


<p style="text-align: center;">GUJARAT AUTHORITY FOR ADVANCE RULING</p> <p style="text-align: center;">GOODS AND SERVICES TAX</p> <p style="text-align: center;">A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,</p> <p style="text-align: center;">AHMEDABAD – 380 009.</p>	
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ADVANCE RULING NO. GUJ/GAAR/R/2020/15

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/53)

Date: 19.05.2020

Name and address of the applicant	:	M/s. Navbharat LPG Bottling Company, At and Post : Godhoda, Himmatnagar, Sabarkantha : 383001.
GSTIN of the applicant	:	24AAAFN7217J1ZD
Date of application	:	10.09.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a) Classification of any goods or services or both. (b) Admissibility of input tax credit of tax paid or deemed to have been paid.
Date of Personal Hearing	:	19.03.2020
Present for the applicant	:	Shri Surendra D.Modi

BRIEF FACTS

The applicant vide their application for Advance Ruling has submitted that they are engaged in the business of purchasing LPG Gas (Bulk) through Tanker and thereafter, refilling the same in two types of bottles- 17 kgs. and 21 kgs. and sell it to Commercial Customer on Rate of GST Applicable @ 18%. Secondly, they are refilling the gas in bottles of 12 kgs. and 15 kgs. also and selling it to Domestic Customers, on which GST rate applicable is @5%.

2. The applicant have further stated that in the above circumstances, by considering Section-97 (2), they have made the following question on which Advance Ruling is required:

- (1) Determination of the liability to pay Tax on sales of Gas sold in Bottle to Commercial Customer and Gas sold in Bottle to Domestic Customer.**
- (2) Entire I.T.C. @ 18% eligible on Purchases of LPG Gas (bulk) through Tanker?**

3. The applicant have enclosed copies of Purchase invoice and Sales invoice for ready reference and have requested to grant them a personal hearing in the matter and after considering the above facts, to pass a Determination Order or Advance Ruling as per provisions of the Act.

DISCUSSION & FINDINGS

4. We have considered the submissions made by the applicant in their application for advance ruling as well as the arguments/discussions made by them at the time of personal hearing. As per their submission, the applicant are engaged in the business of purchasing LPG Gas (Bulk) through Tanker and thereafter, refilling the same in two types of bottles- 17 kgs. and 21 kgs. and sell it to Commercial Customer on Rate of GST Applicable @ 18%. Secondly, they are refilling the gas in bottles of 12 kgs. and 15 kgs. also and selling it to Domestic Customers, on which GST rate applicable is @5%. The applicant have submitted a copy of Purchase Invoice issued to them by M/s. Aegis Gas (LPG) private limited, Tranja village, Post-Limbasa, Tal: Matar, District-Kheda through which they have received 11.970 tonnes of Commercial LPG

Mixture (Gas) from the said company in bulk which would be refilled in smaller bottles as mentioned above and sold at the applicable rates as mentioned above.

5. The applicant has put the following question for advance ruling in their application:-

(1) Determination of the liability to pay Tax on sales of Gas sold in Bottle to Commercial Customer and Gas sold in Bottle to Domestic Customer.

(2) Entire I.T.C. @ 18% eligible on Purchases of LPG Gas (bulk) through Tanker?

6. In order to determine the tax liability on the sale of Gas sold in bottles by the applicant and sold to the Commercial and Domestic customers, we will be required to refer to the Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 containing the sub-headings as well as the rates of GST applicable to various goods. Relevant portion of Notification No:01/2017-Central Tax (Rate) dated 28.06.2017 is reproduced hereunder:

[TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION (i) OF THE GAZETTE
OF INDIA, EXTRAORDINARY]
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)

Notification No.1/2017-Central Tax (Rate)

New Delhi, the 28th June, 2017.

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the rate of the central tax of-

- (i) 2.5 per cent. in respect of goods specified in Schedule I,
- (ii) 6 per cent. in respect of goods specified in Schedule II,
- (iii) 9 per cent. in respect of goods specified in Schedule III,
- (iv) 14 per cent. in respect of goods specified in Schedule IV,
- (v) 1.5 per cent. in respect of goods specified in Schedule V, and
- (vi) 0.125 per cent. in respect of goods specified in Schedule VI

appended to this notification (hereinafter referred to as the said Schedules), that shall be levied on intra-State supplies of goods, the description of which is specified in the corresponding entry in column (3) of the said Schedules, falling under the tariff item, subheading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedules

Schedule I – 2.5%

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
165.	2711 12 00, 2711 13 00, 2711 19 00	Liquefied Propane and Butane mixture, Liquefied Propane, Liquefied Butane and Liquefied Petroleum Gases (LPG) for supply to household domestic consumers or non-domestic exempted category (NDEC) customers by the Indian Oil Corporation Limited, Hindustan petroleum Corporation Limited or Bharat Petroleum Corporation Ltd.

As per the GST tariff (based on Schedule-I of Customs Tariff Act, 1975) Liquefied Petroleum Gas (LPG) is classified under Chapter-27 and Sub-heading 2711 1900. The said item appears at Sr.No.165 of Schedule I of Notification No.1/2017-Central Tax (Rates) dated 28.06.2017 wherein the GST rate is 5% (2.5% SGST + 2.5% CGST) which is available only in cases where LPG is supplied to non-domestic exempted category (NDEC) customers by the Indian oil Corporation Ltd., Hindustan Petroleum Corporation Ltd. or Bharat Petroleum Corporation Ltd. Consumers under NDEC include hospitals, hostels, supplies for mid-day meal schemes, government office canteens, messes of police, BSF, CISF besides that of defence

establishments, the canteens run on cooperative basis, laboratories attached to schools, colleges and research institutes and charitable institutes. As per the purchase invoice given by the applicant along with their submission as well as the arguments/discussions made by their representative during the course of personal hearing held on 19.03.2020, it is seen that the

applicant is purchasing the gas in bulk only from M/s Aegis GAS (LPG) Private Limited (which is a non-government company and a private unlisted company) and selling it by refilling it in cylinders to their commercial/domestic customers. **However, since it is apparent from their submission that they are not providing LPG to NDEC customers, the same need not be discussed.** Further, the above tariff sub-heading does not cover the LPG purchased from companies other than Indian Oil Corporation Ltd., Hindustan Petroleum Corporation Ltd. or Bharat Petroleum Corporation Ltd. and supplied to commercial/domestic customers. Hence, the LPG gas received from companies other than the 3 mentioned above and supplied to Commercial/Domestic customers in cylinders of 21 kgs., 17 kgs., 15 kgs. and 12 kgs. would not be covered under the above Schedule-I but will be covered under Sr.No.453 of Schedule-III of Notification No.1/2017-Central Tax(Rate) dated 28.06.2017 (which reads as under) and would attract GST of 18% (9% SGST + 9% CGST):

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
453	Any Chapter	Goods which are not specified in Schedule I, II, IV, V or VI.

7. Further, Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 was amended by Notification No:06/2018-Central Tax (Rate) dated 25.01.2018 wherein in Sr. No. 165, in column (3), the words, **“to household domestic consumers or”**, was omitted and a **new Serial number 165A was inserted after Sr.No.165 in Schedule-I** of the said notification as under:

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
165A	2711 12 00 2711 13 00, 2711 1900	Liquefied Propane and Butane mixture, Liquefied Propane, Liquefied Butane and Liquefied Petroleum Gases (LPG) for supply to household domestic consumers”;

8. As per the above entry 165A, LPG supplied to household domestic customers would attract GST of 5%(2.5% SGST + 2.5% CGST).Hence, we conclude that LPG supplied by the applicant to household domestic customers would attract GST of 5% GST with effect from 25.01.2018.

9. Now, with regard to the second part of the question on advance ruling, the applicant has stated that they are receiving LPG gas in bulk at 18% through tanker which they are refilling into smaller packs/cylinders and selling it to their commercial/domestic consumers. They have asked whether they are eligible to take credit of the entire input tax credit (I.T.C.)@ 18% on Purchases of LPG Gas (bulk) through Tanker.

10. Input tax credit is discussed in detail in Sections-16, 17 and 18 of the CGST Act, 2017 as under:

Section-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.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services— (i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise; (ii) where the services are

provided by the supplier to any person on the direction of and on account of such registered person.

(c) subject to the provisions of section 41 or section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.

Section-17. (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, except those specified in paragraph 5 of the said Schedule.

(4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

(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 for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:—

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used—

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

(A) further supply of such vessels or aircraft; or

(B) transportation of passengers; or

(C) imparting training on navigating such vessels; or

(D) imparting training on flying such aircraft;

(ii) for transportation of goods

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available—

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged—

(I) in the manufacture of such motor vehicles, vessels or aircraft; or

(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

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

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both 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 center; and

(iii) travel benefit's extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

(c) works contract services when supplied for construction of an immovableproperty (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.

(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

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.

Section-18. (1) Subject to such conditions and restrictions as may be prescribed—

(a) a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;

(b) a person who takes registration under sub-section (3) of section 25 shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;

(c) where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed;

(d) where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed.

(2) A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.

(3) Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

(4) Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or both supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption:

Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

(5) The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed.

(6) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:

Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

11. Input tax credit is discussed in detail in Rules-36, 37, 40, 41 and 42 of the CGST Rules, 2017 as under:

Rule-36. Documentary requirements and conditions for claiming input tax credit.-

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,-

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section 34;

(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;

(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document, and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such person.

Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.

(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts.

(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed **10 per cent.** of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.

Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period

September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.

Rule-37. Reversal of input tax credit in the case of non-payment of consideration.-

(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to subsection (2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

(2) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.

(3) The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.

(4) The time limit specified in sub-section (4) of section 16 shall not apply to a claim for reavailing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.

Rule-40 Manner of claiming credit in special circumstances.-(1) The input tax credit claimed in accordance with the provisions of sub-section (1) of section 18 on the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or the credit claimed on capital goods in accordance with the provisions of clauses (c) and (d) of the said sub-section, shall be subject to the following conditions, namely,-

(a) the input tax credit on capital goods, in terms of clauses (c) and (d) of sub-section (1) of section 18, shall be claimed after reducing the tax paid on such capital goods by five percentage points per quarter of a year or part thereof from the date of the invoice or such other documents on which the capital goods were received by the taxable person.

(b) the registered person shall within a period of thirty days from the date of becoming eligible to avail the input tax credit under sub-section (1) of section 18, or within such further period as may be extended by the Commissioner by a notification in this behalf, shall make a declaration, electronically, on the common portal in FORM GST ITC-01 to the effect that he is eligible to avail the input tax credit as aforesaid:

Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

(c) the declaration under clause (b) shall clearly specify the details relating to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or as the case may be, capital goods—

(i) on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of the Act, in the case of a claim under clause (a) of sub-section (1) of section 18;

(ii) on the day immediately preceding the date of the grant of registration, in the case of a claim under clause (b) of sub-section (1) of section 18;

(iii) on the day immediately preceding the date from which he becomes liable to pay tax under section 9, in the case of a claim under clause (c) of sub-section (1) of section 18;

(iv) on the day immediately preceding the date from which the supplies made by the registered person becomes taxable, in the case of a claim under clause (d) of sub-section (1) of section 18;

(d) the details furnished in the declaration under clause (b) shall be duly certified by a practicing chartered accountant or a cost accountant if the aggregate value of the claim on account of central tax, State tax, Union territory tax and integrated tax exceeds two lakh rupees;

(e) the input tax credit claimed in accordance with the provisions of clauses (c) and (d) of sub-section (1) of section 18 shall be verified with the corresponding details furnished by the corresponding supplier in FORM GSTR-1 or as the case may be, in FORM GSTR- 4, on the common portal.

(2) The amount of credit in the case of supply of capital goods or plant and machinery, for the purposes of sub-section (6) of section 18, shall be calculated by reducing the input tax on the

said goods at the rate of five percentage points for every quarter or part thereof from the date of the issue of the invoice for such goods.

Rule-41. Transfer of credit on sale, merger, amalgamation, lease or transfer of a business.-(1) A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in FORM GST ITC-02, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee:

Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

Explanation: - For the purpose of this sub-rule, it is hereby clarified that the “value of assets” means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.

(2) The transferor shall also submit a copy of a certificate issued by a practicing chartered accountant or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.

(3) The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the un-utilized credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.

(4) The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

Rule-42. Manner of determination of input tax credit in respect of inputs or input services and reversal thereof.-(1) The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

(a) the total input tax involved on inputs and input services in a tax period, be denoted as ‘T’;

(b) the amount of input tax, out of ‘T’, attributable to inputs and input services intended to be used exclusively for the purposes other than business, be denoted as ‘T1’;

(c) the amount of input tax, out of ‘T’, attributable to inputs and input services intended to be used exclusively for effecting exempt supplies, be denoted as ‘T2’;

(d) the amount of input tax, out of ‘T’, in respect of inputs and input services on which credit is not available under sub-section (5) of section 17, be denoted as ‘T3’;

(e) the amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as ‘C1’ and calculated as- $C1 = T - (T1 + T2 + T3)$;

(f) the amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies, be denoted as ‘T4’;

Explanation: For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, value of T4 shall be

zero during the construction phase because inputs and input services will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.

(g) ‘T1’, ‘T2’, ‘T3’ and ‘T4’ shall be determined and declared by the registered person at the invoice level in FORM GSTR-2 and at summary level in FORM GSTR-3B;

(h) input tax credit left after attribution of input tax credit under clause (f) shall be called common credit, be denoted as ‘C2’ and calculated as- $C2 = C1 - T4$;

(i) the amount of input tax credit attributable towards exempt supplies, be denoted as ‘D1’ and calculated as- $D1 = (E \div F) \times C2$ where, ‘E’ is the aggregate value of exempt supplies during the tax period, and ‘F’ is the total turnover in the State of the registered person during the tax period:

Provided that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the value of „E/F“ for a tax period shall be calculated for each project separately, taking value of E and F as under:- E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier; F= aggregate carpet area of the apartments in the project;

Explanation 1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier;

Explanation 2: Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of „E“ in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended.

Provided further that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 and entry 92A of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

(j) the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as 'D2', and shall be equal to five per cent. of C2; and

(k) the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as 'C3', where, - $C3 = C2 - (D1 + D2)$; (l) the amount 'C3' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax;

(l) the amount „C3,, „D1“ and „D2“ shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B or through FORM GST DRC-03;

(m) the amount equal to aggregate of 'D1' and 'D2' shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03;

Provided that where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level by the registered person, the same

shall be included in 'T1' and 'T2' respectively, and the remaining amount of credit on such inputs or input services shall be included in 'T4'.

(2) except in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax credit determined under sub-rule (1) shall be calculated finally for the financial year before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates, in the manner specified in the said sub-rule and-

(a) where the aggregate of the amounts calculated finally in respect of 'D1' and 'D2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2', such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on

the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or
(b) where the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2' exceeds the aggregate of the amounts calculated finally in respect of 'D1' and 'D2', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year to which such credit relates.

(3) In case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax determined under sub-rule (1) shall be calculated finally, for each ongoing project or project which commences on or after 1st April, 2019, which did not undergo or did not require transition of input tax credit consequent to change of rates of tax on 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, in the manner prescribed in the said sub-rule, with the modification that value of E/F shall be calculated taking value of E and F as under:

E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier:

F= aggregate carpet area of the apartments in the project; and,-

(a) where the aggregate of the amounts calculated finally in respect of „D1“ and „D2“ exceeds the aggregate of the amounts determined under sub-rule (1) in respect of „D1“ and „D2“, such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation of the project takes place and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(b) where the aggregate of the amounts determined under sub-rule (1) in respect of „D1“ and „D2“ exceeds the aggregate of the amounts calculated finally in respect of „D1“ and „D2“, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

(4) In case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the input tax determined under sub-rule (1) shall be calculated finally, for commercial portion in each project, other than residential real estate project (RREP), which underwent transition of input tax credit consequent to change of rates of tax on the 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, in the following manner.

(a) The aggregate amount of common credit on commercial portion in the project (C3aggregate_comm) shall be calculated as under,

$$C3aggregate_comm = [aggregate\ of\ amounts\ of\ C3\ determined\ under\ sub- rule\ (1)\ for\ the\ tax\ periods\ starting\ from\ 1\ st\ July,\ 2017\ to\ 31st\ March,\ 2019,\ x\ (AC / AT)] + [aggregate\ of\ amounts\ of\ C3\ determined\ under\ sub- rule\ (1)for\ the\ tax\ periods\ starting\ from\ 1\ st\ April,\ 2019\ to\ the\ date\ of\ completion\ or\ first\ occupation\ of\ the\ project,\ whichever\ is\ earlier]$$

Where, - AC = total carpet area of the commercial apartments in the project AT = total carpet area of all apartments in the project (b) The amount of final eligible common credit on commercial portion in the project (C3final_comm) shall be calculated as under $C3final_comm = C3aggregate_comm \times (E / F)$

Where, -

E = total carpet area of commercial apartments which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

F = AC = total carpet area of the commercial apartments in the project

(c) where, C3aggregate_comm exceeds C3final_comm, such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment;

(d) where, C3final_comm exceeds C3aggregate_comm, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

(5) Input tax determined under sub- rule (1) shall not be required to be calculated finally on completion or first occupation of an RREP which underwent transition of input tax credit consequent to change of rates of tax on 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended.

(6) Where any input or input service are used for more than one project, input tax credit with respect to such input or input service shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per sub-rule (3)

The procedure to be followed and the conditions/provisions for taking cenvat credit have been discussed in great detail in Sections-16, 17 and 18 of the CGST Act, 2017 and Rules-36, 37, 40, 41 and 42 of the CGST Rules, 2017. We conclude that the applicant is eligible to take the entire input cenvat credit @ 18% on purchases of LPG Gas in bulk through Tanker subject to the fulfilment of the conditions/provisions (wherever applicable) for taking input tax credit as envisaged in Sections-16, 17 and 18 of the CGST Act, 2017 and Rules-36, 37, 40, 41 and 42 of the CGST Rules, 2017.

12. In view of the discussions as detailed above, we rule as under –

R U L I N G

(1) The applicant would be liable to pay 18% GST (9% SGST + 9% CGST) on the LPG sold by them to their Commercial Customers. They would be liable to pay 18%(9% SGST + 9% CGST) on the LPG sold to their Domestic Customers for the period upto 24.01.2018 and 5% (2.5% SGST + 2.5% CGST) on the LPG sold to their Domestic Customers with effect from 25.01.2018 onwards.

(2) The applicant is eligible to take the entire input cenvat credit @ 18% on purchases of LPG Gas in bulk through Tanker subject to the fulfilment of the conditions/provisions (wherever applicable) for taking input tax credit as envisaged in Sections-16, 17 and 18 of the CGST Act, 2017 and Rules-36, 37, 40, 41 and 42 of the CGST Rules, 2017.

(SANJAY SAXENA)

(MOHIT AGRAWAL)

MEMBER

MEMBER

Place: Ahmedabad

Date: 19.05.2020.