

**AUTHORITY FOR ADVANCE RULING, TAMIL NADU  
NO.207, 2<sup>ND</sup> FLOOR, PAPJM BUILDING, NO.1, GREAMS ROAD,  
CHENNAI - 600 006.**

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND  
UNDER SECTION 98(4) OF THE TNGST ACT, 2017**

**Members present:**

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| Shri. Balakrishna S, I.R.S.,<br>Additional Commissioner/ Member (CGST),<br>Office of the Principal Chief Commissioner of<br>GST & Central Excise,<br>Chennai - 600 034. | Shri. B. Suseel Kumar, B.E., M.B.A.,<br>Joint Commissioner/Member (SGST),<br>Authority for Advance Ruling,<br>Tamil Nadu,<br>Chennai - 600 006. |
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**Advance Ruling No.01/ARA/2025, Dated: 06.02.2025**

- 1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai as under Sub-Section (1) of Section 100 of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed is communicated.*
- 2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-*
  - (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling.*
  - (b) on the concerned officer or the jurisdictional officer in respect of the applicant.*
- 3. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.*
- 4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.*

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| GSTIN Number, if any / User id   |                        | 33AABCK2367G1ZS   |
| Legal Name of Applicant  |                        | M/s. Kanishk Steel Industries Limited   |
| Registered Address / Address provided while obtaining user id                            |                        | Old No.4, New No.7, Thiru-vi-ka Third Street, Royapettah High Road, Mylapore Chennai, Tamilnadu – 600 004   |
| Details of Application   |                        | GST ARA – 01 Application Sl. No. 07/2024/ARA, dated 11-03-2024.   |
| Jurisdictional Officer   |                        | State: Tamilnadu<br>Division: Chennai South<br>Zone: South-I<br>Circle: Mylapore  |
| Concerned Officer  |                        | Center: Chennai North Commissionerate<br>Division: Mylapore<br>Range: II  |
| Nature of activity(s) (proposed / present) in respect of which advance ruling sought for |                        |   |
| <b>A</b>   | Category               | Factory/ Manufacturing  |
| <b>B</b>   | Description (in brief) | <p>(i) M/s Kanishk Steel Industries Limited (‘the Applicant’) is engaged in the business of manufacture of different types of steel at its factory located in SIPCOT Industrial Complex, Gummidipoondi.</p> <p>(ii) The Applicant has its own 17 Nos Windmill power plant of 10.2 MW at Ayyanaruthu Village Kayathar Taluk, Tuticorin District which is currently used for applicant’s captive consumption.</p> <p>(iii) The Applicant is now planning to replace the entire 17 Nos windmill power plant with Solar Power plant of 10.2 MW at Ayyanaruthu Village Kayathar Taluk, Tuticorin District at 33Kv level in Ayyanaruthu 110/33/11 SS. The applicant has also intimated to the Chief Engineer of TANGEDCO for the replacement of Wind Mill Power Plant and registration of the proposed Solar Power Plant.</p> <p>(iv) Electricity generated from the Solar Power Plant has been fully consumed to produce taxable goods i.e Steel (HSN72165000,</p> |

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|   |  | <p>72141000 etc. taxable @18%). A consolidated contract has been placed for design, engineering and installation of Solar Power Plant of 10.2 MW at Ayyanaruthu Village. There is no third party sales and the entire electricity generated is used in the factory for production of taxable goods.</p> <p>(v) The electricity is consumed in factory by way of transfer of electricity generated from Solar Power Plant to TANGEDCO and further TANGEDCO shall provide the credits for energy generated which shall be adjusted against the actual energy consumed in the factory. Accordingly electricity bill shall be generated by TANGEDCO, wherein the actual consumption of electricity in factory shall be stated and it shall be reduced by the electricity produced by Solar Power Plant installed by the applicant. Further, there is no banking agreement with TNEB to store the surplus or deficit, if any.</p> <p>(vi) The applicant files an application before the Authority to understand whether they are eligible to avail input tax credit as inputs/capital goods or input services of the items used in Design, Engineering, Installation of 10.2 MW of the Solar Power Plant as per MNRE &amp; IEC Standards wherein the generation of electricity from such solar plant is used for captive consumption.</p> <p>(vii) And whether the applicant is eligible to take input tax credit for inputs and services for running the solar plant.</p> |
| Issue/s on which advance ruling required        |  | <p><b>1. Admissibility of Input Tax Credit of tax paid or deemed to have been paid.</b></p>   |
| Question(s) on which advance ruling is required |  | <p><b>Query 1 – Whether the applicant is eligible to take input tax credits as inputs/capital goods or input services of the items used in Design, engineering, Installation of 10.2 MW of the Solar Power plant as per MNRE &amp; IEC standards wherein the generation of electricity</b></p>  |



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|  | <p>from such solar plant is used for captive consumption.</p> <p><b>Query 2</b> – Whether the applicant is eligible to take input Tax credit for inputs and services for running the solar plant.</p> |
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At the outset, we would like to make it clear that the provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services Tax Act (herein after referred to as 'Act') are in *parimateria* and have the same provisions in like matters and differ from each other only on few specific provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Services Tax Act, 2017 would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act, 2017.

2. M/s Kanishk steel Industries Limited (hereinafter '**the Applicant**') submitted a copy of challan CPIN HDFC24023300566235 dated 29-02-2024 evidencing payment of application fees of Rs. 5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017 (hereinafter referred to as Rules'). The online application form for advance ruling dated 01-03-2024 was physically received on 11-03-2024 as mandated under Rule 107A.

3. The applicant has narrated the Statement of relevant facts as follows:

- (i) M/s Kanishk Steel Industries Limited ('the Applicant') is engaged in the business of manufacture of different types of steel at its factory located in SIPCOT Industrial Complex, Gummidipoondi.
- (ii) The Applicant has their own 17 Numbers of Windmill power plant of 10.2 MW at Ayyanaruthu Village Kayathar Taluk, Tuticorin District which is currently used for applicant's captive consumption.
- (iii) The Applicant is now planning to replace all their 17 numbers of Windmill power plant with Solar Power plant of same capacity of 10.2 MW at Ayyanaruthu Village Kayathar Taluk, Tuticorin District at 33Kv level in Ayyanaruthu 110/33/11 SS. The applicant has also intimated to the Chief Engineer, TANGEDCO for the replacement of Wind Mill Power Plant and registration of the proposed Solar Power Plant.
- (iv) Electricity generated from the Solar Power Plant has to be fully consumed for production of taxable goods i.e Steel (HSN72165000, 72141000 etc taxable @18%). A consolidated contract has been placed for design, engineering and installation of Solar Power Plant of 10.2 MW at Ayyanaruthu Village. There is no third party sales and the entire electricity generated is used in the factory for production of taxable goods.



- (v) The electricity is consumed in factory by way of transfer of electricity generated from Solar Power Plant to TANGEDCO and further TANGEDCO shall provide the credits for energy generated which shall be adjusted against the actual energy consumed in the factory. Accordingly electricity bill shall be generated by TANGEDCO, wherein the actual consumption of electricity in factory shall be stated and it shall be reduced by the electricity produced by Solar Power Plant installed by the applicant. Further, there is no banking agreement with TNEB to store the surplus or deficit, if any.
- (vi) The applicant files an application before the Authority to understand whether they are eligible to avail input tax credit as inputs/capital goods or input services of the items used in Design, Engineering, Installation of 10.2 MW of the Solar Power Plant as per MNRE & IEC Standards wherein the generation of electricity from such solar plant is used for captive consumption.
- (vii) And whether the applicant is eligible to take input tax credit for inputs and services for running the solar plant.

4. With the above facts of the case the applicant has filed an application seeking for advance ruling on the following queries

**Query 1** – Whether the applicant is eligible to take input tax credits as inputs/capital goods or input services of the items used in Design, engineering, Installation of 10.2 MW of the Solar Power plant as per MNRE & IEC standards wherein the generation of electricity from such solar plant is used for captive consumption.

**Query 2** – Whether the applicant is eligible to take input Tax credit for inputs and services for running the solar plant.

**5. Interpretation of law by the Applicant on the questions raised by them.**

- The Applicant is engaged in the business of manufacture of different types of steel for decades which are covered under HSN 72165000, 72141000 etc taxable @18%).
- The Applicant has now planned to replace its existing 10.2 MW Windmill power plant with Solar Power plant of 10.2 MW which is to be installed at Ayyanaruthu Village Kayathar Taluk, Tuticorin District at 33Kv level in Ayyanaruthu 110/33/11 SS. The said land was already owned by the applicant and it was previously used for wind mill energy generation.
- The applicant has also intimated to the Chief Engineer of TANGEDCO for the replacement of Wind Mill Power Plant and registration of the proposed Solar Power Plant.

- A consolidated contract for Design, Execution, Commissioning, Installation and post commissioning support (Annual Maintenance Contract) to be awarded to a single contractor namely M/s. PEAK QUALISH SYSTEMS (P) LTD. The Solar Power Plant panels are to be installed in the land owned by the applicant in Kayathar Taluk.
- The applicant has informed that the cost incurred for installation of Solar Power Plant to make it in a present condition and use shall be capitalized in their books of accounts and included in the fixed assets register of the applicant.
- The applicant have entered into an agreement with TANGEDCO for usage of the energy generated from the Solar Power Plant wherein the electricity consumed in the factory by way of transfer of electricity generated from Solar Power Plant to TANGEDCO and further TANGEDCO shall provide the credits of energy generated which shall be adjusted against the actual energy consumed in the factory. Accordingly electricity bill shall be generated by TANGEDCO, wherein the actual consumption of electricity in factory shall be stated and it shall be reduced by the electricity produced by Solar Power Plant installed by the applicant. Further, there is no banking agreement with TNEB to store the surplus or deficit, if any. Thus credits were given to the applicant for the exact energy generated by the Wind Mill.
- As per Section 2(17) of the CGST/TNGST Act, 2017, Business interalia includes any trade, commerce, manufacture, profession, vocation etc, whether or not undertaken for a monetary benefit. Thus, the activity of the applicant namely manufacture of steel constitute business in terms of the said definition.
- As per Section 2(19) of the CGST/TNGST Act, 2017, Capital goods means goods , the value of which is capitalized in the books of accounts of the person claiming the input tax credit and which are used or intended to be used in the course of furtherance of business. Thus, the Solar Power Plant shall be classified as a capital asset in terms of Section 2(19) of the CGST/TNGST Act, 2017.
- Further the primary condition for availing ITC is stated under Section 16(1) of the Act, where the taxpayer is entitled to credit of input tax charged on any supply of goods and or services made to them in furtherance of business subject to the conditions and restrictions as specified in Section 16(2) and Section 17 of the Act.
- Quoting Section 17(5)(c) and Section 17(5)(d) of the Act, the applicant stated that Solar Power Plant is an equipment/machinery fixed to earth by foundation and are directly used for making taxable supply of steel. Accordingly, the Solar Power Plant does not fall under the category of Immovable property.



- By the explanation to Section 17, to avail credit on capital goods, cost must be capitalized in books of accounts without considering the GST and further it should not be an immovable property as explained in Section 17(5) of the Act. Therefore, in the instant case, Solar Power Plant that has been planned to be installed is capitalized in books of accounts under the category 'Plant & Machinery' in fixed assets register.
- The applicant contends that ITC on installation of Solar Power Plant, being a plant and machinery and maintenance of such solar power plant from which electricity is generated and consumed fully for captive consumption is an eligible ITC as it fulfills the conditions of Section 16 and it is not a blocked credit under Section 17(5)(d) of CGST/TNGST Act, 2017.
- The applicant has relied on following decisions in support of their claim.
  - (i) AAR, Tamilnadu - M/s. KLF Nirmal Industries (P) Ltd vide Order No. 19/ARA/2021 dated 18-06-2021 – ITC is eligible in case of purchase of Solar plant used for captive consumption.
  - (ii) AAR, Rajasthan – M/s. Pristine Industries Limited – Order No. RAJ/ARA/2021-22/16 dated 13-09-2021 – Applicant is eligible to take ITC on inputs/capital goods/input services used for setting up of 'Solar Power generating Plant for generation of electricity for captive consumption, in the business of manufacturing PP/HDPE Woven sacks and ITC is not blocked under Section 17(5)(d) of GST Act, 2017.
  - (iii) AAR, Karnataka – M/s. Shri Keshav Cements and Infra Limited – Order No. KAR ADRG 26/2019 dated 12<sup>th</sup> Sep, 2019 – The applicant shall be entitled to eligible credits in entirety provided the entire production is captively consumed.
  - (iv) AAR, Tamilnadu – M/s. Kumaran Oil Mill – Order No. 33/AAR/2020 dated 28-09-2020 – Applicant is eligible for input credit of inputs, Capital goods and services relating to setting up of Solar Power Generation Plant for captive consumption.

#### **PERSONAL HEARING**

6. Personal hearing was fixed on 20-08-2024. Ms. Vishnu Priya of Sankaran & Sundar Chartered Accountant firm, authorized representative (AR), appeared on behalf of the applicant and reiterated the submissions made by them in the application for Advance Ruling. They have furnished copies of invoices relating to purchase/import of materials used for installation and commissioning of Solar Power Plant. AR informed that the wheeling contract/agreement with TANGEDCO will be furnished soon.



**Comments offered by the Central Executive Commissionerate, Chennai North.**

**7.1** Quoting Section 17(5)(c) and (d) of the Act, they have stated that the Solar Power Plant to be installed is a large scale power plant for the reason that the capacity is more than 1 MW. As per the agreement with TANGEDCO for usage of energy generated from Solar Power Plant, it may be installed as an inherent element of permanency, since the power plant cannot be shifted and relocated at frequent intervals. Hence opined that the Solar Power Plant cannot be a movable property.

**7.2** Clauses (c) and (d) of Section 17(5) provides for blocking of credit on works contract and on goods or services received by a taxable person for construction of an immovable property (other than plant & machinery). They have not accepted the fact furnished by the applicant that Solar Power Plant is an equipment/machinery directly used for making outward supply of steel, since even prior to installation of Solar Power Plant, the applicant was effecting taxable outward supply of steel. Hence, the goods and services received by the applicant for construction of the plant i.e an immovable property (other than plant & machinery) is a blocked credit under Section 17(5) of the Act and the applicant is not eligible to take the input tax credit.

**7.3** The electrical energy to be generated by Solar Power Plant installed by the applicant is classified under HSN 27160000 and exempted vide Notification No. 02/2017-CT(Rate) dated 28-06-2017. Hence, ITC on inputs and services for running the plant used exclusively for supply of exempted goods i.e., electrical energy is an ineligible credit under Section 17(2) read with Rule 43(a) of the CGST Rules, 2017.

**7.4** It was further stated that there are no pending proceedings on the issues raised in the Advance Ruling application.

**8.** No comments were offered by the State authorities and hence it is construed that no proceedings are pending on the questions raised in the Advance Ruling application filed by the applicant.

**DISCUSSION AND FINDINGS:**

**9.** We have carefully considered the submissions made by the Applicant in their application, submissions made during the personal hearing, and the comments furnished by the jurisdictional tax officers.

**10.** From the submissions made at the time of filing the application, it is seen that the applicant had sought an advance ruling, on the following aspect, viz,

*“(i) Whether the applicant is eligible to take input tax credits as inputs/capital goods or input services of the items used in Design, engineering, Installation of 10.2 MW of the Solar Power plant as per MNRE & IEC standards wherein the generation of electricity from such solar plant is used for captive consumption.*

*(ii) Whether the applicant is eligible to take input Tax credit for inputs and services for running the solar plant.”*

11. For deciding the above clarification sought by the applicant, the following basic aspects need to be answered.

- (i) Whether the activity of generation and supply of electricity can be treated as ‘supply’ under GST. If yes, whether it is an ‘exempted supply’.
- (ii) Whether the electricity generated by the applicant shall be treated as captively consumed?
- (iii) Whether the Solar Power Plant can be classified as ‘Capital Goods’. If yes, whether depreciation is claimed?
- (iv) Whether the applicant satisfies Section 16 and Section 17 of the CGST/TNGST Act, 2017 for claiming eligible ITC on the goods and services received for installation and running of Solar Power Plant

12. The applicant is engaged in the primary business of manufacture and supply of different grades and types of steel falling under Chapter heading 72165000, 72111410, 72141090 etc., which are taxable at the rate of 18%. They have their manufacturing unit at Gummidipoondi, Tiruvallur District. They have their windmill installed at Kayathar Taluk, Tuticorin District which generates electricity of 10.2 MW. They are planning to replace the same with Solar Power Plant which also generates same 10,2 MW. Intimation to the Chief Engineer, TANGEDCO was also submitted by the applicant for the replacement of wind mill power plant with Solar Power Plant. During the personal hearing, the applicant has stated that the place where the activity of generation of electricity proposed to be done was included as ‘Additional place of business’ in their GST registration.

13. Section 2(17) of the CGST/TNGST Act, 2017 defines business as “Business includes-

- (a) Any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;**
- (b) Any activity or transaction in connection with or incidental or ancillary to sub-clause (a);**



- (c) Any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) Supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) Provision by a club .....to its members;
- (f) Admission, for a consideration, of person to any premises;
- (g) Services supplied by a person ..... Profession or vocation;
- (h) Activities of a race club .....book maker in such club; and
- (i) Any activity or transaction undertaken by Central Government, .....as public authorities."

**14.** As per the above definition of Business', the activity of the applicant falls within the scope of business activity and the generation of electricity and its supply will qualify as 'supply' under GST.

**15.** The applicant in the statement of facts has furnished that there shall be an agreement entered into with TANGEDCO for usage of the energy generated from the Solar Power Plant. As per the arrangement between them, the electricity generated from Solar Power Plant is transferred to the grid of TANGEDCO and TANGEDCO in turn provide them the credits of energy generated which shall be adjusted against the actual energy consumed in the factory at Gummidipoondi. Accordingly, electricity bill shall be generated by TANGEDCO wherein the actual consumption of electricity in the factory shall be stated and it shall be reduced by the credit of electricity produced by Solar Power Plant installed by the applicant at Kayathar, Tuticorin. Further, the applicant do not have any 'wheeling & banking' agreement with TANGEDCO for storing the surplus or excess power generated from the Solar Power Plant.

**16.** From the above, the solar power generated shall not be consumed by the applicant directly at the place of generation of electricity which is different from the place of consumption. Hence, the applicant is left with the only option to transfer/supply the electricity generated to TANGEDCO through grid which in turn is given as credits by TANGEDCO for the amount of electricity generated. Further they have informed that there is no banking agreement with TANGEDCO to store the surplus or deficit, if any. In the absence of banking agreement with TANGEDCO, any surplus/excess power generated shall get lapsed. Here, the power generated shall not be construed as captively consumed as the power is generated elsewhere, though by the same person and supplied to another person, namely TANGEDCO. As the activity of supply of electricity generated to a different entity is involved and the same is adjusted against their electricity charges at the factory of production and supply, the electricity generated shall not be construed as



'captively consumed' becomes part of the business activity of the applicant. As the Solar Power Plant forms part of the business of the applicant, the generation and supply of electricity is treated as a 'supply' as per the GST provisions.

17. Once the power generated and transferred to TANGEDCO by the applicant is treated as supply, the next question to be answered is whether, it is taxable supply of goods or services or not. As per the tariff, electricity is goods classifiable under HSN 27160000 as specified under First Schedule to the tariff. Electricity is charged to 'NIL' rate of tax in terms of Sl. No. 104 of Notification No. 02/2017-CT(Rate) dated 28-06-2017.

18. *"Exempt supply" is defined under Section 2(47) as "exempt supply" means supply of goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under Section 11, or under Section 6 of the Integrated Goods and Services tax Act, and includes non-taxable supply;*

19. As per the above definition 'supply of any goods or services or both is attracting nil rate of tax. Hence, as per the said definition, the generation and supply of electricity to TANGEDCO which attracts nil rate of tax is an exempted supply and accordingly, all provisions related to exempt supply are applicable.

20. Now coming to the question of eligibility of input tax Credit (ITC) on goods and services used or consumed during the setting up for Solar Power Plant, the eligibility of ITC is governed by Section 16 of the CGST/TNGST Act, 2017 with conditions.

21. As per Section 16(1),

*"(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.*

In the instant case, as the activity of generation of electricity itself is 'supply of goods' the tax paid on goods and services used and consumed in the setting up of Solar Power Plant is eligible to be taken as ITC. The applicant has stated in the statement of facts that the cost incurred for installation of Solar Power Plant to make it in the present condition and use shall be 'capitalized in their books of accounts' and included in the 'Fixed Asset Register' of the company.

**22.** The definition of 'Capital Goods' is provided under Section 2(19) of the CGST/TNGST Act, 2017,

*"Capital Goods" means goods, the value of which is capitalized 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 of business"*

As per the above definition, any goods whose value is capitalized in the books of accounts of the person claiming the input tax credit and which are used or intended to be used in the course of furtherance of business are to be treated as 'Capital Goods'. Since, the applicant himself has stated that the cost of installing and commissioning of Solar Power Plant is capitalized in their books, all goods and services used in setting up for Solar Power Plant are classified as Capital Goods.

**23.** In terms of clause (d) of Section 17(5) of the CGST/TNGST Act, 2017, ITC is not eligible on the goods or services received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account including when such goods or services or both are used in the course of furtherance of business. Here it is to be ascertained whether the Solar Power Plant is an immovable property fixed to earth and falls under exclusion clause of Section 17(5) or not. Or, whether it falls within the definition of 'plant & machinery' as per explanation to Section 17(5) for claiming ITC under Section 16(1) of the Act.

**24.** As per the Explanation to Section 17(5), the plant & machinery is defined as

*"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 structure;*
- (ii) telecommunication towers; and*
- (iii) pipelines laid outside the factory premises*

**25.** The Solar Power Plant is a Capital goods since capitalized in the book of accounts under the category of plant and machinery as a fixed asset which is used for making outward supply of goods (electricity). Since this capital goods is used in the generation of electricity chargeable to nil rate of tax, the same can be classified as 'Plant & Machinery' though an immovable property fixed to earth.

**26.** In terms of Section 16(3), when the registered person who is claiming depreciation on the tax component of the cost of capital goods and plant & machinery under the provisions of Income Tax Act, 1961, ITC on said tax component shall not be allowed. Here the applicant has not disclosed



whether they are claiming/going to claim any depreciation on the tax component of cost of capital goods and plant and machinery classified as 'Fixed Asset'. However, eligibility and the quantum of ITC on the capital goods depends on the fact whether the applicant is claiming depreciation under Income Tax Act or not.

27. As per the fact furnished by the applicant it was established that the applicant is involved in two different activities namely, manufacture and supply of different types of steels taxable @ 18% and generation and supply of electricity chargeable to 'nil rate of tax' which is exempted. As the applicant is engaged in providing both taxable and exempted supplies, Section 17(2) will be applicable with regard to apportionment of ITC.

As per Section 17(2),

*"Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies, under this Act, or under Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies".*

Section 17(3) of the Act, states that,

*The value of exempt supply under sub-section (2) shall be such as may be prescribed and shall not include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.*

28 As per the above, it is clear that the provisions of Rule 43 will come into play when a taxpayer uses the same goods and services for effecting both exempted and taxable supplies. Rule 43 of the CGST/TNGST Rules, 2017 prescribes procedure for determining the amount of eligible ITC and reversal in respect of capital goods.

Rule 43 of CGST/TNGST Rules, 2017 prescribes,

**Rule 43. Manner of determination of input tax- credit in respect of capital goods and reversal thereof in certain cases. -**

(1) Subject to the provisions of sub-section (3) of Section 16, the input tax credit in respect of capital goods, which attract the provisions of sub-section (1) and (2) of Section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero-rated supplies and partly for effecting



*exempt supplies, shall be attributed to the purpose of business or for effecting taxable supplies in the following manner, namely,-*

*(a) **the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in FORM GSTR-2 (and FORM GSTR 3B) and shall not be credited to his electronic credit ledger;***

*(b) the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies .....*

29. From the above as per clause (a) of sub-rule (1) of Rule 43, the ITC of capital goods used exclusively for providing exempt supply shall not be available for availment and utilization. The applicant, being a taxable person engaged in effecting taxable (manufacture & supply of Steels) and exempted (generation and supply of electricity) supplies, falls under Section 17(2) and 17(3) of the CGST/TNGST Act, 2017, have to follow the procedure prescribed under Rule 43 for determining the eligible ITC and reversal thereof in respect of capital goods used for exclusive exempt supply on monthly basis in their mandatory returns during filing and payment. Accordingly, the applicant is not eligible for taking the credit of ITC in his electronic credit ledger on the goods and services used exclusively in the provision of exempted supplies.

30. The applicant has cited four advance ruling decisions on similar issues which are discussed below. In terms of Section 103 of the Act, with regard to applicability of Advance Ruling, "the advance ruling pronounced by the authority under this chapter **shall be binding only on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling.** Further, the activity of similar persons may not be same and the facts and circumstances of the case may be different. However, keeping in mind the persuasive value attached to it, the advance ruling decisions listed by the applicant is discussed and distinguished as below.

(i) AAR, Tamilnadu - M/s. KLF Nirmal Industries (P) Ltd vide Order No. 19/ARA/2021 dated 18-06-2021

Here, the Solar Power Plant was installed on the roof top of the building of the applicant and the electricity generated is captively consumed. Hence shall not be related to the present case on hand.

(ii) AAR, Rajasthan - M/s. Pristine Industries Limited - Order No. RAJ/ARA/2021-22/16 dated 13-09-2021.

In the instant case, the Solar Power Plant in question was installed in the same business premises where production and supply of goods were

taken place and the electricity so generated from the plant is captively consumed. Hence, the facts of the case shall not be related to the instant case.

(iii) AAR, Karnataka – M/s. Shri Keshav Cements and Infra Limited – Order No. KAR ADRG 26/2019 dated 12<sup>th</sup> Sep, 2019

This decision of the advance ruling authorities was restricted to capitalization of some of the specific goods listed by the applicant and not the entire power plant which is not the case here. The goods falling under the definition of 'plant & machinery' alone are eligible for ITC.

(iv) AAR, Tamilnadu – M/s. Kumaran Oil Mill – Order No. 33/AAR/2020 dated 28-09-2020

In the above ruling, the electricity is treated as exempt supply and proportionate ITC was allowed to be availed. All the rulings cited by the applicant were distinguished from the facts of the present case.

**30.** Hence, on the facts stated by the applicant and circumstances enumerated above and in line with the provisions of statutes governing the input tax credit, we intend to take the queries one by one for a decision.

#### **QUERY-1.**

*"(i) Whether the applicant is eligible to take input tax credits as inputs/capital goods or input services of the items used in Design, Engineering, installation of 10.2 MW Solar Power Plant as per MNRE & IEC Standards wherein the generation of electricity from such solar plant is used for captive consumption.*

The applicant is not eligible for input tax credit on the goods and services exclusively used for the provision of exempt supply namely 'generation and supply of electricity'. Electricity, being a goods charged to Nil rate of tax, is supplied to TANGEDCO which in turn is given as Credit for adjustment towards the power consumed in the factory of manufacture and hence electricity is not captively consumed but the 'supply' is to be treated as 'exempt supply'. As per Section 17(2) and 17(3) of the CGST/TNGST Act, 2017 read with Rule 43(1)(a) of the CGST/SGST Rules, 2017, the input tax credit exclusively used or consumed for the generation and supply of electricity which is an exempted supply is unavailable for availment as input tax credit.

#### **QUERY-2.**


*(ii) Whether the applicant is eligible to take input tax credit for inputs and services for running the solar power plant.*




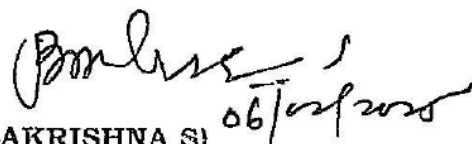
As ruled in the Query-1, the applicant is not eligible to avail the input tax credit on any goods or services exclusively used for running or maintenance of the Solar Power Plant also.

**RULING**

- (i) The activity of the applicant namely, generation and supply of electricity would fall under the scope of supply and as the supply of electricity attracts nil rate of tax, it falls within the definition of exempted supply. The input tax credit on the goods and services used or consumed exclusively for providing exempted supplies are not available for availment and utilisation.
- (ii) The applicant is not eligible to avail the input tax credit on any goods or services exclusively used for running or maintenance of the Solar Power Plant.

  
(B. SUSEEL KUMAR)  
Member (SGST)



  
(BALAKRISHNA S)  
Member (CGST)

To

**M/s. Kanishk Steel Industries Limited**  
**GSTIN: 33AABCK2367G1ZS**  
Old No.4 New No. 7, Thiru-vi-ka 3<sup>rd</sup> Street,  
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//by RPAD//

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2. The Commissioner of Commercial Taxes,  
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3. The Commissioner of GST & Central Excise,  
Chennai North Commissionerate.

Copy to :

4. The Assistant Commissioner (ST),  
Mylapore Assessment Circle,  
Integrated Building for Commercial Taxes and Regn.,  
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