TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Constituted under Section 99 of Tamilnadu Goods and Services Tax Act 2017)

A.R.Appeal No. 12/2021/AAAR Date: 02/12/2021

BEFORE THE BENCH OF

1. **Thiru. M.V.S. CHOUDARY, MEMBER**

2. **Thiru. M.A. SIDDIQUE, MEMBER**

ORDER-in-Appeal No. AAAR/22/2021 (AR)
(Passed by Tamilnadu State Appellate Authority for Advance Ruling under Section 101(1) of the Tamilnadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamilnadu Goods & Services Tax Act 2017("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the Order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.

2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only

(a). On the applicant who had sought it in respect of any matter referred to in sub section (2) of Section 97 for advance ruling;

(b). On the concerned officer or the jurisdictional officer in respect of the applicant.

3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.

4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void sb initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

Name and address of the appellant	Inox Air Products Pvt. Ltd
GSTIN or User ID	33AAACI5569D1ZR
Advance Ruling Order against which appeal is filed	25/AAR/2021
Date of filing appeal	08.09.2021
Represented by	Rohit Jain, Advocate
Jurisdictional Authority-Centre	Chennai-North
Jurisdictional Authority -State	Manali Assessment Circle
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Rs. 20000/- CIN: HDFC21093300051389 dated 08/09/2021

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

The subject appeal has been filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 (hereinafter referred to 'the Act') by INOX AIR PRODUCTS PRIVATE LIMITED (hereinafter referred to as 'Appellant'). The appellant is registered under GST vide GSTIN 33AAACI5569D1ZR. The appeal is filed against the Order No.25/AAR/2021 dated 30.07.2021 passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2.1 The Appellant has stated that they are engaged in the business of manufacture and supply of industrial & Medical gases, including oxygen (both Industrial & Medical Grade), nitrogen, argon etc. (in both liquid and gaseous form); State Industrial Promotion Corporation of Tamilnadu (hereinafter referred as SIPCOT) had entered into an agreement dated 22.07.1993 with India Pistons Limited(hereinafter referred to as IPL) for lease of an area of land in Hosur for a period of 99 years for the purpose of setting up a piston manufacturing industry;

INOX had approached IPL for transfer of the leasehold rights for the remainder period of 72 years in respect of part of the property along with superstructures, for setting up of State-of-the-art medical and industrial gases plant, i.e. Air Separation Unit (ASU) for manufacture and supply of Industrial gases; INOX and IPL entered into a Memorandum of Understanding for transfer of leasehold rights(MOU) dated 20.11.2020; SIPCOT vide Order No. P-II/SICH/II/IPL/146/2012 dated 28.12.2020 had accorded its approval for transfer of leasehold rights to INOX. Accordingly, SIPCOT has amended its original lease agreement vide a modified lease deed on 12.01.2021 in order to lease the part property to INOX. In terms of Clause 2 of MOU, IPL has agreed to transfer the leasehold rights in the part property to INOX for a total consideration of Rs. 15,00,00,000/-. The Appellant had filed an application before Hon'ble Authority for Advance Ruling, seeking clarification on the following question:

> Whether INOX would be entitled to avail and utilize ITC of GST Charged by IPL if such transaction is considered to be a supply

3. The Original Authority has ruled as follows:

> The applicant is not entitled to avail and utilize ITC of GST charged by IPL as the same is restricted under Section 17(5)(d) of the CGST/TNGST Act 2017, if such transaction is considered to be a supply

4.1 Aggrieved by the above decision, the Appellant has filed the present appeal. The appellant has contended that for credit to be restricted in terms of Section 17(5)(d), the following conditions need to be cumulatively satisfied:

> (i) Goods/ services should be received 'for construction' of immovable property; and
>
> (ii) The immovable property should not qualify as 'plant and machinery'

They have contended that the afore-stated conditions are not fulfilled in the present facts and therefore the restriction in terms of Section 17(5)(d) of the CGST Act is not applicable in the present case.

4.2 It is stated that,

- the service provided by IPL to them, viz. agreeing to part with the leasehold rights on the land, is not used for any construction activity per se. These

services are not availed by them for creating/ constructing any land, building or civil structure or any other immovable or movable property.

- Services received for construction of an immovable property encompasses only those services which are directly used for construction of the immovable property such as services of engineer/contractor, services of architect or interior decorators etc. Such an interpretation is clearly discernible from the wordings of Section 17(5)(d) of the CGST Act.
- It is a settled principle of law that a taxing statute is to be strictly interpreted. Strict reading of the expression 'for construction' necessitates that there must be a direct nexus between the goods or service and the activity of construction. In other words, use of the word 'for' before 'construction' emphasizes that the provision must be read in a restricted manner to cover only situations where the goods or services are directly used in the construction of the immovable property. They have relied on the ruling issued by the Hon'ble Supreme Court in
    - Sales Tax Commissioner v. Modi Sugar Mills, 1960 (10) TMI 65 - Supreme Court.;
    - Indian Chamber of Commerce and Others v. Commissioner of Income-Tax, 1975 (9) TMI 4 - Supreme Court

4.3 The appellant has stated that the entire premise for denial of credit under the Impugned Order is that the services availed by them from IPL is in relation to acquiring the lease of the land. 'Land' being excluded from the definition of 'plant and machinery', services availed and utilized for acquiring such land on lease is also restricted. However, the Impugned Order has failed to appreciate the fact that in order to fall under restriction of Section 17(5)(d), the primary condition to be satisfied is that the services should be received for 'construction' of any immovable property. The exclusion under the definition of 'plant and machinery' is also in the context of construction. In the absence of any construction activity, the said restriction do not apply. There is no 'construction of land' involved in the subject transaction. The input service in question enables Appellant to acquire the right to use the land which is already in existence for purpose of installing the plant and machinery to commence the manufacturing business. Accordingly, such services cannot be said to be used for any construction activity. In the absence of any finding regarding the question of

construction of immovable property involved in the present case, the Impugned Order is based on a misinterpretation of both facts and law and is liable to be set aside.

4.4 The Appellant has further submitted that assuming without admitting that the services provided by IPL are used for a construction activity, the construction does not result in any immovable property as the ASP is clearly a movable property. ASP which is being set-up will not be permanently embedded to earth inasmuch as it can be shifted to another site as per the requirements. The Technical drawings of the ASP duly corroborates that it is movable in nature. In view of this, ASP qualifies as a movable property and the restriction under Section 17(5)(d) of the CGST Act which is applicable only in case of construction of immovable property does not apply to the present facts. ASP proposed to be set-up by them qualifies as 'plant and machinery'. Accordingly, services availed for setting-up of the 'plant and machinery' should fall outside the ambit of the exclusion under Section 17(5)(d) of the CGST Act. In terms of the explanation to Section 17 of the CGST Act, 'plant and machinery' has been specifically defined as any equipment, apparatus attached to earth by foundation or structural support used for supply of goods or services. Further, the expression 'plant and machinery' specifically excludes land, building & any other civil structures, telecom towers, pipelines etc. ASP is primarily set-up to produce liquid gases using a cryogenic distillation process. The process of manufacture of gases through ASP involves multiple operations such as filtration, compression, air purification, distillation, refrigeration etc. given this, ASP is indispensable for manufacturing of gases and it has a direct nexus with the outward supply of gases. Further, the ASP once fully set-up, will be capitalized as 'plant and machinery' in the Appellant's books of accounts.

4.5 They have submitted that the ASP does not result in construction of any land, building, civil structure and it is also not a telecommunication tower or pipeline, hence it does not fall under any of the exclusion categories stipulated under the definition of 'plant and machinery'. The LA in the Impugned Order have presumed that the service received by them is a service for construction of an immovable property namely 'land' and since the explanation to Section 17 of CGST Act excludes 'land' from the definition of 'plant and machinery' the AAR

have denied the benefit of ITC. The said finding of the LA is a complete misappreciation of the factual matrix involved in the present case. It is required to be appreciated that the exclusion of land from the definition of 'plant and machinery' will apply only in a situation where services are received for any construction activity. In the present case, the leasehold rights are acquired not for construction of immovable property/ development of land and therefore the exclusion in the definition of 'plant and machinery' would not be triggered. The input service in question enables the Appellant to acquire the right to use the land which is already in existence for purpose of setting up the ASP for the manufacture of gases which are taxable supplies. It is required to be appreciated that the services are not used for construction/development of any land, building or civil structure. Since the AAR has not referred to the activity of construction but merely relied on the expression 'land' which is excluded from the expression 'plant and machinery', it is submitted that the Impugned Order is devoid of any merits and is liable to be set aside. They have further stated that the ASP qualifies as 'plant and machinery', and the same is also not covered by the exclusions under the definition of 'plant and machinery', GST chargeable, on transfer of leasehold rights is rightly admissible to the Appellant as Input Tax Credit. Section 16(1) of CGST Act enables the registered person to take ITC on input tax charged on any supply of goods or services or both which are used or intended to be used in the course or furtherance of business (which legal position and factual position are not disputed in the subject order). The Impugned Order acknowledges the fact that the services are used for setting up of an ASP which will be used for generation of gases by the Appellant and hence is clearly in the course or furtherance of their business. Further, since the restriction related to land under Section 17(5) of the Act cannot be invoked in the facts of this case, the Impugned Order in question passed by the LA is not legally tenable.

PERSONAL HEARING:

5. The appellant was granted personal hearing before this authority, as required under law on 26.10.2020. The Authorised representatives, S/Shri. Rohit Jain, Advocate and Aashish Majumdar, Head-Corporate Accounts appeared for the hearing. They furnished copies of the photographs of Air Separation Plant and a submission of legal provisions. They stated that they are not doing any construction but installing the plant, which is not an 'immovable property' but

'Plant & Machinery'. They referred to the definition of 'Plant & Machinery' and stated that the 'Foundation' is the only civil work. They stated that the service supplied by IPL is giving away the leasehold rights on the land and there is no construction of land as held by AAR. Therefore, the tax paid is eligible as credit in as much as there is no construction of immovable property.

Discussion:

6. We have carefully considered the submissions of the apellant, the ruling of the Lower Authority and the relevant statutory provisions. The factum of the case is that State Industrial Promotion Corporation of Tamilnadu (hereinafter referred as SIPCOT) had entered into an agreement dated 22.07.1993 with India Pistons Limited(hereinafter referred to as IPL) for lease of an area of land in Hosur for a period of 99 years for the purpose of setting up a piston manufacturing industry.; INOX had approached IPL for transfer of the leasehold rights for the remainder period of 72 years in respect of part of the property along with superstructures, for setting up of State-of-the-art medical and industrial gases plant, i.e. Air Separation Unit (ASU) for manufacture and supply of Industrial gases.; INOX and IPL entered into a Memorandum of Understanding for transfer of leasehold rights(MOU) dated 20.11.2020.; SIPCOT vide Order No. P II/SICH/II/IPL/146/2012 dated 28.12.2020 had accorded its approval for transfer of leasehold rights to INOX. Accordingly, SIPCOT has amended its original lease agreement vide a modified lease deed on 12.01.2021 in order to lease the part property to INOX. In terms of Clause 2 of MOU, IPL has agreed to transfer the leasehold rights in the part property to INOX for a total consideration of Rs. 15,00,00,000/-. The appellant has sought ruling on their admissibility to credit of the tax paid to IPL for 'agreeing to give away the leasehold rights held by IPL' in their favour. The LA has held that the services received from IPL is towards facilitating the lease of land in appellants' favour wherein the ASP and other utilities of a complete manufacturing plant is put up; the 'land' leased is not a 'Plant and Machinery' because of the explicit, specific exclusion provided in the GST law in the Explanation to 'Plant and Machinery' and as land stands excluded from 'Plant and machinery', the services availed and utilised for acquiring such land on lease is restricted under Section 17(5)(d) of the GST Act 2017.

7. The contention of the appellant is that the restriction under Section 17(5)(d) applies only to goods and services used for construction of an immovable property. In the case at hand, there is no construction of any immovable property; construction if any results in a movable property which is the ASP and in any event, ASP qualifies as a 'Plant and Machinery' and the exclusion of land from the definition of 'plant and machinery' will apply only in a situation where services are received for any construction activity/ development of land. Therefore, the restriction in respect of goods or services received for construction of an immovable property under Section 17(5)(d) is not applicable to their case and the impugned Credit is available for them. In this regard they have relied on Hon'ble Apex Court decisions and stated that 'taxing statute is to be strictly interpreted'; the word 'for' used with the active participle of a verb means 'for the purpose of'; the object and the intention behind an annexation to the earth is relevant to determine whether a chattel annexed would amount to an immovable property.

8. The issue before us for decision is whether the impugned credit is restricted under Section 17(5)(d) of the GST Act i.e., whether the said service is received by the appellant

- for construction; and if so
- whether it is for construction of
    - an immovable property or
    - a Plant and Machinery - the ASP, claimed to be a movable property
- if the entire project is a 'Plant and Machinery', whether the said service being service received for acquiring the leasehold rights of the land is excluded under the explanation of 'Plant and Machinery', which excludes 'Land'.

9.1 Section 17(5) (d) and the relevant explanations under the GST Act and definition of 'Immovable Property' under General Clauses Act is as follows:

(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:

(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

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.

'Immovable Property' as per the General Clauses Act, is defined as

"Immovable property shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth"

On a cojoint reading of the above, the following are deduced:

- Explanation of 'Construction' is an inclusive one and encompasses renovation, repair,addition, etc to the extent of capitalisation to the said immovable property
- 'Immmovable Property' is also an inclusive definition, which encompasses
  - 'land',
  - benefits to arrive out of land
  - things permanently fastened to anything attached to the earth
- Credit of tax paid on Goods or services received **for construction** of an immovable property is restricted with the exception of 'Plant or Machinery'. The word used is 'for' and not 'in'.
- 'Plant and Machinery' includes foundation and structural support but excludes 'Land'.

Thus, this entry restricts credit of tax paid on goods or services received **for construction** of an **immovable property** which includes benefits to arrive out of land and also things permanently fastened to anything attached to the earth, to the extent of its capitalisation to the said immovable property except 'Plant and

machinery' including the required foundation and strutural support but excluding 'Land', evenwhen it is used in the course or furtherance of business.

9.2 The explanation of 'Contruction' for the purposes of 'Construction' mentioned in Section 17(5)(c) and (d), is an inclusive definition and includes re-construction, renovation, additions or alterations or repairs to the extent of capitalisation to the immovable property. This inclusive explanation states specific activities covered under the term 'construction' apart from the 'Original' activity of 'Construction', the cost of which is capitalised to the said immovable property. The appellant has has Erected, Installed and commissioned the various components of the Air Separation Unit interconnected with Pipes and other necessary components, put up administration units, other utilities required for manufacturing of the Industrial and Medical gases with the required foundations and structural supports, i.e., have undertaken 'original' activities of 'construction'. In as much as 'Construction' is an inclusive explanation in the Act, it definitely covers the Original works of Erection, Installation, commissioning of the manufacturing Plant, to the extent such expenditure is capitalised in their book of accounts. Therefore, even if only Installation of various components were made in setting up the manufacturing plant, such installation, commissioning are original works of construction. From the various photographs furnished by the appellant, it is evident that the appellant has set up the manufacturing plant with all the required utilities and therefore, there is no doubt that the appellant has taken lease of the land and have undertaken 'Construction' of the manufacturing Plant.

9.3 The next issue to be seen is whether the services received by the appellant from IPL i.e., withdrawing the leasehold rights of the land held by them in favour of the appellant, thereby facilitating the appellant to enter into lease with SICOT for the remaining period of lease can be construed as services received 'for construction'. The appellant has stated that when the word 'for' is used with the verb the purpose stands restricted. The appellants' interpretation is that 'for construction' is to be read as 'for the purpose of construction' and only those services which have a direct nexus to 'construction' such as works contract, services of engineer/contractor, services of architect or interior decorators etc., are covered under this phrase. In this connection, the appellant has relied on the decisions of the Apex Court. When the statute expresses clearly, the same is to be

interpreted as per the words of the statute. Further, Hon'ble Supreme Court, in the case of Oblum Electrical Industries Private Limited v. Collector of Customs - 1997 (94) E.L.T. 449 has contrasted the two expressions 'in' and 'for', to hold that the expression "for" was much larger in ambit than the expression "in". The relevant observations of the Supreme Court in this case are as under :

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

Thus, the word 'for' do not confine/limit only those goods or services which have a very direct nexus to 'construction'. This view on the ambit of the word 'for' is endorsed by the Parliament as well inasmuch as it adopted this contrasting treatment in the context of Notification No. 5/2006-C.E. (N.T.), dated 14-3-2006 issued to effectuate refund under Rule 5 of CENVAT Credit Rules. This Notification originally employed the expression "used in" and Parliament enacted Section 74 of Finance Act, 2010 which retrospectively amended Notification No. 5/2006-C.E. (N.T.), dated 14-3-2006 thereby inter alia replacing the expression "used in" by the expression "used for". The CBEC clarified (vide Circular No. 334/1/2010-TRU, dated 26-2-2010) that the effect of the amendment was to expand the scope of refund inter alia inasmuch as the "word 'in' contained in main condition (b) of the said Notification has been replaced with 'for'." Thus, it is clear that the expression "for" is wider in ambit and do not restrict the purpose. Applying the above to the case at hand, it is evident that the services received enables the appellant to procure the lease of land for the remaining lease period and set-up the manufacturing facility. Without IPL agreeing to withdraw its leasehold rights in

appellants' favour, the appellant cannot get the leasehold on the land and cannot construct the manufacturing plant. Further, the amount paid to IPL for service of agreeing to withdraw the leasehold right to use the land is an integral part of the cost of the ASP. It has been stated by the appellant that the amount paid to IPL for grant of leasehold right in their favour stands capitalised along with the ASP in their books. Therefore it is clear that the service received from IPL is a service received 'for construction'.

9.4 The next issue to be seen is whether the manufacturing facility, the ASP is an immovable property or a movable 'plant and machinery', for the construction of which the impugned services are used. The appellant has stated that the ASP is a Movable property in as much as it can be moved as such and setup in any place and is a 'Plant and machinery'. The words "Plant" and "Machinery" have not been defined separately under the GST Acts. The Act gives the explanation of 'Plant and Machinery', as 'Any equipment, apparatus or machinery fixed to earth by foundation / structural support and includes the foundation and such structural support but excludes the immovable property in the nature of land, building or any other civil structure'. The appellant furnished the photo of the ASP, which was perused by us. The entire facility consists of many components interlinked with pipes which are fastened to the structural supports attached to the earth. The facility also consists of administrative offices, other utilities required for the manufacture and outward supply of the Industrial gases constructed. It is without doubt that the entire plant is a manufacturing facility commissioned for manufacturing Industrial gases. In this juncture, the moot point to be decided is whether the ASP is a 'Plant and Machinery' and that it is 'movable', therefore not an 'immovable property'. We find that in a similar situation, in the case of Duncans Industries Ltd. v. State of U.P. & Ors. on 3 December, 1999 Hon'ble Supreme Court had to decide whether the 'plant and machinery' in the fertilizer is 'goods' or 'immovable property. The Apex Court held that the same is immovable property and observed as under :

> *"The question whether a machinery which is embedded in the earth is movable property or an immovable property, depends upon the facts and circumstances of each case. Primarily, the Court will have to take into consideration the intention of the parties when it decided to embed the machinery whether such embedment was intended to be temporary or permanent. A careful perusal of the agreement of sale and the conveyance*

deed along with the attendant circumstances and taking into consideration the nature of machineries involved clearly shows that the machineries which have been embedded in the earth to constitute a fertiliser plant in the instant case, are definitely embedded permanently with a view to utilise the same as a fertiliser plant. The description of the machines as seen in the Schedule attached to the deed of conveyance also shows without any doubt that they were set up permanently in the land in question with a view to operate a fertilizer plant and the same was not embedded to dismantle and remove the same for the purpose of sale as machinery at any point of time. The facts as could be found also show that the purpose for which these machines were embedded was to use the plant as a factory for the manufacture of fertiliser at various stages of its production. Hence, the contention that these machines should be treated as movables cannot be accepted."

Applying the ratio, to the case at hand, we find that the appellant has taken on lease the land from SIPCOT for a period of 72 years with the intention to put up the manufacturing facility in the said place for generation of various Industrial grade gas and it is not a temporary facility. Hence we hold that the 'ASP' set up by the appellant is not a 'movable property' as claimed by the appellant but is an 'immovable property'.

9.5 The final issue to be seen is that whether the entire manufacturing plant is to be construed as a 'Plant and machinery' . As discussed in para supra, the Act do not define the terms 'Plant', 'Machinery', though the provision under Section 17(5)(d) says

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

The Explanation gives what is 'Plant and Machinery' and has a means, inclusive and exclusive limbs. The means limb mentions 'apparatus, equipment, and machinery fixed to earth by foundation or structural support' ; the inclusive limb covers- foundations and structural supports; and the exclusion limb excludes 'land, building or any other civil structure'. Thus the explanation when read with the main portion of the Section 17(5) (d), establishes that the intention of the restriction at S.17(5)(d) of the Act, which is not to extend credit of goods or services received for construction other than for construction of 'Plant' or 'machinery'. The intention stands crystalised by the explanation provided wherein the goods/services used for foundation or structural support is included but goods/services received for 'Land, civil structures' is excluded. In the case at hand,

the impugned services are received by the appellant 'for construction' of the manufacturing plant which is an immovable property and even if the said plant is considerable as 'Plant and Machinery', the restriction on the services received towards the leasehold of the 'Land' is restricted by Section 17(5)(d) of the Act readwith the Explanation for 'Construction' and 'Plant and Machinery'

10. To sum up, we find that ASP is installed and commissioned with foundation and structural support, embedded on the land, the leasehold rights of which is obtained by the appellant by receiving the service of agreeing to withdraw the lease hold rights held by IPL in their favour. Without the appellant having the leasehold rights, they cannot undertake 'construction' of the manufacturing Plant, ASP. Also, ASP is an immovable property and not mere 'Plant' or 'machinery' but can be termed as 'Plant and Machinery', the Explanation of which specifically excludes land. Thus, it is clear that intention of law maker is to restrict ITC on services related to land, received for construction. Thus, we hold that the services received from IPL, the cost of which is capitalised along with ASP, is a service received 'for construction' of an immovable property, and therefore the taxes paid is restricted as per Section 17(5)(d) of the CGST/TNGST Act 2017 and we uphold the ruling of the Lower Authority.

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

RULING

The ruling of the Lower Authority is upheld.

(M.A.SIDDIQUE)
The Principal Secretary/
Commissioner of Commercial Taxes,
Tamil Nadu/Member AAAR.

(M.V.S.CHOUDARY)
Chief Commissioner of GST & Excise
Chennai Zone/Member AAAR.

APPELLATE AUTHORITY FOR ADVANCE RULING
02 DEC 2021
GOODS AND SERVICE TAX
Chennai-5, Tamilnadu.

To

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4. Master File/ Spare – 2.