

Case: M/s SHV ENERGY PVT LTD[2021-8-TMI-360] (TELANGANA AAR)

The applicant is in the business of sale of LPG to industrial customers. As seen from the agreement a minimum quantity of LPG has to be necessarily purchased by the buyer. And if such minimum amount is not purchased they shall pay by way of commitment charges i.e., 'Take or Pay' Charges of such shortfall in quantity. The applicant sought ruling whether take or pay charges collected from buyers would be liable to rate of sale of LPG being principal supply as the entire transaction is composite supply.

The AAR held that The Hon'ble Courts of India in a catena of cases held that 'Take or Pay' charges are meant to compensate for breach of a contract. Thus these charges come into existence only when there is no supply of LPG. That means supply of LPG and 'Take or Pay' Charges are mutually exclusive and can never exist together. The forbearance comes into existence only upon breach and hence the requirements of a composite contract mentioned above are not fulfilled. Thus, sale of LPG, Collection of Take or Pay Charges for not lifting minimum assured quantity and rental charges for supplier gas system installed at the customer premises do not form a composite supply

Case: M/s NEW TRIPURA AREA DEVELOPMENT CORPORATION LTD [2021-TIOL-26-AAAR] (TAMILNADU AAAR)

The appellants have entered into concession agreement entered with the Government of Tamilnadu and Tirupur Municipality to abstract raw water from the river bed, treat it for making it fit for use and supply the same for domestic and non-domestic purposes to Tirupur Municipality and other purchasers i.e. wayside villages. The AAR held that supply of potable water by appellant is liable to GST & not exempted under Sr.No.3 of Notification 12/2017-CTR as they are not the class of persons specified therein, as contended by appellants.

The Appellate authority held that Section 2.4 of the agreement provides for royalty payment by the appellant to the Government of Tamilnadu, one of the parties to the agreement, for the abstraction of such volume of raw water from time to time - Once royalty is charged and collected for the abstraction right, the raw water abstracted becomes the property of the appellant - It is also seen from the agreement that potable water is the output after treatment of the raw water by the appellant, and which is the only supply made by the appellant to all the purchasers - From the scope, language and the terms and conditions of the agreement, it is clearly seen that the appellant has been awarded a contract for the sole purpose of supply of potable water to the purchasers, among others, after treating the raw water from the river bed - The activity of the appellant is thus only a supply of potable water to its purchasers - In other words, supply of goods and not of services - There is no dispute regarding the classification of water as such under 2201. Potable water is never to be equated to 'purified water & same falls under the entry 99 of the notification no. 02/2017-CT (R) and is qualified for the exemption

Case: M/s KLF NIRMAL INDUSTRIES PVT LTD [2021-TIOL-181] (TAMILNADU AAR)

Applicant has entered into works contract for design, engineering and installation along with supply of solar power panel for an agreed consideration which includes the tax - They have procured the said product for use in their business and they have also stated that the entire amount excluding the GST component has been capitalised as "Plant & Machinery" thereby depreciation on the GST element has not been claimed for which they have produced documentary evidences. They seek ruling as to whether they are eligible for ITC on said purchase.

The AAR held that the applicant is eligible for availing input tax credit as inputs/capital goods or input services of the items used in Design, Engineering, Supply, Execution (EPC) of 265KW Roof top Grid Solar PV Power Plant as per MNRE & IEC Standards procured from M/s KCP Solar Industries as they have been found to comply with the provisions of Sections 16 (1) and (2), 17 (5) of the CGST Act,2017 and that they are found to be using the electricity so generated captively only in the process of manufacture of edible oils, which is a taxable.

Case: M/s SHV ENERGY PVT LTD[2021-8-TMI-360] (TELANGANA AAR)

Facts of the Case:

1. The Applicant are suppliers of LPG to domestic and industrial users. They have entered into LPG supply agreement with industrial users for longer period ranging from 5 to 10 years. They setup a structure called manifold at the premises of the recipient for supply of LPG. This manifold consists of LPG cylinders, regulators, primary piping, pressure regulator systems, etc., The ownership of the structure lies with the applicant. The purchaser pays rental charges at the rate of ₹ 5,000/- per month for this structure.
2. Since setting up of this system involves substantial investment the customer is obliged to purchase LPG exclusively from the applicant and the conditions of the agreement specify the minimum quantity lifted from SHV. In the event of the purchaser not lifting the minimum quantity such purchaser has to pay commitment charges at the rate of ₹ 2,900/- per metric ton of such shortfall in quantity.
3. They have installed Supplier Gas System (SGS) consisting of 30 Nos of LPG cylinders, Regulators, Primary pressure regulating systems, Vaporizers etc.
4. A minimum quantity of LPG has to be necessarily purchased by the buyer. And if such minimum amount is not purchased they shall pay by way of commitment charges i.e., 'Take or Pay' Charges at the rate of ₹ 2900/MT of such shortfall in quantity. This amount shall be paid once in a quarter.

Questions before AAR:

1. Whether sale of LPG, Collection of Take or Pay Charges for not lifting minimum assured quantity and rental charges for supplier gas system installed at the customer premises to store the LPG which is a condition precedent for supply of LPG be treated as composite supply under section 2(30) of GST Act, 2017?
2. Whether supply/sale of LPG be treated as principal supply for above mentioned transaction?

Arguments by Applicant:

1. That they primarily supply LPG to industrial consumers and in order to facilitate them SGS(Supplier Gas system) is installed in the premises of their consumers.
2. That LPG is sent to the consumers premises in form of liquid and the apparatus installed by them vaporises it into gaseous form,
3. That the SGS cannot be installed to any customer standalone. And that the ownership of SGS remains with the applicant and the recipient of supply pays lease rental on the same.
4. That to ensure minimum quantity of purchase by their customers there is a clause in the agreement which obliges the purchaser to pay 'take or pay' charges at specified rates. Where the recipient is unable to purchase the agreed quantity then he has to pay the said 'take or pay' charges for the deficit quantity not purchased.
5. For the reason that all the above 3 supplies are made in conjunction with each other i.e., LPG, SGS & 'Take or Pay' Charges, these are naturally bundled supplies amounting to composite supply of which LPG is the principal supply and the rate of tax applicable to LPG apply to other 2 components of bundled supply
6. Reliance was placed on :
 - a. Diebold Systems (P) Ltd V. CST (2008 (12) STT 346)
 - b. Kone Elevators India (P) Ltd v. CST, [2009 (20) STT 447]
 - c. M/S. Kingfisher Training & Aviation Service Ltd Vs CST Mumbai [2016 (46) S.T.R. 254 (Tri. - Mumbai)]
 - d. NIKHIL COMFORTS 2020 (41) G.S.T.L. 417 (APP. A.A.R. - GST Mah.)

Decision of AAR

1. As per Section 2(31) of the CGST Act, monetary value of any act or forbearance constitutes consideration of supply. Therefore the above commitment charges are taxable under GST Act.
2. As seen from the definition a composite supply is essentially a naturally bundled supply where two or more different supplies invariably exist along with each other. The Hon'ble High Court of Kerala in the case of Abott Health Care Pvt. Ltd., (2020) 74 GSTR 37 (Kerala) held that a composite supply must take into account supplies as affected at a given point in time on "as is where is" basis.
3. Therefore a naturally bundled supply should possess the following attributes (as mentioned in Education Guide on Taxation of Services published by CBE & C on 20.06.2012 at Para 9.2.4

- a. There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
 - b. The elements are normally advertised as a package.
 - c. The different elements are not available separately
 - d. The different elements are integral to one overall supply - if one or more is removed, the nature of supply would be affected.
4. 'Take or Pay' contract is a contract which requires the buyer to either purchase and receive a minimum amount of product at a set price("take") or pay for this minimum without taking immediate delivery("pay"). 'Take or Pay' clauses in a contract ensure compensation for the seller in the event buyer does not purchase a specified quantity of goods or services in the course of a continuous supply. The Hon'ble Courts of India in a catena of cases held that 'Take or Pay' charges are meant to compensate for breach of a contract.
5. In the case of applicant 'Take or Pay' Charges are evidently compensation for breach of contract and a penalty stipulated to be paid to the applicant by his buyer for not purchasing the minimum quantity specified in the agreement. Thus these charges come into existence only when there is no supply of LPG. That means supply of LPG and 'Take or Pay' Charges are mutually exclusive and can never exist together. The forbearance comes into existence only upon breach and hence the requirements of a composite contract mentioned above are not fulfilled. Hence 'Take or Pay' Charges cannot form a part of composite supply along with other components of composite supply.

Case: M/s NEW TRIPURA AREA DEVELOPMENT CORPORATION LTD [2021-TIOL-26-AAAR] (TAMILNADU AAAR)

Facts of the Case:

1. The Appellant is in the business of promoting infrastructure development activities in the area of water supply at New Tirupur. They had implemented an integrated water supply project for the town of Tirupur.
2. In order to implement the integrated water supply and sewage treatment project for Tirupur City Municipal Corporation (TCMC), wayside villages and Tirupur Local Planning Area (TLPA), a Concession agreement was signed between the Government of Tamilnadu, Tirupur Municipality (now Corporation) and the applicant to implement a 185 million litre per day (MLD) water supply project and a 15 MLD Sewage Treatment plant (STP) at the total project cost of Rs. 1023 crore.
3. They had signed a water drawal agreement with Tamilnadu Government for drawing raw water up to a Maximum of 185 Million Litres Per day from the river Cauvery for supply towards domestic and non-domestic purposes within the Tirupur Municipality.
4. The Appellant had sought Advance that whether the following activities of the applicant is taxable or exempt? i.e. Sale of water, Sewage treatment charges, Consultancy Services such Detailed Project Report (DPR), Project Management Consultancy (PMC) and any other infrastructure related consultancy to TCMC / GoTN Incidental to main business activities, Interest on receivable on delayed payments, Disconnection Charges Reconnection charges, Permanent disconnection charges, Cheque Bouncing charges, Non-Revenue - Service provided to Customer on New Connection works-Concept of No Loss No Gain, New Connection Shifting and other works.
5. They also under take the following activities and levy charges as follows:-
 - (i) Charge 1: In the event of there being a shortfall in the quantity of water consumed when compared with the agreed quantity by any industrial customer in any month, the Appellant levies a 'water capacity charge' or a 'take or pay charge'. This is like monthly minimum billing for a pre-agreed amount of water. This charge is calculated on the quantum of shortfall when compared with the quantity to be taken.
 - (ii) Charge 2: The Appellant levies a re-connection charge in the event of non -payment of bills within due period and if the cheque is dishonoured. Apart from the above, the Appellant levies dishonour charges as levied by the Bank.
 - (iii) Charge 3: In the event of any delay in payment, beyond contracted dates, the Appellant also levies interest on delayed payment at rates prescribed in the service agreement
6. Charge 1 is in the nature of 'Minimum Take or Pay Charges' ('MTOP'). In the context of the previously existing excise law which also operates on a transaction value basis, that MTOP charges are consideration for the commodity which is actually supplied in cases where there are long term contracts.
7. The AAR held that
 - a) They are not eligible for the said Notification 12/2017-CTR as they are not the class of persons specified in notification

- b) The activity of Sewage offtake and treatment extended to Tirupur Municipal Corporation is exempt under SI.No.3 of Notification No. 12/2017- C.T.(Rate)
- c) The Consultancy Services rendered by the applicant to Tiruppur City Municipal Corporation in respect of the Project- Construction Management and Supervision Consulting Service to assist Project ULBs - Tiruppur City Municipal Corporation exempt under SI.No.3 of Notification No. 12/2017-C.T.(Rate)
- d) In respect of the activities incidental to main business activities i.e. Interest on receivable on delayed payments, Cheque Bouncing Charges being charges are taxable being charges received for 'Agreeing to tolerate an act' classifiable under SAC 999794 is taxable @ 9% CGST and 9% SGST
- e) New connection works executed as per agreement for TCMC, the established asset is accounted as their assets are not taxable being self-service
- f) Connection/ Reconnection/ Disconnection/ Permanent Disconnection Charges are charges received for the services of 'Water Distribution Services' classifiable under SAC 9969 and is taxable @ 9% CGST and 9% SGST

8. Aggrieved by above ruling, & as regard to the activity of 'supply of Water-goods' by the appellant to the purchasers as per the concession agreement held as taxable by AAR, the appellants had different view and therefore filed present appeal.

Arguments by Appellant:

1. That on a perusal of the terms of the Concession Agreement dated 11.02.2000 it can be ascertained that the Appellant is performing a municipal function within the ambit of Article 243G and W, subject to the terms of the Concession Agreement.
2. The AAR failed to appreciate that Notification no. 12/2017-CTR is issued & pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution are exempt from the levy of CGST. The supply of water by them is supply of service as per Schedule II of the Act and the exemption under Si.No.3 of Notification 12/2017 as applicable
3. It is further submitted that Water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container] falling under tariff heading 2201 is unconditionally exempt from the levy of CGST in terms of Notification No.2/2017-CTR. If sale of water is even treated as goods it is exempted as per entry 99 of Notification 2/2017 and the water supplied by them is potable water and not purified water.
4. The AAR failed to appreciate that the services rendered by the Appellant are in relation to a function entrusted to the Municipality under Article 243W of the Constitution and are provided to a local authority. Therefore, on such sewage and waste collection services, the effective rate of CGST will be 'nil' as the same are exempt from the levy of GST.
5. The learned AAR failed to appreciate that there is a tremendous difference between making water potable and selling it like the appellant does and purifying water like aeration, mineralisation-demineralization, purification, distillation, medication, ionization, and selling them in a sealed container. That while the former is exempt the later is subject to the levy of CGST and SGST, and by no stretch of imagination can water which is made potable by the appellant and sold ever classified as aeration, mineralisation demineralization, purification, distillation, medication, ionization, and selling them in a sealed container.
6. The learned AAR erred grievously in relying on Wikipedia entries for the purpose of passing the impugned order. It is well settled that Wikipedia is open source and can be edited by anyone and articles contained therein cannot form basis for adjudication. Hence, reliance on such statements from Wikipedia ought to be eschewed and set aside.
7. It is further submitted that it would be absurd to exempt the main supply of goods or service from the ambit of the tax and levy the tax only on the interest / penalty / late fee component. In such a case, the basis of charge to tax of the interest / penalty / late fee component on a different basis would be unknown as it would have to be treated as a stand alone transaction rather than a composite one. Hence, it is submitted that Charges 2 and 3 (as stated in the statement of facts), are in the nature of 'interest or late fee or penalty for delayed payment of any consideration for any supply'. The same will therefore, form a part of the value of supplies made by the Appellant, which is exempted under Notification no. 12/2017-CTR.

8. That MTOP charges are consideration for the commodity which is actually supplied in cases where there are long term contracts. Seen from that context, the MTOP charges which the Appellant levies are the only consideration for the water supplied by the Appellant. The same will therefore, form a part of the value of supplies made by the Appellant, which is exempted under Notification no. 12/2017-CTR

9. Reliance is placed on decision of Hon'ble Supreme Court in Govt, of NCT of Delhi Vs. Union of India (UOI) (2020) 12 SCC 259 wherein it was held as to what is a service qua a fire service under Article 243 (W) in the realm of services provided by a Municipality, as follows:

"212. We may first notice that the word 'services' used in the Act has been used in a manner of providing services for fire prevention and fire safety measures. The word 'services' has not been used in a sense of constitution of a service. It is to be noted that fire service is a municipal function performed by local authority. Delhi Municipal Council Act, 1957 contains various provisions dealing with prevention of fire etc. Further fire services is a municipal junction falling within the domain of the Constitution deals with functions of the municipalities in relation to matters listed in the 12th Schedule. Entry 7 of the 12th Schedule provides for 'Fire Services' as one of the functions of the municipalities. The nature of the enactment and the provisions clearly indicate that Delhi Fire Services Act falls under Entry 5 of List II and not under Entry 41 of List II."

10. It is respectfully submitted that the supply of potable water needs in the Tirupur Local Planning Area, is an act falling clearly within the domain of Tirupur Municipality.

11. The CEGAT, New Delhi in Gujarat State Fertilizers Company Ltd. Vs. Collr. Of C. Ex. 1998 (98) ELT 840 (Tri. - Delhi), had discussed in para 31 that whether there has been transformation in the water and whether the removing of the two minerals in making water more useful for the purpose for which it has put to use in the boiler, will bring into existence new goods. It is submitted that the Appellant only makes the water potable and does not treat the water under any other process nor does the Appellant mineralise or demineralise the water.

12. Therefore it is pleased to Set aside the Impugned Advance Ruling passed by the AAR and issue a fresh Ruling clarifying that services rendered by the appellant are in relation to a function entrusted to the Local Authority Municipality / Corporation under Article 243G/243W of the Constitution and are provided to a local authority and the effective rate of CGST will be 'nil' as the same are exempt from the levy of GST, in terms of Notification no. 12/2017.

Decision of AAAR

1. Section 2.4 of the agreement provides for royalty payment by the appellant to the Government of Tamilnadu, one of the parties to the agreement, for the abstraction of such volume of raw water from time to time. Once royalty is charged and collected for the abstraction right, the raw water abstracted becomes the property of the appellant. It is also seen from the agreement that potable water is the output after treatment of the raw water by the appellant, and which is the only supply made by the appellant to all the purchasers, viz., TM, wayside villages and Industrial units.

2. The water treatment, etc., are activities done by the appellant on his own account only to achieve the quality standards of the potable water as per the agreement with one of the purchasers, Tirupur Municipality. Further, the consideration for such supply of potable water to all the purchasers is in the form of water charges determined as per the agreement and other miscellaneous amounts for activities essential to supply of water.

3. Thus from the scope, language and the terms and conditions of the agreement, it is clearly seen that the appellant has been awarded a contract for the sole purpose of supply of potable water to the purchasers, among others, after treating the raw water from the river bed. The activity of the appellant is thus only a supply of potable water to its purchasers. In other words, supply of goods and not of services

4. There is no dispute regarding the classification of water as such under 2201. However, the main question raised by the appellant and also the point of reference made by the members of AAR is whether the water supplied by the appellant is exempted under Sr. No. 99 of notfn. No.02/2017-CT(R). Since purified water is excluded from the exemption entry, the point of contention appears to be that since the raw water is treated to various processes to make it potable, whether these processes make the raw water as a 'purified water' or it remains as 'Water treated' to make it fit as potable water.

5. Potable water is never to be equated to 'purified water'. In fact, the meaning of 'purified water' depends on what use of it people have in mind, like whether it is for washing, pharma use, industrial use or even to swim. In chemical terms, purified water is pure H₂O and only contains Hydrogen and Oxygen and no minerals. Distilled water is the most common form of pure water. However, potable water has only one meaning, water fit for human and animal consumption and has dissolved minerals. Infact, from the performance standards spelt out in Schedule C of the agreement, the quality of potable water would itself indicate that it does not attain the nature and quality of a 'purified water' on any count. Therefore, it can be safely concluded that the supply of the appellant is of raw water, treated to become 'potable water' and nothing more. Once it is distinctly clear that the supply is of 'water' only, and NOT purified water, the same falling under the entry 99 of the notification no. 02/2017-CT (R) is qualified for the exemption.

6. In the light of the above discussions, the reference made by the AAR on the divergent views as well as the ruling sought by the appellant, is answered as affirmative with regard to exemption available to the supply of potable water made by the appellant under notfn. No. 2/2017-CTR.

7. With regard to the other questions raised in the appeal, we concur with the reasoning and the ruling given by the AAR and therefore, the appeal by the appellant is not sustainable.

Case: M/s KLF NIRMAL INDUSTRIES PVT LTD [2021-TIOL-181] (TAMILNADU AAR)

Facts of the Case:

1. The applicant is engaged in procuring and extracting/crushing/pressing edible oils and producing Coconut Milk & Coconut Milk Powder by pressing and spray dryer at their mills in the states of Kerala and Tamil Nadu.
2. They have a plant in Erode for extracting edible oils etc. The applicant has installed a captive roof top solar grid connected power plant in the edible oil extracting plant. The solar panels have been installed at the top of the roof of the factory building and oil tanks. Electricity generated from the solar plant has been fully consumed to produce taxable goods
3. A consolidated contract was placed for design, engineering, supply, erection of Roof top Grid Solar PV Power Plant as per MNRE & IEC Standards. The operation is done by a reference signal received by the smart meter from the main panel which is synchronised with the solar system. In case there is a failure of the smart meter there is a system called reverse base relay protection fixed in the main panel room which will shut down the solar generation, in order to avoid any discharge to the grid (zero discharge). Solar generation is done only when there is a consumption (discharge) in the main panel which is being sensed by the smart meter. If there is no consumption the smart meter will shut down the complete solar system

Questions before AAR:

1. Whether the company is eligible to take input tax credit as inputs/capital goods or input services of the items used in Design, Engineering, Supply, Execution (EPC) of 265KW Roof top Grid Solar PV Power Plant as per MNRE 8v IEC Standards?
2. Whether the company is eligible to take input tax credit for inputs and services for running the solar plant?

Arguments by Applicant:

1. They have submitted that the primary conditions provided in section 16 of the CGST/TNGST Act have been complied with. The solar equipment's 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. The applicant is in possession of invoices and the input tax credit sought to be availed are available in the GST site. Hence the inputs, input services and capital goods for use of erection, commissioning and installation of solar power plant are permissible input tax credit under section 17 of the CGST/TNGST Act.
2. That even though inputs/capital goods and input services are used for generation of electrical energy, the electrical energy is used solely for captive/own use for extraction/crushing/pressing/pressing and supply of taxable goods (i.e. edible oils, coconut milk & coconut milk powder). The business of the applicant is extraction/crushing/pressing/pressing and sale of edible oils and the solar power plant meets the criteria of being used in the business of extraction and sale of edible oils since the power generated from this plant is used to operate the plant. Hence it is eligible for input tax credits on all inputs, input services and capital goods. They relied upon the decision of Supreme Court in CCE vs Solaris Chemtech (2007) 214 ELT 481.
3. The activity of production of electric energy is a supply to self as the electricity produced is captively used. The production of electricity in the solar plant is an intermediate process in the extraction of edible oil. The entire electricity generated is consumed captively and no part of the energy produced is sold or discharged into the grid. Hence, the applicant is of the view that they are entitled to claim input credit

Decision of AAR

1. From the purchase order it is seen that the supply is a works contract comprising of designing, engineering and erection along with supply of the product which has been done as a whole process. The solar panels have been installed at the top of the roof of the factory building and oil tanks.
2. That as per Section 16 (1), it is evident that a registered person is 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. Section 16 (2) provides that such person will be eligible for such credit only when he is in possession of a tax invoice, has received the goods or services, paid the tax charged on such supply and has furnished the returns. Section 16 (3) provides that if depreciation is claimed the ITC on the said tax component is not available. It has been stated by the applicants that the GST element involved in the project cost of the Solar panel has not been capitalized, thus have fulfilled provisions of Section 16 (3) of the Act. From the foregoing it is seen that the applicant has complied with the conditions of section 16 (1), (2) and (3).
3. The applicant is admittedly engaged in the manufacture of goods. Electric Energy is classified under TH No. 27160000 of the First Schedule to the Customs Tariff Act, 1975 and hence, Electric Energy is considered as goods. Accordingly, Electric power is one of the inputs required for carrying out the process of manufacturing. Further, in terms of SI.No.104 of Notification No. 02/2017(Rate) dated 28.06.2017, electrical energy is exempted from tax under CGST Act, 2017. However, in the case of the Applicant, though electric energy is fully exempted under GST, the same is going to be fully capitively consumed by the applicant for manufacture and supply of taxable goods viz. Edible oils as certified by the order issued by the Tamil Nadu Generation and Distribution Corporation Ltd
4. That solar generation is done only when there is a consumption (discharge) in the main panel which is being sensed by the smart meter. If there is no consumption the smart meter will shut down the complete solar system. Hence the electricity generated by the said solar power plant can only be consumed captively and the applicant has not entered into any wheeling agreement with the Tamil Nadu Generation and Distribution Corporation Ltd. Thus it is seen that the electricity generated is qualified to be considered an input used in the manufacture of end product namely edible oils, which is their product of manufacture and is taxable
5. Section 17 (5) further stipulates certain conditions for availing Input tax credit wherein, clauses (c) and (d) provide for blocking of credits on works Contract service / construction, but it excludes 'Plant and Machinery' which is defined under the Explanation to the Section.
6. In the instant case, the whole designing, engineering, supplying and installation have been done as works contract and as the said solar power plant being Plant and Machinery, the related Credits are not blocked under this Section. On verification of the submissions, from the Fixed Asset Register for year 20-21 it is seen that asset number FA83766 having a description "Solar Power Plant 265 KW (TN)" has been capitalized for a sum of Rs. 10098670/.
7. On verification of the Work-in-Progress account, it is seen that apart from the invoice of M/s. KCP Solar Industry for supply of the solar power plant, the applicant has grouped the invoices received from M/s. Sri Devi Steels, Perundurai, M/s. United Tools& Machinery, Erode, M/s. Sri Palani Andavar Hardwares, Perundurai ,M/s. Sree Vinayaga Roofing Products, Perundurai and RENJITH . K (BABU RADHAKRISHNAN) as Gross Block Plant & Machinery-TN (Tamil Nadu) and in all such cases, the amount of goods/services excluding GST has been capitalised thus satisfying the condition laid down at Section 16(3).
8. While the purchase order has been raised on M/s. KCP Solar Power Industry for Design, Engineering, supply & Execution (EPC) as per MNRE& IEC Standards using solar wedge inverter, the grouping under Gross Block Plant& Machinery mentioned above and claim of credit on the goods/services grouped under such plant and machinery is not substantiated thus not satisfying explanation under Section 17 (5). As the entire set up of the solar power plant is vested with M/s. KCP Solar Industry, and has been installed by them, the work executed under Invoice no 135/20-21 dated 10.9.2020 alone qualifies as Plant& Machinery and the credit of GST paid in the said invoice amounting to Rs. 8,47,458/- is alone not blocked under this section and hence available as credit.
9. To sum up, it is seen that the applicant has entered into works contract for design, engineering and installation along with supply of solar power panel for an agreed consideration of Rs. 1,03,69,458/- which includes the tax of Rs. 8,47,458/-. Further they have produced copies of invoices for M.S. Channels and Loading charges etc., and claimed credit of GST paid on such goods/services, grouped under "Gross Block Plant & Machinery-TN (Tamil Nadu)" while in the Appendix-A annexed to the application, they have submitted invoices of M/s.KCP Solar Industries from whom they have ordered to purchase the solar power plant along with connected services of desinging, engineering etc and required their eligibility to credit on this alone. The works contract services received from M/s. KCP Solar Industry,

being Plant& Machinery, the credit of Rs. 8,47,458/- raised under Invoice no.135/20-21 dt. 10.09.2020 listed as Appendix-A to the application is eligible as credit.

10. However, the GST component on other invoices grouped under "Gross Block Plant & Machinery-TN (Tamil Nadu)" is not available as credit.

11. Thus the applicant is eligible for availing input tax credit as inputs/capital goods or input services of the items used in Design, Engineering, Supply, Execution (EPC) of 265KW Roof top Grid Solar PV Power Plant as per MNRE & IEC Standards procured from M.s KCP Solar Industries as they have been found to comply with the provisions of Sections 16 (1) and (2), 17 (5) of the CGST Act,2017 and that they are found to be using the electricity so generated captively only in the process of manufacture of edible oils, which is a taxable.

Coming to the second question Whether the company is eligible to take input tax credit for inputs and services for running the solar plant, it is seen that they have not furnished the list of inputs and services that will be used in running the solar plant as they have done for the capital goods vide Appendix-A and elaborated it with the Fixed Assets and Work-in-progress register. They have not even attempted to substantiate their stand in this regard. Hence we refrain from passing a ruling in this respect for want of valid inputs.