

AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32,
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI - 600 003.
PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.

Members present are:

1. Shri T.G.Venkatesh, I.R.S., Additional Commissioner/Member,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -34
2. Tmt. K.Latha., M.Sc., (Agri), Joint Commissioner (ST)/ Member,
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-3.

ORDER No.32/AAR/2022 DATED: 29.07.2022

GSTIN Number, if any / User id		33AAACE9013G2Z1
Legal Name of Applicant		KAMARAJAR PORT LIMITED
Registered Address/Address provided while obtaining user id		17, Jawahar Building, 2 nd Floor North Wing, 3 rd Floor, Rajaji Salai, Chennai. 600 001.
Details of Application		GST ARA- 01 Application Sl.No.16/2022/ARA dated: 06.04.2022
Concerned Officer		Centre: Chennai North Commissionerate State: Large Tax Payers Unit (LTU)
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Supply of services
B	Description (in Brief)	Kamarajar Port Limited, a CPSE under the Ministry of Ports, Shipping & Waterways, Government of India. Kamarajar Port functions on the "Landlord Port Model" basis whereby the Port provides the basic infrastructure facilities like breakwaters, Capital dredging, maintenance of port channels, dredged basin/channel, road and rail infrastructure for connectivity to hinterland, aids to navigation, firefighting facilities, utilities, water and power supply and manage the resources apart from regulatory functions and

	overall Port planning & development. Operating functions such as planning, safety, pilotage, mooring, navigation and overall coordination are done by the Port.
Issue/s on which advance ruling required	Admissibility of input tax credit of tax paid or deemed to have been paid.
Question(s) on which advance ruling is required	Whether input tax credit can be claimed on upfront lease premium paid? If the answer is affirmative, in what manner the input tax credit can be availed?

Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

Tvl. KAMARAJAR PORT LIMITED, 17, Jawahar Building, 2nd Floor North Wing, 3rd Floor, Rajaji Salai, Chennai. 600 001 (hereinafter called the Applicant or KPL) are registered under GST with GSTIN 33AAACE9013G2Z1. The applicant has sought Advance Ruling on the following questions:

Whether input tax credit can be claimed on upfront lease premium paid? If the answer is affirmative, in what manner the input tax credit can be availed?

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The applicant has stated that the Chennai Port Trust has allotted covered space to an extent of 267 sq.m at Ground floor – North wing of Jawahar building on Upfront Premium for Long Term Lease Basis to the applicant till 31.08.2045 from the

2.1 The applicant has stated that the Chennai Port Trust has allotted covered space to an extent of 267 sq.m at Ground floor – North wing of Jawahar building on Upfront Premium for Long Term Lease Basis to the applicant till 31.08.2045 from the date of handing over of the premises by Chennai Port Trust. The space is intended to be used by the applicant as an extended corporate office. The prevailing rate as per Schedule of Rates for the above building premises at Rajaji Salai is Rs. 740/- (for January 2021) per Sq.m per month or part thereof which is arrived after effecting the compoundable annual escalation of 5% on every year basis. The Details of the allotment and Upfront premium calculation are as below:-

The Chennai Port Trust has allotted the covered space to an extent of 267 sq.m at Jawahar building (Ground floor) till 31.08.2045 for Kamarajar Port Limited's Extension of corporate office, subject to the following conditions:

i) The lease rent is fixed as Rs. 740/- per sq.m per month or part thereof and inform the KPL to pay the Provisional Upfront amount of Rs.6,84,28,627/- (Rupees Six Crores eighty-four lakhs twenty-eight thousand six hundred and twenty-seven only) (including SD & GST). The detailed breakup of lease rent on upfront mode is furnished below:

i)	267 sq.m – Total Lease rent on Upfront mode calculated Upto 31.08.2045	Rs. 5,39,21,553.00
ii)	GST @ 18% (for the upfront premium)(CGST 9% and SGST 9%)	Rs. 97,05,880.00
iii)	Security Deposit – 2 years annual lease rent (refundable)	Rs. 48,01,194.00
	Total	Rs. 6,84,28,627.00

The above payment to Chennai Port Trust was made on 12.08.2021 against the invoice number R/07/202104/10 Dt.30.07.2021.

2.2 On interpretation of law, the applicant has stated that the contract is a simple lease contract of building and does not construe to any construction activity and hence the credit should not be blocked and should be available to them.

3.1 The applicant was addressed to seek their willingness to participate in the hearing in digital mode and the applicant consented. The hearing was held in digital platform on 06.04.2022. The Authorised representatives (AR) Shri V.Balaji, Sr.Manager and Shri R.Sudarshan. The AR stated that Chennai Port Trust had raised invoices for the upfront premium in July 2021 and they had paid the same along with the GST in August 2021. He also stated that the GST paid has not been availed as

credit. The State Member stated that AC(LTU), State Jurisdictional officer has reported that there are pending proceedings in the case of the applicant and required the applicant to furnish details of the proceedings viz., notices issued by the Department and their reply with the current status. The Centre Member asked them to furnish a write up on the accounting of the upfront premium paid i.e, whether the same is accounted as capital cost or otherwise, substantiating with the documentation proof.

3.2 In furtherance to hearing held on 29.04.2022, the applicant submitted the following details/documents vide their letter dated 30.05.2022.

➤ **Accounting Treatment for the lease transaction:**

Indian Accounting Standard 116 applies to leases of Property, Plant and Equipment and other assets. A contract is, or contains, a lease if the contract conveys the right to control the use of an identified asset for a period of time in exchange of consideration. Indian Accounting Standard 116 "Leases" requires a lessee to recognize a right-of-Use (ROU) asset representing its right to use the underlying asset and a lease liability representing its obligation to make lease payments. KPL shall recognize the ROU Asset and the lease liability as follows:

➤ **Right of Use Asset:**

1. As per the initial measurement criteria, ROU Asset that has to be capitalized amounts to Rs.5,39,21,553/- including initial direct cost, if any, incurred by KPL.
2. Subsequently, the carrying amount of the ROU Asset shall be measured by applying cost model complying with the depreciation requirements as per Ind AS 16 "Property, Plant and Equipment" by depreciating the asset over its useful life of 25 years being the period of lease Term.

➤ **Lease Liability:**

- 1.The lease liability shall initially be measured at the present value of lease payments which is being discounted using the RBI Index of April 2021 at 5.96% amounting to Rs. 5,39,21,553/-.
2. Subsequently, the carrying amount of lease liability shall be increased by the interest component at 5.96% and reduced by the lease payments made every year. The said interest component shall be recognized in the Profit and Loss Statement of the company over the lease term.

➤ **Security Deposit**

Security Deposit of Rs.48,01,194/- (Two years annual lease rent) being refundable in nature shall be treated as a non-current Asset as per Indian Accounting Standard 1 "Presentation of Financial Statements".

The applicant has furnished the Amortisation Schedule of Lease liability for the lease term period from 01.08.2021 to 31.08.2045

Further, in respect of the status of pending scrutiny proceedings the applicant has submitted that several discrepancies were observed by the Department during Scrutiny of assessment of the returns filed by them for the FY 2018-19, the discrepancies were notified to them vide GST ASMT-10 and the applicant has filed a written submission on 05.01.2022 vide GST ASMT-11 clarifying the differences observed by the GST Department, however, no order has been passed with regard to the scrutiny proceedings till date. The applicant has submitted that the above said proceedings have no bearing to the transaction for which the application for advance ruling has been filed and the said transaction has taken place in the month of July 2021 pertaining to FY 2021-22.

4. The State Jurisdictional Authority, Deputy Commissioner(ST) – IV, Large Taxpayers Unit, who has the administrative jurisdiction over the applicant vide his letter dated 12.07.2022, informed that no specific proceedings is pending for adjudication in respect to the above tax payer Tvl. Kamaraj Port Limited relating to the issue of upfront lease premium paid to the Chennai Port Trust and has submitted the following remarks:

➤ Sections 16 to 19 of the CGST Act, 2017 contain the provisions relating to allowance of Input Tax Credit subject to the conditions stipulated there under. Sec. 16(1) allows every registered person to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business subject to such conditions and restrictions as may be prescribed.

➤ Sec. 17(5) of the Act lists the circumstances wherein input tax credit in r/o goods/services shall not be available. At this juncture, it is relevant to refer to clause (d) Sec. 17(5)(d) which is reproduced hereunder:

“ (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.”

In the instant case, the applicant has paid tax of Rs.97,05,880/- for the upfront premium for long term lease to Chennai Port Trust for covered space which is to be utilized for the accommodation of Record / Documentation Room. In view of the above Section 17 (5) (d) read with Section 16(1) of the TNGST Act, 2017, the said GST paid is an one time payment wherein there is no inference for the furtherance of

business . Tvl. Kamaraj Port Limited is found to be the ultimate user and hence the input tax credit availed on upfront premium for long term lease is ineligible under Section 17 (5) (d) read with Section 16(1) of the TNGST Act ,2017.

5. The Central Jurisdictional Authority Chennai North Commissionerate has not offered any remarks on the questions raised by the applicant in the Advance Ruling Application. Hence, it is construed that there is no proceedings pending on the questions raised by the applicant in the Advance Ruling Application

6. We have carefully examined the statement of facts, supporting documents filed by the Applicant along with application, submissions made at the time of Virtual hearing and thereafter the comments of the State Jurisdictional Authority. It is seen that the Chennai Port Trust has allotted the covered space to an extent of 267 sq.m at Jawahar building (Ground floor) till 31.08.2045 for Kamarajar Port Limited's Extension of corporate office on lease and the lease rent is fixed as Rs.740/- per sq.m per month or part thereof and has informed the KPL to pay the Provisional Upfront amount of Rs. 6,84,28,627/- (Rupees Six Crores eighty-four lakhs twenty-eight thousand six hundred and twenty-seven only) (including Security Deposit & GST). The applicant is before us seeking ruling on the following question:

Whether input tax credit can be claimed on upfront lease premium paid? If the answer is affirmative, in what manner the input tax credit can be availed?

6.1 During the virtual hearing it was observed that AC(LTU), the State Jurisdictional officer has reported that there are pending proceedings in the case of applicant. However while offering specific remarks on the question raised by the Applicant, the State Jurisdictional Authority has informed that there is no specific proceedings pending for Adjudication in respect of the applicant relating to the issue of upfront premium paid to the Chennai Port Trust which is detailed in para 4 supra and therefore, the application is admissible subject to the issues falling under the ambit of this Authority.

6.2 The first part of the question raised is on the admissibility of credit of input tax paid on the services received by the applicant which is found to be within the purview of the section 97(2) of the Act and admitted for consideration. The second part of the question is on the manner in which input tax credit can be availed if found eligible

which is procedural and the same is not within the ambit of this Authority as it is not within the purview of Section 97(2) of the CGST Act 2017 and hence not admitted.

7.1 From the submissions before us it is seen that the applicant is allotted a covered space of 267 sq.mt by Chennai Port Trust at Ground floor, North wing of Jawahar building vide Allotment Order No. LBS1/992/2020/E dated 27.04.2021 of Chennai Port Trust, for the purposes of accommodation of Record/Documentation Room till 31.08.2045 from the date of actual handing over of the premises by Chennai Port Trust subject to the following conditions:

i) The lease rent is fixed as Rs. 740/- per sq.m per month or part thereof and inform the KPL to pay the Provisional Upfront amount of Rs. 6,84,28,627/- (Rupees Six Crores eighty-four lakhs twenty-eight thousand six hundred and twenty-seven only) (including SD & GST). The payment to Chennai Port Trust was made on 12.08.2021 against the invoice number R/07/202104/10 Dt.30.07.2021.

7.2 The detailed breakup of lease rent on upfront mode is furnished below:

i)	267 sq.m – Total Lease rent on Upfront mode calculated Upto 31.08.2045	Rs. 5,39,21,553.00
ii)	GST @ 18% (for the upfront premium)(CGST 9% and SGST 9%)	Rs. 97,05,880.00
iii)	Security Deposit – 2 years annual lease rent (refundable)	Rs. 48,01,194.00
	Total	Rs. 6,84,28,627.00

7.3 The Applicant has contended that the contract is a simple lease contract of building and does not construe to any construction activity and hence the credit should not be blocked.

8.1 Before proceeding further, the statutory provisions related to Input Tax Credit are examined as under:

Section 16. Eligibility and conditions for taking input tax credit.-

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation.-For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

From the above provision it is evident that as per Section 16(1), a registered person is entitled to take credit of Input Tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business. Section 16(2) provides that such person will be eligible for such credit only when he is in possession of a tax invoice, has received the goods or services, paid the tax charged on such supply and has furnished the returns. Section 16(3) provides that if depreciation is claimed the ITC on the said tax component is not available. In the instant case the applicant has been allotted space by Chennai Port Trust vide Allotment Order No. LBS1/992/2020/E dated 27.04.2021 that is intended to be used by them as an extended corporate office for the accommodation of Record/Documentation Room till 31.08.2045 and in respect of the Right of use of the Asset the applicant has stated that ROU Asset that has to be capitalized, amounts to Rs.5,39,21,553/- including the initial direct cost, if any incurred by them. It is seen from the tax invoice furnished by the applicant that the license fee paid amounts to Rs.5,39,21,553/- which is the taxable value and GST is levied only on the taxable value. Thus on reading of the above statute and applying to the case at hand it is seen

that input tax credit can be claimed on the upfront lease premium which is paid for the allotted covered space used as an extended corporate office as it is in the course of business.

8.2 The State Jurisdictional authority has stated that input tax credit is ineligible in the instant case under Section 17(5) (d) of the CGST Act, 2017. The relevant provisions of the Section is extracted below:

17 (5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.-For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;


From the above provisions it is seen that in respect of immovable property the Credit of tax paid on goods or services received on own account, for construction of immovable property is available only when such immovable property is a 'Plant and Machinery'. In the instant case the contract is a lease contract of the built-building for use as an extended corporate office for accommodation of record & as documentation room and it is for the business purpose of the applicant. The lease allotment letter do not spell of lease for any construction activity on the closed space leased for business purposes. Hence, the upfront premium made is the lease rentals as per the allotment order/letter of Chennai Port Trusts and it is nothing but lease rentals paid for the services of 'Renting of Immovable property' for business purpose. From the material on record, we observe that the upfront premium paid is not related to any construction activity of such covered space but against the rental value for the period of rent calculated for the period of lease and collected upfront. Thus, provisions of Section 17(5) (d) is not applicable to the instant case.

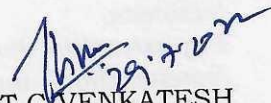
9. To sum up, the issue relates to the eligibility to ITC of Tax paid on the upfront lease rent paid by the applicant which is consideration towards the space rented by them from Chennai Port Trust. As discussed above the provisions of Section 17(5)(d) is not attracted to the activity of 'renting Immovable Property Services'. Therefore, the credit of tax paid on the upfront lease rent by the applicant is available subject to fulfillment of other conditions set out under Section 16 of the Act

10. In view of the above, we rule as under:

RULING

1. The tax paid on the Upfront Lease Premium is available as Input Tax Credit to the applicant subject to provisions of Section 16 and 17 of the CGST/TNGST Act 2017.
2. The question on the manner in which Input Tax Credit can be availed, being procedural not admitted/answered.


Smt. K.LATHA
Member (SGST)


Shri.T.G.VENKATESH
Member (CGST)



To
KAMARAJAR PORT LIMITED
17, Jawahar Building,
2nd Floor North Wing, 3rd Floor, Rajaji Salai,
Chennai. 600 001. **// BY SPEED POST WITH ACK.DUE //**

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Principal Secretary/Commissioner of Commercial Taxes/Member,
IIndFloor, Ezhilagam, Chepauk, Chennai - 600 005.

Copy to:

3. The Principal Commissioner of GST & Central Excise,
North Commissionerate, 26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai-600034.
4. The Assistant Commissioner(ST),
LTU (Large Tax Payers Unit) Integrated Commercial Taxes & Registration
Department, South Tower, Government Farm Building,
Nandanam, Chennai - 600 035.
5. Master File/ Spare - 2.