


GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING(APPEAL) NO. GUJ/GAAAR/APPEAL/2025/17
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2025/AR/03)

Date : 22.09.2025

Name and address of the appellant	:	<i>M/s. Gujarat Narmada Valley Fertilizers & Chemicals Ltd.,</i> P.O. Narmadanagar, Distt- Bharuch, Gujarat-392015.
GSTIN of the appellant	:	24AAACG8372Q1Z2
Jurisdiction Office	:	Center Commissionerate- Vadodara-II, Division-VI, Bharuch, Range- IV,
Advance Ruling No. and Date	:	GUJ/GAAR/R/2025/11, dated 25.03.2025
Date of appeal	:	25.04.2025
Date of Personal Hearing	:	25.06.2025
Present for the appellant	:	CA Rutvij Modi and CA Jenee Bhavsar, for the appellant.

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 M/s. Gujarat Narmada Valley Fertilizers & Chemicals Ltd., (for short - 'the appellant') against the Advance Ruling No. GUJ/GAAR/R/2025/11, dated 25.03.2025.

3. Briefly, the appellant, a Public Ltd. Company and a SPSU¹ is engaged in the manufacturing of fertilizers and chemicals & is registered with the department. They

¹ State Public Sector Undertakings



initiated a share buyback² program in December, 2023 in terms of GoG³ Government Resolution, dated 24.04.2023.

4. The appellant stated that various expenses are incurred for share buyback which are essential & that they were of the opinion that they are eligible to avail the ITC in respect of the expenses so incurred, in view of the following, viz.

- (a) any activity carried on with a purpose to achieve business objective, principles, continuity & stability is in course or furtherance of business;
- (b) that while buyback process does not directly result in immediate outward supply it is essential step towards optimizing financial health; that they would like to rely on the case of Coca-Cola India⁴;
- (c) that buyback though not directly generating immediate taxable supplies will contribute to a company's overall well-being and future taxable capacity;
- (d) that term 'transaction in securities' is very wide; that it should be read in conjunction with the value of exempt supply & not read independently;
- (e) that buy back of shares is no sale and purchase transaction; that there is only capital reduction; that the nomenclature 'buy back' is not purchase transaction;
- (f) that ITC is eligible in case of issuance of fresh shares and similarly ITC should be eligible even in case of buy back of shares;
- (g) that they would like to rely on the case of Kretztechnik pronounced by the European Court of Justice.

5. In view of the foregoing, the appellant, approached the GAAR⁵ seeking a ruling on the below mentioned question viz

Whether the expenditure incurred by the applicant, a listed entity, for the buyback of its shares in the course of furtherance of business, is eligible for ITC under GST regime?

6. GAAR, post admittance & personal hearing, pronounced its impugned ruling vide Advance Ruling No. GUJ/GAAR/R/2025/11, dated 25.03.2025, wherein it was held as under:

The applicant is not eligible to avail the ITC involved in the expenditure incurred for buyback of its share and is also required to reverse the ITC on common inputs and input service used in relation to the expenditure incurred for buyback of share.

7. The below mentioned findings, led the GAAR to arrive at the aforementioned ruling, viz.

- (a) a conjoint reading of sections 2(52), 2(101) & (102), ibid, states that the activity undertaken ie buy back of shares is neither a supply of goods nor supply of services;
- (b) the term securities is excluded from the definition of goods & services;

² 'buyback' signifies repurchasing its own shares from existing shareholders as stipulated under the Companies Act, 2013 & SEBI Regulation 2018.

³ Government of Gujarat

⁴ 2002 (22) STT 130 Bom

⁵ Gujarat Authority for Advance Ruling



- (c) that in terms of section 16(1), applicant is not eligible for ITC on expenditure incurred for buyback of its shares, it neither being '*goods*' nor '*services*' which is a primary condition for availment of ITC;
- (d) that averment that expenses incurred towards buyback of shares is in course of furtherance of business is only to be examined if the expenditure incurred is towards goods or services, which incidentally is not the case.

8. Aggrieved, the appellant is before the GAAAR⁶, against the impugned ruling dated 25.03.2025, raising the following averments, viz

- (a) In terms of section 2(17)(b), *ibid*, the definition of 'business', covers the activity of buy back of shares;
- (b) that professional fees, legal expenses, consultancy charges, & other incidental costs incurred in relation to the buy-back of shares are directly connected to & undertaken in the furtherance of business and are therefore eligible for ITC u/s 16(1);
- (c) while buyback process does not directly result in immediate outward supply it is an essential step towards optimizing financial health & ultimately increase its ability to make taxable supplies;
- (d) that the term 'transaction in securities' is very wide & should be read in conjunction with value of exempt supply & not independently;
- (e) that in case of buy back of shares per se there is no supply in conventional sense; that the shares bought back are not in the nature of assets for the company & have to be cancelled after buyback within a prescribed time frame;
- (f) that in terms of the FAQ issued by the ICAI⁷, ITC is eligible in case of issuance of fresh shares;
- (g) that the expenses incurred are in course of furtherance of business and therefore do not constitute a transaction in securities within the meaning of section 17(3);
- (h) that GAAR read section 16(1) by putting in an additional requirement that the purpose for which input service are used must itself be a supply under GST;
- (i) that even the direction of reversal of ITC attributable to the common expenses is not correct as these are legally admissible.

9. Personal hearing in the matter was held on 25.06.2025, wherein Shri Rutvij Modi, CA and Ms. Jenee Bhavsar, CA appeared on behalf of the appellant reiterated the submissions made in the appeal.

FINDINGS

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

11. The facts having been mentioned *supra*, we do not wish to repeat it. The primary issue before the authority is whether the impugned ruling holding that the

⁶ Gujarat Appellate Authority for Advance Ruling

⁷ The Institute of Chartered Accountants of India



applicant is not eligible to avail the ITC involved in the expenditure incurred for buyback of its shares and is also required to reverse the ITC on common inputs and input service used in relation to the expenditure incurred for buyback of share, is correct or otherwise.

Eligibility of ITC on expenditure incurred on buy back of shares

12. What stands factually undisputed is that shares are securities in terms of section 2(h)(i) of the Securities Contracts (Regulation) Act, 1956 and owing to this they are neither goods [u/s 2(52)] nor services [u/s 2(102)]. It is in this context, that we proceed forward to examine the averments raised by the appellant.

13. The first averment before us is that the buy-back program constitutes a 'business' activity undertaken to achieve the core objectives; that the term business is defined u/s 2(17), *ibid*; that clause (b) encompasses activity like buy-back of shares/issue of shares by a Limited Company.

14. Section 16 of the GST Act deals with eligibility and conditions for taking Input Tax Credit. Sub-section (1) of the said Section states:

"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."

15. In view of the above sub-section, the appellant's contention is that any input tax charged on any supply of goods or services or both to them, which are used or intended to be used in the course or furtherance of their business is available to them. Since, the buy-back of shares, according to the appellant, is for the furtherance of his business, they would be eligible of the expenses, charges and incidental costs incurred in relation to the buy-back of shares.

16. We do not, however, subscribe to this view that any tax paid on the cost incurred for the furtherance of the business is eligible for credit. It is trite law that for entitlement of input tax credit, the goods or services or both should be intended to be used for the business or in its furtherance thereof. However, this does not mean that the tax paid on every activity used in the furtherance of business is eligible for credit. Sub-



section (1) of Section 16, while laying down the eligibility of input tax credit also states that it is subject to conditions and restrictions. Such conditions and restrictions have been imposed vide Sections 16(3), Section 16(4), Section 17 and Section 18 *ibid*. Section 17(2) restricts the input tax credit to taxable supplies including zero rated supplies. It categorically denies input tax credit of goods or services or both used for effecting exempt supplies. Therefore, even though there may be various goods and services which are used in the furtherance of business, the credit of the input tax paid on each of these goods or services, will be subject to the restrictions mentioned in the sections mentioned *supra*. Further, the Supreme Court in the case of *TVS Motor Company Ltd. vs The State Of Tamil Nadu*⁸ has held that claim of ITC is not a vested right or an indefeasible right. It is a benefit conferred under the Act in certain contingencies and subject to conditions prescribed in the statutory scheme.

17. As mentioned earlier, shares being securities, are neither **goods** nor **services**. Therefore, a transaction in securities, is not a supply in GST and hence not taxable. Section 17(2) *ibid*, restricts allowance of input tax credit of goods or services or both to the extent of expenses attributable to taxable supplies. Therefore, any tax paid on goods or services or both used for transaction in securities, which is not even a supply under GST, is not allowed as input tax credit. Further, as per Section 17(3), the value of transaction in securities is included in the value of exempt supply. Thus, the intention of the legislature is to not allow the input tax credit of the various costs incurred in the transaction of securities. On reading Section 17(5)(d), *ibid*, we are further fortified in our view that all costs incurred for the furtherance of the business is not eligible for credit, as the said Section restricts input tax credit on goods or services or both received by a taxable person for construction of an immovable property, even if they are used in the course of furtherance of business. Therefore, we do not find any merit in the argument that the ITC on the expenses like professional fees, legal expenses, consultancy charges, etc., relating to buy back of shares, if used in the course of furtherance of business, should be allowed. We are firmly of the view that the argument that the activities are in the course of furtherance of business is wholly irrelevant to decide the availability of ITC if the activities are in relation to transaction in securities. Hence, we don't find it worthwhile to go into the issue of whether or not the activities, relevant in this case, are in the course of furtherance of business.

⁸ 2019 (13) SCC 403



18. In view of the foregoing, we concur with the ruling of the GAAR holding that the appellant is not eligible to avail ITC involved in the expenditure incurred for buy back of its shares.

Reversal of ITC on common inputs

19. Now, as far as reversal of the ITC attributable to the common expenses is concerned, as discussed *supra*, 'securities' are excluded from the definition of **goods & services**. Therefore, they stand excluded even from the ambit of exempt supply [u/s 2(47)] and non-taxable supply [u/s 2(78)]. However, section 17(3) of the CGST Act, 2017, states as under:

*(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, **and 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.*

¹*[Explanation.- For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, ⁴except,-*

(i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and

(ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule.];]

[emphasis supplied]

Likewise, the explanation at the end of Chapter V of the Central Goods and Services Tax Rules, 2017, which deals with ITC states as follows:

Explanation. - *For the purposes of this Chapter,-*

(1) the expressions "capital goods" shall include "plant and machinery" as defined in the Explanation to section 17;

(2) for determining the value of an exempt supply as referred to in sub-section (3) of section 17-

(a) the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty; and

*(b) **the value of security shall be taken as one per cent of the sale value of such security.***

[emphasis supplied]

20. A conjoint reading of the above reveals that the averment of the appellant that there is no requirement to reverse ITC of tax paid on common inputs & input services, in relation to buy back of shares, is not legally tenable owing to the deeming fiction which forms a part of section 17(3), *ibid*, via an inclusion clause.

21. The appellant has finally relied upon some case laws to substantiate his averments *viz*



(a) ***Punjab State Industrial Development Corporation Ltd [1997 (93) Taxman 5/225 ITR 792 (SC)].***

The question involved in this case before the Hon'ble Supreme Court was whether the amount paid to the Registrar of Companies, as filing fee for enhancement of capital was revenue expenditure or otherwise. The reference was made to the Hon'ble Court by the Tribunal on account of divergent view of various High Courts, some holding it as capital expenditure and others as revenue expenditure. The Hon'ble Supreme Court affirmed that "*the fee paid to the Registrar for expansion of the capital base of the company was directly related to the capital expenditure incurred by the company and although incidentally that would certainly help in the business of the company and may also help in profit-making, it still retains the character of a capital expenditure since the expenditure was directly related to the expansion of the capital base of the company.*"

(b) ***Brooke Bond India Ltd [1997 (91) Taxman 26/225 ITR 798 (SC)].***

The question involved in this case before the Hon'ble Supreme Court was whether the ITAT was right in sustaining the disallowance of Rs. 13,99,305/- being expenses incurred in connection with the issue of fresh lot of shares in 1967. The Supreme Court relying on the aforementioned case of Punjab State Industrial Development Corporation Ltd held that it is a capital expenditure.

(c) ***M/s. Kernex Microsystems (India) Ltd [2016 (42) STR (Tri-Bang)].***


The issue involved in this case was denial of CENVAT credit for the input services viz. advertisement, DVD film production, campaigning in electronic and print media etc. which were used for collecting capital through IPO by the appellant. The IPO was to collect the capital for expansion & creation of manufacturing facilities. The Hon'ble Tribunal held that the definition of input services under Rule 2(l) of the CENVAT Credit Rules, 2004, was very wide and clear; that all the input services which are used "directly or indirectly, in or in relation to the manufacture of the final products" would be eligible; that the definition of 'input service' also included input services used in relation to setting up of a factory and specifically mentions advertisement or sales promotion, activities relating to business, financing and so on.

In the first two cases pertaining to the Income Tax Act, the dispute was whether an expenditure was a capital expenditure or a revenue expenditure. While holding that the expense made led to expansion of the capital base and would help the business and may also help in profit making, the Hon'ble Court ruled that it was a capital expenditure. In the case of *M/s. Kernex Microsystems (India) Ltd.*, it was held that the IPO was used to collect the capital expansion and creation of manufacturing activities. We have already held that even if the said expenses are related to furtherance of business, the ITC would not be available as the securities are neither goods nor services. Therefore, these case laws, which primarily deal with credit of tax paid on activities related to furtherance of business, will not help the appellant's cause.




In none of the above cases were the courts/Tribunal dealing with a situation where there was specific statutory exclusion of such activities from the ambit of input tax credit.

22. In view of the above findings, we reject the appeal filed by appellant M/s. Gujarat Narmada Valley Fertilizers & Chemicals Ltd., against the Advance Ruling No. GUJ/GAAR/R/2025/11, dated 25.03.2025 of the Gujarat Authority for Advance Ruling.


(Rajeev Topno)
Member [SGST]

Place: Ahmedabad
Date: 22/09/2025




(Sunil Kumar Mall)
Member [CGST]