Western Concessions Private Limited (formerly known as H-Energy Gateway Private Limited)

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-94/2018-19/B-22, Mumbai, dt. 22/02/2019 (order number an… Dated **22.02.2019**

Q Questions Before the Authority

- Whether the applicants are eligible to avail ITC of GST paid on goods and services used for construction of Tie-in pipeline, for delivery of re-gasified LNG from FSRU to the National Grid.

F Facts

The applicant regasifies LNG at Jaigarh port, Maharashtra, using a Floating Storage Regasification Unit (FSRU) moored to a jetty. It is building a tie-in pipeline of about 60 km, laid underground, to carry the re-gasified natural gas from the FSRU terminal to the National Grid. The applicant argued that the pipeline is plant and machinery, and so not blocked by section 17(5)(c) and (d), because the FSRU is not a factory and the pipeline therefore is not laid outside a factory.

H Ruling

ITC on goods and services used for construction of the Tie-in pipeline (FSRU to National Grid)	**Not eligible**	The pipeline is laid outside the factory premises (the FSRU treated as a factory), so it is not plant and machinery and section 17(5)(c) and (d) applies.

The authority held that the applicant is **not eligible** to avail ITC on goods and services used to construct the tie-in pipeline. It treated the FSRU as a factory and the pipeline as laid outside the factory premises, so the pipeline falls within the exclusion in Explanation (iii) to section 17 and is not plant and machinery. The section 17(5)(c) and (d) bar therefore applies.

R Reasoning

The authority found that the FSRU is a factory under section 2(m) of the Factories Act, 1948, which it applied because the GST Act has no definition of factory. It reasoned that manufacture takes place on the vessel when LNG is regasified, and that dictionary definitions of 'factory ship' support this. Since the pipeline carries the output from that factory to the end user, it is laid outside the factory premises. The authority also rejected the argument that the pipeline's valves, meters and other fittings make it apparatus, equipment or machinery, holding that a pipeline described as a pipeline cannot be recast as machinery. Section 17(5)(c) and (d) therefore bars the credit.

P Provisions Relied On

Section 16(1) of the CGST Act	Section 17(5)(c) and (d) of the CGST Act

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

Explanation to Section 17 (definition of 'plant and machinery'), clause (iii) on pipelines laid outside the factory premises

Section 2(m) of the Factories Act, 1948 (applied to define 'factory')

Porritts and Spencer (Asia) Ltd v. State of Haryana, AIR 1979 SC 300 (cited on the evolving meaning of terms)

! For the Practitioner

This ruling is useful for practitioners advising on ITC for pipelines linked to floating regasification or other offshore facilities, as it shows the authority's view that a floating unit can be a factory for the section 17 exclusion. It settles that a pipeline carrying output from such a unit to the grid falls within the 'outside the factory premises' exclusion. It does not decide the position for land-based terminals, for pipelines inside a factory boundary, or for other taxpayers, and it is an advance ruling binding on the applicant. The order itself notes that an appeal lies before the Maharashtra Appellate Authority for Advance Ruling.

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 -> ara_order_94_2018_maharashtra_h_egpl.pdf

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Pune (HQ)
RTC Silver, B4-708, Sai Satyam Park, Wagholi, Pune, Maharashtra 412207

Mumbai
104, Rajshila Building, 597 J.S.S. Road, Marine Lines, Mumbai 400002

Delhi
3rd Floor, B-6/154-155, Sector 5, Rohini, Delhi 110085

Gurugram
Pioneer Urban Square, B109, Golf Course Ext Road, Sector 62, Gurugram…

Ahmedabad
Phoenix Tower, 1107, near Commerce Six Road, Drive In Road, Navrangp…

Talk to us: **+91 94594 56700** | sales@patronaccounting.com | patronaccounting.com