

ITC on construction of water storage and effluent storage tank eligible, applying functionality test

M/s Nitta Gelatin India Ltd.¹

The Kerala Authority for Advance Ruling ('AAR') has held that Input Tax Credit ('ITC') is admissible on GST paid on goods and services used for construction of a freshwater storage tank and effluent storage tank. The AAR ruled that these structures are not passive civil structures but are integral part of the Applicant's manufacturing process and, though constructed using civil elements, qualify as "plant and machinery" in terms of Explanation to Section 17(5) of the Central Goods and Services Tax Act, 2017 ('CGST Act'). Accordingly, the restrictions under Section 17(5)(c) and 17(5)(d) do not apply.

Facts of the case:

- M/s Nitta Gelatin India Ltd. ('the Applicant'), is engaged in the manufacture of gelatin from Ossein (derived from animal bones).
- The Applicant plans to construct a freshwater storage tank and effluent storage tank for maintaining proper water storage and effluent storage capacity, respectively.
- These assets are proposed to be capitalized as "plant and machinery" in the books of accounts.

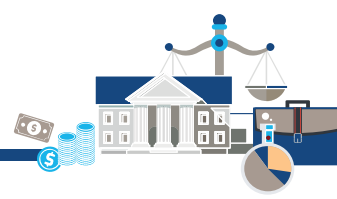
- The Applicant sought an Advance Ruling to confirm whether ITC is eligible on goods and services used in the construction of these structures.

Contentions of the Applicant:

- The processing plant's effluent requires treatment and discharge as per Pollution Control Board norms.
- The Applicant referred the Explanation to Section 17(5), which define the term "plant and machinery" and contended that both the structures are not merely civil structures excluded from the definition of 'plant and machinery' but essential and inseparable components of the Applicant's manufacturing process. Therefore, both the structures qualify as 'plant and machinery' used in manufacturing process.
- Accordingly, the restriction under Section 17(5)(c) and 17(5)(d) does not apply.
- The Applicant also placed reliance on the advance ruling in the case of *SHV Energy Pvt. Ltd., Tamil Nadu AAR*², which allowed ITC on

¹ 2025 (7) TMI 1181

² 2021 (4) TMI 882



fire water reservoir when capitalized as ‘plant and machinery’.

Observations and Ruling of AAR:

- Explanation to Section 17(5) defines the terms “plant and machinery” to means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports. However, the definition expressly excludes land, buildings, and other civil structures.
- Perusal of above definition suggests that even though something may be immovable property in the ordinary sense (being fixed to the earth), if it qualifies as “plant and machinery” ITC on its construction is not restricted Section 17(5)(c) and 17(5)(d).
- In the present case, freshwater tank and the effluent guard pond ensure uninterrupted availability of water required for the production process, while also assisting in meeting environmental compliance.
- These structures are not administrative buildings or ornamental constructions. These serve as dedicated and essential production-related functions.
- Though constructed using concrete and steel, the tanks are not mere civil structures, but functional apparatus akin to large equipment used in fluid storage and waste treatment.
- Given the functional role of both the tanks in manufacturing process and the fact that both structures were capitalized as plant and machinery in the books, the said structures squarely fall under the definition of ‘plant and machinery’.
- Further, to determine whether both the structures fall under the ‘civil structures’

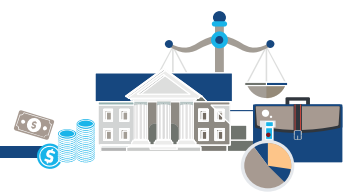
excluded from definition of plant and machinery, the AAR referred to Supreme Court’s judgment in *Safari Retreats Pvt. Ltd*³, emphasizing that the classification of an asset must be based not merely on its form or structural characteristics, but on its functional role in the taxpayer’s business.

- On applying the “functionality test,” the AAR held that both the tanks serve indispensable roles in manufacturing process and are not merely passive civil structures. Therefore, both the tanks qualify to be plant and machinery and the restriction under Section 17(5)(c) and (d) not attracted.
- In view of the above, the AAR confirmed the eligibility of ITC on construction of freshwater storage tank and effluent storage tank subject to capitalization in the books of accounts and integral use in manufacturing operations.

Dhruva Comments

This ruling is based on the foundational principle that the functional characterization prevails over form while evaluating whether a structure qualifies as civil structure or as part of plant and machinery. The AAR has distinguished manufacturing process-integrated structures from civil structures, thereby supporting the eligibility of ITC on civil structures, like, storage tanks, and effluent treatment facilities, when used directly in the manufacturing process. Taxpayers should, however, exercise caution and ensure proper documentation and capitalization of such assets in their books of accounts. They should also maintain evidence of the functional necessity of such structures in the manufacturing process to substantiate ITC claims.

³ 2024 (10) TMI 286



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