

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



ADVANCE RULING NO. GUJ/GAAR/R/02//2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/11)
Date : 11.03.2020

Name and address of the applicant	:	M/s. Deendayal Port Trust (erstwhile Kandla Port Trust), CDC Section, Seva Sadan – III, Kandla Port, Kandla, Kachchh – 370210 (Gujarat).
GSTIN of the applicant	:	24AAALK0046N1Z6
Date of application	:	26.03.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(d) admissibility of input tax credit of tax paid or deemed to have been paid
Fees payment details	:	CIN : SBIN18032400054752
Date of Personal Hearing	:	05.03.2020
Present for the applicant	:	Shri Hardik v. Thacker, C. A.

BRIEF FACTS

The applicant has submitted that they have been directed by the ministry of shipping to prepare a master plan comprising future projects and for utilization of land resources with the endeavour for developing port based smart city. Keeping in view the above directions and vision of the government, Deendayal Port trust is developing one of India's first Smart Industrial Port City (SIPC) within Gandhidham-Kandla-Adipur Complex as part of the Sagarmala project. SIPC Kandla aims to help industries and local economy grow by providing better infrastructure facilities along with a supportive environment to thrive in. The smart city will be green field project and DPT earmarked two land parcels it owns for this Development i.e. Location 1 and Location 2. The First Location is in the heart of Gandhidham City and shall be developed as Mixed Use Residential Development spread over 580 Acres of DPT owned Land. This Integrated Development shall have Residential Development (45.22%), Institutional Development including Schools, Colleges & Hospitals (7.41 %) and Commercial & Retail Development (14.17 %). 11.33% of the total land is to be developed for recreational activities like Sports and Green Parks/ Open Spaces. The Second Location is in close proximity of Kandla Port and is planned to be developed into Industrial Park with Logistic Facilities. The Envisaged Development is spread over 845.02 Acres of Land and shall house various Industries, Residential & Commercial Facilities and Recreational Areas along with Amenities. Considering the Present Needs of the Industry and anticipated Growth, Industries like Furniture, Edible Oil and Engineering & Fabrication have been proposed. There is also a provision for Future Railway Siding along with Logistic Park in close proximity to the existing Railway Line running to the south of this Location.

2. The applicant further submitted that at present Deendayal Port Trust is incurring various project development expenses like:-

1. Programme management consultancy;
2. Marketing Consultancy;
3. Land levelling and other related works;
4. Roads;
5. Water, electricity, & Drainage Infrastructure; and
6. Other related works for developing SIPC.

3. The applicant also submitted that after the development of SIPC, DPT will auction the land under the SIPC for 60 or more years, for a consideration, in the form of one time **upfront premium**. In the absence of any special notification from government in this regard DPT is liable for GST, on the upfront premium receivable, under the category of Real Estate Service (HSN 9972). Considering these facts, DPT is in dilemma,

whether the "Input Tax Credit" for expenses at Sr. No. 1 to 6 above shall be available to DPT or not?

DISCUSSION & FINDINGS

4. We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing. The issue involved in this case pertains to 'Input Tax Credit' under the Central Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act'). The applicant is a port trust running a major port at Kandla. Under the directions of the ministry of shipping to utilize the land resources with the endeavour for developing port based smart city, they are **developing** one of **India's first Smart Industrial Port City (SIPC)** within Gandhidham-Kandla-Adipur Complex as part of the Sagarmala project. They will auction the land under the SIPC for 60 or more years, for a consideration, in the form of one time **upfront premium**, liable for GST, under the category of Real Estate Service (HSN 9972). The applicant has requested for advance ruling as to whether the "Input Tax Credit" shall be available on the following **project development services** like:-

1. Programme management consultancy;
2. Marketing Consultancy;
3. Land levelling and other related works;
4. Roads;
5. Water, electricity, & Drainage Infrastructure; and
6. Other related works for developing SIPC.

5. It is observed that Chapter V of CGST Act stipulates in respect of **input tax credit**. Section 16 (1) of the CGST Act provides that every registered person shall, **subject to such conditions and restrictions as may be prescribed**, 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. For ease of reference the same is reproduced as follows:-

[CHAPTER V INPUT TAX CREDIT

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.]

6. It is further observed that sub-section (5) of Section 17 of the CGST Act **denies input tax credit in respect of goods and services** specified there-under. For ease of reference the same is reproduced as follows:-

*[(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:—*

(a) motor vehicles and other conveyances

***except** when they are used—*

(i) for making the following taxable supplies, namely:—

(A) further supply of such vehicles or conveyances ; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods;

(b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre;

(iii) rent-a-cab, life insurance and health insurance

***except** where—*

(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or

(B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and

(iv) travel benefits extended to employees on vacation such as leave or home travel concession;

*(c) **works contract services when supplied for construction of an immovable property** (other than plant and machinery)*

except where it is an input service for further supply of works contract service;

*(d) **goods or services or both received by a taxable person for construction of an immovable property** (other than plant or*

machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—*For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;*

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.]

7. We observe that the applicant is engaged in development of port based smart city i.e. **Smart Industrial Port City (SIPC)** within Gandhidham-Kandla-Adipur Complex. The said **project development is nothing but construction of an immovable property** and **any project development services** or goods or works contract used for **construction of an immovable property** shall attract the provisions of *clauses (c) and (d)* under sub-section (5) of Section 17 of the CGST Act, which specifically deny input tax credit in respect of works contract services or goods and services used for construction of an immovable property. Therefore the said project development services of Programme management consultancy, Marketing Consultancy, Land levelling and other related works, Roads, Water, electricity, & Drainage Infrastructure and other related works **for developing SIPC** are not eligible for Input Tax Credit under the CGST Act, 2017.

14. In view of the foregoing, we rule as under –

R U L I N G

The "Input Tax Credit" shall be **NOT** be available under the CGST Act, 2017, on the **project development services** like Programme management consultancy, Marketing Consultancy, Land levelling and other related works, Roads, Water, Electricity, & Drainage Infrastructure and other related works for development of SIPC i.e. **construction of an immovable property**.

(SANJAY SAXENA)
Member

(MOHIT AGRAWAL)
Member

Place : Ahmedabad

Date : 11.03.2020.