

IMPORTANT GST UPDATES



Issued in case of M/s Bayer Vapi Private Limited by AAR, Gujarat
GUJ/GAAR/R/2023/29 | Date: 24-08-2023

Ruling

Transferee acquiring the rights of the lease for construction of the immovable property is not entitled to take ITC of the GST paid by them on the services received by the Transferor by way of the lease.

Observations & Findings

M/s Bayer Vapi Private Limited, the applicant is engaged in chemical manufacturing for agricultural and health applications. It has entered into an MOU with M/s Vapi Enterprises Ltd. to acquire lease rights for land owned by the Gujarat Industrial Development Corporation. This land was intended for expanding their manufacturing facility.

The company sought clarification from the AAR, Gujarat, regarding their eligibility for Input Tax Credit (ITC) on GST paid for lease-related services for their manufacturing facility expansion.

In response to this query, the AAR, Gujarat, referenced Section 17(5)(d) of the Central Goods and Services Tax Act (CGST Act). This section specifies that a registered person cannot avail of ITC on GST paid for goods and services related to the construction of immovable property, excluding plant and machinery, even if such goods and services are used for business purposes.

Furthermore, the AAR noted a precedent set by the Gujarat Authority for Advance Ruling in a previous case (IN RE: M/S. GACL NALCO ALKALIES & CHEMICAL PVT. LTD. - 2021) that emphasized the legislative intent that ITC should not be available for services related to land when used in the construction of immovable property, irrespective of their use in the course or furtherance of business.

Based on these interpretations and the evidence provided in the application and MOU, which indicated that M/s Bayer Vapi's intent was to acquire leasehold land for industrial purposes adjoining their manufacturing plant, the AAR, Gujarat, ruled that Bayer Vapi Private Limited was not entitled to claim ITC on the GST paid for services provided by Vapi Enterprises in the form of lease rights to the land, as per the provisions of Section 17(5)(d) of the CGST Act.