

**2019 (10) TMI 570 - AUTHORITY FOR ADVANCE RULING, KARNATAKA**

**IN RE: M/S. SHRI KESHAV CEMENT AND INFRA LIMITED,**

KAR ADRG 26/2019

**Dated: - 12 September 2019**

Input tax credit - inputs/capital goods/input services -Section 16 and 17 of the CGST/ KGST/ IGST Act - whether the capital goods and. inputs constitute plant and machinery of the Applicant which are used in the business of Manufacturing Cement and hence not blocked input tax credit under section 17(5) of the CGST/ KGST/ IGST Act? - HELD THAT:- The applicant is entitled to credit of input tax charged on any supply of goods and/or services made to the applicant and used by the applicant in furtherance of his business. Here the electricity is produced by the solar power plant. Therefore the supplies of goods and/or services that go into the setting up of the solar power plant can be rightly construed as supplies made and used by the applicant in furtherance of his business. However this is subject to the conditions and restrictions as specified in Section 16(2) and Section 17 of the CGST Act, 2017.

Input Tax Credit - items being used towards the electric energy generated from the captive power plant and transmitted to the cement manufacturing plants which are physically located at distinct locations within the State of Karnataka - section 17(1) and 17(2) of the CGST/KGST/IGST Act - permission for utilization of the credit for payment of output tax - HELD THAT:-The activity of production of electric energy is a supply to self as the electricity produced is captively used. In fact the production of electricity in a solar power plant geographically separated from the manufacturing site is an intermediate process in the manufacture of cement akin to the use of generators sets within the factory premises to produce electricity for consumption in the manufacturing process. The operation of generator sets within the factory would not constitute a separate supply. Similarly the operation of the solar power plant shall not constitute a separate supply warranting the application of Section 17(1) and /or 17(2) - the applicant shall be entitled to the eligible input credits in entirety provided the entire production is captively consumed.

Reversal of Input Tax Credit - electric energy generated by it at its plant and banked with the KPTCL, GESCOM & HESCOM and which is unutilized at the end of six months from the date of banking and is deemed to be consumed by KPTCL, GESCOM and HESCOM at the end of six months - HELD THAT:- Electrical energy is an exempted item in terms of CGST-Notification 2/2017-Central Tax (Rate) dated 28.06.2017 (Serial No. 104) & KGST-Notification GD48 CSL 2017 dated 29.06.2017. The applicant also agrees to this, as per para 12 of Annexure 3 to their application. Therefore in respect of the supply of surplus electric energy it is evident that the applicant is engaged in supply of exempted goods - The applicant company is required to reverse input tax credit on the unutilized electric energy banked with KPTCL, GESCOM & HESCOM and for which the applicant receives a consideration in terms of the Wheeling and banking agreement.

**Judgment / Order**

**SRI. HARISH DHARNIA, AND DR. RAVI PRASAD M.P. MEMBER**

**Represented by: Sri Rishabh Singhvi,**

**ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS & SERVICES TAX ACT, 2017 AND UNDER  
98(4) OF THE KARNATAKA GOODS & SERVICES TAX ACT, 2017**

1. M/s Shri Keshav Cement and Infra Limited, Jyothi Tower, 215/2, 6th Cross, Nazar Camp, Karbhar Galli, M. Vadgaon, Belgavi-590 005, having GSTIN number 29AAACK8074H1Z8, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 & KGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01 discharging the fee of ₹ 5,000/- each under the CGST Act and the KGST Act.

2. The applicant is a registered public limited company (bearing CIN No. L26941KA1993PLC014104) engaged in the business of manufacturing of cement. The applicant has migrated into the GST law and is registered in the State of Karnataka bearing GSTIN No. 29AAACK8074H1Z8. The cement manufactured from the plants is taxable under GST at a bundled rate of 28% under HSN 2523.

3. The applicant has two cement manufacturing units, one each at Lokapur and Kaladgi both in Bagalkot district. The applicant has recently installed a Captive solar electricity power plant in Bisarahalli (Koppal district). The said places along with other offices of the applicant have been reported in the GST registration which is enclosed as **Annexure 6**. The Kaladgi Plant (Cement), Lokapur Plant (Cement), Koppal Plant (Solar Power) are all registered under the same GSTIN of the Applicant.

4. The applicant has received a license to set-up and produce electricity vide GO No. 381 NCE 2016 dt. 02-02-2017. Under the said GO, the applicant has been authorised to set-up a renewable energy based Solar Electric Power Plant of 20MW capacity for power generation and captive consumption. The plant has been commissioned and operative w.e.f. 01 April 2018.

5. The Applicant, for the purpose of setting up the power plant, has purchased the following inputs/capital goods such as Solar Power Panels, Transformers, electrical meters, wiring & installations and performed civil works for the foundation of these items. The detailed listing of the items and the sample invoices of each type have been enclosed.

6. Under the Central and State Electricity regulations, the applicant was required to seek permission for the setting up of the captive power plant and enter into agreements with Power Transmission authorities for the transmission of the electricity generated at its solar power plant. The Applicant is statutorily required to transmit the electricity to its other plants only through licensed State Transmission Companies which operate the electricity grids.

7. The applicant has entered into a Wheeling and Banking agreement dated 24-03-2018 ('W&B agreement') with Karnataka Power Transmission Corporation Limited ('KPTCL'). The other parties to this agreement are Gulbarga Electricity Supply Company Limited ('GESCOM') and Hubli Electricity Supply Company Limited ('HESCOM') in respect of the power produced from the solar power plant. The applicant has also received consent letters from GESCOM and HESCOM for wheeling and banking of the electricity produced from this power plant.

8. The key terms of the agreement are as follows:-

*a. Power generated from the solar power project of the company would be connected with the transmission lines of KPTCL/GESCOM at the prescribed injection points at the Betagera Sub-Station.*

*b. The electric meters installed at the technical nodes make a recording of the electricity transmitted into the Grid of the Transmission Company. The power produced is wheeled via the KPTCL grid under banking and wheeling agreement to the drawal point (i.e. point of consumption being the Cement Plant). The power is transmitted through the KPTCL grids between Betagera substation in Koppal to Lokapur plant and Kaladgi plant through their respective grids.*

c. The company would have to submit a list of the consumers (captive/ exclusive or non-exclusive consumers) to whom it proposes to wheel the electric energy.

d. KPTCL/ GESCOM would provide the connectivity network and ensure that the contracted network capacity under open access is available to the Applicant at normative levels.

e. The transmission loss for this wheeling agreement has been fixed at 0 % of the power transmitted into the Grid.

f. In case of surplus transmission or short drawal at the plant location, the Company is permitted to bank the electric energy with the ESCOM. The banked energy would be kept for a period of six months after which no carry forward would be permitted and it would be deemed to utilised by the ESCOM as per the general tariff applicable.

g. KPTCL/ GESCOM/ HESCOM would collected the cross subsidy charges from the exclusive consumers identified by the Company and would form part of the electricity bill issued by the Distribution Company (HESCOM) to the actual consumer. Cross subsidy charges are zero for 10 years from 01.04.2018 to 31.3.2028.

9. The Applicant seeks clarification on the eligibility of input tax credit u/s 16 and 17 of the Central Goods and Services Tax Act, 2017 (CGST Act) and the Karnataka State Goods and Services Tax Act, 2017 (KGST Act) and Integrated Goods and Service Tax Act, 2017 (IGST Act) in respect of the inputs, input services and capital goods received towards erection, installation and commissioning of the solar power plant at Bisarahalli (Koppal District).

10. In view of the above Statement of Facts put forth by the Applicant, advance ruling in respect of the following questions has been sought:-

1. Whether the company is eligible to take input tax credit as 'inputs/capital goods' or 'input services' of the items enlisted in Annexure-4 of this application in terms of Section 16 and 17 of the CGST/ KGST/ IGST Act? Additionally, whether the capital goods and. inputs constitute plant and machinery of the Applicant which are used in the business of Manufacturing Cement and hence not blocked input tax credit under section 17(5) of the CGST/ KGST/ IGST Act?

2. Whether the Applicant Company is permitted to avail the entire input tax credit of the enlisted items in Annexure 4 of this application, being used towards the electric energy generated from the captive power plant and transmitted to the cement manufacturing plants which are physically located at distinct locations within the State of Karnataka in terms of section 17(1) and 17(2) of the CGST/KGST/IGST Act and subsequently utilize the same for payment of output tax on cement sold by the Applicant?

3. Whether the applicant company is required, to reverse input tax credit on the electric energy generated by it at its plant and banked with the KPTCL, GESCOM & HESCOM and which is unutilized at the end of sic months from the date of banking and is deemed to be consumed by KPTCL, GESCOM and HESCOM at the end of six months?

#### **PERSONAL HEARING: / PROCEEDINGS HELD ON 03.10.2018.**

11. Sri. M.A Maniyar, Authorised Representative appeared for personal hearing on 03.10.2018. Shri Maniyar reiterated the statement of facts and the applicants understanding of the law on the questions raised by them in the application.

12. The Statement of Facts has already been enumerated in earlier Paras 2 to 9. The applicants understanding of the law in relation to the questions is as follows.

13. In respect of the first question the applicant contends as follows:-

a. The applicant is in the business of manufacturing and sale of Cement of various types and grades from its manufacturing plant in Lokapur and Kaladgi. The said activities constitute 'business' in terms of section 2(17) of the CGST/ KGST Act.

b. Section 16(1) of the CGST/ KGST Act provides the benefit of input tax credit to a taxable person of input tax charged on any supply of goods or services which are used or intended to be used in the course or furtherance of business of the taxable person.

c. Section 2(59) defines inputs as being all goods including capital goods which are used or intended to be used by a supplier in the course of its business. Input service has been defined u/s 2(60) in a similar manner.

d. Input tax has been defined as tax charged to a taxable person on goods and services supplied to be him under the Integrated goods and service tax Act, 2017 (TGST)/ CGST and KGST Act and such tax would be creditable in terms of section 2(63) read with section 49 of the said Acts.

e. Section 16 of the said Act provides additional conditions for claiming this input tax credit, such as:-

1. Taxable person should be in possession of the tax invoice or tax paying document
2. Taxable person should have received the goods and services
3. Tax charged has been duly paid to the Government either in cash or by input tax credit
4. Taxable person has duly furnished his return as per the law

f. Section 17 of the said Act also provides certain conditions for availment of input tax credit and the relevant conditions are below:-

1. Input tax which are partly used for taxable and exempted supplies would have to be proportionately reduced in terms of Section 17(1)/ 17(2) and the rules there under
2. Works contract services received for construction of immovable property (other than plant and machinery) would not be eligible for input tax credit
3. Goods and services received for construction of immovable property (other than plant and machinery) on own account would not be eligible for input tax credit
4. Plant and machinery has been defined in Explanation as apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods and services and includes foundation/ structural support but excludes land, building and civil structures.

g. The applicant submits that it has satisfied the primary conditions provided in section 16 of the CGST/ KGST Act. Further, in respect of section 17, the applicant submits that the solar equipments purchased qualify as 'plant and machinery' as they are equipment, apparatus and machinery used by the taxable person for its business of supplying taxable goods. Hence, the inputs, input services and capital goods for the use of erection, commissioning and installation of the solar power plant are permissible input tax credit under section 17 of the CGST/ KGST Act.

h. Further, the applicant submits that even-though the inputs/ capital goods and input services are used for generation of electrical energy, the electrical energy is solely for captive / own use for the manufacture and supply of taxable goods (i.e. Cement). The business of the applicant is manufacture and sale of cement and the solar power plant meets the criteria of being used in the business of manufacture and sale of cement since the power generated from this plant is used to

operate the cement manufacturing plant. Hence, it is eligible for input tax credit on all inputs, input services and capital goods installed at Bisarahalli (Koppal).

i. The applicant relies on the recent decision of the Hon'ble [Madras High Court in Thiagarajar Mills \(P\) Ltd 54 GSTR 420 \(Mad\) dt. 24.04.2018 = 2018 \(8\) TMI 1562 - MADRAS HIGH COURT](#) which held that wind power generated at a physically different location and transmitted through electric networks to the manufacturing plant is construed as eligible capital goods and eligible for input tax credit. The relevant extract of the conclusive part of the decision is below:

12. By ample evidence, the petitioner had proved that he has entered into an agreement with the Power Grid Corporation for transmitting the power and getting supply and then, the relevant column proved that it is not distributed to anybody else on commercial basis. In that event, when the erection of windmill for the purpose of generating power in the manufacturing process shall be construed as capital goods, input-tax credit shall be made available to the assessee as per section 19(3) of the TNVAT Act.

14. In respect of the second question the applicant contends as follows:-

a. The provisions of section 17(1) & (2) of the CGST/ KGST restrict proportionate credit in respect of common credits (partly used for taxable and exempt supplies) and also exclusive credit used for exempt supplies. Rule 42 and 43 of the respective rules provide for the mechanism of computation of the proportionate amount eligible as input tax credit.

b. The applicant is engaged in manufacture of cement and engaged in production of electrical energy but solely for own use/ consumption. The electrical energy generated at the solar power plant is transmitted through the electrical grid of KPTCL/ ESCOMs to the consuming cement manufacturing plant at Lokapur and Kaladgi. The applicant is liable to pay the wheeling / banking charges to KPTCL/ESCOMs for usage of the grid for transmission of electricity.

c. The applicant submits that even though electrical energy is an exempted item in terms of CGST-Notification 2/2017-Central Tax (Rate) dated 28.06.2017 & KGST-Notification GD48 CSL 2017 dated 29.06.2017, there is no requirement of reversal of input tax credit on the same as this is captively used in the manufacturing of cement which is a taxable commodity under GST and which is then sold to the customer on payment of applicable GST.

d. Moreover, the solar power plant and the cement manufacturing plant though at physically different locations are covered under the same GSTIN, the input tax credit from the solar power plant would be eligible for set-off as input tax credit at the cement manufacturing plant.

15. In respect of the third question the applicant states as follows:-

a. Under the W&B arrangement, the applicant is permitted to bank surplus electrical energy for a period of upto six months failing which the said electrical energy would be lapsed by ESCOM and considered as good as consumed by the said company.

b. In such a case, the applicant is statutorily required to treat the energy as consumed by the ESCOM towards this lapsed electrical energy. The applicant submits that this does not amount to an exempt supply as this an act of the Statute and hence cannot be termed as an exempt supply. Accordingly there is no requirement of reversal of input tax credit even where the banked energy is lapsed at the end of six months on account of any non-utilisation of input tax credit.

## **FINDINGS & DISCUSSION:**

16. It is observed that the applicant company has two manufacturing units, one each at Kaladgi and Lokhapur and a solar power plant situated at another third distinct location at Bisarahalli village, Koppal. In other words the solar power plant is located at a location away from the manufacturing sites. The

electricity generated at the solar power plant is for captive consumption at the two manufacturing units of the applicant. Electricity generated at the solar power plant is transmitted to the manufacturing units utilizing the grid facility provided by KPTCL/GESCOM/HESCOM under an agreement already discussed earlier.

17. The applicant is admittedly engaged in the manufacture of goods. Electric Energy is classified under Tariff Heading 27160000 as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). Therefore Electric Energy is considered as goods. Accordingly electric power is one of the inputs required for carrying out the process of manufacturing. Furthermore, in terms of Serial number 104 of Notification 2/2017- Central Tax (Rate) dated 28.06.2017, electric energy is exempted from tax under the CGST Act.

18. Section 2(59) provides that 'input' means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Further capital goods are defined in Section 2(19) as goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business. This implies that goods which have been capitalized in the account books would not qualify to be considered as inputs.

*4.3 It has been contended, as well as suitably been demonstrated with the help of Wheeling and Banking agreements, that the applicant has a solar power plant located away from the manufacturing units and the electric energy produced there is used in the manufacture of the end product in the units located away from the solar power plant. Undoubtedly the electricity energy is captively used after transmission through the grid and drawal from the grid at the manufacturing point. The electric energy is therefore qualified to be considered as an input, used in the manufacture of the end product, as defined under Section 2(59) of the CGST act, 2017.*

19. Section 16(1) of the CGST Act, 2017 provides as follows:-

*"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".*

The generalized interpretation of the aforesaid Section implies that the applicant is entitled to credit of input tax charged on any supply of goods and/or services made to the applicant and used by the applicant in furtherance of his business. Here the electricity is produced by the solar power plant. Therefore the supplies of goods and/or services that go into the setting up of the solar power plant can be rightly construed as supplies made and used by the applicant in furtherance of his business. However this is subject to the conditions and restrictions as specified in Section 16(2) and Section 17 of the CGST Act, 2017.

20. Section 17(5) of the CGST Act, 2017 stipulates the situations wherein input tax credit shall not be available notwithstanding anything contained in section 16(1) of the said Act. Serial number (c) under sub section 5 of Section 17 provides as follows:-

*(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;*

This provides that work contract services are not eligible to be treated as input service for the purpose of availing input tax credit unless those services are in relation to plant and machinery.

21. 'Plant and Machinery' has been described in the Explanation to Section 17(5) as follows:-

**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.

22. On the basis of the above cited provisions of law and the facts and circumstances attending to the applicant’s case we proceed to answer the first question as follows.-

(a) Question 1 has two parts. The first part reads ‘Whether the company is eligible to take input tax credit as ‘inputs/capital goods’ or ‘input services’ of the items enlisted in Annexure-d of this application in terms of Section 16 and 17 of the CGST/ KGST/ IGST Act?’. The definition of ‘input’ (as provided in Section 2(59) *ibid*) does not cover capital goods. Therefore goods, the value of which has been capitalized in the books of account would not be considered as inputs and the applicant will not be entitled to credit of input tax in relation to such goods. From the list of the goods given in Annexure 4 to the application it cannot be inferred as to where capitalization has been done. Therefore in respect of each and every entry of the Annexure specific order cannot be made. Therefore the applicant is entitled to input tax credit in respect of goods other than capital goods.

(b) The second part of the question is ‘Additionally, whether the capital goods and inputs constitute plant and machinery of the Applicant which are used in the business of Manufacturing Cement and hence not blocked input tax credit under section 17(5) of the CGST/ KGST/ IGST Act?’. Section 17(5)(c) of the CGST Act provides that input tax credit shall be available in respect of works contract services related to construction of plant and machinery. Plant and Machinery, as per Explanation to Section 17 of the CGST Act 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.

This definition implies that only those apparatus, equipment, and machinery which are fixed to earth by foundation or structural support alone are entitled to qualify as plant and machinery. Therefore the goods answering to this definition alone shall be qualified to be treated as ‘plant and machinery’. In respect of other goods provisions of Section 17(5)(c) shall apply and credit of input tax shall not be available.

23. We now take up the second question. The second question asks Whether the Applicant Company is permitted to avail the entire input tax credit of the enlisted items in Annexure 4 of this application, being used towards the electric energy generated from the captive power plant and transmitted to the cement manufacturing plants which are physically located at distinct locations within the State of Karnataka in terms of section 17(1) and 17(2) of the CGST/KGST/IGST Act and subsequently utilize the same for payment of output tax on cement sold by the Applicant?-

(a) Here the applicant contends that they are engaged in two supplies, first being manufacture of cement and the second being production of electric energy, an exempted supply. The applicant understands that they are, accordingly, engaged in taxable and exempted supplies and therefore

seek clarification on the application of apportionment of credit under Section 17(1) and 17(2) of the CGST Act, 2017.

*(b) The second activity of production of electric energy is a supply to self as the electricity produced is captively used. In fact the production of electricity in a solar power plant geographically separated from the manufacturing site is an intermediate process in the manufacture of cement akin to the use of generators sets within the factory premises to produce electricity for consumption in the manufacturing process. The operation of generator sets within the factory would not constitute a separate supply. Similarly the operation of the solar power plant shall not constitute a separate supply warranting the application of Section 17(1) and /or 17(2). Needless to say that this shall apply only in the case where the entire electricity generated is consumed captively and no part of the energy produced is sold or discharged into the grid and not taken out at their manufacturing site.*

*(c) The answer to the second question, therefore, shall be that the applicant shall be entitled to the eligible input credits (as decided in question 1) in entirety provided the entire production is captively consumed (emphasis supplied).*

24. The third question asks Whether the applicant company is required to reverse input tax credit on the electric energy generated by it at its plant and banked with the KPTCL, GESCO & HESCO and which is unutilized at the end of six months from the date of banking and is deemed to be consumed by KPTCL, GESCO and HESCO at the end of six months?

*(a) The applicant states, in para 14 of Annexure 3 of their application, that they are permitted to bank surplus energy considering it as lapsed consumed by ESCOM. In this para the applicant is silent about the aspect of the cost of the lapsed energy. In the question, as narrated above, the applicant contends that the surplus energy is deemed to be consumed by KPTCL, GESCO and HESCO at the end of six months. Here also the applicant stops short of stating as to what happens to the cost of the energy that has lapsed. In this context we take recourse to the Wheeling and Banking Agreement for an answer. Copy of the agreement was submitted by the applicant along with the Application. In this regard para 5.7, page 39, is worth reproducing here as follows:*

*5.7 Charges for banked energy remaining unutilized at the end of six months: As per KERC order dated 09.1.2018, any unutilized banked energy, remaining at the end of six(6) months shall be deemed to have been purchased by the ESCOM(Distribution Licensee) of the area, where the project is located and shall be paid at 85% (Eighty Five percent) of the applicable generic RE tariff as determined by the commission from time to time. The six(6) months shall be reckoned from April to September and October to March in respect of the Solar Power Projects.*

*(b) The aforementioned provision in the said agreement clearly provides that the surplus power shall accrue to the ESCOM and the applicant would be entitled to receive a certain payment for the surplus energy. This demonstrates that the applicant makes a supply of electric energy (i.e. goods) and also receives a consideration. In Para 15 of annexure 3 the applicant contends that 'the applicant is statutorily required to treat the energy as consumed by the Escom towards this lapsed electrical energy. The applicant submits that this does not amount to an exempt supply as this an act of the Statute and hence cannot be termed as an exempt supply.'. We do not agree with the applicants understanding on the issue. It is a fact that electric energy produced by them accrues to Escom and Escom pays them a price. Moreover the agreement does not provide that the applicant has to necessarily produce energy in excess of their requirement and have to necessarily supply that to Escom as a condition for issue of Licence to set up the solar power*



*plant. If the applicant pumps surplus energy in the grid that energy would be utilized elsewhere by the Escom and therefore it is commercial fair for them to offer a certain value of that energy to the applicant. The applicants contention in this regard, as reproduced above, has no merit and we do not accept it. The surplus energy consumed by Escom and also paid for amounts to a supply by the applicant.*

*(c) Electrical energy is an exempted item in terms of CGST-Notification 2/2017-Central Tax (Rate) dated 28.06.2017 (Serial No. 104) & KGST-Notification GD48 CSL 2017 dated 29.06.2017. The applicant also agrees to this, as per para 12 of Annexure 3 to their application. Therefore in respect of the supply of surplus electric energy it is evident that the applicant is engaged in supply of exempted goods.*

*(d) In summation of the above discussion the answer to question number 3 is in the affirmative. The applicant company is required to reverse input tax credit on the unutilized electric energy banked with KPTCL, GESCOM & HESCOM and for which the applicant receives a consideration in terms of the Wheeling and banking agreement as discussed in the preceding paragraphs.*

25. In view of the foregoing, we pass the following

### **RULING**

**Question 1:** Goods, the value of which has been capitalized in the books of account would not be considered as inputs and the applicant will not be entitled to credit of input tax in relation to such goods. From the list of the goods given in Annexure 4 to the application it cannot be inferred as to where capitalization has been done. Therefore in respect of each and every entry of the annexure specific order cannot be made. Therefore the applicant is entitled to input tax credit in respect of goods other than capital goods. In respect of the second part of the question it is Ruled that only those apparatus, equipment, and machinery which are fixed to earth by foundation or structural support alone are entitled to qualify as plant and machinery. Therefore the goods answering to this definition alone shall be qualified to be treated as 'plant and machinery'. In respect of other goods provisions of Section 17(5) (c) shall apply and credit of input tax shall not be available.

**Question 2:** The applicant shall be entitled to the **eligible** input credits (as decided in question 1) in entirety **provided the entire production is captively consumed** (emphasis supplied).

**Question 3:** The applicant company is required to reverse input tax credit on the unutilized electric energy banked with KPTCL, GESCOM & HESCOM and for which the applicant receives a consideration in terms of the Wheeling and banking agreement as discussed in the preceding paragraphs.

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**Citations:** in 2019 (10) TMI 570 - AUTHORITY FOR ADVANCE RULING, KARNATAKA

1. [2018 \(8\) TMI 1562 - MADRAS HIGH COURT](#)