

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, 8th floor, H -wing, New building, Mazgaon, Mumbai-400010.
(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)

(2) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		27AAAGG000101ZM
Legal Name of Applicant		GENERAL MANAGER ORDNANCE FACTORY BHANDARA
Registered Address/Address provided while obtaining user id		Ordnance factory Bhandara, Jawaharnagar, Bhandara, Gondia, Maharashtra, 441906
Details of application		GST-ARA, Application No. 79 Dated 24.09.2018
Concerned officer		Jt. Commr. CGST &CX, Nagpur-I
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Factory / Manufacturing , Recipient of Goods or Service, Service Provision
B	Description (in brief)	Ordnance Factory Bhandara (OFBa) is a unit under the Ordnance Factories Description Board (OFB) functioning under the Department of Defence Production of Ministry of Defence, Government of India. The main business of OFBa is to manufacture Propellants and Commercial Explosives for use by sister factories for production of finished products like arms and ammunitions that are ultimately supplied to Indian defence and military forces. Thus, OFBa majorly acts as a feeder factory for goods such as explosives and propellants for its sister Ordnance Factories that use such goods for their production and manufacturing process.
	Issue/son which advance ruling required	(ii) Applicability of a notification issued under the provisions of this Act (iv) Admissibility of input tax credit of tax paid or deemed to have been paid (v) Determination of the liability to pay tax on any goods or services or both (vii) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

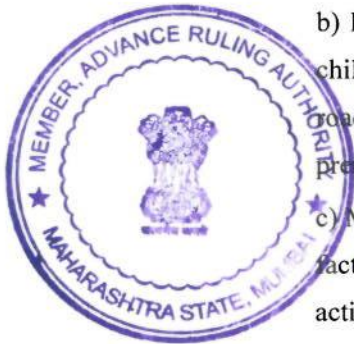


PROCEEDINGS

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by GENERAL MANAGER ORDNANCE FACTORY BHANDARA, the applicant, seeking an advance ruling in respect of the following questions.

- 1) Being a part of the Ministry of Defence, Government of India, whether they are liable to pay GST Advance on the following supply of services:
 - a) Liquidated damages deducted from the payments to be made to required suppliers in case of delayed delivery of goods or services.
 - b) Amount of Security deposit forfeited of suppliers due to non fulfilment of certain contract conditions.
 - c) Security deposit left unclaimed by the suppliers and recognised as income after 3 years.
 - d) Food and beverages supplied at industrial canteen inside the factory premises.
 - e) Community hall (Multipurpose Hall) provided on rental basis to employees of our organisation.
 - f) School bus facility provided to children of the employees.
 - g) Conducting exams for various vacancies.
 - h) Rent recovered from residential quarters of employees.
- 2) Whether Input Tax Credit on expenditure on the goods and services consumed by our organisation in following activities shall be available:
 - a) Maintenance of garden inside the factory premises.
 - b) Maintenance and upkeep activities relating to gardens, parks, playground, factory school for children of employees, hall for recreational activities, residential quarter buildings of employees, roads, footpaths, street lightings and other parts of estate area that are located outside the factory premises but within the factory **estate**.
 - c) Medicines purchased by the hospital maintained by our organisation and used for treatment of factory employees and their dependents. Expenditure on maintenance, upkeep and other activities relating to such hospital.
 - d) Expenditure related to maintenance and upkeep of guest houses maintained by organisation.
 - e) Expenditure related to purchase of LPG cylinders used within industrial canteen.
- 3) Whether the exemption to a 'defence formation' for preparation and generation of E-way bills is applicable to Ordnance factories & other Central Government & Public Sector Undertakings(PSU's) that function under the Ministry of Defence, Government of India?
- 4) Whether exemption on payment of GST on transport of 'military or defence equipments through a goods transport agency applicable to goods transported by our organisation?
- 5) Whether Input Tax Credit is to be reversed on finished goods that are destroyed during testing?
- 6) Whether proportionate Input Tax Credit has to be reversed in cases where lesser payment is made to the supplier due to deduction on account of liquidated damages from supplier's dues?
- 7) Being a part of the Ministry of Defence, Government of India, whether the following notifications are applicable to our organisation and what shall be the impact of such notifications:



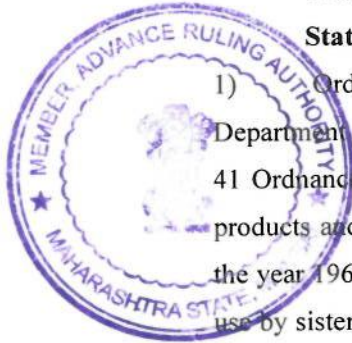
- a) Notification No. 2/2018- Central Tax (Rate), in relation to services by an arbitrator or an advocate to our organisation.
- b) Notification No. 3/2018- Central Tax (Rate), in relation to services supplied by our organisation by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017.
- c) Notification No. 36/2017 - Central Tax (Rate), in relation to payment of tax on reverse charge mechanism on sale of used vehicles, seized and confiscated goods, old and used goods, waste and scrap to a GST registered person.
- 8) Whether Input Tax Credit on services of passenger vehicles hired by our organisation is available?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

02. FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-

Statement of relevant facts having a bearing on the questions raised:-



1) Ordnance Factory Bhandara is a unit of Ordnance Factories Board (OFB) functioning under the Department of Defence Production and Supply of Ministry of Defence, Government of India. There are 41 Ordnance factories in India in total, each engaged in different activities like production of finished products and their parts relating to arms, ammunitions, explosives, military clothing etc. Established in the year 1960, the main business of OFBa is to manufacture Propellants and Commercial Explosives for use by sister factories for production of finished products like arms and ammunitions that are ultimately supplied to Indian defence and military forces. Thus, OFBa majorly acts as a feeder factory for goods such as explosives and propellants for its sister Ordnance Factories that use such goods for production of finished goods. However, some of the manufactured goods are also directly supplied to depots and units of defence and military forces, as per requirement. OFBa also sells a small part of its manufactured goods to state police and private firms. Supplies to Defence Public Sector companies like Bharat Dynamics Ltd. Etc. and defence laboratories like Defence Research & Development Laboratory are also there.

2) The manufacturing process involves procurement of various raw materials from sister Ordnance factories and private entities. Majority of the purchase is from private entities. The output is then transferred to sister Ordnance factories/units of armed forces as per order. The consideration for transfer is fixed by OFB and is booked in the financial accounts of our organisation and the adjustment is done through book transfer. Money consideration is involved only for a small portion of the produce, where the goods are sold to units under Ministry of Home affairs, paramilitary forces like BSF, units of state police, defence PSU's and private entities.

3) The goods are sent in finished condition to proof establishments (such as PXE Balasore, CPE Itarsi) for testing purpose. Such proof establishments are located outside the factory premises across the country and they also function under the Ministry of Defence, Government of India. Such sample goods are destroyed during testing process. The value of the raw materials used in the sample goods so destroyed is included in the value of the finished goods that are manufactured & thus included in the value of taxable goods supplied.

4) Apart from sale/transfer of manufactured goods, the factory also sells the scrap generated during the manufacturing process and other used and waste goods to private entities through auction process.

5) Employees of the factory from all over the country come down and reside in the factory estate to help run the factory and it is the obligation of the factory to provide them with residential quarters for accommodation and to maintain and upkeep their residential quarters along with maintenance of estate including playground, community hall, hospital, roads, school etc. Monthly License fees is collected from the employees in respect of such accommodation.

6) There are 2 guest houses in the factory estate. Expenditure on maintenance of Guest houses for stay of various persons visiting the factory is incurred by our organisation. Guest houses are used to provide accommodation services to various guests including employees on tour. Room charges are recovered from such guests for their stay on per day basis that are different for such different guest houses.

7) The factory estate is huge and some portion of it has been let out on leasehold basis for commercial purposes like daily needs shops, banks etc. Our organisation collects lease rentals from the tenants of such let out immovable property.

8) Other allied establishments like local accounts office & SQAE are also functioning for the factory & within the factory. These organisations though a separate entity, they are units of the Central Government and function for OFBa. Local accounts office provides services related to accounting of transactions of OFBa, payment of bills of OFBa etc. to OFBa & SQAE provides services related to quality control & checking of products of OFBa. The cost of salary & other expenses related to such allied establishments is included in the total cost of manufacturing of final products of OFBa & thus forms part of the value of taxable supply. Employees of such establishments are also provided residential quarters for accommodation and monthly license fees is collected from them in respect of such accommodation. The employee strength of such organisations is extremely small in comparison to the employee strength of OFBa.

9) The whole of OFBa estate is divided into two parts-

a) Factory premises. It consists of the factory where manufacturing activity is carried out & the administration building.

b) Estate area:- It consists of the area other than factory premises. Residential quarters of employees of OFBa and allied establishments, gardens, parks, playground, factory school for children of employees, hall for recreational activities, places of worship of God, market area, guest houses, school for children of employees, factory hospital & open land is included is included in such estate area.



3. **Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the questions raised in the referred application for advance ruling:-**

A) **Question No. 1:- Being a part of the Ministry of Defence, Government of India, whether our organisation Ordnance Factory Bhandara (OFBa) is liable to pay GST on the following supply of services:-**

- a) Liquidated damages deducted from the payments to be made to suppliers in case of delayed delivery of goods or services.
- b) Amount of Security deposit forfeited of suppliers due to non-fulfilment of certain contract conditions.
- c) Security deposit left unclaimed by the suppliers and recognised as income after 3 years.
- d) Food and beverages supplied at industrial canteen inside the factory premises.
- e) Community hall (Multipurpose Hall) provided on rental basis to employees of our organisation.
- f) School bus facility provided to children of the employees.
- g) Conducting exams for various vacancies.
- h) Rent recovered from residential quarters of employees.

As per section 2(53) of the CGST Act, 2017, 'Government' means the Central Government. As per clause (23) of section 3 of the General Clauses Act, 1897 the 'Government' includes both the Central Government and any State Government. As per clause (8) of section 3 of the said Act, the 'Central Government', in relation to anything done or to be done after the commencement of the Constitution, means the President. As per Article 53 of the Constitution, the executive power of the Union shall be vested in the President and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, in terms of Article 77 of the Constitution, all executive actions of the Government of India shall be expressed to be taken in the name of the President. Therefore, the Central Government means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of the President.

Ordnance Factory Bhandara is an unit under the Ordnance Factories Board(OFB) functioning under the Department of Defence Production and supply of Ministry of Defence, Government of India. All the powers provided to our organisation's officers and decisions taken in our organisation are on behalf of the President of India. Thus, OFBa is a part of the 'Central Government' as per clause (23) of section 3 of the General Clauses Act, 1897.

a) **Liquidated damages deducted from the payments to be made to suppliers in case of delayed delivery of goods or services:-**

Our organisation deducts liquidated damages (L.D) from the payments to be made to its suppliers in case of delayed delivery of goods or services. As per para 5(e) of Schedule II to the CGST Act, 2017, "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" is an activity that shall be treated as a supply of service. So, OFBa would have paid tax on such L.D deducted from supplier's payment had it not been a part of the Central Government since Sr. No. 62 of the



exemption list on supply of services as per notification no. 12/2017- Central tax(Rate)specifies that, “Services provided by the Central Government, State Government, Union territory or local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract” shall attract NIL rate of tax.

b) Amount of Security deposit forfeited of suppliers due to non-fulfilment of certain contract conditions:-

OFBa also forfeits security deposit of its suppliers due to non-fulfilment of certain contract conditions. Such forfeiture though not in the form of L.D, it can be considered as a form of ‘fine’ that is recovered from suppliers’ dues in the form of forfeiture of their deposit. Thus, NIL rate of tax as per aforementioned Sr. No. 62 of the exemption list on supply of services as per notification no. 12/2017- Central tax (Rate) should be applicable on such forfeiture of deposit.

c) Security deposit left unclaimed by the suppliers and recognised as income after 3 years.

Sometimes, after completion of their scope of work, the suppliers do not claim the security deposits or by whatever name called from OFBa. In such a scenario, OFBa treats such unclaimed deposits as ‘lapsed’ after the end of 3 successive financial years from the financial year in which such deposits could have been claimed by the suppliers. The amount relating to such ‘lapsed’ deposits is treated as income in the financial statements of OFBa for that relevant F.Y. However, as per Ordnance Factory Board (OFB) norms, such lapsed deposit can be claimed by the supplier to whom it belonged after any interval of time and OFBa shall have to mandatorily refund it. Thus, such act of treating deposits as lapsed and recognizing them as income cannot be said to fall under the phrase - “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act” and thus it does not constitute a service as per para 5(e) of Schedule II to the CGST Act, 2017 or any other provisions of the CGST Act, 2017.

Sr. No. 6 of the exemption list on supply of services as per notification no. 12/2017- Central tax(Rate) specifies that, “Services by the Central Government, State Government, Union territory or local authority excluding the following services— (a) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; (b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (c) transport of goods or passengers; or (d) any service, other than services covered under entries (a) to (c) above, provided to business entities” shall attract NIL rate of tax. Accordingly, the following services supplied by OFBa should attract NIL rate of tax since they are provided to non-business entities:-

d) Food and beverages supplied at industrial canteen inside the factory premises:

As per Clause 6 of Schedule II to the CGST Act, 2017, “supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration” shall be treated as a supply of services. There is an industrial canteen inside the factory premises that serves food and beverages to employees of the factory.



Neither is alcoholic liquor served in the industrial canteen nor is the industrial canteen air conditioned. Nominal charges for such food and beverages are recovered from the employees on no profit basis in order to cover the day-to-day expenditure of the canteen. Such industrial canteen is run by the factory itself and no outdoor caterer is involved in providing services related to supply of food and beverages. Thus, such supply of food and beverages by the factory to factory employees inside the industrial canteen falls within the category of 'services' as per the aforementioned clause 6 of Schedule II to the CGST Act, 2017. However, in terms of the aforementioned Sr. No. 6 of the exemption list on supply of services as per notification no. 12/2017- Central tax(Rate), supply of services by the Central Government to non-business entities attract 'NIL' rate of tax. Thus, since such supply of food and beverages is done to factory employees that are non-business entities, the charges recovered by the factory from such employees for such supply attracts 'NIL' rate of tax since OFBa is a unit of the Central Government as explained above.

e) Community hall provided on rental basis to employees of the factory:

There is a community hall within the factory estate that is let to be used by the factory to its employees for their personal purposes like family gatherings, marriages, other social functions etc. Charges in terms of monetary consideration are recovered by the factory from its employees in lieu of such use. As per clause (zz) of the definitions contained in notification no. 12/2017- Central tax (Rate), "Renting in relation to immovable property" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property. Thus, the service provided by the factory to its employees for letting them use cultural hall for their personal purposes falls within the definition of "Renting in relation to immovable property". However, keeping in view the above discussed Sr. No. 6 of the exemption list on supply of services as per notification no. 12/2017- Central tax(Rate), such services provided by OFBa attract 'NIL' rate of tax since the provider of service (OFBa) is a unit of the Central Government and the recipient of services(factory employees) are non-business entities.



f) School bus facility provided to children of the employees:

OFBa provides the service of pick and drop of the children of its employees from school located outside the factory via bus owned by the factory. Charges in terms of monetary consideration are recovered by the factory from its employees in lieu of such service provided to them. So, keeping in view the above discussed Sr. No. 6 of the exemption list on supply of services as per notification no. 12/2017- Central tax(Rate), such services provided by OFBa attract 'NIL' rate of tax since the provider of service (OFBa) is a unit of the Central Government and the recipient of services(factory employees) are non-business entities.

g) Conducting exams for various vacancies in the factory:

For conducting examinations to fill up various staff vacancies in OFBa, it collects fees from the candidates who wish to appear in such examinations. So, keeping in view the above discussed Sr. No. 6 of the exemption list on supply of services as per notification no. 12/2017- Central tax(Rate), such services of conducting examinations provided by OFBa attract 'NIL' rate of tax since the provider of

service (OFBa) is a unit of the Central Government and the recipient of services(candidates) are non-business entities.

h) Rent recovered from residential quarters of employees:

As discussed above, as per notification no. 12/2017- Central tax(Rate), “Renting in relation to immovable property” means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.” OFBa provides quarters located within the factory estate to its employees as well as employees of the allied establishments for residential purposes and licence fees is recovered from such employees in lieu of such use by them for residential purposes. Thus, the service provided by the factory to its employees of allowing them to use quarters for their residential purposes falls within the definition of “Renting in relation to immovable property”. Such licence fees recovered by OFBa from employees attracts ‘NIL’ rate of tax in terms of Sr. No. 6 of the exemption list on supply of services as per notification no. 12/2017- Central tax(Rate). Sr. no. 12 of the same notification no. 12/2017- Central tax(Rate) also specifies that “Services by way of renting of residential dwelling for use as residence” attract ‘NIL’ rate of tax.

B) Question No. 2:- 1) Whether Input Tax Credit on expenditure on the goods and services consumed by our organisation in following activities shall be available:-

- a) Maintenance of garden inside the factory premises.
- b) Maintenance and upkeep activities relating to gardens, parks, playground, factory school for children of employees, hall for recreational activities, residential quarter buildings of employees, roads, footpaths, street lightings and other parts of estate area that are located outside the factory premises but within the factory estate.
- c) Medicines purchased by the hospital maintained by our organisation and used for treatment of factory employees and their dependents. Expenditure on maintenance, upkeep and other activities relating to such hospital.
- d) Expenditure related to maintenance and upkeep of guest houses maintained by organisation.
- e) Expenditure related to purchase of LPG cylinders used within industrial canteen.

The basic question that is being asked here is that whether the following services received by the factory are covered under the definition of “input services” as per section 2(60) of the CGST Act, 2017 & whether such services can be considered to be falling within the scope of “used or intended to be used in the course or furtherance of business” as per section 16(1) of the CGST Act, 2017 so as to entitle OFBa to avail Input Tax of the said services. It is worthwhile to note here that Hon. Finance Minister of India stated at paragraph 5(b) of the Statement of Objects & Reasons while introducing the Central Goods & Services Tax (“CGST”) Bill, 2017 in the Parliament as under:-

“5. The Central Goods and Services Tax Bill, 2017, inter alia, provides for the following, namely:—

(b) to broad base the input tax credit by making it available in respect of taxes paid on any supply of goods or services or both used or intended to be used in the course or furtherance of business.”



Hence a clear intent to broad base the input tax credit is evident from the above. Also, the term “used or intended to be used in the course or furtherance of business” has been used to expand the scope of inputs & input services to those activities that have some direct or indirect nexus to business of the supplier. So, it requested to the Hon. Appellate Authority for Advance Ruling to decide upon the admissibility of Input Tax Credit in relation to the following services keeping in view the aforementioned intention of the Hon. Finance Minister of broadening the Input Tax Credit base.

Even in the erstwhile laws relating to Excise Duty & Service Tax, the essential requirement of a service to be considered as “Input Service” for availing CENVAT Credit of the same as per Rule 2(l) of the CENVAT Credit Rules, 2004, was that such service should be used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products. There is a plethora of decisions by various High Courts & various benches of Tribunal (CESTAT) in which it was adjudged that CENVAT Credit of Service Tax in relation to the following services was allowable on the pretext that such services were used by the manufacturer, whether directly or indirectly, in or in relation to the business of manufacture of final products.

In the case of Coca Cola India Pvt. Ltd. vs. CCE reported in 2009, a Division Bench of the Hon. Bombay High Court held that the expression 'activities in relation to business' in the inclusive part of the definition of 'input service' further widens the scope of input service so as to cover all services used in the business of manufacturing the final products and that any service used in relation to the business of manufacturing the final product would be an eligible input service for availing CENVAT Credit. It was also held that the cost of any input service that forms part of value of final products would be eligible for CENVAT credit. Thus, it can be construed to mean from such decision that where the input service used is integrally connected with the business of manufacturing the final product and the cost of that input service forms part of the cost of the final product, then credit of service tax paid on such input service would be allowable.

Therefore, applying the same logic, in the GST regime, the said following services can be said to be satisfying the twin necessities for availing Input Tax Credit of GST in respect of expenditure on the said services; that is “input services” and “used or intended to be used in the course or furtherance of business” since as per section 2(17) of the CGST Act, 2017, the term “business” includes “manufacture”. In fact, the scope of availing Input Tax Credit has been further widened under the GST regime to include all inputs and input services used in the course or furtherance of business vis-a-vis erstwhile CENVAT Credit Rules where admissibility of CENVAT Credit was restricted to input services used directly or indirectly, in or in relation to manufacture of final product.

a) Maintenance of garden inside the factory premises:-

Here ‘factory premises’ means plant area where manufacturing activity is carried out and administrative building. The services of maintenance & upkeep of gardens that are located within the factory premises should be considered to be an “input service” as per section 2(60) of the CGST Act, 2017 and should also be considered to be “used or intended to be used in the course or furtherance of business” as per section 16(1) of the CGST Act, 2017 and Input Tax Credit should be available in respect of expenditure done on such services on the following counts:-

- i) Gardening is essential & mandated by Maharashtra Pollution Control Board to maintain quality of ambient air & prevent air & water pollution and also a condition precedent as laid down by the said Board, without which OFBa cannot resort to its business activity of manufacturing.
- ii) Garden creates better atmosphere and environment which increases working efficiency and thus its maintenance is essential in the course of business for better running & furtherance of business.
- iii) Cost of such 'gardening expenses' forms part of the cost of the final products and thus forms part of the value of taxable supply.
- iv) Reliance is placed on the following judicial pronouncements of the Tribunal (CESTAT) & various High Courts, wherein it was adjudged that CENVAT Credit of Service Tax was allowable on expenditure related to maintenance & upkeep of gardens in the factory:-

In M/s. Rane TRW Steering System Ltd. vs. The Commissioner of Central Excise and Central Tax (2018), the Hon. Madras High Court held that garden maintenance service would fall within the definition of input service, in terms of Rule 2 (I) of the Cenvat Credit Rules, 2004.

In Mukand Ltd's case Vs. Commissioner of Central Excise, Belapur {2016 (42) STR 88 (Tri-Mumbai)}, it was held by the Hon. Tribunal that the credit on 'gardening expenses' is fully allowable as the same is required for maintaining the good atmosphere in the manufacturing area and also a condition precedent as laid down by the State Pollution Control Board, without which the appellant cannot resort to manufacturing Activity.

In HCL Technologies Ltd., Vs. Commissioner of Central Excise, Noida {2015 (4) STR 369 (Tri-Del)}, it was held by the Hon. Tribunal that Garden Maintenance Services qualify as input services.

In Lifelong Meditech Ltd., Vs. Commissioner of Central Excise and Service Tax, Gurgaon II {2016 (44) STR 626 (Tri-Chan)}, it was held by the Hon. Tribunal that "horticulture services are directly related to the manufacturing activity by the appellant as without maintaining the garden, the appellant cannot run their factory. Therefore, I hold that the appellant is entitled to avail CENVAT Credit for horticulture services."

In M.s, Orient Bell Ltd., Vs. Commissioner of Central Excise, Noida, reported in 2016 SCC Online CESTAT, 7923, it was held by the Hon. Tribunal that So far as garden maintenance is concerned, the same is input service as it is a pollution control requirement and improves the aesthetics and overall atmosphere and thus is an expenditure in or in relation to manufacture.

In Commissioner of Central Excise, Delhi III, Suzuki Motor Cycle India Private Limited {2017 (47) STR 85 (Tri-Chan)}, it was held by the Hon. Tribunal that the assessee is entitled to avail the credit of gardening service.

b) Maintenance and upkeep activities relating to gardens, parks, playground, factory school for children of employees, hall for recreational activities, residential quarter buildings of employees, roads, footpaths, street lightings and other parts of estate area that are located outside the factory premises but within the factory estate:-

As explained above, the term 'factory estate' has been used to describe the area that falls within the boundaries of OFBa and are so controlled by OFBa but such area is outside the precincts of the area

where factory & administrative building is there. Such area comprises of establishments such as residential quarters of employees of OFBa & allied organisations, market area, places for worship of God, shops that are given on lease rental basis for commercial purposes, gardens, parks, playgrounds, swimming pool, factory school for children of employees, hall for recreational activities, footpaths, street lightings, inter-connected roads between all such establishments and factory premises and land that is currently not used for any purpose whatsoever.

The services of maintenance, upkeep, repair, housekeeping, cutting of trees& grass, civil construction, hiring of manpower for attending school bus, security services, garbage collection, sewage treatment, sweeping & cleaning etc. procured in relation to such establishments within the factory estate should be considered to be an “input service” as per section 2(60) of the CGST Act, 2017 and should also be considered to be “used or intended to be used in the course or furtherance of business” as per section 16(1) of the CGST Act, 2017. Thus, input Tax Credit should be available in respect of expenditure done on such services in so far as they are not disallowed under any other provisions of the CGST Act, 2017. Let us analyse each establishment one by one for admissibility of Input Tax Credit:-

i) Residential quarters of employees of OFBa & allied organisations, market area, places for worship of God, gardens, parks, playgrounds, swimming pool, footpaths, street lightings, factory school for children of employees, hall for recreational activities:-

Services like maintenance, upkeep, repair, providing security, garbage collection, sewage treatment, civil construction, sweeping & cleaning etc. are procured in relation to the aforementioned establishments. The specific transactions in respect which ruling on entitlement of input tax credit is required is specified in the enclosed “Annexure A”. We wish to submit that all such services are used by the employees of the factory. The Ordnance Factory Board decided to develop such residential facilities within the factory estate since the factory is located at a remote area and employees from different parts of the country are recruited to work over here in OFBa. The residential colony is an 'industrial township' and the appellant is responsible to provide all types of municipal services in the colony. If the employees are not provided a proper residential colony with all the aforementioned facilities and establishments, there would be no availability of proper staff and labour required for continuous manufacturing activities. Thus, such services procured in relation to such establishments are necessary for furtherance of business of our organisation since these services help in maintaining the basic living standard of the employees who in turn are responsible for running the day- to-day business of the factory. Cost of such services forms part of the cost of the final products and thus forms part of the value of taxable supply. Reliance is placed on the following judicial pronouncements of various High Courts & Tribunals wherein it was adjudged that CENVAT Credit of Service Tax was allowable on expenditure related to services procured in relation to residential colony for the employees:-

In the case of CCE vs. ITC Ltd. in the year 2012, the Hon. Andhra Pradesh High Court held that CENVAT credit of service tax paid on the taxable services used in the residential complex shall be available to the manufacturer. The relevant paragraph of the said judgment is extracted herein below.

“The Commissioner’s Order-in-Appeal dated 27-5-2008 reflects that he accepted that the efficiency of the employees of an organization would be dependent on various factors, one such being the provision of



a housing colony. He further conceded that these facilities would contribute to the enhancement of the productivity of the organization. Having stated so, the appellate authority surprisingly took the view that maintenance of the residential colony by the respondent-Company was only an obligatory activity owing to situational exigencies and was not connected either directly or indirectly to the manufacture of its final products. This inherent contradiction in the Order-in-Appeal was noted by the CESTAT, which opined that if accommodation was not provided by the respondent-Company to its employees at this remote location, it would not be feasible for it to carry on its manufacturing activity. The finding of the Commissioner that providing a colony to the employees was not directly or indirectly connected with the manufacturing activity of the respondent-Company was therefore, not borne out on facts. The staff colony, provided by the respondent-Company, being directly and intrinsically linked to its manufacturing activity could not therefore, be excluded from consideration. Consequently, the services which were crucial for maintaining the staff colony, such as lawn mowing, garbage cleaning, maintenance of swimming pool, collection of household garbage, harvest cutting, weeding, etc., necessarily had to be considered as 'input services' falling within the ambit of Rule 2(1) of the CENVAT Rules, 2004."

In the case of MANGALAM CEMENT LTD VERSUS COMMISSIONER OF C. EX. & S.T., JAIPUR-I, the Hon. Delhi bench of Tribunal held that the residential colony was constructed adjacent to the factory because of the reason that the factory manufacturing cement is located at a place which is away from the city. Unless the residential colony is constructed near the factory, the appellant will not be in a position to get the proper/adequate manpower for running its plant activities and thus set aside the order passed by the Id. Commissioner (Appeals) of denying CENVAT credit of service tax taken by the appellant on maintenance and repair work of their residential colony.

In the case of CCE Meerut vs. M/s Bajaj Hindustan Ltd., the dispute was in relation to allowance of CENVAT Credit of Service Tax paid on construction services to the respondent for construction of residential colony/dormitory located in the precinct of the factory. The Hon. New Delhi bench of the Tribunal held that construction of residential colony/dormitory adjacent to the factory premises was the necessity because of the location of the factory in a remote area, where if the accommodation is not provided to staff/workers, the continuous/round the clock manufacturing activity will hamper. Further, the cost towards such construction has also been considered as expenditure in the books of accounts of the respondent. Therefore, such construction activity was held to be relation to the business of the respondent and therefore CENVAT Credit was allowed in relation to such services.

In the case of Reliance Industries Ltd. vs. CCE & ST, Mumbai, the dispute was in relation to allowance of CENVAT Credit of Service Tax in respect of services like construction services, repairs and maintenance services, security service, manpower recruitment and supply services, works contract services etc. It was noticed by the lower authorities that these services on which credit was availed of service tax paid were received in their residential township constructed for the employees. It was held by the Mumbai Bench of the Tribunal that the expenses which were incurred by the appellant for the setting up of the township/colony for their employees are expenses which are in relation to the business activity of the appellant which is manufacturing of petroleum products. It was also noted that while arriving at



the price of the finished goods manufactured in these factory premises, appellant has considered the expenses incurred towards the residential township/colony as expenses and included the same while arriving at the cost of production of the final products manufactured in the factory premises and accordingly CENVAT Credit was allowed in relation to such services.

(ii) Shops that are given on rental basis for commercial purposes:-

In general, services related to establishment, repair and maintenance of such shops is procured. Such shops are used for commercial purposes & commercial lease rent is recovered from the tenants of such shops on which GST is collected by OFBa. Thus, the Input Tax Credit related to such services in relation to such shops should be admissible as such expenditure is directly related to the business of renting of immovable property unless otherwise blocked under any other provisions of the CGST Act, 2017.

(iii) Inter-connected roads between various establishments and factory premises:-

The specific transactions in respect of which ruling on entitlement of input tax credit is required is specified in the enclosed "Annexure B". In general, services related to construction, repair and maintenance of such roads is procured. Roads connect the various establishments within the factory premises; that is factory where manufacturing activity is done and administration building with various other establishments within the factory estate like residential quarters, market area and other establishments mentioned above. Thus, the Input Tax Credit related to expenses mentioned in Annexure B" in relation to such inter-connected roads should be admissible on the following grounds:-

- a) The road ranging from the main entrance gate from where the factory estate begins up to the factory premises is used for inward and outward transportation of raw materials & finished goods and is thus used in the course or furtherance of business.
- b) The roads within the factory estate; that is the establishments like residential quarters, hospital, guest houses, market area and all other establishments as mentioned above are also used for the purpose of business of OFBa since as argued above all such establishments are there for the benefit of employees of the factory & thus such roads are used in the course of business of OFBa.
- c) The cost of such services forms part of the cost of the final products and thus forms part of the value of taxable supply.

(iv) Land that is currently not used for any purpose whatsoever:-

The specific transactions in respect of which ruling on entitlement of input tax credit is required is specified in the enclosed "Annexure C". In general, services related to maintenance of such land are procured. Such land is located within the factory estate and consists of mainly wild grass, trees & other vegetation. It is adjacent to the roads that are used for commutation. Input Tax Credit related to expenses mentioned in "Annexure C" in relation to such land should be admissible on the following grounds:-

- a) It is necessary to cut wild grass & other vegetation that grows in such area on regular basis in order to maintain the factory estate area neat & clean and ensure that such vegetation does not spill over to and obstruct the roads used for commutation within the factory.
- b) Another reason is that such wild grass & other vegetation increases the bacteria count in the environment, factory and finished product that adversely affects the manufacturing process & the quality



of the final product & the environment and hence it is necessary to maintain such wild grass & other vegetation.

c) The cost of such services forms part of the cost of the final products and thus forms part of the value of taxable supply.

d) Reliance is placed on the following judicial pronouncement of the Tribunal(CESTAT), wherein it was adjudged that CENVAT Credit of Service Tax was allowable on expenditure related to jungle cutting services to keep environment, factory and finished product bacteria free:-

In the case of L'Oreal India Pvt. Ltd.. vs. CCE (2011) 22 STR 89 (Tri. – Mum.), the Hon. Mumbai bench of the Tribunal held that CENVAT credit of service tax paid on jungle cutting services to keep environment, factory and finished product bacteria free are to be allowed as they have nexus with business activity of Appellant.

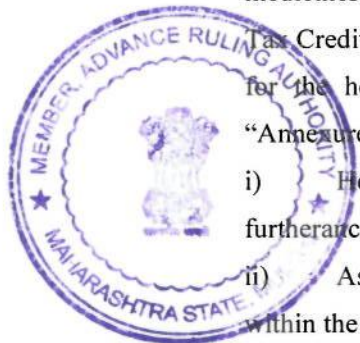
c) **Medicines purchased by the hospital maintained by our organisation and used for treatment of factory employees and their dependents. Expenditure on maintenance, upkeep and other activities relating to such hospital:-**

The specific transactions in respect which ruling on entitlement of input tax credit is required is specified in the enclosed "Annexure D". Hospital is run by OFBa and is also located within the factory estate but outside the precincts of the area where factory & administrative building is there. The medicines and other facilities are provided to employees of the factory without any consideration. Input Tax Credit on the inputs like medicines and others mentioned in "Annexure D" purchased by the factory for the hospital and expenditure on maintenance, upkeep and other activities also mentioned in "Annexure D" relating to such hospital should be admissible on the following grounds:-

- i) Hospital helps in keeping the employees fit and healthy, so that they can contribute for furtherance of business of OFBa.
- ii) As a part of welfare measure, it is necessary to provide the employees basic medicinal facilities within the factory estate itself since the factory is located at a remote location.
- iii) Cost of such medicines and expenditure on maintenance, upkeep and other activities relating to such hospital forms part of the cost of the final products and thus forms part of the value of taxable supply.
- iv) Reference to the judicial pronouncements mentioned in above questions can be drawn in so much so that hospital has been set up for the benefit of the employees and it too forms a part of residential colony of OFBa.

d) **Expenditure related to maintenance and upkeep of guest houses maintained by our organisation:-**

The specific transactions in respect which ruling on entitlement of input tax credit is required is specified in the enclosed "Annexure E". Guest houses are run by OFBa and is also located within the factory estate but outside the precincts of the area where factory & administrative building is there. Guest houses are used to provide accommodation services to various guests including employees on tour. Room charges are recovered from such guests for their stay on per day basis that are different for such different guest houses. So, inward supply of inputs and input services that are used for maintenance



and upkeep of such guest houses should also be considered to be for the purpose of furtherance of business of OFBa and Input Tax Credit should be admissible on the following grounds:-

- i) Such guests visit OFBa for various purposes that are related to business of our organisation and thus such guest houses are used in the course or furtherance of business of OFBa.
- ii) The management, maintenance and repair service obtained from the service providers in respect of guest houses has direct benefit to the business operations of the factory & has thus direct nexus with the core business of the factory.
- iii) Cost of such inputs and input services relating to such guest houses forms part of the cost of the final products and thus forms part of the value of taxable supply.
- iv) Reliance is placed on the following judicial pronouncement of the Tribunal (CESTAT), wherein it was adjudged that CENVAT Credit of Service Tax was allowable on various expenditure related to guest houses maintained by the assessee:-

In the case of **ISMT LTD. VERSUS COMM. OF CUS. & C. EX., AURANGABAD [2015 (40) S.T.R. 596 (Tri. - Mumbai)]**, it was held that security service provided to the guest house in the factory is admissible input service since guest house is used for the stay of employees and auditors which has direct nexus with factory which produces excisable goods therefore CENVAT credit is admissible to the appellant.

In the case of **L'Oreal India Pvt. Ltd. v. Commissioner of C. Ex., Pune-I [2011 (22) S.T.R. 89 (Tri. - Mumbai)]**, it was held that the appellant is eligible for credit of guest house maintenance services since such services have nexus or integral connection with the business of manufacturing of the final product.

In the case of **Commissioner of C. Ex., Visakhapatnam Vs. Hindustan Zinc Ltd. [2009 (16) S.T.R. 704 (Tri. - Bang.)]**, it was held that Guest House is used for businessmen during visit to the company in connection with the business. It is indeed related to business activity. The appellants are rightly entitled for credit.

e) Expenditure related to purchase of LPG cylinders used within industrial canteen and within the office:-

LPG cylinders are purchased and used within:-

(i) **Industrial canteen:** - The industrial canteen is used for providing food and beverages at subsidised rates to employees. Hence, such expenses of purchasing LPG cylinders should also be considered for the purposes of furtherance of business of OFBa and ITC should be allowed on such expenses. Also, maintenance of such industrial canteen is a statutory obligation under the Factories Act, 1948.

(ii) **Within the office:** - We wish to withdraw this sub-question from the application.

C) Question No. 3:- Whether the exemption to a 'defence formation' for preparation and generation of E- way bills is applicable to Ordnance factories & other Central Government & Public Sector Undertakings (PSU's) that function under the Ministry of Defence, Government of India?



As per para 14(k) of Rule No. 138 of the CGST Rules, 2018(Notification No. 12/2018 – Central Tax), e-way bill is not required to be generated, irrespective of the value of movement of goods where movement of goods is being caused by defence formation under the Ministry of Defence as a consignor or a consignee. The term ‘defence formation under the Ministry of Defence’ has not been defined in the CGST Act, 2017 or the rules made there under.

Now, let us examine from the available information whether OFBa is a ‘defence formation’ or not. OFBa is functioning under the Ordnance Factory Board (OFB) which in turn is functioning under the Department of Defence Production and Supply of Ministry of Defence, Government of India. Thus, OFBa has been ‘formed’ by the Ministry of Defence, Government of India and so OFBa should get covered under the term ‘defence formation under the Ministry of Defence’. So, the aforementioned exemption should be applicable to OFBa when it causes movement of goods as a consignor. The factory also causes movement of goods to units of the Indian Armed Forces. The Indian Armed Forces are under the Ministry of Defence (MoD) Government of India. So, the units of the Indian Armed Forces get covered under the term ‘defence formation under the Ministry of Defence’. So, the aforementioned exemption should be applicable when OFBa causes movement of goods to such units of the Indian Armed Forces since the consignee in this case is a ‘defence formation under the Ministry of Defence’.

Similarly, the factory also causes movement of goods to proof establishments for testing of its goods. These proof establishments are also under the management of the Ministry of Defence (MoD) of the Government of India. So, the aforementioned exemption should be applicable when OFBa causes movement of goods to such proof establishments since the consignee in this case is a ‘defence formation under the Ministry of Defence’.

Lastly, defence Public Sector Undertakings, Defence research Organisation(DRDO) or any other organisation under the management of the Ministry of Defence, Government of India should also get covered under the term ‘defence formation under the Ministry of Defence’ and the aforementioned exemption should be applicable when goods are sent from the factory to such organisations.

D) Question No. 4:- Whether exemption on payment of GST on transport of ‘military or defence equipments’ through a goods transport agency applicable to goods transported by our organisation?

As per Sr. No. 21 of the Notification No. 12/2017- Central Tax (Rate), “Services provided by a goods transport agency, by way of transport in a goods carriage of defence or military equipments” are exempt from the levy of GST. The term ‘defence or military equipment’ has not been defined in the CGST Act, 2017.

As per Oxford dictionary, the word equipment means ‘the necessary item for a particular purpose’. Hence the term ‘defence or military equipment’ should mean items/goods that are to be used by Indian defence or military forces.

So, the question arises that whether the following category of goods shall get covered under ‘defence or military equipment’:-

Production Goods:-



OFBa uses services of Goods Transport Agencies(GTA) for transporting goods like propellant & explosives that are used in preparation of ammunition. Such goods are transported by OFBa to units of the defence forces, its sister Ordnance factories, proof establishments and other organisations under the Ministry of Defence, Government of India.

- i) Transport to units of the defence forces:-When such goods are transported to units of the defence forces then they should get covered under the term 'defence or military equipment' since they are used directly by Indian defence and military forces and hence the aforementioned exemption should apply on transportation of such goods.
 - ii) Transport to sister Ordnance factories:- When such goods are transported to sister Ordnance factories, then also the goods should get covered under the term 'defence or military equipment' since Ordnance factories are part of the Department of Defence Production, Ministry of Defence.
 - iii) Transport to Proof establishments: - When such goods are transported to proof establishments outside the factory for testing purpose, then also the goods should get covered under the term 'defence or military equipment' since the proof establishments are also a part of Ministry of Defence.
 - iv) Transport to Research institutions: - When such goods are transported to research organisations like DRDO, ARDE etc., then also the goods should get covered under the term 'defence or military equipment' since such research institutions are also a part of Ministry of Defence.
- Transport to Defence Public Sector Units (PSU's):- When such goods are transported to Defence PSU's, then also the goods should get covered under the term 'defence or military equipment' since such PSU's are also under the aegis of the Department of Defence Production, Ministry of Defence.
- Transport to private entities: - The factory is also engaged in Civil Trade where it sells its manufactured goods to select private entities. In such a scenario also, the goods should get covered under the term 'defence or military equipment' since the supplier of goods is our organisation which is a part of the Department of Defence Production, Ministry of Defence.

Goods transferred from stock:-

The factory also uses GTA services for transporting goods that are not manufactured by it but are issued from its stock. Such goods maybe anything that are lying in the stock of the factory. Such goods are transported to the following:-

- i) Transport to sister Ordnance factories: - When such goods are transported to sister Ordnance factories, then the goods should get covered under the term 'defence or military equipment' since Ordnance factories are part of the Department of Defence Production, Ministry of Defence.
- ii) Transport to Research institutions: - When such goods are transported to research organisations like DRDO, ARDE etc., then also the goods should get covered under the term 'defence or military equipment' since such research institutions are also a part of Ministry of Defence.



- iii) Transport to private entities: - When old used goods & scrap are sold through auction process to private entities and transportation of such goods is carried out through GTA, then also such goods should get covered under the term 'defence or military equipment' since the supplier of goods is our organisation which is a part of the Department of Defence Production, Ministry of Defence.

E) Question No. 5:- Whether Input Tax Credit is to be reversed on finished goods that are destroyed during testing?

Samples of the finished goods manufactured by the factory are sent for quality testing to proof establishments set up under the Ministry of Defence outside the factory where such samples are completely destroyed during the testing process.

Section 17(5)(h) of the Central GST (CGST) Act, 2017 reads that "input tax credit shall not be allowed in respect of goods lost, stolen, destroyed, written off, or disposed of by way of gift or free samples."

The bare analysis of above section makes it clear that this section has an overriding effect and it states that the ITC shall not be available in respect of goods lost, stolen, destroyed or written off.

However, this section does not talk of the cases wherein the said inputs, capital goods or input services have already been utilized for further production of final products. In other words, the question of reversal will arise only if the inputs or capital goods are themselves lost, stolen or destroyed. If the finished goods are destroyed, lost or stolen; then reversal should not be required.

The definition of inputs and capital goods uses the phrase "used or intended to be used in the course or furtherance of the business". Since this condition is to be checked at the time of admissibility of ITC and at that time the goods lost, stolen or destroyed were intended to be used in the course or furtherance of business, the ITC was legally availed.

It is worthwhile to mention here that once ITC is legitimately availed, it cannot be demanded back without a specific provision in this regard. There is no provision for demanding the ITC on inputs, capital goods and input services that have already been used for the manufacture of finished goods that are lost or stolen or damaged.

There is only one provision under clause (h) of section 17(5) of CGST Act, 2017 which talks of reversal on inputs or capital goods or input services itself. Further, there is no such provision of reversal under rule 42 of CGST Rules, 2017. In absence of any specific provision for demanding back the ITC on already consumed inputs or capital goods or input services, the same cannot be reversed.

Also, it is worthwhile to mention here that under Central Excise Regime, there was specific provision for reversing the CENVAT credit availed on inputs contained in finished goods lost as well as availing the remission of duty. This was due to the fact that the excise duty was levied on the "manufacture". Since the liability had already arisen, the remission was to be taken and credit already availed was required to be reversed in view of the specific provision.

There is no such provision in GST regime. Also, the liability is linked to "supply" rather than "manufacture". The liability to pay tax arises on "Supply" under the GST regime. As per section 7(1) of the CGST Act, 2017, the expression "supply" includes all forms of supply of goods or services or both



such as sale, transfer, barter, exchange, licence, rental, lease or disposal. Thus, dispatch of samples of finished goods for quality testing purposes to proof establishments and the consumption of such goods during such testing process does not fall in the definition of “supply” since such dispatch cannot be classified as sale, transfer, barter, exchange, licence, rental, lease or disposal. Therefore, in view of this, the reversal of tax on the ITC cannot be demanded on the input content in the finished goods lost or destroyed under the aforementioned section 17(5) of the CGST Act, 2017.

It is also important to note here that the value of the raw materials used in the sample goods so destroyed is included in the value of the finished goods that are manufactured and thus included in the value of taxable goods supplied on which GST is levied by OFBa.

F) Question No. 6:- Whether proportionate Input Tax Credit has to be reversed in cases where lesser payment is made to the supplier due to deduction on account of liquidated damages from supplier’s dues?

As per 2nd proviso to section 16(2) of the CGST Act, 2017, where a recipient fails to pay to the supplier of goods or services or both, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed.

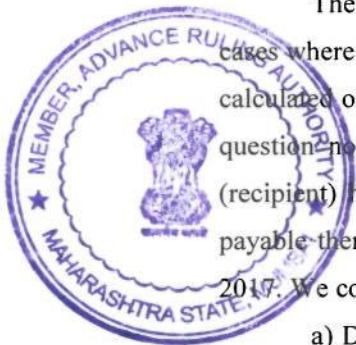
The factory deducts liquidated damages (L.D) from the payment to be made suppliers in certain cases where there is a delay in supply of goods or services by such supplier. Such liquidated damages are calculated on the total invoice amount of the supplier; that is taxable amount plus applicable GST. So, a question now arises that due to such deducted amount of L.D, whether it can be said that OFBa (recipient) has failed to pay to the supplier, the amount towards the value of supply along with tax payable thereon in order to invoke the aforementioned 2nd proviso to section 16(2) of the CGST Act, 2017. We contend that the said proviso should not be invoked due to the following reasons:-

- a) Deduction of L.D is an act of tolerating non-performance of supplier on account of delay in delivery of goods or services and is as such a manner of compensating the supplier for his dues and is also an activity to be treated as a supply of service as per clause 5(e) of Schedule II to the CGST Act, 2017.
- b) The taxable value of goods/services does not change due to L.D deduction. The supplier shall have to pay tax on the entire taxable amount and not on the amount after deduction of L.D.

Thus, on the above grounds, an amount equal to the input tax credit availed by the factory should not be added to the output tax liability of the factory as per 2nd proviso to section 16(2) of the CGST Act, 2017 due to non-payment towards the value of supply to the supplier in respect of which such input tax credit was availed by the factory.

G) Question No. 7:- Being a part of the Ministry of Defence, Government of India, whether the following notifications are applicable to our organisation and what shall be the impact of such notifications:-

- a) Notification No. 2/2018- Central Tax (Rate), in relation to services by an arbitrator or an advocate to our organisation.



b) Notification No. 3/2018- Central Tax (Rate), in relation to services supplied by our organisation by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 .

c) Notification No. 36/2017 – Central Tax (Rate), in relation to payment of tax on reverse charge mechanism on sale of used vehicles, seized and confiscated goods, old and used goods, waste and scrap to a GST registered person.

Applicability and impact of the following notifications:-

a) As per Notification No. 2/2018- Central Tax (Rate), services by an arbitrator or an advocate to the Central Government have been exempted. Accordingly, it means that no tax on reverse charge mechanism has to be calculated and paid by OFBa for payments made to arbitrators and advocates from the date of notifications coming into effect.

b) As per Notification No. 3/2018- Central Tax (Rate), services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 has been covered under reverse charge mechanism. Since our organisation is a part of the Central Government, the notification is applicable to it.

c) As per Notification No. 36/2017 – Central Tax (Rate), for supply of any used vehicles, seized and confiscated goods, old and used goods, waste and scrap, tax is payable on reverse charge mechanism when such supply is made by Central Government, State Government, Union territory or local authority. Since our organisation is a part of the Central Government, the notification is applicable to it.

H) For Question No. 8: Whether Input Tax Credit on services of passenger vehicles hired by our organisation is available?

We wish to withdraw this question from the application.

Additional information submitted on 15.10.2018

1. A) B)

Classification of goods	Central Excise Tariff Heading	Rate of Duty
Propellant	36010090	12.5%
Explosive	36020090	12.5%
Cord Detonating, Charge Linear	36030019	12.5%

04. CONTENTION – AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

It is submitted that, Issue on which advance ruling is required:

M/s. General Manager, Ordnance Factory, Jawaharnagar Bhandara-441906 (M.S.).

4 (a) Classification of Goods and their Central Excise Tariff Heading.

Classification of goods	Central Excise Tariff Heading
Propellant	36010090
Explosive	36020090
Cord Detonating, Charge Linear	36030019

(b) Rate of Central Excise Duty as applicable.

Central Excise Duty @ 12.5% Adv. was payable/paid.

(c) Details of benefit of Notification of Central Excise if any availed.

Notification No. 10/97- CE dated 01/03/1997 –for material issued to various units of Ministry of Defence for research and Development purpose.

5 a) Classification of Service/Services as applicable:-

Renting of immovable property, Manpower supply and security Services & Transport of goods by road Services.

b) Rate/ rates of Service Tax as applicable to services provided:

@15% adv. (including of SB Cess and KK Cess).

c) Details of benefits of Notification of Service Tax if any availed- **NIL.**

6 Copies of advance ruling application/orders if any obtained by applicant under the provisions of Central Excise, Service Tax and Sales Tax and their present status in case of your company/related company or sister concern-

As per available records No application/order was made under Central Excise & Service Tax in respect of M/s. General Manager, Ordnance Factory, Jawaharnagar, Bhandara on account of Advance Ruling.

Copy of show Cause Notices/ Adjudication order in respect of Central Excise or Service tax if any issued during last five years, in case of your company/ related company or sister concern.

The Demand for the period 12-13 to 2015-16 of Service tax of Rs. 2,98,473/- on account of security deposits recovered/forfeited from the contractors for the reasons of non-fulfillment of contract/agreements has been confirmed against M/s. General Manager, Ordnance Factory, Jawaharnagar, Bhandara. A copy of Show Cause Notice and Order in Original is enclosed for ready reference please.

8 Cases of violation of Excise Duty & Service Tax if any booked during last Five years:-

No case has been booked against M/s. General Manager, Ordnance Factory, Jawaharnagar, Bhandara in the last five years on account of Central Excise & Service Tax by the Department.

9 Whether any proceeding is pending before any authority on said subject matter or otherwise-

No proceeding is pending before any authority on subject matter.

However point wise comments are as under:

Ques. 1(a) whether Ordnance Factory Bhandara (OFBa) is liable to pay GST on Liquidated damages deducted from the payments to be made to suppliers in case of delayed delivery of goods or services:-

Legal Submission by Department :- In the present case, the applicant submitted that the ordnance factory is functioning under Govt. of India and hence their organization is covered under the definition of "Government" defined under section 2(53) of the CGST Act,2017. Hence they are not liable to pay GST.

The Indian Ordnance Factories is an industrial organization, functioning under the Department of



Defence Production of Ministry of Defence, Government of India. It is engaged in research, development, production, testing, marketing and logistics of a comprehensive product range in the areas of air, land and sea systems. This is the Apex board having industrial status functioning under the control of Ministry of defence. However, the Govt. of India is a union Govt. created by the constitution of India as the legislative, executive and judicial authority of the union of India of states and union territories of the constitutionally democratic republic.

On the above facts, though ordnance factory is functioning under the Ministry of defence, Govt. of India, the organization shall not be treated as “Government” defined under section 2(53) of the CGST Act, 2017, since the organization is having Apex Body and industrial status.

Hence, the contention of applicant that their organization is ‘Government’ is not legal and correct.

As per Sr. No. 62 (heading 9991 or 9997) of Notification No. 12/2017- Central Tax(Rate) dated 28th June 2017 provide NIL rate of Tax in respect of services provided by the Central Government, State Government, Union Territory or Local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union Territory or local authority under such contract.

Hence, the ordnance factory is not liable to get exemption under Notification No. 12/2017- Central Tax(rate) dated 28-06-2017.

Ques. 1(b) whether Ordnance Factory Bhandara (OFBa) is liable to pay GST on Amount of Security deposit forfeited of suppliers due to non-fulfillment of certain contract conditions:-

Legal Submission by Department:- As per the provisions of section 15 (2) (d) of CGST Act, the value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply.

Further, as per the Section 2(31) of CGST Act, “consideration” means any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the central Govt. or state Govt.

It is noticed that the applicant has forfeited Security deposited of suppliers due to non-fulfillment of certain contract conditions, which is nothing but the additional “consideration” received by the applicant. Hence, the applicant is liable to pay on such additional consideration being the part of the value of supply of goods as defined under section 15(2) of the CGST Act, 2017.

It is further submitted that the applicant has paid the service tax on such amount of Security deposited forfeited before the GST regime. A copy of demand order No. 48/AC/BHD/DEM/ST/2017 dated 07.1.2017 is submitted with this letter for ready references.

Ques. 1(c) whether Ordnance Factory Bhandara (OFBa) is liable to pay GST on Security deposit left unclaimed by the suppliers and recognised as income after 3 years:-

Legal Submission by Department:- The applicant has forfeited Security deposited left unclaimed by the supplier and same has been recognized as income after 3 years, which is nothing but unclaimed amount by the suppliers and not any amount received against any penalty or non-fulfillment of any contract



condition. Hence the applicant is not liable to pay any tax on such amount shown as income under the GST Regime.

Ques. 1(d) whether Ordnance Factory Bhandara (OFBa) is liable to pay GST on Food and beverages supplied at industrial canteen inside the factory premises being a Govt. organization :-

Legal Submission by Department :- As clarified in revenue submission mentioned in question 1(a) the ordnance factory functioning under the Ministry of defense, Govt. of India, shall not be treated as “Government” defined under section 2(53) of the CGST Act,2017, since the organization is having Apex Body and industrial status. The fact of the applicant organization having industrial status has already been mentioned in their present advance ruling application and there is no need to establish separately that the applicant’s organization shall not be treated as Government.

It is also noticed that, the applicant has not clarified the fact that whether they themselves engage in supply of food and beverages at the canteen for their employees or they have engaged any contractor for the supply of food and beverage. They have also not clarified whether they are charging money from their employee for supply of such food and beverage in their industrial canteen. Hence in absence of such clarification, liability cannot be ascertained at this stage.

However, as per the notification 11/2017-CT dated 28.06.2017 amended by notification No. 46/2017 dated 14.11.2017, the supply of food and beverages is covered under the category of catering services, which is taxable under GST regime. The taxability of GST on supply of food and beverages in the premises of industrial units/offices has also been confirmed by the Authority of Advance Ruling Chennai vide order No. 9/AAR/2018 dated 30.08.2018. Copy of same is enclosed for the ready reference.

Ques. 1(e) whether Ordnance Factory Bhandara (OFBa) is liable to pay GST on Community hall (Multipurpose Hall) provided on rental basis to employees of our organization being a Govt. organization :-

Legal Submission by Department :- As per the schedule II (Section 7) of CGST Act 2017, renting of immovable property shall be treated as supply of service. In the applicant’s own case, they have provided Community hall(Multipurpose Hall) on rental basis to their employee shall be covered under the definition of supply of services as defined in CGST Act 2017 and hence they are liable to pay GST on the amount charged by them from their employee towards the renting of their community hall. The applicant is not entitled for any exemption under Notification No. 12/2017-Central Tax(rate) dated 28-06-2017, since their organization is not defined under government since the organization is having Apex body and Industrial status.

Ques. 1(f) whether Ordnance Factory Bhandara (OFBa) is liable to pay GST on School bus facility provided to children of the employees of their organization, being a Govt. organization :-

Legal Submission by Department :- As per Sr. No. 66 (heading 9992) of the Notification No. 12/2017-Central Tax (Rate) dated 28th June 2017-no GST liability on Transportation of students, faculty and staff. Hence as per the said provisions, the applicant is not liable to pay GST on such taxable services.

Ques. 1(g) whether Ordnance Factory Bhandara (OFBa) is liable to pay GST on conducting exams for various vacancies, being a Govt. organization:-

Legal Submission by Department:- For conducting any examination by the organization, no



exemption available from payment on GST on examination fee charged from candidates.

Ques. 1(h) whether Ordnance Factory Bhandara (OFBa) is liable to pay GST on Rent recovered from residential quarters of employees, being a Govt. organization :-

Legal Submission by Department :- As per the schedule II (Section 7) of CGST Act 2017, renting of immovable property shall be treated as supply of service. In the applicant's own case, they have provided residential quarters on rental basis to their employees, which shall be covered under the definition of supply of services as defined in CGST Act 2017 but services by way of renting of residential dwelling for use as residence is currently chargeable to nil rate of tax under the GST regime.

Qus.2(a) whether Input Tax Credit on expenditure on the goods and services consumed by their organization in Maintenance of garden inside the factory premises shall be available to them.

Legal Submission by Department :- As per the section 16 of the CGST Act, every registered person shall be entitled to take credit of input tax charged on any supply of goods and services or both by him which are used or intended to be used in the course of furtherance of his business and said amount will be credited to the electronic credit ledger of the such person. However the applicant has received services from the service provider towards the Maintenance of garden inside the factory premises of the applicant. Such taxable service received by the applicant is not covered under the negative list of Section 18(5) and hence input tax credit shall be available to them.

Ques. 2(b) whether Input Tax Credit on Maintenance and upkeep activities relating to gardens, parks, playground, factory school for children of employees, hall for recreational activities, residential quarter buildings of employees, roads, footpaths, street lightings and other parts of estate area that are located outside the factory premises but within the factory estate shall be available to them.

Legal Submission by Department:- As per the section 16 of the CGST Act, every registered person shall be entitled to take credit of input tax charged on any supply of goods and services or both by him which are used or intended to be used in the course of furtherance of his business and said amount will be credited to the electronic credit ledger of the such person. However the applicant has received services from the service provider towards the maintenance and upkeep activities relating to gardens, parks, playground, Factory school for children of employees, hall for recreational activities residential Quarter buildings of employees, roads, footpaths, street lightings and other parts of estate area that are located outside the factory premises but within the factory estate have no nexus to the manufacturing activity undertaken by the applicant. The said activity are neither relating to business nor relating to manufacture of final products and its supply. The said activity may be welfare activity undertaken while carrying on the business but to qualify as input service, the activity must have nexus with the business of applicant. The expression "in course or furtherance of business" appearing in section 16(1) of GST Act refers to activities which are integrally related to the business activity and not welfare activity. Hence no ITC is available on such supplies of services.

Qus.2(c) whether Input Tax Credit on Medicines purchased by the hospital maintained by our organization and used for treatment of factory employees and their dependents. Expenditure on maintenance, upkeep and other activities relating to such hospital shall be available to them.



Legal Submission by Department :- The hospital/ dispensary maintained by the applicant for its employees and their dependents come within the definition of “Clinical Establishment” and such supply of service is exempted under Sr. No. 74, heading 9993 of the Notification no. 12/2017-Central Tax(Rate) dated 28th June 2017. Consequently, the input tax credit on such exempted supply of services is not available to applicant under sub section (2) of Section 17 of the CGST Act,2017.

Ques. 2(d) whether Input Tax Credit on Expenditure related to maintenance and upkeep of guest houses maintained by organization shall be available to them

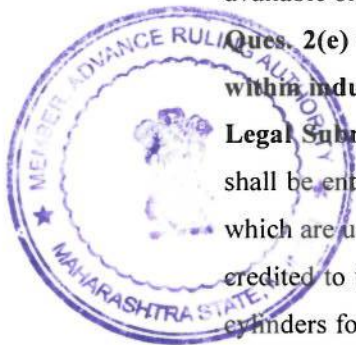
Legal Submission by Department :- As per the section 16 of the CGST Act, every registered person shall be entitled to take credit of input tax charged on any supply of goods and services or both by him which are used or intended to be used in the course of furtherance of his business and said amount will be credited to the electronic credit ledger of the such person. However the applicant has received services from the service provider towards the maintenance of guest houses maintained by organization within the factory estate. The said activities are neither relating to business nor relating to manufacture of final products and its supply. The said activities may be welfare activity undertaken while carrying on the business but to qualify as input service, the activity must have nexus with the business of applicant. The expression “in course or furtherance of business” appearing in section 16(1) of GST Act refers to activities which are integrally related to the business activity and not welfare activity. Hence no ITC is available on such supplies of services.

Ques. 2(e) whether Input Tax Credit on Expenditure related to purchase of LPG cylinders used within industrial canteen maintained by organization shall be available to them

Legal Submission by Department :- As per the section 16 of the CGST Act, every registered person shall be entitled to take credit of input tax charged on any supply of goods and services or both by him which are used or intended to be used in the course of furtherance of his business and said amount will be credited to the electronic credit ledger of the such person. However if the applicant has purchased LPG cylinders for using in their office for the preparation of foods and beverages for their employee. The said activities are neither relating to business nor relating to manufacture of final products and its supply. The said activities may be welfare activity undertaken while carrying on the business, but to qualify as input service the activity must have nexus with the business of applicant. The expression “in course or furtherance of business” appearing in section 16(1) of GST Act refers to activities which are integrally related to the business activity and not welfare activity. Hence no ITC is available on purchase of LPG cylinder.

Ques.(3) Whether the exemption to a ‘defence formation’ for preparation and generation of E-way bills is applicable to Ordnance factories & other Central Government & Public Sector Undertakings (PSU’s) that function under the Ministry of Defence, Government of India?

Legal Submission by Department :- As per the provisions of para (14)(k) of Notification No. 12/2018-Central Tax dated 07th March,2018, no e-way bill is required to be generated, for any movement of goods cause by defence formation under Ministry of defense as a consignor or consignee. In the present case the applicant working under the Formation of Defense Ministry, Government of India, and hence the applicant organization is not required to raise e-way bill at the time of supply of goods.



Ques(4) Whether exemption on payment of GST on transport of 'military or defense equipments' through a goods transport agency applicable to goods transported by their organization?

Legal Submission by Department :- As per clause (h), of Sr. No. Sr.21 (heading 9965 or 9967) of Notification No. 12/2012-Central Tax(Rate) dated 28th June 2017, the Services provided by a goods transport agency, by way of transportation in a goods carriage of defense or Military equipments is NIL. Hence the applicant is entitled for exemption from payment of GST on transport of 'military or defense equipments' through a goods transport agency transported by their organization.

Ques(5) Whether Input Tax Credit is to be reversed on finished goods that are destroyed during testing?

Legal Submission by Department:-The submission made the applicant may be taken into consideration on merits.

Ques (6) Whether proportionate Input Tax Credit has to be reversed in cases where lesser payment is made to the supplier due to deduction on account of liquidated damages from supplier's dues:-

Legal Submission by Department: -As per the provisions of section 15 of CGST Act,2017, the ITC is available to recipient subject to actual payment equal to supply of goods made to such supplier. If the recipient make lesser payment towards liquidated damages from supplier, the recipient is eligible to take ITC proportionally equal to actual made to such supplier. Hence the applicant is require to reverse ITC to that extent.

Ques 7(a) Being a part of the Ministry of Defence, Government of India, what is the impact of the Notification No. 2/2018— Central Tax (Rate), in relation to services by an arbitrator or an advocate to their organization.

Legal Submission by Department:-As per Sr.No.45 of the Notification No. 12/2017 Central Tax (Rate) dated 28th June,2017 as amended by Notification No. 02/2018-CT(rate) dated 25-01-2018, the services provided by an arbitral tribunal to (i) any person other than a business entity or (ii) a business entity with an aggregate turnover up to twenty lakh rupees (ten lakh rupees in the case of special category states) in the preceding financial year, will be NIL in respect of intra- State Supply of Service. The said exemption is to be verified with the actual services received from advocate considering the fact that said advocate are other than a senior advocate and not having any business entity. The Ordnance Factory, Bhandara is having a specific status of business organization having annual turnover of more than Rs.100 Crs. and hence the applicant is liable to pay GST on supply of services under reverse charge. As per applicable rate of GST.

Ques No. 7(b) Being a part of the Ministry of Defence, Government of India, what is the impact of the Notification No. 3/2018- Central Tax (Rate), in relation to services supplied by our organisation by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 .

Legal Submission by Department:- As per the schedule II (Section 7) of CGST Act 2017, renting of immovable property shall be treated as supply of service. In the applicant's own case, they are providing non-residential property on rental basis to a registered person under the CGST Act 2017, which shall be



covered under the definition of supply of services as defined in CGST Act 2017 as supply of real estate services other than renting of residential dwellings and will be chargeable to tax under the GST regime.

Ques No. 7(C) Being a part of the Ministry of Defence, Government of India, what is the impact of the Notification No. 36/2017 — Central Tax (Rate), in relation to payment of tax on reverse charge mechanism on sale of used vehicles, seized and confiscated goods, old and used goods, waste and scrap to a GST registered person.

Legal Submission by Department:- :- As per Notification No. 4/2017-Central Tax(Rate) dated 28th June 2017 as amended vide Notification No. 36/2017-Central Tax (Rate) dated 13th October,2017, the recipient of supply shall pay tax on reverse charge basis. Hence applicant is liable to pay GST on sale of used vehicles, seized and confiscated goods, old and used goods, waste and scrap to a GST registered person.

Ques No.(8) Whether Input Tax Credit on services of passenger vehicles hired by our organization is available?

Legal Submission by Department:-As per the section 16 of the CGST Act, every registered person shall be entitled to take credit of input tax charged on any supply of goods and services or both by him which are used or intended to be used in the course of furtherance of his business and said amount will be credited to the electronic credit ledger of the such person. However the applicant has hired the service for passenger vehicles hired by organization.

The said activities are neither relating to business nor relating to manufacture of final products and its supply. The said activities may be welfare activity undertaken while carrying on the business, but to qualify as input service the activity must have nexus with the business of applicant. The expression “in course or furtherance of business” appearing in section 16(1) of GST Act refers to activities which are integrally related to the business activity and not welfare activity. Hence no ITC is available on services of passenger vehicles hired by their organization.

It is therefore, requested to decide the applicants application on the basis of facts and submission made by the revenue in the interest of law.

05. HEARING

The Preliminary Hearing in the matter was held on 28.11.2017. Sh. Deodatta Sahu Jr. Works Manager appeared and requested for admission of application as per contentions made in their application. Jurisdictional Officer did not appear but report was submitted.

The application was admitted and called for final hearing on 13.12.2018. Sh. Sagar Sahawani, C.A, along with Sh. Deodatta Sahu Jr. Works Manager appeared made oral and written submissions. Jurisdictional Officer Sh. D. D. Dalal Suptt., Range Bhandara appeared and made written submissions.

06. OBSERVATIONS

We have gone through the facts of the case, documents on record and submissions made by both, the applicant and the department.

The applicant has submitted that their main business is to manufacture propellants and commercial explosives for use by their sister factories for production of finished products like arms and ammunitions that are ultimately supplied to Indian defence and military forces. However, some of the



manufactured goods are also directly supplied to depots and units of defence and military forces, state police, private firms, defence public sector companies like Bharat Dynamics Ltd. Etc. and defence laboratories like Defence Research & Development Laboratory. In their submissions the applicant has also mentioned that they are a part of the 'Central Government' as per clause (23) of section 3 of the General Clauses Act, 1897.

Hence we will first of all take up the issue as to whether the applicant can be considered as "government". As per clause (23) of section 3 of the General Clauses Act, 1897, the word "Government" or "the Government" shall include both the Central Government and any State Government.

We agree with the submissions made by the jurisdictional office that the Indian Ordnance Factories is an industrial organization, functioning under the Department of Defence Production of Ministry of Defence, Government of India. Further, we find that Section 2(53) of the CGST Act and the corresponding section of the SGST Act defines the word 'Government' as the Central/State Government. The applicant which is engaged in research, development, production, testing, marketing and logistics of a comprehensive product range in the areas of air, land and sea systems is having an industrial status and functions under the Ministry of defence. It is not created by the constitution of India as a legislative, executive or judicial authority of the country. Hence we find that the applicant cannot be treated as "Government" as defined under section 2(53) of the CGST Act, 2017. Keeping this factor in mind we now take up all the questions raised by them one by one.

QUESTION NO. 1 : Being a part of the Ministry of Defence, Government of India, whether our organisation Ordnance Factory Bhandara (OFB) is liable to pay GST on the following supply of services-

- a) Liquidated damages deducted from the payments to be made to suppliers in case of delayed delivery of goods or services.
- b) Amount of Security deposit forfeited of suppliers due to non-fulfilment of certain contract conditions.
- c) Security deposit left unclaimed by the suppliers and recognised as income after 3 years.
- d) Food and beverages supplied at industrial canteen inside the factory premises.
- e) Community hall (Multipurpose Hall) provided on rental basis to employees of our organisation.
- f) School bus facility provided to children of the employees.
- g) Conducting exams for various vacancies.
- h) Rent recovered from residential quarters of employees."

Answer : With respect to question no. 1 (a) above, we find that Sr. No. 62 (heading 9991 or 9997) of Notification No. 12/2017- Central Tax (Rate) dated 28th June 2017 provides NIL rate of Tax in respect of services provided by the Central Government, State Government, etc. by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union Territory or local authority under such contract. Since the applicant is not 'Government', they are not liable to get exemption under the said Notification in respect of 'Liquidated damages' deducted from the payments to be made to suppliers in case of delayed delivery of goods or services.



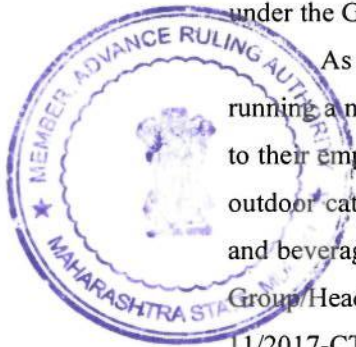
With respect to question no 1 (b) above, the Security deposit of suppliers forfeited by the applicant, due to non-fulfilment of certain contract conditions, will also not be exempted as per Sr. No. 62 (heading 9991 or 9997) of Notification No. 12/2017- Central Tax (Rate) dated 28th June 2017 in view of the applicant not being considered as 'government'. Security deposits which are refundable in nature are not liable to tax as per the GST Laws. However in this case such Security deposits are forfeited which would be considered as 'additional consideration' flowing to the applicant on account of supply of goods by them and this additional consideration will be required to be added in the taxable value and accordingly, tax liability will have to be discharged by the applicant. The jurisdictional office has reported that the applicant has paid the service tax on such amount of Security deposited forfeited before the GST regime.

With reference to question no 1 (c) in respect of Security deposit unclaimed by the supplier which has been recognized as income after 3 years by the applicant, we find that there appears to be no intention on the part of the applicant to forfeit such deposit. It is just a case of the supplier not claiming the same. Hence we cannot treat the same as a consideration received for the supply of goods or services or both and therefore the applicant is not liable to pay any tax on such amount shown as income under the GST Regime. Security Deposits which in normal course are refundable as such, are not liable to tax under the GST regime

As regards question no. 1 (d) above, the applicant has submitted that they are themselves are running a non-air-conditioned industrial canteen inside the factory premises to serve food and beverages to their employees for which nominal charges are recovered from their employees on no profit basis. No outdoor caterer is involved. We find that the canteen is in providing services related to supply of food and beverages to their employees and also charging consideration for the same. The service code (Tariff Group/Heading) for such services is 9963 and the same is taxable under GST. As per Notification 11/2017-CT dated 28.06.2017 as amended, supply of food and beverages is covered under the category of catering services, which is taxable under GST regime The applicant's claim that Sr. No. 6 of the exemption list on supply of services as per notification no. 12/2017- Central tax (Rate), is applicable to them is not acceptable in view of the fact that as discussed above they are not Central Government.

With respect to question no. 1 (e) above we find that as per the schedule II (Section 7), 5 (b) of CGST Act 2017, renting of immovable property shall be treated as supply of service. The applicant has provided Community hall (Multipurpose Hall) on rental basis to their employees which is covered under the definition of supply of services as mentioned above and they are liable to pay GST on the amount charged by them from their employees for supplying such services. For reasons mentioned in the foregoing the applicant is not entitled for any exemption under Notification No. 12/2017-Central Tax(rate) dated 28-06-2017.

With respect to 1 (f) above we find that as per Sr. No. 66 (b) (heading 9992) of Notification No. 12/2017-Central Tax (Rate) dated 28th June 2017, services provided to an educational institution by way of transportation of students does not attract any GST liability. As the applicant is not an educational institution and the school bus facility is extended to the children of employees and not to an educational



institution, the provisions of Sr. No. 66 (b) (heading 9992) of Notification No. 12/2017-Central Tax (Rate) dated 28th June 2017 is not applicable to them.

With respect to 1 (g) above we find that services by way of conducting exams is available only to educational institutions as per Sr. No. 66 (aa) (heading 9992) of Notification No. 12/2017-Central Tax (Rate) dated 28th June 2017. The applicant is neither an educational institution nor 'Government' as discussed aforesaid and therefore they are liable to pay GST on such services supplied by them.

With respect to 1 (f) above, we find that under the provision of GST Laws, "renting of immovable property" is included in Schedule II of the CGST Act and is taxable. However Entry No. 12 of Notification No. 12/2017 mentioned above, exempts supply of services by way of renting of residential dwelling for use as residence.

Question No. 2:-

1) Whether Input Tax Credit on expenditure on the goods and services consumed by our organisation in following activities shall be available:-

- a) Maintenance of garden inside the factory premises.
- b) Maintenance and upkeep activities relating to gardens, parks, playground, factory school for children of employees, hall for recreational activities, residential quarter buildings of employees, roads, footpaths, street lightings and other parts of estate area that are located outside the factory premises but within the factory estate.
- c) Medicines purchased by the hospital maintained by our organisation and used for treatment of factory employees and their dependents. Expenditure on maintenance, upkeep and other activities relating to such hospital.
- d) Expenditure related to maintenance and upkeep of guest houses maintained by organisation.
- e) Expenditure related to purchase of LPG cylinders used within industrial canteen.

The main objective of Input Tax Credit, an important feature of GST Laws, is to avoid cascading effect of taxes. Under this credit of tax paid is allowed as allowed to be availed and used for payment of tax at subsequent stages. Section 16 to Section 21 of the CGST Act deals with conditions for availment, use and recovery of such ITC by businesses. As per the section 16 of the CGST Act a registered person, in this case the applicant, is entitled to take credit of input tax charged on any supply of goods and services or both which are used or intended to be used in the course of furtherance of their business. Section 16 (2) to (4) of the CGST Act restricts availment of ITC in certain cases. Section 17 of the CGST Act deals with apportionment of credit in some cases (credit used for both, business and other purposes) and blocked credits (cases when ITC is not available).keeping the said provisions of ITC in mind we now take up the next set of questions raised by the applicant.

With respect to question 2 (a) we find that as per the Section 16 of the CGST Act the applicant, being a registered person is entitled to take credit of input tax charged on any supply of goods and services or both received by them, which are used or intended to be used in the course of furtherance of their business. Supply in relation to maintenance of garden is not a supply that can be considered as a supply used or intended to be used in the course of furtherance of the business of the applicant which is



to manufacture Propellants and Commercial Explosives. Hence the applicant are not eligible to avail ITC of the tax paid by them on the same. The services availed in relation to plantation and gardening within the plant area will not qualify for input tax credit.

With respect to question no. 2 (b), we find that the activities listed by the applicant are carried out outside the factory premises. These activities can at best be termed as welfare or social activities and they are not carried out in furtherance of the business and have no nexus to their manufacturing activity. Since these activities are not used or intended to be used by the applicant in furtherance of business ITC on the same are not available to them.

With respect to question no. 2 (c), we agree with the submissions made by the jurisdictional office and find that hospital/dispensary maintained by the applicant for its employees and their dependents come within the definition of “Clinical Establishment” as defined under the said Notification at definition mentioned at Sr. No. 2(s) and such supply of service is exempted under Sr. No. 74, heading 9993 of the Notification no. 12/2017-Central Tax(Rate) dated 28th June 2017. Thus ITC on such exempted supply of services is not available to applicant under sub section (2) of Section 17 of the CGST Act, 2017 in respect of services and goods procured for maintenance of hospitals and pharmacy outlet as such services, being nil rated, fall under exempt supplies.

With respect to question no. 2 (d), we find that provision of guest houses is a prerequisite for their employees and therefore tax paid on maintenance and upkeep of guest houses cannot be allowed as ITC. Guest houses are generally used for temporary accommodation of employees as well as outsiders. Such provision of guest house cannot be treated as an activity in course or furtherance of its business and related to the applicant’s business. Further, we find that the goods, or services, or both pertaining to Guest House are used for personal consumption of the employees/guests and are not used or intended to be used in the course or furtherance of business. As such in view of the provisions of Section 17 (5)(g), no ITC is available to the applicant. Hence, we hold that they are not eligible for ITC on taxes paid for maintenance and upkeep of guest houses.

With respect to question 2 (e) we have to state that we have already held that their canteen is in providing services related to supply of food and beverages to their employees and also charging consideration for the same and therefore such service is taxable under GST regime. The LPG cylinders are used to provide such services related to supply of food and beverages to their employees and therefore we are of the opinion that they are eligible to avail ITC on the purchase of LPG cylinders.

Question No. 3:- Whether the exemption to a ‘defence formation’ for preparation and generation of E- way bills is applicable to Ordnance factories & other Central Government & Public Sector Undertakings(PSU’s) that function under the Ministry of Defence, Government of India?

As per para 14(k) of Rule No. 138 of the CGST Rules, 2018(Notification No. 12/2018 – Central Tax), e-way bill is not required to be generated when any movement of goods is being caused by defence formation under the Ministry of Defence as a consignor or a consignee. We find that the applicant which functions under the Ordnance Factory Board (OFB) which in turn functions under the Department of Defence Production and Supply, Ministry of Defence, Government of India, is causing movement of



goods to units of the Indian Armed Forces, proof establishments, DRDO, etc. and are eligible for the benefit under Rule 138 (14) (k) of the CGST Rules.

Question No. 4:- Whether exemption on payment of GST on transport of 'military or defence equipments' through a goods transport agency applicable to goods transported by our organisation?

As per Sr. No. 21, Heading 9965 or 9967, clause (h) of the Notification No. 12/2017- Central Tax (Rate), "Services provided by a goods transport agency, by way of transport in a goods carriage of defence or military equipments" are exempt from the levy of GST. We find that the applicant is manufacturing and transporting goods like propellant & explosives that are used in the manufacture of ammunition and therefore the said exemption is available to them.

E) Question No. 5:- Whether Input Tax Credit is to be reversed on finished goods that are destroyed during testing?

The applicant has submitted that they send samples of the finished goods, for quality testing, to proof establishments set up under the Ministry of Defence outside the factory where such samples are completely destroyed during the testing process. Section 17(5)(h) of the Central GST (CGST) Act, 2017 reads that "input tax credit shall not be allowed in respect of goods lost, stolen, destroyed, written off, or disposed of by way of gift or free samples." From a perusal of Section 16 it is seen that only a registered person is entitled to take credit of input tax charged on any supply which are used or intended to be used in the course or furtherance of business. Accordingly we find that goods, or services, or both are eligible for input credit in both the scenarios i.e. when they are intended to be used and when they are actually used. In the subject case the said goods are actually used in the manufacture of final goods which are then sent for testing. Hence it cannot be said that the said goods are destroyed. Goods destroyed would imply goods which are destroyed on various kinds of natural and manmade situations such as flood, fire, and destruction of expired goods (especially in the case of drugs). The interpretation as made out by the applicant that reversal of ITC will arise only if the inputs or capital goods are themselves lost, stolen or destroyed etc. and not where the finished goods are lost, stolen or destroyed etc. is not acceptable for the simple reason that Section 16(1) contemplates both the situations i.e. case where the goods are actually used or intended to be used. To arrive at the conclusion that the applicant's submission is not tenable, we find that where inputs are used, they cease to exist and they being destroyed, lost or stolen, etc. will not arise. We therefore conclude that once the inputs are used in the manufacture of final products, which are then sent for testing purposes, then in such a case the said inputs cannot be considered to have been destroyed.

F) Question No. 6:-

Whether proportionate Input Tax Credit has to be reversed in cases where lesser payment is made to the supplier due to deduction on account of liquidated damages from supplier's dues?

As per 2nd proviso to section 16(2) of the CGST Act, 2017, where a recipient fails to pay to the supplier of goods or services or both, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an



amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed.

The applicant deducts liquidated damages (L.D) from the payment to be made suppliers in certain cases where there is a delay in supply of goods or services by such supplier. Such deduction will be construed as amount received as compensation for tolerating non-performance of supplier on account of delay in delivery of goods or services and is an activity to be treated as a supply of service as per clause 5(e) of Schedule II to the CGST Act, 2017 on which the applicant will have to discharge GST.

Simultaneously from the submissions made by the applicant we find that ultimately they would be paying a lesser amount to their suppliers against supply of goods received, which would result in lesser payment being made by the supplier towards GST. Hence the applicant will be eligible to take ITC proportionally equal to actual payment made to such suppliers and is therefore required to reverse ITC accordingly.

Question No. 7:- Being a part of the Ministry of Defence, Government of India, whether the following notifications are applicable to our organisation and what shall be the impact of such notifications:-

a) Notification No. 2/2018- Central Tax (Rate), in relation to services by an arbitrator or an advocate to our organisation.

b) Notification No. 3/2018- Central Tax (Rate), in relation to services supplied by our organisation by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 .

c) Notification No. 36/2017 – Central Tax (Rate), in relation to payment of tax on reverse charge mechanism on sale of used vehicles, seized and confiscated goods, old and used goods, waste and scrap to a GST registered person.

With reference to question 7 (a) the applicant has submitted that as per Notification No. 2/2018- Central Tax (Rate), services by an arbitrator or an advocate to the Central Government have been exempted. Accordingly, it means that no tax on reverse charge mechanism has to be calculated and paid by them for payments made to arbitrators and advocates from the date of notifications coming into effect. We have in our discussions above held that the applicant is not ‘Government’ and therefore the said exemption is not applicable to them.

With reference to question 7 (b) the applicant has submitted that as per Notification No. 3/2018- Central Tax (Rate), services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 has been covered under reverse charge mechanism. They have submitted that since their organisation is a part of the Central Government, the notification is applicable to them.

Renting of immovable property is to be treated as supply of service as per the provisions of Schedule II (Section 7) of CGST Act 2017. The applicant, who is not ‘Government’ are giving non-residential property on rental basis to a registered person under the CGST Act 2017, which is covered under the definition of supply of services as defined in CGST Act 2017 as supply of real estate services other than renting of residential dwellings and will be chargeable to tax under the GST regime.



With reference to question no 7 (c) the applicant has submitted that as per Notification No. 36/2017 – Central Tax (Rate), for supply of any used vehicles, seized and confiscated goods, old and used goods, waste and scrap, tax is payable on reverse charge mechanism when such supply is made by Central Government, State Government, Union territory or local authority. They have submitted that since their organisation is a part of the Central Government, the notification is applicable to them. We have already held that the applicant is not ‘Government’ and therefore they shall discharge GST in respect of supply of any used vehicles, seized and confiscated goods, old and used goods, waste and scrap.

For Question No. 8:

8) Whether Input Tax Credit on services of passenger vehicles hired by our organisation is available?

This question has been withdrawn by the applicant.

07. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 79/2018-19/B-

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Mumbai, dt. 24/12/2018



For reasons as discussed in the body of the order, the questions are answered thus –

Question - 1) Being a part of the Ministry of Defence, Government of India, whether on which our organisation Ordnance Factory Bhandara (OFBa) is liable to pay GST Advance on the following supply of services:

- a) Liquidated damages deducted from the payments to be made to required suppliers in case of delayed delivery of goods or services.
- b) Amount of Security deposit forfeited of suppliers due to non fulfilment of certain contract conditions.
- c) Security deposit left unclaimed by the suppliers and recognised as income after 3 years.
- d) Food and beverages supplied at industrial canteen inside the factory premises.
- e) Community hall (Multipurpose Hall) provided on rental basis to employees of our organisation.
- f) School bus facility provided to children of the employees.
- g) Conducting exams for various vacancies.
- h) Rent recovered from residential quarters of employees.

Answer :- (a) Answered in the affirmative.

(b) Answered in the affirmative.

(c) Answered in the negative.

(d) Answered in the affirmative.

(e) Answered in the affirmative.

(f) Answered in the affirmative.

(g) Answered in the negative.

Question :- 2) Whether Input Tax Credit on expenditure on the goods and services consumed by our organisation in following activities shall be available:

- a) Maintenance of garden inside the factory premises.
- b) Maintenance and upkeep activities relating to gardens, parks, playground, factory school for children of employees, hall for recreational activities, residential quarter buildings of employees, roads, footpaths, street lightings and other parts of estate area that are located outside the factory premises but within the factory **estate**.
- c) Medicines purchased by the hospital maintained by our organisation and used for treatment of factory employees and their dependents. Expenditure on maintenance, upkeep and other activities relating to such hospital.
- d) Expenditure related to maintenance and upkeep of guest houses maintained by organisation.
- e) Expenditure related to purchase of LPG cylinders used within industrial canteen.

- Answer :- (a) Answered in the negative.
(b) Answered in the negative.
(c) Answered in the negative.
(d) Answered in the negative.
(e) Answered in the affirmative.

Question :- 3) Whether the exemption to a 'defence formation' for preparation and generation of E-way bills is applicable to Ordnance factories & other Central Government & Public Sector Undertakings(PSU's) that function under the Ministry of Defence, Government of India?

Answer :- Answered in the affirmative.

Question :- 4) Whether exemption on payment of GST on transport of 'military or defence equipments through a goods transport agency applicable to goods transported by our organisation?

Answer :- Answered in the affirmative.

Question :- 5) Whether Input Tax Credit is to be reversed on finished goods that are destroyed during testing?

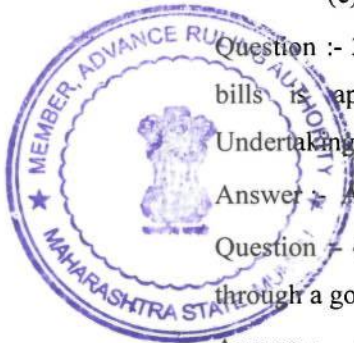
Answer :- Answered in the negative in view of discussions made above.

Question :- 6) Whether proportionate Input Tax Credit has to be reversed in cases where lesser payment is made to the supplier due to deduction on account of liquidated damages from supplier's dues?

Answer :- Answered in the affirmative.

Question :- 7) Being a part of the Ministry of Defence, Government of India, whether the following notifications are applicable to our organisation and what shall be the impact of such notifications:

- a) Notification No. 2/2018- Central Tax (Rate), in relation to services by an arbitrator or an advocate to our organisation.



b) Notification No. 3/2018- Central Tax (Rate), in relation to services supplied by our organisation by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017.

c) Notification No. 36/2017 - Central Tax (Rate), in relation to payment of tax on reverse charge mechanism on sale of used vehicles, seized and confiscated goods, old and used goods, waste and scrap to a GST registered person.

Answer :- (a) The applicant is not eligible for exemption as per the said Notification.

(b) Renting of immovable property for non-residential purpose is taxable at the hands of the applicant.

(c) The applicant is required to discharge GST on such sale.

8) Whether Input Tax Credit on services of passenger vehicles hired by our organisation is available?

Answer : Not answered, being withdrawn by the applicant.



— sd —
B. TIMOTHY
(MEMBER)

— sd —
B. V. BORHADE
(MEMBER)

CERTIFIED TRUE COPY

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Jurisdictional Commissioner of Central Tax.
5. Joint commissioner of State tax , Mahavikas for Website.


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai – 400021.