used of construction. Therefore, the ITC on lease rentals with respect to the said portion of land would not be hit by the provisions of Section 17(5) of the CGST Act.

(f) Without prejudice to the above, the ITC of GST paid on lease rental would be available when repairs, maintenance and renovation activities are undertaken on the factory building. While restrictions under Section 17(5)(d) apply to activities concerning the factory building, such as repairs, renovations, additions or alterations, they do not extend to the leasehold land itself.

7. Personal hearing was granted on 19.08.2025 wherein Shri Ishan Bhatt, Advocate, accompanied by Shri Rajesh Shukla, Senior General Manager, Tata Motors Global Services Ltd., and Shri Vinod Rai, General Manager, Agratas Energy Storage Solutions Pvt Ltd., appeared on behalf of the applicant and reiterated the facts & grounds as stated in the application. During the course of hearing, they also submitted that they would submit additional submissions distinguishing the AAR judgement passed in the case of *Re: M/s Bayer Vapi Ltd.*

7.1 Subsequently, vide letter dtd. 15.09.2025 received through e-mail, the applicant made the following additional submissions: -

(a) The transaction in question in the case of M/s Bayer Vapi Pvt. Ltd. is distinguishable for the applicant as in Bayer Vapi, they had sought an advance ruling on the eligibility of ITC of GST paid on services received from Vapi Enterprise Ltd., in the form of leasehold rights in industrial land, whereas the applicant has sought an advance ruling on the eligibility of ITC of GST paid under reverse charge on annual lease rental paid to GIDC.

(b) The following questions have not been raised or discussed in the case of M/s Bayer Vapi: -

- Since the lease rental paid to GIDC is on annual basis for a continuous ongoing supply of services for a period of 50 years, the question of ITC eligibility also arises for the period before and after the construction of factory. On the other hand, in the case of Bayer Vapi Pvt Ltd., the ITC eligibility pertains to GST paid on one time transfer of leasehold rights.



- The AAR in the case of Bayer Vapi Pvt Ltd., was not faced with the question regarding eligibility of ITC for the vacant/unoccupied portion of land where construction would not take place at all.
- The Advance Ruling in the case of Bayer Vapi Pvt Ltd. is also silent on the issue of eligibility of ITC during the 50-year lease period where the factory is undergoing repair, maintenance or renovation.

(c) The advance ruling in the case of Bayer Vapi Pvt Ltd proceeds on the basis that the transaction of assignment of lease rights does not qualify as sale of land and is not excluded from the levy of GST. However, the Gujarat High Court in its recent judgement dtd. 03.01.2025 in the case of *GCCI & Others Vs UOI* [ 2025(1) TMI 516-HC-GST has held that assignment of leasehold rights by lessee-assignor to assignee qualifies as transfer of immovable property and would not qualify as 'supply of service'.

(d) The advance ruling has not discussed the issue regarding applicability of Section 17(5)(d) of the CGST Act in light of the judgement dtd. 03.10.2024 of the Supreme Court in the case of *Chief Commissioner of CGST Vs Safari Retreats Pvt Ltd & Others* [2024 (10) TMI 286-Supreme Court] where the Hon'ble Supreme Court has affirmed the 'functionality test' and observed that where a building has been so planned and constructed as to serve an assessee's special technical requirements, it would qualify to be treated as a plant.

### **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 both oral and written 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. We find that the applicant has entered into a into a lease agreement for a plot of government waste land, admeasuring 321 acres approx, with the Government





of Gujarat for a duration of 50 years for the period from 26 June 2024 to 25 June 2074, for industrial purposes. The applicant would use the land for carrying out their business activities including industrial construction, erection, repair or demolition of construction of the concerned purpose etc. In consideration for the grant of lease, the applicant has agreed to pay annual lease rental at the rate of 6% of the total Market price (market price at the time of allotment of land) to the Government of Gujarat with an escalation of 10% of lease rent every five years. The applicant wants to know whether they would be eligible to avail the ITC of the GST charged on the lease rental by the Government of Gujarat.

11. We find that this Authority in the case of *Re: M/s Bayer Vapi Pvt Ltd /2023(9) TMI 165-AAR, Gujarat*], while dealing with a similar matter had held that it is clearly hit by the bar of Section 17(5)(d) of the CGST Act. The relevant portion of the order is reproduced below: -

*“23. It is in this background that the transaction needs to be examined. Invariably, it is undisputed that the applicant by entering into an MoU with VEL to acquire leasehold rights of GIDC land on payment of a consideration for the balance lease period of 52 years as per the GIDC norms, is in receipt of service from VEL. Now we find that the applicant in para 8 of Annexure II to his application has stated that that the land belonging to GIDC in respect of which the applicant has obtained leasehold rights from M/s. VEL in terms of an MoU, is an industrial plot, adjacent to their existing manufacturing plant & as per the applicant, they intend to set up a new manufacturing plant/expand its existing manufacturing plant. This further finds a reaffirmation in para R. of Annexure III. However, moving forward in para DD in Annexure III, the applicant states that at the time of procuring the leasehold land, the applicant had not thought about whether the land will be used for construction of immovable property or not. The averment we therefore find, is contradictory.*

*24. Thus, it is clear that the applicant wishes to use the service received from M/s VEL, in the form of leasehold rights to land of GIDC and intends to set up a new manufacturing plant/expand its existing manufacturing plant. This being the fact, clearly shows that the service of leasehold rights to land was received and is a precursor to construction being carried out on the said land to set up a new manufacturing plant/expand existing manufacturing facility. It is clearly hit by 17(5)(d) of CGST Act, 2017 also bringing the non obstante clause into play. For repetition, section 17(5)(d), ibid, as already stated, bars ITC on services received by a taxable person for construction of an immovable property (other than P&M) on his own account including when such services are used in the course or furtherance of*



*business. Therefore, we believe that as far as the applicant is concerned, his ITC stands blocked in terms of section 17(5), ibid."*

12. We also find that this Authority has also in the case of *Re: M/s GACL-NALCO Alkalies and Chemicals Pvt Ltd. (hereinafter referred to as GNAL)* [2021(12) TMI-36-AAR, Gujarat] , on a similar issue of availability of ITC on the GST payable for the one time consideration paid to GIDC for transferring its leasehold rights of the plot to GNAL, has held that the same is blocked credit under Section 17(5)(d). The relevant portion of the ruling is reproduced below: -

*"11. We refer to Section 16(1) CGST Act, reproduced as follows:*

*Section 16(1)*

*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.*

*12. Further we refer to the Non-Obstante Section 17(5) CGST Act, which starts with the phrase 'Notwithstanding anything contained in section 16(1)..', i.e, provisions of section 17(5) overrides the provisions of section 16(1). Section 17(5)(d) CGST Act, is reproduced as follows:*

*(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 clauses (c) and (d), the expression 'construction' includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;*

*13. We find that the law makes it explicitly clear that 'plant and machinery' excludes land, as laid down in explanation following Section 17(5) CGST Act. We note the following:*

- i. Law has expressed that Plant and Machinery excludes land in Section 17(5) CGST Act.*
- ii. The phrase Plant and Machinery is used in Section 17(5)(c) CGST Act and the words plant or machinery is used in section 17(5)(d) CGST Act. We hold that*

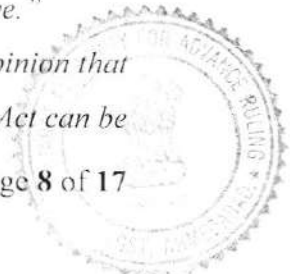


the phrase 'plant or machinery' in section 17(5)(d) may be read as 'plant and machinery'. Here, We find it apt to quote a relevant excerpt, as follows- In the case of an appeal filed by M/s. Tarun Realtors Pvt. Ltd. against Ruling dated 30-9-19 passed by the Authority of Advance Ruling of Karnataka (reported at 2020 (35) G.S.T.438 (App.AAR-GST-Kar.), the Appellate Authority for Advance Ruling for Karnataka(in their Ruling No.KAR/AAAR-14/2019-20 dated 06.02.2020), while examining the aspect of eligibility for input tax credit of various goods of the appellants covered under the definition of plant and machinery held that the word 'or' in clause (d) of Section 17(5) of the CGST Act can be read as 'and' since it appears to give effect to the intention of the Legislature to allow input tax credit on the construction of plant and/or machinery. Relevant portion of the aforementioned Ruling reads as follows:

"15. It is the contention of the appellant that the definition of the expression 'plant and machinery' as used in Chapter V and Chapter VI of the CGST Act cannot be applied to interpret the words 'plant or machinery' used in clause(d) of Section 17(5) of the CGST Act. We find that in ordinary usage 'and' is conjunctive and 'or' disjunctive. From the well-known dictum of the Supreme Court that grammar is a good guide to meaning but is a bad master to dictate, it will appear that there is no hard and fast rule as to the meaning of the word 'or' and this word gets its proper meaning from the particular context from which it has been used. Justice G.P.Singh in the principles of Statutory Interpretation (Thirteenth Edition) Chapter 7 page 485 has stated as follows:

"The word 'or' is normally disjunctive and 'and' is normally conjunctive but at times they are read as vice versa to give effect to the manifest intention of the Legislature as disclosed from the context. As stated by Scrutton L.J. "You do sometimes read 'or' as 'and' in a statute. But you do not do it unless you are obliged because 'or' does not generally mean 'and' and 'and' does not generally mean 'or'. Further, as pointed out by Lord Halsbury, the reading of 'or' as 'and' is not to be resorted to, "unless some other part of the same statute or the clear intention of it requires that to be done". Where provision is clear and unambiguous the word 'or' cannot be read as 'and' by applying the principle of reading down. But if the literal reading of the words produces an unintelligible or absurd result 'and' may be read for 'or' and 'or' for 'and' even though the result of so modifying the words is less favourable to the subject provided that the intention of the Legislature is otherwise quite clear. Conversely if reading of 'and' and 'or' produces grammatical distortion and makes no sense of the portion following 'and', 'or' cannot be read in place of 'and'. The alternatives joined by 'or' need not always be mutually exclusive. "

16. Applying the above principle to the instant case, we are of the opinion that in this case, the word 'or' in clause(d) of Section 17(5) of the CGST Act can be





read as 'and' since it appears to give effect to the intention of the Legislature to allow input tax credit on the construction of plant and/or machinery. ...."

iii. The subject land leasing service from GACL to GNAL hinges on said leased land.

iv. We cannot brush aside the position of law that Legislature has excluded 'land' from plant and machinery. There must be an intent of Legislature to explicitly exclude the word 'land' in the expression. With this expression of Plant and Machinery excluding land, explicitly incorporated in the Blocked Credit section 17(5) CGST Act, we hold that Legislature has expressed its intent that ITC shall not be available in respect of services pertaining to land received by a taxable person for construction of an immovable property on his own account including when such services are used in the course or furtherance of business.

v. For if there was no such legislative intention, the word 'land' need not have been used in the said exclusion expression of 'plant and machinery'.

14. Further, besides the discussed legislative intent, the plain meaning of very wordings of Section 17(5)(d) itself blocks subject credit admissibility, detailed as follows:

i. We find that the words used in the said Section 17(5)(d) reads as: services received by a taxable person for construction of immovable property (other than plant or machinery). Hypothetically, if the word 'used' was in the place of 'for', then said Section 17(5)(d) would be read as: Services received by a taxable person (used in) construction of immovable property (other than plant or machinery) .... In such a hypothetical case and limiting to the wordings of Section 17(5)(d) only, there would have been a prima facie merit in the submission of the GNAL to consider that subject ITC is not blocked. But the word used in the said Parliamentary Act in said clause (d) is 'for' and not 'used'. The word 'for' indicates a purpose, an intended goal. Here, 'for' is to be construed to indicate the purpose to construct the buildings/ civil structures, administrative block et al on the leased land. The purpose to enter into the subject agreement with GACL for the subject land is to construct factory with administrative block, et al, so that GNAL may pursue its business.

14.1 With respect to the plant and structural work, GNAL submitted as follows:

#### Plant & Structural Works

The power plant civil and structural works shall cover all buildings, structures, equipment & structure foundations required for installation of the power plant.



### Main Plant Building

*The main plant building including the adjacent control room shall be a concrete framed structure (with a common column for power house building and control room building) supported over isolated/ combined foundations based on soil test data and loads. The roof over the power house building housing the turbine generator shall be of GI sheeting supported on structural steel arrangement. The crane girder shall be plate formed type considering all loads due to wheel loads and surge loads. All floors shall be of cast in-situ RCC slabs supported over RCC beams and RCC columns. The main Plant building shall be provided with windows and doors as required. Doors in the control room shall be made of extruded aluminium box frames fully or partly glazed. Partition walls in control room shall be provided for large openings meant for equipment entry. Large entry points shall be provided with electrically/ gear operated shutters. Main doors in the electrical and control rooms shall be sized considering the maximum size of panels.*

*14.2 Thus we hold that subject GST borne by GNAL is blocked credit under Section 17(5)(d) CGST Act for the land leased to it will be for the construction of civil structures, administrative block/ factory et al. Thus, the plain meaning of the words of Section 17(5)(d) blocks the subject amount from credit admissibility."*

13. The above ruling of this Authority was challenged before the Appellate Authority for Advance Ruling, and the Appellate Authority vide order dtd. 30.12.2024 [2025 (96) GSTL 211 (App. AAR-GST-Guj)] has rejected the appeal filed by GNAL. Therefore, we are of the opinion that the **applicant is not eligible to avail Input Tax credit of the GST paid under RCM on the lease rental.**

14. Having held so, we now deal with the averments made by the applicant. As per the applicant the term 'for' used in section 17(5)(d) of the Act i.e. 'for construction' should be applicable only to those goods and services which are directly used in the construction of factory building and would not cover supplies indirectly/remotely related to construction activities. In other words, the applicant's interpretation is that only those services which have a direct nexus to 'construction' such as works contract, services of engineer/contractor, services of architect etc are only covered. We find that the Supreme Court in the case of *Oblum Electrical Industries Pvt Ltd Vs Collector of Customs* [1997(94) ELT 449] has explained the scope of the expression 'for' as under: -



*The wordings in the notification have to be construed keeping in view the said object and purpose of the exemption. In the notification two different expressions have been used namely, 'materials required to be imported for the purpose of manufacture of products' and 'replenishment of materials used in the manufacture of resultant products' which indicates that the two expressions have not been used in the same sense. The expression 'materials required to be imported for the purpose of manufacture of products' cannot be construed as referring only to materials which are used in the manufacture of the products. The said exemption must be given its natural meaning to include materials that are required in order to manufacture the resultant products. On that view, the exemption cannot be confined to materials which are actually used in the manufacture of the resultant product but would also include materials which though not used in the manufacture of the resultant product are required in order to manufacture the resultant product. Crystar beams imported by the appellant are materials, which though not used in the manufacture of H.T. Porcelain Insulators required for Lightning Arrestors, are materials which are required for producing the insulators in the kilns.*

Therefore, the term 'for' does not in fact restrict the scope of Section 17(5)(d) to materials having a direct nexus to construction, but enlarges it. The applicant has relied upon the judgement of the Supreme Court in the case of *Collector of Central Excise, Pune Vs Tata Engineering and Locomotives Co. Ltd* [2003(158) ELT 130 (SC)] to put a restrictive meaning for the word 'for'. We have gone through this judgement. We find that the Supreme Court was comparing the expression 'used for producing or processing' with 'used in or in relation to the manufacture of the final product'. It is in these circumstances that the Supreme Court held that "used for producing or processing" must mean something less than "used in or in relation to the manufacture of the final products".

15. The next averment is that the restriction under Section 17(5)(d) of the CGST Act should be read in the context of Section 17(5)(c) of the CGST Act. Section 17(5)(c) only restricts ITC with respect to works contract services wherein the service element does not include land, therefore, the transaction related to land (such as lease) cannot be said to be covered under the service part of Section 17(5)(d) of CGST Act. We do not agree with the averment of the applicant as both the clauses i.e (c) and (d), deal with different situations. Clause (c) specifically deals with work contract service supplied for construction of an immovable property whereas Clause (d) deals with any goods or services used for construction of an immovable property which is received by a taxable person. Therefore, both these clauses are independent of each other and one cannot be read in context of the other.



16. The next averment of the applicant is that there cannot be differential tax treatment on the basis of the manner/periodicity of payment. As per the applicant, upfront premium paid for services involving the grant of long-term leases of industrial plots or plots for infrastructure development from GST, if they are provided by certain government owned entities, are exempted vide Notification No. 12/2017-CT (R) dtd. 28.06.2017, while annual lease payments are subject to GST. This differential between upfront premium payments and annual lease may lead to inequitable outcomes for taxpayers engaging in similar lease transactions, if the ITC on periodic lease premiums is disallowed. First of all, upfront payments and annual lease rentals are not the same. The Supreme Court in the case of *Commissioner of Income Tax, Assam Vs The Panbari Tea Co. Ltd* [ 1965 AIR 1871] has brought out the distinction between the upfront payment (called as premium, salami, cost, price, development charges etc) and rent as under: -

*“When the interest of the lessor is parted with for a price, the price paid is premium or salami. But the periodical payments made for the continuous enjoyment of the benefits under the lease are in the nature of rent. The former is a capital income and the latter a revenue receipt.”*

Therefore, both the payments cannot be equated. Further, Notification No. 12/2017-CT(Rate) dtd. 28.06.2017 grants exemption of GST paid only on upfront amount for granting of long-term lease of industrial plots or plots, for development of infrastructure for financial business, provided by the State Governments, Union Territories, State Industrial Development Corporations or Undertakings. This was a conscious decision of the Government to promote setting up of industrial parks. However, no exemption from GST for lease rental has been provided. Thus, the Government has also treated both these payments differently. We find that in the agenda for the 37<sup>th</sup> GST Council meeting, the Finance Minister of Punjab had raised the issue of exemption on long term lease of land, apart from the upfront payment already available vide Notification No. 12/2017-CT (R) dtd. 28.06.2017. In the said letter, the non availability of ITC on leasing for construction of immovable property was also raised, which made new projects unviable. The said letter (Enclosure 5 of the agenda for the 37<sup>th</sup> GST Council meeting) is reproduced below: -



### Enclosure 5

#### ***Request to exempt GST on long term lease of land for setting up of industrial parks:***

*Hon'ble Finance Minister from Punjab vide his letter dated 25.02.2019 has requested for GST exemption on long term lease of land for setting up of industrial parks by private entities. Levy of GST on long term lease of land has been referred by GST Council to the GoM on Real estate.*

#### **Present GST rate:**

*Vide Sl. No. 41 of the notification No. 12/2017- CT(R) dated 28.06.2017 GST exemption is available on upfront amount payable in respect of service by way of granting of long term lease of industrial plot or plot for development of infrastructure for financial business, provided by the State Government Industrial Development Corporation or undertaking or by any other entity having 50% or more ownership of Government. The entry reads as under: -*

*"Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years or more of industrial plot or plot for development of infrastructure for financial business, provided by the State Government Industrial Development Corporation or undertaking or by any other entity having 50% or more ownership of Central Government, State Government, Union Territory to the industrial unit or the developer in any industrial or financial business area."*

#### ***Justification for exemption (as mentioned in letter of the Hon'ble FM of Punjab):***

- India is now critically poised to attract foreign investments particularly by the possible relocation of many MNCs located in China in the context of ongoing tariff war and global economic recession. India offers an attractive destination for investment by way of FDI due to its high domestic consumption base.*
- GST on long term lease of land presently attracts GST of 18% along with stamp duty of 6-7% levied by states. This high rate of tax makes new projects unviable particularly when tax credit of GST on such leasing is not available for construction of immovable property. (Emphasis Supplied)*
- Taxation on leasing of land is the only one in GST where there is an overlap between GST and powers of States to levy a parallel tax. Similar concession has already been given to GIFT city."*

Thus, the GST Council was also aware of this position.

17. The applicant has further claimed that without prejudice to their claim of ITC for the whole period of lease, the applicant would be eligible for ITC of GST charged on the lease rental paid for the period pre and post the activity of

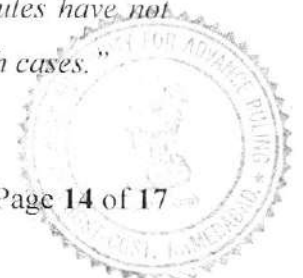




construction, as the land would not be used 'for construction' of immovable property. We are unable to subscribe to this view as the land has been given on lease specifically for construction of the factory. This can be seen from the conditions to the lease deed dtd. 26.06.2024, specifically Condition No. 5, which stipulates that the industrial unit shall commence production activity within 3 years from the lease agreement and Condition No. 16, which mandates that the purpose of the land i.e for industrial purpose, cannot be changed. Thus, the land being used for industrial construction and the any services specific to land is blocked by virtue of Section 17(5)(d) of the Act, *ibid*, the eligibility of ITC is not contingent to the pre or post activity of construction. Therefore, we hold that **the applicant is not eligible for ITC of GST charged on the lease rental paid for the period pre and post the activity of construction.**

18. Another contention raised by the applicant is that the portion of land on which construction activity would not be undertaken, is not used of construction. Therefore, the ITC on lease rentals with respect to the said portion of land would not be hit by the provisions of Section 17(5) of the CGST Act. The applicant, themselves have, at Para 3.1.4 of the Annexure-A, which is forming part of ARA-01, mentioned that would be keeping a land vacant for environmental and other purposes. While, it has not been specifically mentioned as to for what other purposes, apart from mandatory environmental purposes, the land would be kept vacant, but the fact remains that the whole land has been lease out by the Government for industrial purposes, for which we have already held that ITC of GST charged on the lease rental of land is blocked vide Section 17(5)(d). Further, any land kept vacant for meeting the mandatory environment guidelines would be a part of the industry being constructed by the applicant on the leased land. We also find that a somewhat similar claim was made by the applicant in *Re: M/s GACL-NALCO Alkalies and Chemicals Pvt Ltd.*, which is reproduced below: -

*"Also, GNAL have given us a faint impression that certain of their pipes fitted on supporting structures may be installed in the open, i.e, outside a shed but on a supporting structure. We are of the opinion that the proportion of plot area used for the construction of civil structures/ administrative block/ factory/ building sheds (having plant and machinery inside it )vis-à-vis the proportion of plot area used for installation of pipes fitted on supporting structures in the open on the land, if that be the case, cannot be taken as a basis for awarding a proportionate credit, for the CGST Act and Rules have not envisaged such a mechanism to award proportionate credit for GST in such cases."*



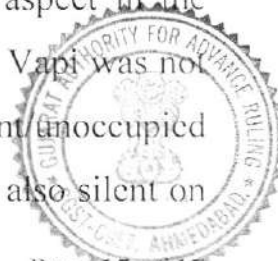
Therefore, we hold **that ITC of GST paid on lease rental would not be available with respect to the area of the land on which no immovable property is constructed i.e vacant portion of the land.**

19. The applicant has further contented that the ITC of GST paid on lease rental would be available when repairs, maintenance and renovation activities are undertaken on the factory building. For answering this question, we find it necessary to reproduce the explanation under Section 17, as under: -

*‘Explanation: For the purpose of clauses (c) and (d), the expression “construction” includes reconstruction, renovation, additions or alterations or repairs to the extent of capitalization, to the said immovable property.’*

From the above, it is clear that the expression ‘*construction*’ also includes reconstruction, renovation, addition or alterations or repairs. Therefore, when it has already been held that ITC of GST paid on lease rental paid on land for construction of immovable property is blocked under Section 17(5)(d) and **since construction includes repairs, we do not find any reason to hold that the ITC of GST paid on lease rental would be available on repairs.**

20. The applicant’s in their further submissions dtd. 15.09.2025, has tried to distinguish the judgement of *Re: M/s Bayer Vapi Pvt Ltd [2023(9) TMI 165-AAR, Gujarat]* on the ground that in Bayer Vapi the advance ruling was on the eligibility ITC of GST paid on services received from Vapi Enterprise Ltd., in the form of leasehold rights in industrial land, whereas the applicant has sought an advance ruling on the eligibility of ITC of GST paid under reverse charge on annual lease rental paid to GIDC. As per our understanding, this would not make any difference as the services in both the cases are in relation to the land used for construction of immovable property. The second ground raised by the applicant is that in the case of Bayer Vapi Pvt Ltd., the ITC eligibility pertains to GST paid on one time transfer of leasehold rights, whereas in their case, it is the annual lease rent for a period of 50 years, and therefore, the question of ITC eligibility also arises for the period before and after the construction of factory. We have already dealt this aspect in the preceding paras. The other grounds raised are that the AAR in Bayer Vapi was not faced with the question regarding eligibility of ITC for the vacant/unoccupied portion of land where construction would not take place at all and is also silent on



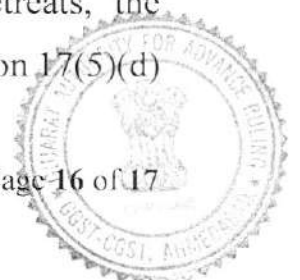
the issue of eligibility of ITC during the 50-year lease period where the factory is undergoing repair, maintenance or renovation. We have also dealt with these issues in the preceding paras.

20.1 The applicant, has further submitted that the ruling in *Re: Bayer Vapi Pvt Ltd.* is in jeopardy as the advance ruling proceeds on the basis that the transaction of assignment of lease rights does not qualify as sale of land and is not excluded from the levy of GST. However, the Gujarat High Court in its recent judgement dtd. 03.01.2025 in the case of *GCCI & Others Vs UOI* [ 2025(1) TMI 516-HC-GST has held that assignment of leasehold rights by lessee-assignor to assignee qualifies as transfer of immovable property and would not qualify as 'supply of service'. We find that in Bayer Vapi, the ruling was sought on the following question: -

*Whether the applicant is entitled to take ITC of the CGST & SGST paid by them on the services received from Vapi Enterprise Ltd in the form of transfer of its rights in the leasehold land owned by GIDC in favour of the applicant which is to be used by the applicant in the course or furtherance of its business in terms of the provisions prescribed under the CGST & SGST Act.*

Therefore, the issue before this Authority in *Re: Bayer Vapi* was not regarding the levability of GST on assignment of leasehold rights by lessee-assignor to assignee.

20.2 The applicant has also submitted that the advance ruling has not discussed the issue regarding applicability of Section 17(5)(d) of the CGST Act in light of the judgement dtd. 03.10.2024 of the Supreme Court in the case of *Chief Commissioner of CGST Vs Safari Retreats Pvt Ltd & Others* [2024 (10) TMI 286-Supreme Court] where the Hon'ble Supreme Court has affirmed the '*functionality test*' and observed that where a building has been so planned and constructed as to serve an assessee's special technical requirements, it would qualify to be treated as a plant. We find that in *Safari Retreats*, the Supreme Court has held that the term 'Plant and machinery' mentioned in Section 17(5)(c) of the CGST Act, has to be given a different meaning from the term 'Plant or machinery' mentioned in Section 17(5)(d) of the Act and therefore, the definition of 'Plant and machinery' contained in the explanation to Section 17 will not apply. The Supreme Court then went on to hold that the word "plant" will have to be interpreted by taking recourse to the functionality test. However, we find that subsequent to the judgement of *Safari Retreats*, the Legislature vide Section 124 of the Finance Act, 2025 has amended Section 17(5)(d)



and substituted the words 'Plant or Machinery' with the words 'Plant and Machinery' with effect from 01.07.2017. The said provisions have come into effect from 01.10.2025.

21. In view of the foregoing, we rule as under: -

### RULING

*Q.1. Whether the Applicant would be eligible to avail the ITC of the GST charged on the lease rental, where the factory building would be constructed on lease land?*

*Ans: No, for the reasons mentioned aforesaid.*

*Q. 2. Without prejudice to the above, whether the ITC of GST charged on the lease rental paid would be available in the following periods:*

*(i) For the period prior to initiation of the construction of the factory building*

*Ans: No, for the reasons mentioned aforesaid.*

*(ii) For the period after construction of the factory building*


*Ans: No, for the reasons mentioned aforesaid.*

*Q.3 Without prejudice to the above, whether ITC of GST paid on lease rental would be available when the repairs, maintenance and renovation activities are undertaken on the factory building?*

*Ans: No, for the reasons mentioned aforesaid.*

*Q.4 Without prejudice to the above, whether ITC of GST paid on lease rental would be available with respect to the area of the land on which no immovable property is constructed i.e. vacant portion of the land?*

*Ans: No, for the reasons mentioned aforesaid.*

  
(Sushma Yora)  
Member (SGST)

Place: Ahmedabad  
Date: 03.11.2025



  
(Vishal Malani)  
Member (CGST)