Western Concessions Private Limited (Appellant); Respondent: Asstt. Commissioner of CGST, Division-III, Navi Mumbai

Appellate Authority for Advance Ruling — Maharashtra

ORDER NO. MAH/AAAR/SS-RJ/09/2019-20 Date- 07.10.2019 Dated **07.10.2019**

Q Questions Before the Authority

- Whether the Floating Storage Re-gasification Unit (FSRU), where re-gasification of LNG is carried out for delivery to the National Grid, is a 'factory' or otherwise.
- If the FSRU is a factory, whether the tie-in pipeline connecting the FSRU to the National Grid is a pipeline laid outside the factory premises, so as to be excluded from 'plant and machinery' under the Explanation to Section 17(5).
- Whether the appellant is entitled to take input tax credit (ITC) of GST paid on goods and services used for construction of the tie-in pipeline from the FSRU to the National Grid, given Section 17(5)(c) and 17(5)(d) of the CGST Act, 2017.

F Facts

The appellant, which regasifies LNG and delivers it to customers, is setting up an LNG terminal at Jaigarh port with a Floating Storage Re-gasification Unit (FSRU) of 4 MMTPA capacity moored to a jetty. A tie-in pipeline of about 60 km, to be laid underground, is being built to carry the re-gasified high-pressure gas from the FSRU to the National Grid. The appellant claims ITC on goods and services used to construct that pipeline.

H Ruling

ITC on goods and services used to construct the FSRU-to-National Grid tie-in pipeline	**Not entitled to ITC**	Based on the FSRU being a factory and the pipeline being outside factory premises, so the pipeline is not plant and machinery and the Section 17(5)(c) and (d) bar applies. No rate or HSN is involved.

The Appellate Authority modified the Advance Ruling. It held that the FSRU is a factory, and that the tie-in pipeline is a pipeline laid outside factory premises, so it falls within the exclusion in the Explanation to Section 17(5) and is not 'plant and machinery'. Accordingly, the appellant is **not entitled** to ITC on goods and services used for constructing the tie-in pipeline, because the restrictions in Section 17(5)(c) and 17(5)(d) apply.

R Reasoning

The Authority noted that 'factory' is not defined in the CGST Act and rejected the Advance Ruling's reliance on the Factories Act, 1948, citing the Supreme Court's caution against importing definitions from other statutes (M/s Msco). It instead applied dictionary meanings of 'building', 'establishment' and 'premises', and concluded that the FSRU, where manufacturing (re-gasification) takes place, is a factory, relying on contextual reading of 'premises'

alongside 'factory'. It then held that the tie-in pipeline, which joins the FSRU to the grid, is laid outside factory premises. Under the Explanation to Section 17(5), that excludes it from 'plant and machinery', so the Section 17(5)(c) and (d) restrictions on immovable property construction apply. The Authority said it did not rely on the appellant's other case law.

P Provisions Relied On

- Section 16(1) of the CGST Act, 2017
- Section 17(5)(c) of the CGST Act, 2017
- Section 17(5)(d) of the CGST Act, 2017
- Explanation to Section 17(5) of the CGST Act, 2017 (definition of 'plant and machinery', exclusion (iii) pipelines laid outside th…
- Section 101 of the CGST Act, 2017 (appellate order and 90-day timeline, cited as the reason the personal hearing could not b…
- Section 2(m) of the Factories Act, 1948 (considered by the Advance Ruling and rejected by this Authority)

! For the Practitioner

A practitioner advising on ITC for LNG terminals, FSRUs or similar offshore or port infrastructure should note that this order treats an FSRU as a factory and denies ITC on a grid-connecting pipeline laid outside it. The order is a state-level appellate ruling and does not bind other authorities. It does not decide the position where no factory premises exist, nor the treatment of pipelines inside a factory. The reasoning rests on dictionary meanings, so a challenge before higher forums remains open, and the order should be read in full before relying on it.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> mh_aaar_ss-rj_09_2019_07.10.2019.pdf

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