

IMPORTANT GST UPDATES



Issued in case of Colourband Dyestuff by Gujarat Authority for Advance Ruling
GUJ/GAAR/R/2023/19 | Date: 12-05-2023

Ruling

Gujarat AAR ruled that ITC is applicable for the foundation and structural supports as they are included in the definition of plant and machinery.

Observations & Findings

The applicant, Colourband Dyestuff P Ltd, is registered under GST and engaged in the manufacturing of dyes. They procure intermediate raw materials and process them into finished dyes using various machinery. The company is expanding and has acquired new land to set up a factory. The applicant seeks a ruling on the eligibility of Input Tax Credit (ITC) for:

- 1) Works Contract Services (WCS) used for the structure on which machinery is fixed to the foundation, as well as services used for setting up the plant, including the MS steel structure and roof designed to protect the machinery supported by the foundation.
- 2) Steel (TMT bar) procured and used in conjunction with works contract services for constructing the foundation that connects the machinery to the earth.

The applicant argues that they are eligible for ITC based on the premise that the structure and building are distinct from the foundation. They contend that the foundation is specifically constructed to support the plant and machinery (P&M) and other equipment, with the intention of making the plant immovable. According to the applicant, the foundation does not constitute immovable property.

Section 17(5) of the CGST Act, 2017, states that ITC is not available for works contract services supplied for the construction of an immovable property, except for plant and machinery. It further explains that "construction" includes reconstruction, renovation, additions, alterations, or repairs to the immovable property. The definition of "plant and machinery" includes apparatus, equipment, and machinery fixed to earth with foundation or structural support, but excludes land, building, civil structures, telecommunication towers, and pipelines outside the factory premises.

After examining the applicant's contention and supporting documents, the AAR ruled that:

- ITC is eligible for WCS taken for the structure on which machinery is fixed to the earth by foundation, as well as services taken for setting up the plant's MS steel structure.
- ITC is not eligible on the structure or shed erected on the left side of the Sand mill and spray dryer, as well as the ITC on the structure or shed (including the roof and its supports). Additionally, ITC for the foundation and support structure related to the Effluent Treatment Plant (ETP) and Transformer is blocked.
- ITC is eligible for the steel (TMT bar) procured by the applicant company and used in conjunction with WCS for constructing the foundation to fix the machinery to the earth.