

RAJASTHAN AUTHORITY FOR ADVANCE RULING

GOODS AND SERVICES TAX

KAR BHAWAN, AMBEDKAR CIRCLE, NEAR

RAJASTHAN HIGH COURT

ADVANCE RULING NO. RAJ/AAR/2021-22/16, Dated 13th September, 2021

JAIPUR - 302005 (RAJASTHAN)

J.P.MEENA Additional Commissioner	:	Member (Central Tax)
M. S. Kavia Joint Commissioner	:	Member (State Tax)
Name and address of the applicant	:	PRISTINE INDUSTRIES LIMITED, B129A 130 BOA, Ambaji Industrial Area, Abu Road, Sirohi, 307026, Rajasthan
GSTIN of the applicant	:	08AACCC4299A1ZT
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	(d) Admissibility of input tax credit of tax paid or deemed to have been paid;
Date of Personal Hearing	:	08.09.2021
Present for the applicant	:	Rohit Jain (CA)
Date Of Ruling	:	13.09.2021

Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the SGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the SGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / SGST Act would be mentioned as being under the "GST Act".

The issue raised by PRISTINE INDUSTRIES LIMITED, B129A 130 BOA, Ambaji Industrial Area, Abu Road, Sirohi, 307026, Rajasthan, -(hereinafter the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2) (d) given as under:-

(d) Admissibility of input tax credit of tax paid or deemed to have been paid;

A. SUBMISSION AND INTERPRETATION OF THE APPLICANT:

1. M/s Prestine Industries Limited (CIN U2520PN2003PLC018148) is registered on GSTIN with No 08AACCC4299A1ZT (Herein after called Applicant company) dealing with manufacturing of PP/HDPE Woven Sacks at Abu Road (Dist: Sirohi), Rajasthan which is taxable at the rate 01 18% under GST Act.

2. The applicant company is under the process of installation of a 620+ kW roof top "Solar Power Generating Plant" at its manufacturing unit for captive consumption of electricity so generated from the above plant for its PP HOPE Woven Sacks manufacturing unit at Abu Road (Dist: Sirohi). Under the State Electricity regulations, the applicant is required to seek permission for the setting up of the captive power plant and enter into agreements with Power Transmission authorities for the transmission of the electricity generated at its solar power plant. So far the applicant company has made an application for approval from State Electricity Company as per copy enclosed herewith and marked Annexure 'A'. The Applicant is statutorily required to transmit the electricity to its plants only through licensed State Transmission Companies which operate the electricity grids.

3. The above registered taxpayer has got its own building set up at the above manufacturing unit and the above Solar Power Generating plant is under implementation to be set up by affixing/mounting it on roof top of the above said existing building. The Applicant, for the purpose of setting up the power plant, started purchasing the following inputs/ capital goods such as Solar Power Panels, Transformers, electrical meters, wiring, etc. The detailed listing of the items are appearing in Annexure II to the work order dt. 15.01.2021 placed to M/s Solar91 Cleantech Pvt Ltd. Jaipur and enclosed at Annexure "B" to the Application for Advance Ruling. Detailed scope of work so assigned inter-alia includes the following specific acts to be performed:-

a. Preparation of detailed project report (DPR) of the SpV power plant as per the technical details provided.

b. Obtaining No objection certificate and other documentation work from concerned DISCOM authorities/Electrical inspector/factory inspector etc for and any other government related liasoning work with respect to the project.

c. Design, supply, storage, civil work, erection, testing and commissioning of SpV power plant.

4. In the facts and circumstances of the applicant company's case, the said solar plant falls in the definition of "Plant and Machinery" as is understood by it in this case as defined in Explanation to sec 17 of the CGST Act and has accordingly been capitalised under the head "Plant and Machinery" in the books of accounts of the applicant company and it wishes to avail input tax credit on capital goods/services.

QUESTION

"Whether the company is eligible to take input tax credit as 'inputs/capital goods' or 'input services' of the items enlisted in Annexure-B of this application in terms of Section 16 and 17 of the CGST/ RGST/ IGST Act? Additionally,

whether the capital goods and inputs constitute plant and machinery of the Applicant which are used in the business of Manufacturing PP/HDPE Woven Sacks and hence not blocked input tax credit under section 17(5) of the CGST/ RGST/ IGST Act?"

SUBMISSION IN SUPPORT OF QUESTION POSED

The applicant contends in support of the question so posed relying on the interpretation of various provisions as follows:-

a. The applicant is in the business of manufacturing and sale of PP/HDPE Woven Sacks of various types from its manufacturing plant in Abu Road (Dist Sirohi). The said activities constitute 'business' in terms of section 2(17) of the CGST/ RGST Act.

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

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

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

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

1. Taxable person should be in possession of the tax invoice or tax paying document

2. Taxable person should have received the goods and services

3. Tax charged has been duly paid to the Government either in cash or by input tax credit

4. Taxable person has duly furnished his return as per the law

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

1. Input tax which are partly used for taxable and exempted supplies would have to be proportionately reduced in terms of Section 17(1)/ 17(2) and the rules there under

2. Works contract services received for construction of immovable property (other than plant and machinery) would not be eligible for input tax credit

3. Goods and services received for construction of immovable property (other than plant and machinery) on own account would not be eligible for input tax credit

4. Plant and machinery has been defined in Explanation as apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods and services and includes foundation/ structural support but excludes land, building and civil structures.

g. The applicant submits that it has satisfied the primary conditions provided in section 16 of the CGST/ RGST Act, 2017. Further, in respect of section 17, the applicant submits that the solar equipments purchased qualify as 'plant and machinery' as they are equipment, apparatus and machinery used by the taxable person for its business of supplying taxable goods. Hence, the inputs, input services and capital goods for the use of erection, commissioning and installation of the solar power plant and input tax credits under section 17 of the CGST/ RGST Act,2017 are permissible.

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

B. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT

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

C. PERSONAL HEARING

In the matter personal hearing was granted to the applicant on 08.09.2021 at Room no. 2.11 NCRB, Statue Circle, Jaipur. Sh. Rohit Jain (CA) Authorised Representative of applicant appeared for PH. During the PH, he reiterated the submissions already made in the written application. She also made additional submission during the PH.

D. COMMENTS OF THE JURISDICTIONAL OFFICER

Comments received from the Superintendent, CGST Division, Abu Road vide letter dated 30.07.2021 are as under:-

1. Solar Power Generation Plant is being set up at the roof top of their manufacturing unit and generated electricity will be wholly captive consumed for manufacturing of taxable supplies. Accordingly, as per submission made by applicant, the same is in furtherance of business. Section 17(5) which states the blocked credits, under Clause (c) and (d) provides blocking of credits of works Contract service / construction but it excludes 'Plant and Machinery' which is defined under the Explanation to the Section. Applying the above to the present case, it is evident that the Solar Power Generator being a Plant and the related Credits are not blocked under this section.
2. From the above statutory provisions, it is evident that if taxes paid on Inputs/capital goods and Input services used in set up a Solar Power Generating Plant is in the course or furtherance of business and permitted to be availed as per Section 16 of the Act as the same are only in relation to plant and machinery.
3. Applicant has provided list of goods under Annexure-II, as the capital goods. Capital goods has been defined under Section 2(19) of the Act, -(19) "capital goods" means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business. Applicant has just furnished the list and has not furnished

any documentary proof to establish that the goods listed in the statement furnished have been capitalised in their books of accounts. Therefore, subject to the goods being capitalised in their books of account, the applicant may be eligible to claim Input tax on such goods as 'Capital Goods' and the Provisions of Rule 43 of the GST Rules is applicable to determine the eligible credit in respect of the taxable supplies made by them.

4. On the above submission, and relied on Advance Ruling order passed by Authority for Advance Ruling Tamil Nadu dated 28.09.2020 in the case of M/s Kumaran Oil mill, it appears that Applicant is eligible for Input credit of Inputs, Capital goods and Services related to setting of Solar Power generator plant for captive consumption.

E. FINDINGS, ANALYSIS & CONCLUSION:

1. We have gone through the facts of the case, submission made by the applicant at the time of preliminary hearing.

2. Applicant company is under the process of installation of a 620+ kW roof top "Solar Power Generating Plant" at its manufacturing unit for captive consumption of electricity so generated from the above plant for its PP/HDPE Woven Sacks manufacturing unit at Abu Road (Dist: Sirohi).

3. Before we delve deep to decide the case, it would be proper in the fitment of justice to discuss the relevant provisions of the statute which are as under-

Section 16(1) and (2) of the CGST Act

Eligibility and conditions for taking input tax credit.

16.(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49. be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

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

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

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

4. Thus. Section 16 (1) of the CGST Act specifically provides that every registered person shall be entitled to take credit of the input tax charged on any supply of goods or services or both made to him, which are used or intended to be used in the course or furtherance of his business. Such entitlement is subject to fulfillment of certain conditions such as possession of invoice, receipt of goods/service, payment of tax to Government etc. as provided under Section 16(2) of the GST Act, 2017. However, the availability of credit is subject to the restrictions as stipulated under Section 17(5)(d) of the GST Act, 2017.

5. Sub-section 5 of Section 17 of CGST Act, 2017

The relevant portion of sub-section 5 of Section 17 of CGST Act, 2017 in this regard is reproduced below:-

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

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account Including when such goods or services or both are used in the course or furtherance of business.

Explanation -For the purposes of clauses (c) and (d), the expression "construction " includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property:

(6) -----

Explanation.- For the purposes of this Chapter and Chapter VI, the expression 'plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes,-

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises

6. Bare reading of the above provisions makes it clear that the restriction imposed herein is absolute in nature as it seeks to override Section 16(1) which entitles a registered taxpayer to avail credit on goods or services used or intended to be used in the course or furtherance of business. Irrespective of the fact that the goods or services are used for construction of immovable property which in turn will be used for conducting business, credit is not available; if the ownership of the property remains with the said person. The legislature, in his wisdom, think it proper to stop the flow of seamless credit once immovable property comes into existence and the ownership is fixed.

7. The applicant company intend to install "Solar Power Generating Plant" at the roof top of its own building set up. The applicant has not submitted full procedure of the installation of the said plant. Further, the applicant has just furnished the list and has not furnished any documentary proof to establish that the goods listed in the statement furnished have been capitalised in their books of accounts. Therefore, subject to the goods being capitalised in their books of account, the applicant may be eligible to claim Input tax on such goods as 'Capital Goods' and the Provisions of Rule 43 of the GST Rules is applicable to determine the eligible credit in respect of the taxable supplies made by them. It is admitted by the applicant that they are getting installed a 620+ kW roof top "Solar Power Generating Plant" on its own building set up and that the ownership of the property shall remain with them.

8. We observed that, in order to install/embed the said power plant at the roof top of its own building, there would be construction/erection of pillars on which the said plant is to be installed and certainly there would be lot of other civil work which support to construct the said plant. Such work can not be done without fasten and embed the part of said plant at roof top of the building. The Section 3(26) of the General Clauses Act, 1897 which reads as under-

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

The roof top of the building is attached to earth and simultaneously plant to be fastened/embedded is attached to roof top. This results in 'permanently fastened to anything attached to the earth' as per Section 3(26) of the General Clauses Act, 1897. Further, for the purposes of clauses (c) and (d) of sub-section 5 of Section 17 of CGST Act, 2017, the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said

immovable property. Hence, the erection, commissioning and installation of the said power plant covers in expression of 'construction'.

9. In light of above discussion, it reveals that "Solar Power Generating Plant" to be fastened/embedded to the roof top of the building of applicant company, is construction of immovable property.

10. On the other hand, as far as question whether the capital goods and inputs constitute plant and machinery of the Applicant is concern, we are of the view that explanation to Section 17(5) provides "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes,- (i) land, building or any other civil structures; (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises.

The terms apparatus, equipment and machinery has been examined as under:-

Apparatus: A group of instruments, tools, etc. for a specific use Any complex instrument or machine. A collection of equipment used for a particular purpose. Is a compound instrument designed to carry out a specific function or for a particular use. Is a kind of word which as a generality extends widely and is not confined to things which are capable of being operated so as to generate some kind of result.

Equipment: The machines tools, or instrument etc. necessary for a particular kind of work or activity.

Machinery: In a generic sense, would include all appliances and instruments whereby energy or force is transmitted and transformed from one point to another.

11. In view of the above, "Solar Power Generating Plant" of the applicant qualify as 'plant and machinery' as it falls under machinery as discussed above and not covers under (i) land, building or any other civil structures; (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises. Therefore, subject to the goods being capitalised in their books of account, the said plant is 'Capital Goods'. The "Solar Power Generating Plant is to be used for generation of electrical energy, the electrical energy is solely for captive / own use for the manufacture and supply of taxable goods (i.e. PP/HDPE Woven Sacks). The business of the applicant is manufacture and sale of PP/HDPE Woven Sacks and the solar power plant meets the criteria of being used in the business of manufacture and sale of PP/HDPE

Woven Sacks since the power generated from this plant is used to operate the PP/HDPE Woven Sacks manufacturing plant.

12. Although, construction of "Solar Power Generating Plant at rooftop of the building of applicant is an immovable property, however the said "Solar Power Generating Plant qualify as 'plant and machinery', hence it not covered under blocked credit as mentioned in 17(5)(d) of the CGST Act, 2017. Thus, the applicant is eligible for Input credit of Inputs, Capital goods and Services related to setting of Solar Power generator plant for captive consumption.

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

RULLING

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

Ans:- Yes

13/09/2021

(J. P. MEENA)	(M. S. Kavia)
Member	Member
(Central Tax)	(State Tax)

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