

GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.



ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2025 /16
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2024/AR/04)

Date : 22.09.2025

Name and address of the appellant	:	<i>The Assistant Commissioner, CGST and Central Excise, Division-VII, Bharuch, Vadodara-II Commissionerate</i> , GST Building, Opp. Gujarat Gas Company, B/h Amidhara Township, Kanvibhaga, Bharuch, Gujarat. PIN-392001.
Name and address of the respondent	:	<i>M/s Elixir Industries Private Limited</i> , Plot No. 101, GIDC Palej Industrial Estate, Palej, Bharuch, Gujarat- 392 220.
GSTIN of the appellant	:	Not Applicable.
Advance Ruling No. and Date	:	GUJ/GAAR/R/2024/18, dated 02.07.2024
Date of appeal	:	16.08.2024
Date of Personal Hearing	:	25.06.2025
Present for the appellant	:	Shri Govind Bhagora, Superintendent, CGST & C.Ex., Vadodara-II.
Present for the respondent	:	Shri Mukesh Soni, Advocate.

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (for short - 'CGST Act, 2017' and the 'GGST Act, 2017') are *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. The present appeal has been filed under Section 100 of the CGST Act, 2017 and the GGST Act, 2017 by Assistant Commissioner, CGST and Central Excise, Division VII, Bharuch, Vadodara-II Commissionerate, (for short - 'appellant') against the Advance Ruling No. GUJ/GAAR/R/2024/18 dated 2.7.2024.

3. M/s Elixir Industries Private Limited, Plot No. 101, GIDC Palej Industrial Estate, Palej, Bharuch, Gujarat- 392 220 [for short – 'respondent'] is a 100% EOU, engaged in the manufacture of hydro entangled (spun lace) non-woven products. For its electricity/HT power connection, they require a 1000 KVA power demand on 66 KV system voltage for which they need to install a 66 KV feeder bay at substation of GETCO¹ under deposit

¹ Gujarat Energy Transmission Corporation Ltd



scheme & also lay a 750 meters new 66 KV S/cable (3+1), 630 mm square aluminum corrugated sheath U/G cable line from 66 KV Palej substation of GETCO to their switchyard at their Palej factory.

4. For the aforementioned requirement of laying a 66 KV line, GETCO offered the respondent two options viz

- a) either carry out the above work through GETCO itself; or
- b) to do the above work on their own [as per option 3 of GETCO estimate for 1000 KVA] under supervision of GETCO.

The respondent chose the second option wherein they have to purchase materials for installation & handover the same to GETCO, who will provide installation and supervision service.

5. The respondent further informed the GAAR that,

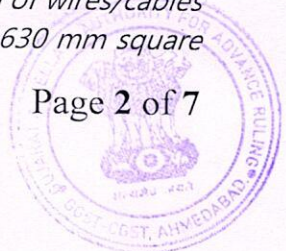
- a) the aforementioned expenditure will be borne by respondent;
- b) the line so erected by the respondent will be handed over to GETCO through an agreement on a Rs. 300 stamp paper at zero value; that it will be a property of GETCO & will be maintained by GETCO;
- c) they have satisfied all the four conditions in terms of section 16 of the CGST Act, 2017, viz (i) that they are in possession of the tax invoice issued by the supplier; (ii) that they have received the goods and service; (iii) that the tax charged has been paid to the Government & that the return has been furnished u/s 39, *ibid*; (iv) that the payment [i.e value and GST] has been made to the supplier within 180 days so as to be eligible for the ITC;
- d) they have capitalized the basic value of the supply of material and installation charges of Rs. 1,28,22,250/- & that the GST value will be availed as ITC credit.
- e) they are eligible to avail the ITC credit in view of the foregoing and more so since it is not blocked under section 17 of the CGST Act, 2017.

6. In view of the aforementioned facts, respondent sought a ruling on the below mentioned question, viz.

Whether or not a manufacturer is eligible to take ITC on the capital goods in the form of wires/cables electrical equipment etc. used for transmission of electricity from power station of the DISCOM to the factory premises of the registered person which are installed outside factory premises, as per rules and policy of GETCO, Government of Gujarat Electricity distribution company.

7. GAAR, post admittance & personal hearing, pronounced its impugned ruling vide Advance Ruling No. GUJ/GAAR/R/2024/18, dated 02.07.2024, wherein it was held as under:

The applicant is eligible to take ITC on the capital goods in the form of wires/cables electrical equipment etc [viz 750 meters new 66 KV S/Cable (3+1), 630 mm square



aluminium corrugated sheath/G cable line for installation of 66 KV feeder bay at sub-station of GETCOJ used for transmission of electricity from power station of the DISCOM to the factory premises of the applicant.

8. The below mentioned findings, led the GAAR to arrive at the aforementioned ruling that :-

- a) they are not hit by 17(5)(c) of the CGST Act, 2017;
- b) they have capitalized the basic value as capital goods and the tax portion is being availed as ITC; that they are not hit even by the explanation;
- c) as far as 17(5)(d) is concerned, the respondent states that they are covered by the explanation which defines plant and machinery and that they are also not hit by the three exclusions listed in the explanation;
- d) though these are underground cables, they are not fixed to earth;
- e) they are kept in a duct and can be removed/opened as and when any maintenance is required to be done on these goods;
- f) even on this count, the ITC sought by the respondent is not blocked by sub-sections 17(5)(c) & (d), *ibid*;
- g) there is no provision under the CGST Act, 2017 which bars availment of ITC by the applicant, if subsequently the capitalized goods are handed over to GETCO/others;
- h) post availment of ITC, if subsequently, the capitalized goods are handed over to GETCO/others, the liability is cast on the respondent under section 18(6) of the CGST Act, 2017.

9. Aggrieved, by the aforementioned order, the appellant [Revenue] is before the GAAAR², against the impugned ruling dated 2.7.2024, raising the following averments, *viz*

- a) that the installation of 66KV feeder bay is outside the factory & the ownership of which lies with GETCO, cannot be categorized as plant and machinery and is blocked under section 17(5) of the CGST Act, 2017;
- b) that it is mentioned in para 17 of the ruling that the goods will be transferred to GETCO & as a result ITC is liable to be reversed or paid back in terms of section 18(6), yet the ITC was allowed;
- c) that the aspect of section 17(5) and 18(6) of the CGST Act, 2017 was not considered.

10. The respondent submitted para wise comments against the appeal, *inter alia*, stating the following, *viz*

- a) the respondent is eligible for ITC since the said capital goods are received in the factory and capitalized in the books of accounts;
- b) that these goods have been used for furtherance of business;
- c) that the capital goods have been transferred to GETCO only for maintenance purpose without any consideration;
- d) that clauses 17(5)(c) and (d) is not applicable in their case;
- e) that section 18(6) is not applicable in their case;
- f) that they would like to rely on the below mentioned cases, *viz*
M/s. Prism Cement³
M/s. Calcom Cement India Ltd⁴
M/s. Hindustan Coca Cola Beverages P Ltd⁵

² Gujarat Appellate Authority for Advance Ruling

³ 2017 (3) TMI 1283

⁴ 2017 (9) TMI 274

⁵ 2017 (6) TMI 846



11. Personal hearing in the matter was held on 25.6.2025, wherein Shri Govind Bhagora, Superintendent, CGST, Vadodara-II Commissionerate appeared on behalf of the appellant and reiterated the grounds of appeal. Shri Mukesh Soni, Advocate, appeared on behalf of the respondent and reiterated the prayer that the departmental appeal may be rejected.

FINDINGS

12. We have carefully gone through and considered the appeal papers, written submissions filed by the appellant, submissions made by the appellant and respondent at the time of personal hearing, the Advance Ruling given by the GAAR and other materials available on record.

13. The facts having been mentioned *supra*, we do not wish to repeat it. The primary issue raised by the Revenue is that GAAR erred in allowing the ITC on the capital goods, in the form of wires/cables electrical equipment etc. [viz 750 meters new 66 KV S/Cable (3+1), 630 mm square aluminium corrugated sheath/G cable line for installation of 66 KV feeder bay at sub-station of GETCO] used for transmission of electricity from power station of the DISCOM⁶ to the factory premises of the respondent.

14. The primary ground raised by Revenue is that the installation of 66KV feeder bay is outside the factory & the ownership lies with GETCO. Therefore, it cannot be categorized as plant and machinery and is, therefore, blocked under section 17(5) of the CGST Act, 2017. Further, since the goods will be transferred to GETCO, ITC is liable to be reversed or paid back in terms of section 18(6).

15. Facts that are not disputed even by the Revenue is that the conditions for availing ITC, as far as section 16 of the CGST Act, 2017, is concerned, stand fulfilled. As far as the ITC being hit by section 17(5)(c) and (d) is concerned, we find that the GAAR has discussed the same in paragraphs 19 and 20 of their impugned ruling, wherein it was held as under:

"19. Likewise, section 17 of the CGST Act, 2017, deals with apportionment of credit and blocked credit. From what is relevant, we find that ITC is blocked in the following cases [relevant to the issue on which ruling is sought] viz

⁶ Distribution Company



- where the goods or services are used partly for the purpose of any business and partly for other purposes or exempt supply, the amount of credit shall be restricted to what is attributable for business;
- that the value of exempt supply shall 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;
- that ITC shall not be available in respect of 17(5)(c) and (d), which is reproduced supra in paragraph 15 above.

The explanation to the clauses (c) and (d) of section 17, ibid, further states that "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property and that "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.

20. The applicant's averment is that they are not hit by 17(5)(c), ibid. The applicant further states that they have capitalized the basic value as capital goods and the tax portion is being availed as ITC. Therefore, it is not hit even by the explanation. As far as 17(5)(d) is concerned, the applicant states that they are covered by the explanation which defines plant and machinery and that they are also not hit by the three exclusions listed in the explanation. The ITC that the applicant wishes to avail is on capital goods viz cables/wires, equipment viz 750 meters new 66 KV S/Cable (3+1), 630 mm square aluminum corrugated sheath/G cable line for installation of 66 KV feeder bay at sub-station of GETCO. On a specific query raised during the course of personal hearing, it was stated by the representative of the applicant that though these are underground cables, they are not fixed to earth; that they are kept in a duct and can be removed/opened as and when any maintenance is required to be done on these goods. Even on this count, the ITC sought by the applicant is not blocked by sub-sections 17(5)(c) & (d), ibid."

As far as applicability of section 18(6) of the CGST Act, 2017, is concerned, the GAAR has given its finding in paragraph 22 of the ruling, wherein it was held as follows:

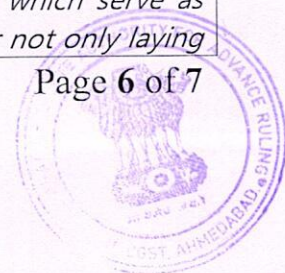


"22. We find that there is no provision under the CGST' Act, 2017 which bars availment of ITC by the applicant if subsequently the capitalized goods are handed over to GETCO/others. However, we would like to point out to the applicant of the liability cast on him, in such situations in terms of section 18(6) of the CGST Act, 2017. We do not wish to further delve into the same, since the issue is not before us. We restrict ourselves to the question raised before us."

16. We find that the departmental appeal does not put forth any grounds as to why the aforementioned findings are not legally tenable except for a bald averment that the same cannot be categorized as 'plant and machinery' & hence blocked by section 17(5) and that the aspect of section 18(6) was not followed. The findings in paragraph 19 and 20 of the impugned ruling are not controverted. Further, even the explicit findings in paragraph 22 regarding application of section 18(6), *ibid*, have been ignored.

17. Even otherwise, CBIC, vide its circular No. 219/13/2024-GST dated 26.6.2024, has clarified as under:-

Issue	Clarification
Whether the input tax credit on the ducts and manholes used in network of optical fiber cables (OFCs) for providing telecommunication services is barred in terms of clauses (c) and (d) of sub-section (5) of section 17 of the CGST Act, read with Explanation to section 17 of CGST Act ?	<p>1. Sub-section (5) to Section 17 of the CGST Act provides that input tax credit shall not be available, inter alia, in respect of the following:</p> <p><i>i.</i> 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; or</p> <p><i>ii.</i> 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.</p> <p>2. Explanation in section 17 of CGST Act provides that 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 land, building or any other civil structures; telecommunication towers; and pipelines laid outside the factory premises.</p> <p>3. Ducts and manholes are basic components for the optical fiber cable (OFC) network used in providing telecommunication services. The OFC network is generally laid with the use of PVC ducts/sheaths in which OFCs are housed and service/connectivity manholes, which serve as nodes of the network, and are necessary for not only laying</p>



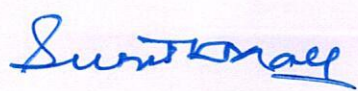
	<p><i>of optical fiber cable but also their upkeep and maintenance. In view of the Explanation in section 17 of the CGST Act, it appears that ducts and manholes are covered under the definition of "plant and machinery" as they are used as part of the OFC network for making outward supply of transmission of telecommunication signals from one point to another. Moreover, ducts and manholes used in network of optical fiber cables (OFCs) have not been specifically excluded from the definition of "plant and machinery" in the Explanation to section 17 of CGST Act, as they are neither in nature of land, building or civil structures nor are in nature of telecommunication towers or pipelines laid outside the factory premises.</i></p> <p><i>4. Accordingly, it is clarified that availment of input tax credit is not restricted in respect of such ducts and manhole used in network of optical fiber cables (OFCs), either under clause (c) or under clause (d) of sub-section (5) of section 17 of CGST Act.</i></p>
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We find that when Board has clarified that ITC is not restricted even in respect of *ducts* and *manhole* used in OFCs under section 17(5) of the CGST Act, 2017, the question of restricting the ITC on capital goods in the form of wires/cables electrical equipment etc. [viz 750 meters new 66 KV S/Cable (3+1), 630 mm square aluminium corrugated sheath/G cable line for installation of 66 KV feeder bay at sub-station of GETCO] used for transmission of electricity from power station of the DISCOM to the factory premises of the applicant, simply does not arise.

17. We, therefore, uphold the findings of the GAAR. Nothing is produced before us by the Revenue, compelling us to interfere with the impugned ruling dated 02.07.2024. The departmental appeal being devoid of merits is therefore rejected.

18. In view of the above findings, we reject the departmental appeal filed by the Assistant Commissioner, CGST and Central Excise, Division VII, Bharuch, Vadodara-II Commissionerate, against the Advance Ruling No. GUJ/GAAR/R/2024/18, dated 02.07.2024 of the Gujarat Authority for Advance Ruling.


(Rajeev Topno)
Member [SGST]


(Sunil Kumar Mall)
Member [CGST]

Place: Ahmedabad
Date : 22/09/2025



