TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Constituted under Section 99 of Tamil Nadu Goods and Services Tax Act 2017)

RC. No. 15/2025/A2 Date :18.03.2026

BEFORE THE BENCH OF

Shri. Madan Mohan Singh, I.R.S., Principal Chief Commissioner of GST & Central Excise, Member, Appellate Authority for Advance Ruling, Tamil Nadu. Nungambakkam, Chennai - 600 034	Shri. S. Nagarajan, I.A.S., Commissioner of Commercial Taxes, Member, Appellate Authority for Advance Ruling, Tamil Nadu. Chepauk, Chennai – 600 005.

Order-in-Appeal No. AAAR/04/2026 (AR)

(Passed by Tamil Nadu State Appellate Authority for Advance Ruling under Section 101(1) of the Tamil Nadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamil Nadu Goods & Services Tax Act 2017 ("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the Order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.
2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only
(a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling;
(b) on the concerned officer or the jurisdictional officer in respect of the appellant.
3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.
4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

Name and address of the Appellant	M/s. Inox Air Products Private Limited 66-1A1B2B1B 1A1A2, Manali Express Highway, Sathangadu, Tiruvallur, Tamil Nadu, 600068
GSTIN or User ID	33AAACI5569D1ZR
Advance Ruling Order against which appeal is filed	Advance Ruling No.25/ARA/2021 dated 30.07.2021.
Date of filing appeal	28.11.2025
Represented by	Mr. Supreme Kothari, Advocate and Ms. Mallows Priscilla, Advocate, M/s.Economic Laws Practice (Advocates and Solicitors) Authorised Representatives of Appellant
Jurisdictional Authority - State	Division - TIRUVALLUR Zone - TIRUVALLUR Circle - MANALI
Jurisdictional Authority – Center	Commissionerate - CHENNAI-NORTH Division - THIRUVOTTIYUR Range - RANGE V
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	The Appellent had already paid Rs. 20,000/- vide CIN HDFC21093300051389 dated 8.9.2021 while filing the original Appeal. (This Appeal is by way of Order dated 8.4.2025 of the Hon'ble High Court of Madras in WP No. 9952 & 9956 of 2022, wherein the case has been remanded for De Novo consideration.)

At the outset, we would like to make it clear that the provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services Tax Act are in *pari materia* and have the same provisions in like matter and differ from each other only on few specific provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Services Tax Act, 2017 would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act, 2017.

2. The Appellant is registered under GST vide GSTIN 33AAACI5569D1ZR. They are engaged in the manufacture and supply of industrial and medical gases, including oxygen, nitrogen, argon etc. (in both liquid and gaseous form). M/s.India Pistons Ltd., (hereinafter referred to as 'IPL') had leased an area of land in Hosur for a period of 99 years from SIPCOT (State Industrial Promotion Corporation of Tamil Nadu). The Appellant in turn had approached IPL for transfer of leasehold rights in respect of a part of the property with superstructures for the remainder period of 72 years to set-up 'State of the Art' medical and industrial gases plant, i.e., Air Seperation Unit (ASU).

In this regard, the Appellant Inox and IPL had entered into a Memorandum of Understanding (MOU) dated 20.11.2020, and SIPCOT had accorded its approval for transfer of leasehold rights to INOX. Towards the same, Inox became liable to pay a total consideration of Rs.15,00,00,000/- to IPL. Accordingly, the Appellant had applied for an Advance Ruling vide Form ARA-01 No. 16/2021/ARA dated 23.04.2021 before the Authority for Advance Ruling, Tamil Nadu ('AAR' in short), wherein they had sought a ruling on whether they would be entitled to avail and utilize Input Tax Credit (ITC) of Goods and Services Tax (GST) charged by India Pistons Limited (IPL) if such transaction is considered to be a supply.

3.1 The AAR vide Ruling No.25/ARA/2021 dated 30.07.2021 ruled that the Appellant (an applicant at that stage) is not entitled to avail and utilize ITC of GST charged by IPL as the same is restricted under Section 17(5)(d) of the CGST/TNGST Act 2017, if such transaction is considered to be a supply.

3.2 Aggrieved over the aforesaid ruling of AAR, the Appellant had filed an appeal vide Appeal No.12/2021/AAAR dated 08.09.2021 before the Appellate Authority for Advance Ruling, Tamil Nadu ('AAAR' in short). The AAAR vide Order-in-Appeal No. AAAR/22/2021 (AR) dated 02.12.2021, upheld the ruling of the lower authority.

4.1 Under the grounds of appeal, the appellant had stated that for credit to be restricted in terms of Section 17(5)(d), the following conditions need to be cumulatively satisfied:

(i) Goods/ services should be received 'for construction' of immovable property; and
(if) The immovable property should not qualify as 'plant and machinery'

They have contended that the afore stated conditions are not fulfilled in the present facts and therefore the restriction in terms of Section 17(5)(d) of the CGST Act is not applicable in the present case.

4.2 The Appellant stated that the service provided by IPL to them, viz. agreeing to part with the leasehold rights on the land, is not used for any construction activity *per se*; that these services are not availed by them for creating / constructing any land, building or civil structure or any other immovable or movable property; that the Services received for construction of an immovable property encompasses only those services which are directly used for construction of the immovable property such as services of engineer/contractor, services of architect or interior decorators etc. Such an interpretation is clearly discernible from the wordings of Section 17(5)(d) of the CGST Act; that it is a settled principle of law that a taxing statute is to be strictly interpreted and a strict reading of the expression 'for construction' necessitates that there must be a direct nexus between the goods or service and the activity of construction. In other words, use of the word 'for' before 'construction' emphasizes that the provision must be read in a restricted manner to cover only situations where the goods or services are directly used in the construction of the immovable property. They have relied on the ruling issued by the Hon'ble Supreme Court in Sales Tax Commissioner v. Modi Sugar Mills, 1960 (10) TMI 65 Supreme Court and Indian

Chamber of Commerce and Others v. Commissioner of Income Tax, 1975 (9) TMI 4 - Supreme Court.

4.3 The appellant had stated that the entire premise for denial of credit under the Impugned Order is that the services availed by them from IPL is in relation to acquiring the lease of the land. 'Land' being excluded from the definition of "plant and machinery" services availed and utilized for acquiring such land on lease is also restricted. However, the Impugned Order has failed to appreciate the fact that in order to fall under restriction of Section 17(5)(d), the primary condition to be satisfied is that the services should be received for 'construction' of any immovable property. The exclusion under the definition of 'plant and machinery' is also in the context of construction. In the absence of any construction activity, the said restriction does not apply. There is no 'construction of land' involved in the subject transaction. The input service in question enables Appellant to acquire the right to use the land which is already in existence for purpose of installing the plant and machinery to commence the manufacturing business. Accordingly, such services cannot be said to be used for any construction activity. In the absence of any finding regarding the question of construction of immovable property involved in the present case, the Impugned Order is based on a misinterpretation of both facts and law and is liable to be set aside.

4.4 The Appellant had further submitted that assuming without admitting that the services provided by IPL are used for a construction activity, the construction does not result in any immovable property as the ASP is clearly a movable property. ASP which is being set-up will not be permanently embedded to earth inasmuch as it can be shifted to another site as per the requirements. The Technical drawings of the ASP duly corroborates that it is movable in nature. In view of this, ASP qualifies as a movable property and the restriction under Section 17(5)(d) of the CGST Act which is applicable only in case of construction of immovable property does not apply to the present facts. ASP proposed to be set-up by them qualifies as 'plant and machinery'. Accordingly, services availed for scatting-up of the 'plant and machinery' should fall outside the ambit of the exclusion under Section 17(5)(d) of the CGST Act. In terms of the explanation to Section 17 of the CGST Act, 'plant and machinery' has been specifically defined as any equipment, apparatus attached to cart by foundation or structural support used for supply of goods or services. Further, the expression 'plant and machinery' specifically excludes land, building & any other civil structures, telecom towers, pipelines etc. ASP is primarily set up to produce liquid gases using a cryogenic distillation process. The process of manufacture of gases through ASP involves multiple operations such as filtration, compression, air purification, distillation, refrigeration etc. given this, ASP is indispensable for manufacturing of gases and it has a direct nexus with the outward supply of gases. Further, the ASP once fully set-up, will be capitalized as 'plant and machinery' in the Appellant's books of accounts.

4.5 The Appellant had submitted that the ASP does not result in construction of any land, building, civil structure and it is also not a telecommunication tower or pipeline, hence it does not fall under any of the exclusion categories stipulated under the definition of 'plant and machinery'. The Learned Authority (LA) in the Impugned Order have presumed that the service received by them is a service for construction

of an immovable property namely 'land' and since the explanation to Section 17 of CGST Act excludes 'land' from the definition of 'plant and machinery' the AAR have denied the benefit of ITC. The said finding of the learned authority is a complete misappreciation of the factual matrix involved in the present case. It is required to be appreciated that the exclusion of land from the definition of 'plant and machinery" will apply only in a situation where services are received for any construction activity. In the present case, the leasehold rights are acquired not for construction of immovable property/ development of land and therefore the exclusion in the definition of 'plant and machinery would not be triggered. The input service in question enables the Appellant to acquire the right to use the land which is already in existence for purpose of setting up the ASP for the manufacture of gases which are taxable supplies. It is required to be appreciated that the services are not used for construction/development of any land, building or civil structure. Since the AAR has not referred to the activity of construction but merely relied on the expression 'land' which is excluded from the expression plant and machinery', it is submitted that the Impugned Order is devoid of any merits and is liable to be set aside.

4.6 They have further stated that the ASP qualifies as 'plant and machinery' and the same is also not covered by the exclusions under the definition of 'plant and machinery', GST chargeable, on transfer of leasehold rights is rightly admissible to the Appellant as Input Tax Credit. Section 16(1) of CGST Act enables the registered person to take ITC on input tax charged on any supply of goods or services or both which are used or intended to be used in the course or furtherance of business (which legal position and factual position are not disputed in the subject order). The Impugned Order acknowledges the fact that the services are used for setting up of an ASP which will be used for generation of gases by the Appellant and hence is clearly in the course or furtherance of their business. Further, since the restriction related to ITC under Section 17(5) of the Act cannot be invoked in the facts of this case, the Impugned Order in question passed by the learned authority is not legally tenable.

4.7 After considering the grounds of appeal and other submissions made by the Appellant, the Appellate Authority had passed an Order upholding the Ruling of the Lower Authority that M/s. Inox Air Products Pvt Ltd is not entitled to avail and utilize ITC of GST charged by India Pistons Ltd. as the same is restricted under Section 17(5)(d) of the CGST/TNGST Act 2077, if such transaction is considered to be a supply.

4.8 Aggrieved again by the Order-in-Appeal No. AAAR/22/2021 (AR) dated 2.12.2021, the Appellant filed a Writ Petition before the Hon'ble High Court of Madras in WP No. 9952 and 9956 of 2022. The Hon'ble High Court vide Order dated 8.4.2025, remanded back the Order-in-Appeal No.AAAR/22/2021 (AR) dated 2.12.2021 for De Novo consideration.

4.9 The Hon'ble High Court, while remanding back the matter vide Order dated 8.4.2025, had opined as follows :- *"there are two limbs to the argument viz., whether the plant and machinery which has been installed would constitute movable or immovable property and secondly, assuming that it is immovable property, it would fall within the exception to Section 17(5) d of the GST Act. The Appellate Advance Ruling*

authority after coming to a conclusion that this would constitute an immovable property while dealing with the second limb does not appear to have assigned reasons."

The Hon'ble Court, vide para 3 of the said Order, further pronounced as follows:

> *"3. In view thereof, it is open to the petitioner to file additional submissions if any and the Appellate Advance Ruling Authority would consider and pass orders after affording the petitioner a reasonable opportunity of hearing as expeditiously as possible not more than 6 months from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any views with regard to the merits of the representation, it is open to the concerned respondent to consider the representation on its own merits and in accordance with law."*

4.10 Accordingly, the Appellate Authority took up the Order-in-Appeal No. AAAR/22/2021 (AR) dated 2.12.2021 for De Novo consideration and an opportunity of hearing was extended to the appellant, requesting them to appear before the AAAR on 03.12.2025. However, the Appellant vide their letter dated 01.12.2025 requested that the personal hearing may be rescheduled after a period of two weeks, or to any subsequent date convenient to the authorities. Therefore, another opportunity of hearing was extended to the Appellant, requesting them to appear on 06.01.2026.

PERSONAL HEARING

5.1 Mr. Supreme Kothari, Advocate and Ms. Mallows Priscilla, Advocate, M/s. Economic Laws Practice (Advocates and Solicitors) Authorised Representatives of Appellant appeared for personal hearing on 06.01.2026.

5.2 During the hearing, the Authorised Representatives furnished 'Additional Written Submissions' dated 06.01.2026, containing the Grounds of defence, Copy of the MoU and SIPCOT approval, copies of the application for advance ruling and application for appeal filed, the respective rulings pronounced, the Hon'ble Madras High Court's Order dated 08.04.2025, Copy of the CESTAT (Mumbai) Final Order dated 24.04.2025, and Photographs of the ASP (Air Separation Plant). They also furnished a 'Compilation' of the extracts of relevant legal provisions and copies of the case laws in support of their defence.

5.3 The AR explained in detail the various contentions of the Appellant, as in the 'Additional Written Submissions' filed by them. In fine, the Authorised Representatives contended that their defence is basically structured around three basic layers, viz., (i) Inward supply of Leasing of land is not used for "Construction" within the meaning of Section 17(5)(d), (ii) the ASP is inherently movable in nature and cannot be regarded as an immovable property, and (iii) Without prejudice to the above, even if the ASP is considered immovable, the same qualifies as "Plant and Machinery" under Section 17(5). Accordingly, the Authorised Representatives prayed and requested to set aside the findings in the impugned order based on the erroneous

interpretation of Section 17(5), and to hold that ITC is admissible on the subject inward supplies transactions.

5.4 Under the 'Grounds' of the Additional Written submissions made during the personal hearing, the Appellant has affirmed the following contentions, viz.,

- Section 16 of the CGST Act embodies the fundamental principle that ITC is a vested statutory entitlement, available to a registered person in respect of goods or services or both used or intended to be used in the course or furtherance of business, subject only to the express restrictions set out in Section 17.
- Section 17(5)(d) carves out a limited and specific exception to this general entitlement by blocking ITC only in cases where the goods or services or both are received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account, even where such construction is undertaken in the course or furtherance of business.
- The provision is therefore attracted only when all the following statutory conditions are cumulatively satisfied, namely;
  a. The inward supply is used for construction;
  b. Such construction results in an immovable property;
  c. The immovable property is other than plant and machinery ; and
  d. The construction is on the taxable person's own account.
- The explanation appended to Section 17(5) performs a definitional and clarificatory function, by delineating what constitutes "plant and machinery" and by expressly excluding land, buildings and other civil structures from that definition. Importantly, the Explanation does not operate as an independent restriction on ITC, but only as an aid to determine whether a given asset falls within or outside the ambit of "plant and machinery" for the purposes of applying Section 17(5)(d).
- Consequently, Section 17(5)(d) is attracted only if all the statutory conditions prescribed therein are cumulatively fulfilled. It follows that once it is established that any one or more of these conditions is not satisfied, including that the inward supplies are not used for construction, or that the construction does not lead to creation of immovable property, or that the construction in question qualifies as plant and machinery, etc. the embargo under Section 17(5)(d) ceases to operate, and ITC cannot be denied merely by reference to the situs of installation or the involvement of land.

- **A. INWARD SUPPLY OF LEASING OF LAND IS NOT USED FOR "CONSTRUCTION" WITHIN THE MEANING SECTION 17(5)(d)**
  - The Appellant contends that the subject inward supply, namely GST paid on leasing / leasehold rights in land, is not used for "construction" of any immovable property, as contemplated under Section 17(5)(d) of the CGST Act. The expression "construction" in Section 17(5)(d) is a term of limitation, and not one of mere association or proximity. The provision is attracted only where the inward supply is directly and proximately used in the activity of construction, resulting into the coming into existence of an immovable property. In the present case, the lease of land constitutes an enabling inward supply, which merely provides the right to access and use a site for

the purpose of installing and operating the ASP, and that the same does not result in, or is consumed in, any activity of construction.

- The Appellant does not undertake any construction activity on the leased land in the sense understood under Section 17(5)(d), and that no construction of buildings or civil structures are undertaken by the Appellant on its own account. The ASP is installed as a plant comprising machinery and equipment, and the existing civil foundations are merely incidental and ancillary to installation of machinery and do not constitute construction of immovable property.
- Importantly, the inward supply of leasing of land precedes and is independent of any installation activity. The lease is not availed *for construction*, but for conducting business operations, namely the manufacture and supply of industrial gases through the ASP. The nexus of the leasing service is with business use and operation and not with construction.
- The Appellant states that this distinction is critical because Section 17(5)(d) does not block ITC on all inward supplies, but only when the inward supply is used for construction, which is not the case here, and therefore one of the foundational statutory conditions for invoking Section 17(5)(d), is not satisfied in the instant case. On this ground alone, the bar under Section 17(5)(d) cannot be triggered in respect of the subject inward supply of leasing of land.

➢ **B. THE ASP IS INHERENTLY MOVABLE IN NATURE AND CANNOT BE REGARDED AS AN IMMOVABLE PROPERTY**

- The Appellant contends that without prejudice to the above, the ASP is not intended to be permanently attached to the earth. Further, an ASP comprises modular machinery inter-alia including compressors, cold boxes, purifiers, distillation columns, pipelines and accessories, that are mounted on foundations merely for stability and vibration control, and not for permanent annexation. The attachment is by way of nuts and bolts, not by permanent civil embedding, and they are regularly dismantled, transported and reinstalled. The Appellant states that the question of whether an ASP is movable or immovable is no longer res-integra. The issue stands conclusively settled by the decision of the Hon'ble CESTAT, Mumbai in the Appellant's own case, where vide Final Order No. A/85751-85753/2025 dated 24.04.2025, the Hon'ble Tribunal examined the identical category of cryogenic ASPs, including a 300 TPD and 41260 TPD unit, and after detailed factual, technical and legal analysis, held that such plants are movable property. The findings directly apply to the ASP under the present proceedings, which is structurally and functionally identical, thereby squarely covering the issue. Relevant paragraphs from the judgement are extracted below:

"...On careful scrutiny of the available photographs in the case records, we are of the considered view that various individual equipment of the plant are erected, installed and commissioned within the premises of ISPAT by way of

fastening to the foundation by the help of nuts/bolts and through installation of the base concrete support, which can be dismantled at any time, without causing much damage to the original equipment. Since, those equipment were not permanently attached to the earth, the same in our view, seized to be considered as 'immovable property' and as such, cannot fall under the scope of the definition provided under 65 (105) (zzzz) of the Act of 1994.

9.5 We find that an identical issue about immovability of the plant came up for consideration before the Hon'ble Supreme Court in the case of Solid & Correct Engineering & Ors. (supra). The issue arose in that case for consideration was, whether erection of plant at site would be considered as 'immovable' or 'movable'. By referring to the provisions of Section 3(26) and 3(36) of the General Clauses Act, 1897, the Hon'ble Supreme Court had prescribed the test, through which it can be ascertained, whether the plant is immovable' or 'movable'. At paragraph 24 in the said judgement, upon analyzing the factual matrix involved in the said case vis-a-vis the position of law, the Hon'ble Court have prescribed the parameters, when the plant cannot be considered as 'immovable property', which are quoted herein below:

...

9.6 Further, various judgements relied upon by the Counsels with regard to the issue of immovability of the plant was also considered by the Hon'ble Supreme Court in the said case of Solid & Correct Engineering & Ors. (supra) and upon consideration of the factual matrix involved therein, had held as under:

...

9.7 The ratio of the above judgement is squarely applicable to the facts of the present case. In the present case, the fact that the gas/oxygen plants in question, were not fixed permanently to the earth and are embedded to the earth only for the purpose of providing stability and to keep their operation vibration free, is evident from the affidavits sworn in by the officers of the appellant's company, certificate of the chartered engineer and shifting of the same plants in case of other buyers to another place(s) upon completion of the contract period."

- The Appellant states that these findings arise out of a full evidentiary exercise inter-alia including Chartered Engineer certifications, relocation records, and photographic evidence and categorically establish the movable nature of ASPs identical to that of the present case. Accordingly, the matter is settled, and the movable nature of the ASP requires no further adjudication, and the copy of the Final Order dated 24.04.2025 has been enclosed as Exhibit-G.
- The legal tests for determining whether an installation is movable or immovable are now well settled. In Bharti Airtel Ltd. v. Commissioner of Central Excise, Pune [2024 (11) T 1042 (SC)], the Hon'ble Supreme Court held that equipment assembled on site and affixed by nuts and bolts remains movable where such attachment is only for operational stability, the installation is capable of dismantling and relocation without loss of identity, and there is no intention of permanent beneficial enjoyment of land, emphasising that mere fastening for vibration-free functioning is not determinative. These principles flow from and reaffirm the ratio in CCE,

Ahmedabad vs. Solid and Correct Engineering Works & Ors. [2010 (4) TMI 15 - Supreme Court], which has been expressly relied upon and applied by the Hon'ble CESTAT in the Inox Air Products Ltd, (Final Order dated 24.04.2025) while examining identical ASPs of the Appellant. Applying these settled tests, the ASP in the present case, being bolted to foundations only for stability and capable of dismantling and re-installation, retains the character of movable property.

- The photographs of the ASP, enclosed at Exhibit-H to the additional submissions, further demonstrate that the ASP comprises discrete industrial machinery and equipment such as compressors, pumps, adsorption beds, skids, cryogenic storage tanks and MCC panels, each mounted on foundations solely for purposes of alignment, load-bearing and vibration-free operation. The images clearly establish that such machinery, apparatus and equipment are bolted, detachable and not inseparably integrated with land or civil structures, and are capable of dismantling and relocation without loss of identity. This factual position satisfies the settled legal test that mere fixing to earth for operational stability or efficient functioning does not render machinery immovable in nature.

➢ **C. WITHOUT PREJUDICE TO THE ABOVE, EVEN IF THE ASP IS CONSIDERED IMMOVABLE, THE SAME QUALIFIES AS "PLANT AND MACHINERY" UNDER SECTION 17(5)**

- The Appellant states that without prejudice to the above grounds, and assuming ipso arguendo that the ASP is to be regarded as immovable, a finding of immovability does not, by itself, determine the applicability of Section 17(5)(d). As the Hon'ble Madras High Court has clarified in the remand order, the AAAR was also required to examine the second and independent limb, namely, whether the ASP nevertheless falls within the statutory exception for plant and machinery, a consideration that was not undertaken earlier. This implies that the Hon'ble High Court considered such examination as fundamental to the determination of whether ITC is admissible on the subject inward supplies. In other words, where ASP qualifies as plant and machinery, ITC would be admissible on the subject inward supply of leasing of land.
- The Appellant states that the Section 17(5)(d) expressly excludes "plant and machinery" from the ITC restriction. The Explanation to Section 17(5) defines "plant and machinery" to mean:
  - apparatus, equipment and machinery,
  - fixed to earth by foundation or structural support,
  - used for making outward supplies,
  - while excluding only land, buildings and other civil structures.

  Thus, fixing machinery to earth for functional or operational reasons does not take it outside the ambit of plant and machinery.
- That the ASP squarely falls within the statutory meaning of plant and machinery because:
  - it comprises apparatus, equipment and machinery such as compressors, cold boxes, distillation columns, purifiers, pipelines, pumps, MCC panels and allied cryogenic systems;

- it is used directly and integrally for the manufacture and outward supply of industrial gases; and
- it is fixed to earth in the precise manner contemplated by the Explanation, i.e., through foundations and structural supports for alignment, load-bearing and vibration-free functioning.

- The Hon'ble CESTAT, in the Appellants own case (supra), has conclusively found that such installations constitute machinery placed on foundations only for stability, and not for permanent beneficial enjoyment of land. These findings directly support the characterisation of the ASP as plant and machinery within the meaning of Section 17(5), even if treated as immovable.
- Once it is established that the ASP qualifies as "plant and machinery":
  - the statutory exception in the proviso is Immediately triggered;
  - the embargo under Section 17(5)(d) stands displaced by operation of law; and
  - ITC on the inward supply (GST charged on transfer of leasehold rights) cannot be denied.
- Accordingly, the Appellant contends that even on the assumption that the ASP is to be regarded as immovable, the statutory framework, read with the settled tests and the findings of the CESTAT in Appellant's own case (supra), compels the conclusion that the Appellant is entitled to ITC under the express exception for plant and machinery.
- As stated, the Hon'ble Tribunal, in the Appellant's own case (supra), proceeded on a settled and admitted position that the ASP constitutes plant and machinery, and the controversy before it was confined only to whether such plant could nevertheless be regarded as "immovable property" for the purposes of levy of Service Tax under the Finance Act, 1994. This is evident from the issues framed by the Tribunal, particularly Issue 7(c), which reads as under:

  "Whether the phrase immovable property' as per Explanation 1 appended to Section 65(105)(zzzz) of the Finance Act, 1994 would cover only the properties itemised therein viz. 'building', land' and 'common areas / facilities relating thereto'; or would it also encompass within its scope and ambit, the other assets i.e. 'plant and machinery'?"
- The Tribunal answered this issue by holding that Explanation 1 to Section 65(105)(zzzz) of the Finance Act, 1994 is exhaustive and not extendable, and that plant and machinery cannot be subsumed within the definition of "immovable property" by implication. Significantly, the Tribunal's analysis proceeds on the accepted premise that the ASP is plant and machinery, and the decision turns solely on the impermissibility of expanding an Explanation to include assets not enumerated therein. Accordingly, the character of the ASP as plant and machinery stood admitted and uncontested, forming the foundational basis of the Tribunal's reasoning.

➢ **Fundamental misconstruction in the Impugned Order** – The Appellant contends that the impugned Order proceeds on the erroneous premise that since "land" is excluded in the Explanation to Section 17(5), there is no requirement to examine ITC eligibility any further once the asset is assumed to be immovable. This reasoning is legally unstainable and contrary to the scheme of Section 17(5). As the Explanation to Section 17(5):
- does not operate as an independent restriction on ITC;
- merely demarcates and clarifies what constitutes "plant and machinery" for the purposes of applying Section 17(5)(d); and
- clarifies that land, buildings and civil structures do not themselves constitute plant and machinery.

- The reference to land in the Explanation is therefore classificatory and definitional, and not prohibitory. It only signifies that land cannot be treated as plant and machinery and it does not follow that the presence or involvement of land automatically attracts the ITC bar. The moment an asset is found to qualify as plant and machinery, the statutory bar under Section 17(5)(d) stands lifted, and no further embargo survives merely because the machinery is installed on land.

➢ **Land not constructed, hence the Explanation to Section 17 is not applicable** – The Appellant further submits that the exclusion of "land" in the Explanation to Section 17(5) operates in a specific and limited statutory context. The exclusion presupposes a situation where land might otherwise have been sought to be characterised as "plant and machinery" by virtue of some construction or functional integration therewith (e.g. permanently engineered mining pits or quarries for extraction or waste-treatment or effluent management systems where lined land beds/ lagoons constitute the operating apparatus), but for such exclusion. In other words, the exclusion of land in the Explanation is intended to clarify that even where land is developed or constructed upon in a manner that could otherwise be argued to form part of plant and machinery, such land shall nevertheless not be regarded as plant and machinery for the purposes of Section 17(5).

- The interpretation that the Explanation operates as a bar on ITC on land itself is entirely misconstrued also for the reason that land is not leviable to GST, which applies only to goods and services. Such an interpretation would in fact render the said exclusion otiose.
- This statutory design necessarily pre-supposes construction or development of land as such, or an attempt to treat land itself as a functional business asset akin to plant and machinery. Such a situation does not arise in the present case, where there is no construction of land, nor any attempt to treat land as plant or machinery. The land merely serves as the situs for installation of the ASP, and the inward supply in question is leasing of land as an input service, not construction or development of land on the Appellant's own account.
- Accordingly, the Appellant states that the exclusion of land in the Explanation cannot be read as automatically triggering the bar under Section 17(5)(d) in every case where land is involved. On the contrary, the Explanation itself underscores that the enquiry under Section 17(5)(d) is asset-centric and construction-centric, and applies only in situations where the inward supplies are used for construction of an immovable asset other than plant and machinery. Where, as in the present case, there is no construction of land, but merely the use of land as a situs through an input service of leasing, the exclusion has no application. The Impugned Order, by treating the mere involvement of land as determinative, has therefore misconstrued both the scope and purpose of the Explanation.

➢ **Transaction involves leasing of land as an input service, not land as an asset** - Without prejudice to the above, it is further submitted that the exclusion of "land" under Explanation 1 to Section 17(5) is wholly inapplicable in the present case, since the ITC claimed pertains to an inward supply of services, namely leasing of land / leasehold rights, and not to land as an asset or capital good. Explanation 1 operates only to clarify what can or cannot be regarded as "plant and machinery" and does not extend the scope of Section 17(5)(d) to deny ITC on input services independently consumed in the course or furtherance of business. The statutory exclusion of land presupposes a

claim of ITC on land itself or on construction thereof, whereas the present claim arises from GST paid on leasing services used as a business input for installation and operation of plant and machinery. Accordingly, the Explanation has no role to play in disallowing ITC on the impugned input service.

5.5 In view of the foregoing, the Appellant prayed that this Hon'ble Appellate Authority may be pleased to:

A. Hold that the ASP is movable in nature;

B. In any event, hold that the ASU qualifies as plant and machinery under the Explanation to Section 17(5);

C. Set aside the findings in the Impugned Order based on erroneous interpretation of Section 17(5); and

D. Hold that ITC is admissible on the subject inward supplies transactions.

DISCUSSION AND ANALYSIS

6.1 We have carefully considered all the material available on record, the applicable statutory provisions, the 'Grounds' and the relevant documents furnished under the additional submissions made by the appellant during the personal hearing held on 06.01.2026.

6.2 We take note of the fact that the Hon'ble High Court of Madras while remanding the matter vide Order dated 08.04.2025 in WP Nos. 9952 and 9956 of 2022 has opined as follows :- *"The Appellate Advance Ruling authority after coming to a conclusion that this would constitute an immovable property while dealing with the second limb **does not appear to have assigned reasons.**"* We also take note of the fact that the Hon'ble High Court in para 3 of the said Order, further pronounced as follows :- *"It is made clear that this Court has not expressed any views with regard to the merits of the representation, **it is open to the concerned respondent to consider the representation on its own merits and in accordance with law.**"*

6.3 We find that the facts of the case involves the following crucial aspects, viz.,

- IPL had leased an area of land in Hosur for a period of 99 years from SIPCOT.
- Inox (The Appellant) in turn had approached IPL for transfer of leasehold rights in respect of a part of the property, i.e., 5 acres of land with existing shed/superstructures for the remainder period (72 years) of leasehold rights.
- Inox intends to set-up 'State of the Art' Ultra High Purity Cryogenic Liquid Medical and Industrial Oxygen plant, also known as Air Seperation Unit (ASU).
- In this regard, Inox and IPL had entered into a Memorandum of Understanding (MOU) dated 20.11.2020, and SIPCOT had accorded its approval for transfer of leasehold rights to INOX.
- Towards the same, Inox became liable to pay a total consideration of Rs.15,00,00,000/- to IPL.

- Inox now seeks an answer as to whether they would be entitled to avail and utilize Input Tax Credit (ITC) of Goods and Services Tax (GST) charged by India Pistons Limited (IPL) if such transaction is considered to be a supply.

6.4 Accordingly, we start our discussion with the supposition that if the said transaction between IPL and Inox (the Appellant) were to be considered as a 'Supply', whether the Appellant becomes eligible to avail ITC of the same, which is precisely the query for clarification sought by the Appellant under the instant application for advance ruling.

6.5 As far as the blocked credits prescribed under Section 17(5) of the CGST Act, 2017 goes, we are of the opinion that the provision that merits consideration is Section 17(5)(d) of the Act, ibid, as it involves the terms/phrases, 'Construction', 'Immovable Property', 'On his own account' 'Plant and Machinery', 'Land, building and civil structures' etc., which are crucial for discussion in the instant case. Section 17(5)(d) of the CGST Act, 2017, read as,

> *"(d) goods or services or both received by a taxable person for **construction** of an **immovable property** (other than **plant and 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;"*

6.6 It is to be noted here that the phrase 'other than plant **or** machinery' that was part of clause (d) of Section 17(5), now stands amended as 'other than plant **and** machinery', retrospectively with effect from 1.07.2017 onwards, through Sl.No.124 of the Finance Act, 2025 (No.7 of 2025), which reads as below :-

> *"124. In Section 17 of the Central Goods and Services Tax Act, in sub-section (5), in clause (d), -*
>
> *(i) for the words "plant or machinery", the words "plant and machinery" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017;*
>
> *(ii) the Explanation shall be numbered as Explanation 1 thereof, and after Explanation 1 as so numbered, the following Explanation shall be inserted, namely:-*
>
> *'Explanation 2. – For the purpose of clause (d), it is hereby clarified that notwithstanding anything to the contrary contained in any judgement, decree or order of any court, tribunal, or other authority, any reference to "plant or machinery" shall be construed and shall always be deemed to have been construed as a reference to "plant and machinery";'."*

Whereby, it becomes crystal clear that unless the commodity or an installation gets covered under the expression "plant and machinery" as defined in the explanation under Section 17 of the CGST Act, 2017, the input tax credit of the GST paid on the said commodity or installation stands blocked in view of clause (d) of Section 17(5) of the Act, ibid.

6.7 With these aspects in mind, we set out to examine the issue. In this regard, we find that the provisions of Section 17(5)(d) clearly blocks the ITC in respect of the GST paid on goods or services or both received for construction of an immovable property by a taxable person on his own account, even if they are used in the course or furtherance of business. Therefore, in order to ascertain the ITC eligibility or otherwise in the instant case, the following factors crucial to the case are required to be examined, viz.,

- whether the service received by the Appellant in the instant case is **for 'construction'** of any property?
- whether the said property could be treated as an **'immovable property'**?
- whether the construction of the said property is **'on his own account'**?
- whether the activity involves the creation of **'plant and machinery'**, as defined under the Explanation to Section 17 of the CGST Act, 2017?

6.8 Prima facie, it is seen that the advance ruling is sought on the admissibility of ITC of the tax paid/payable on the consideration (Rs.15,00,00,000/-) paid to IPL for agreeing to part with the leasehold rights of a part (5 acres) of the property held by IPL, in order to enable SIPCOT to transfer the said leasehold rights in favour of the Appellant. In this regard, we find that para 2 of page 2 of the MOU for transfer of Leasehold Rights dated 20.11.2020, entered into between M/s.India Pistons Ltd., (IPL) and M/s.INOX Air Products Pvt. Ltd., (INOX), reads as below :-

> *"2. INOX has approached IPL for transfer of the remainder period of leasehold rights in respect of part of the Whole Property admeasuring 5 acres comprising survey nos.18 (pt), 19 (pt), 20 (pt) and 21 (pt) situated in plot no.76 (pt) along with **superstructures** (hereinafter collectively referred to as the "Scheduled Property" and more fully described in Schedule B hereunder and delineated in Red Colour in the Sketch annexed herewith) for setting up of medical and industrial gases air separation unit by INOX."*

Likewise, the State Industries Promotion Corpn. of Tamil Nadu Ltd., (SIPCOT), in para 2 of its letter No.P-II/SICH/II/IPL/2012 dated 28.12.2020, has observed as below :-

> *"We, therefore, hereby, accord approval for transfer of balance period of leasehold rights to Plot No.76 pt. (S) measuring 5.00 acres of land along with **existing shed/super structures**, out of 15.34 acres at SIPCOT Industrial Complex, Hosur Phase – II from M/s.India Pistons Limited to M/s.Inox Air Products Private Limited (INOX) for setting up of the state of the art Ultra High Purity Cryogenic Liquid Medical and Industrial Oxygen Plant, subject to the following conditions :"*

6.9 As could be seen from the above, the property being acquired on lease by the Appellant is for a long term of 72 years, and that the property is not just 5 acres of open land, but land with existing shed / superstructures. Further the intended purchase/acquisition is for the purpose of setting up of an 'Air Separation Plant' (ASU), more specifically described as *"the state of the art Ultra High Purity Cryogenic Liquid Medical and Industrial Oxygen Plant"*, in order to cater to the normal business activity of the Appellant, i.e., manufacture and supply of industrial and medical gases.

In this regard, it is seen that the explanation to Section 17(5) of the CGST Act, defines the expression 'construction' as below :-

> ***"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;"*

Whereby, it becomes clear that apart from construction of an absolutely new plant, any addition or alteration to the existing structure/immovable property, also gets included under the expression 'construction'. Further, in the acquired piece of land which was reportedly having existing shed/super-structures, the Appellant has admittedly set up the Air Separation plant, as proposed and intended by the Appellant in the MOU, and as seen from the photographs of ASP, enclosed as Exhibit-H to the additional submissions furnished during the personal hearing on 06.01.2026. Accordingly, it becomes clear that the service received by the Appellant towards acquisition of the property for the remaining lease period of 72 years is very much for 'construction' of the property (ASP), as it enables the Appellant to set up the manufacturing facility. Because without IPL agreeing to withdraw its leasehold rights in Appellant's favour, the Appellant cannot get the leasehold on the land and cannot construct the manufacturing facility. Further, the amount paid to IPL for the said service of withdrawal of rights to use a part of the land, forms an integral part of the cost of the ASP being constructed by the Appellant, and it admittedly stands capitalised along with ASP in their books of accounts. Thereby it becomes clear that the service received from IPL is 'for construction' of the manufacturing facility (ASP). This apart, irrespective of the fact whether the said manufacturing facility is movable or immovable, it is clear that the said construction is undertaken 'on own account' by the Appellant.

6.10 Moving on to the issue, as to whether the said property could be treated as an immovable property or not, we find that the term 'immovable property', has not been defined under the GST enactments. However, under the General Clauses Act, 1897, 'Immovable Property' has been defined under Section 3(26) as,

> " ***"Immovable Property"*** *shall include land, benefits arising out of land and things attached to the earth, or permanently fastened to anything attached to the earth."*

Accordingly, 'immovable property' includes not just land, but benefits arising out of land and other things attached to the earth, and most importantly irrespective of the fact whether a particular thing is directly attached to earth, or permanently fastened to anything that is attached to earth like the walls, pillars, etc., it becomes part of such immovable property. Further, as per Section 3 of the Transfer of Property Act 1882, the phrase "attached to earth" means

(a) rooted in the earth, as in the case of trees and shrubs;

(b) imbedded in the earth, as in the case of walls or buildings; or

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

6.11 In this regard, we find that the Appellant has contended that the legal tests for determining whether an installation is movable or immovable are now well settled. They have also stated that in Bharti Airtel Ltd. v. Commissioner of Central Excise, Pune [2024 (11) T 1042 (SC)], the Hon'ble Supreme Court held that **equipment** assembled **on site** and affixed by nuts and bolts remains movable where such attachment is only for operational stability, the installation is capable of dismantling and relocation without loss of identity, and there is **no intention of permanent beneficial enjoyment of land,** emphasising that mere fastening for vibration-free functioning is not determinative. On perusal of the referred case involving M/s.Bharti Airtel Ltd., it is seen that the said case discusses about the nature of the equipment used for providing telecommunication service like mobile tower and pre-fabricated buildings (PFBs) which are assembled on site for operational efficiency. It also discusses about such installation being capable of dismantled and relocated to another site to suit the prevailing requirements, and that there is no intention of permanent beneficial enjoyment of land in such cases. As against the same, the instant case of the Appellant involves setting up of a 'State of the Art' Ultra High Purity Cryogenic Liquid Medical and Industrial Oxygen plant, on his own account, for the purpose of manufacture and supply of medical and industrial gases by the Appellant. That is to say, the cases differ basically in view of the fact that while M/s.Bharti Airtel case discusses about the installation at site (site normally rented, and temporary in nature), of an equipment or an appartus, the Appellant's case involves the setting up of a comprehensive Air Separation Plant/Unit, including the machinery, equipment, apparatus, etc., and a host of other installation and paraphernalia to support the needs relating to electrical, electronic, refrigeration, storage, etc., in their own premises of land that has been acquired on lease for a period of 72 years. Therefore, the intention of permanent beneficial enjoyment of land is very much present in the instant case of the Appellant.

6.12 At this juncture, we would like to make it clear that the 'movable nature' or 'movability' is not the only criteria which would enable an installation or a work to fall outside the ambit of 'immovable property'. Rather the 'object', 'intendment', 'marketability' of the said work or installation are also to be taken into account to determine the movable nature of the said work. In this regard, we find that under the very same case involving M/s.Bharti Airtel Ltd., the Hon'ble Supreme Court has discussed the said aspect in a detailed manner in para 11.8 of its Order dated 20.11.2024, as follows :-

> *"**11.8** In view of the above decisions, we are of the opinion that merely because certain articles are attached to the earth, it does not ipso facto render these immovable properties. If such attachment to earth is not intended to be permanent but for providing support to the goods concerned and make their functioning more effective, and if such items can still be dismantled without any damage or without bringing any change in the nature of the goods and can be moved to market and sold, such goods cannot be considered immovable.*
>
> ***11.8.1** We may summarise some of the principles applied by the Courts in the decisions referred to above to determine the nature of the property as follows :*
>
> *(1) **Nature of annexation :** This test ascertains how firmly a property is attached to the earth. If the property is so attached that it cannot be removed or relocated without causing damage to it, it is an indication that it is*

immovable.

(2) ***Object of annexation :*** *If the attachment is for the permanent beneficial enjoyment of the land, the property is to be classified as immovable. Conversely, if the attachment is merely to facilitate the use of the item itself, it is to be treated as movable, even if the attachment is to an immovable property.*

(3) ***Intendment of the parties :*** *The intention behind the attachment, whether express or implied, can be determinative of the nature of the property. If the parties intend that the property in issue is for permanent addition to the immovable property, it will be treated as immovable. If the attachment is not meant to be permanent, it indicates that it is movable.*

(4) ***Functionality Test :*** *If the article is fixed to the ground to enhance the operational efficacy of the article and for making it stable and wobble free, it is an indication that such fixation is for the benefit of the article, such the property is movable.*

(5) ***Permanency Test :*** *If the property can be dismantled and relocated without any damage, the attachment cannot be said to be permanent but temporary and it can be considered to be movable.*

(6) ***Marketability Test :*** *If the property, even if attached to the earth or to an immovable property, can be removed* ***and sold in the market****, it can be said to be movable."*

6.13 Under the 'Object of annexation' as above, it stands clarified that if the attachment is for the permanent beneficial enjoyment of the land, the property is to be treated as immovable. That the construction/installation activity has taken place in their own premises of land that has been acquired on lease for a period of 72 years, proves the fact that that the attachment is for the permanent beneficial enjoyment of the land. We find that in the instant case, even in the event of considering the fact that certain equipment or machinery or apparatus of the overall Air Separation Plant are found to be detachable and movable, the object behind the installation of such machinery/apparatus along with the other facilities related to it, is clearly to assist and enable the Appellant in the manufacture and supply of medical and industrial gases, on a permanent basis. Further, it is evident that the overall Plant with all the infrastructure that has come up after acquisition of land, and the shed / super-structures that existed prior to acquisition, are not capable of being detached as such and moved. Therefore, we are of the opinion that these installations are basically meant for the permanent beneficial enjoyment of the land, and are to be considered as immovable.

6.14 Alternatively, it has been stated under the clause 'Object of annexation' as above, that if the attachment is merely to facilitate the use of the item itself, it is to be treated as movable, even if the attachment is to an immovable property. That is to say, only those items which are attached in order to facilitate the use of the said item itself, as in the case of an air-conditioner, or any other machinery which is attached to earth or to a wall of the building for stability, could be treated as movable. On the other hand, we notice that in the instant case, the attachment is not merely to facilitate the use of a particular machinery or apparatus, and that the entire plant involving a host of machinery/apparatus and other facilities installed, is meant to undertake manufacturing activities by the Appellant, whereby they cannot be treated as 'movable'.

6.15 Further, we find that the 'Marketability Test' (clause 6), assumes immense significance in the context of the instant case. On perusal of the images furnished at Exhibit-H of the additional written submissions made during the personal hearing, it becomes clear that the overall Air Separation Plant, cannot be marketed as such. Even in the event of considering the individual apparatus like 'Cooling Tower and Pumps', 'TSA Bed A & B', 'Warm and Cold Compressor', 'Lox Storage Tank 1000MT', 'Lin Storage Tanks 250KL x 2 Nos.', 'LAR Storage Tank 30 KL', etc., we are of the opinion that they are tailor-made to suit the needs of a particular factory/facility, and that they are not capable of being marketed as such, as in the case of a stand-alone apparatus like an air-conditioner. We are therefore of the considered opinion that the Air Separation Plant constructed at the Appellant's premises is 'immovable' in nature attached to the immovable property, viz., the land acquired on lease for a period of 72 by the Appellant.

6.16 In this regard, we take note of the Appellant's contention that the question of whether an ASP is movable or immovable is no longer res-integra; that the issue stands conclusively settled by the decision of the Hon'ble CESTAT, Mumbai in the Appellant's own case, under the Final Order No. A/85751-85753/2025 dated 24.04.2025; where the Hon'ble Tribunal examined the identical category of cryogenic ASPs, including a 300 TPD and 41260 TPD unit, and after detailed factual, technical and legal analysis, held that such plants are movable property; that the findings directly apply to the ASP under the present proceedings, which is structurally and functionally identical, thereby squarely covering the issue. On perusal of the said Order of the Hon'ble CESTAT, Mumbai, we find that under the impugned case, the Appellant's unit at Raigad had entered into agreements with M/s.Ispat Industries Ltd., ('ISPAT' in short) for setting up a 1260 TPD Gas Plant and a 300 TPD Oxygen Plant to be set up at ISPAT's premises. The brief facts of the said case as brought out in para 1.3 of the said order is reproduced below for facilitation:-

> *"1.3 Under the agreement dated 02.01.2004, certain equipment required for setting up of the plant facilities* ***were provided by ISPAT*** *(termed as 'ISPAT equipment' under the agreement). Those ISPAT equipment were provided free of cost to the appellants for setting up of the Gas Plant. The ownership of that equipment always remained with ISPAT and the appellants do not have any interest in the same. Apart from the ISPAT equipment, ISPAT also provides power and water.* ***The site on which the plant is required to be set up is provided by ISPAT****. The site consists of a plot of developed land. According to the agreement, the appellants have no interest in the land provided by ISPAT. The appellants only have a right of access to the site to carry out their obligations under the agreement.* ***The rest of the equipment*** *(other than the ISPAT equipment)* ***were procured by the appellants themselves****. ------."*

It could be seen that the facts of the case relating to the Appellant's Raigad unit differ basically from that of the instant case, in as much as the Raigad case involves setting up plants in ISPAT's own premises, with the help of ISPAT's equipment supplied free of cost, apparently with an intention to effect supplies exclusively to ISPAT (client), whereas, the instant case involves **acquisition of land by the Appellant themselves** on a long term lease of 72 years, where they intend to manufacture medical and

industrial gases and supply them to various clients by way of bring up a manufacturing facility **on their own account**.

6.17 This apart, we note that the basic issue involved in the Appellant's Raigad unit case, relates to the liability to pay service tax on the lease rental paid by ISPAT under the category of 'Renting of Immovable property service', as defined under Section 65(90a) read with 65(105)(zzzz) of the erstwhile Finance Act, 1994 (referred to as 'Act of 1994'). It is secn that the Hon'ble CESTAT, Mumbai has discussed and pronounced the order in line with the definition of 'Immovable Property' as provided under 'Explanation 1' to sub-clause zzzz to Section 65(105) which relates to 'Renting of Immovable property service', as it existed at the relevant period of time, i.e.,

> *"(105) "taxable service" means any service provided or to be provided, -*
> *(zzzz) to any person, by any other person in relation to **renting of immovable property** for use in the course or furtherance of business or commerce.*
>
> ***Explanation 1.**—**For the purposes of this sub-clause**, "immovable property" includes—*
> *(i) building and part of a building, and the land appurtenant thereto;*
> *(ii) land incidental to the use of such building or part of a building;*
> *(iii) the common or shared areas and facilities relating thereto; and*
> *(iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate,*
> *(v) vacant land, given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce*
>
> *but does not include-*
>
> *(a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;*
> *(b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;*
> *(c) land used for educational, sports, circus, entertainment and parking purposes; and*
> *(d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities."*

6.18 Accordingly, the Hon'ble CESTAT, Mumbai had held in para 11.1 of the said order as,

> *"----. In view of the fact that the said Explanation clause has considered only a 'building', 'land', 'facilities relating thereto', in our considered view, **no other property can be included therein for consideration as 'immovable property'**.*

And in para 11.2 as,

> *"----. Thus, the legislative intent is manifest that the scope of the main section for understanding the meaning of 'immovable property', **should only be confined to those prescribed properties, which are itemized in the said explanation clause**. In other words, any other property(ies) not conforming to the prescribed properties should fall outside the scope and purview of consideration as 'immovable' **for the purpose of the Act of 1994**. ----."*

It is evident from the above that the Hon'ble CESTAT, Mumbai while pronouncing the order has apparently encountered constraints in categorizing the movable/immovable nature of property in dispute, and has arrived at the conclusion that the said property is not 'immovable' in nature, **only for the purposes of ersthwile Finance Act, 1994**, and not in general. Moreover, the same is specifically in relation to taxability under 'Renting of Immovable Property' service as defined sub-clause (zzzz) to Section 65(105) of the Finance Act, 1994.

6.19 At this juncture, we would like to reiterate the fact that the issue involved in the instant case is that of ITC eligibility, whereas the issue in respect of the Appellant's Raigad case revolves around the taxability of the 'Renting of Immovable Property' service rendered, where the concept of 'Immovable Property' has a restrictive meaning, extendable only to the items listed under the Explanation 1 to Section 65(105)(zzzz) of the Finance Act, 1994. This apart, the facts of the case are absolutely different and distinguishable from the instant case as compared to the Appellant's Raigad case, as discussed already above. Accordingly, we are of the opinion that the ratio of the verdict obtained in the Appellant's Raigad case, is not applicable to the instant case of the Appellant, more so because the instant case involves the provisions of GST law, whereas the Appellant's Raigad case not only involves the provisions of the erstwhile Finance Act, 1994, it relates to the provisions of the Finance Act, 1994, as it existed prior to the 'Negative List' era.

6.20 Likewise, we find that the Appellant's reliance on the Hon'ble Supreme Court's judgment dated 8.04.2010 in the case of M/s.Solid & Correct Engineering Works & Others, also do not come to their aid, as the case becomes distinguishable in view of the fact that the provision of the Central Excise Act, 1944 has been invoked in the said case for demand of Central Excise duty on the machinery/equipment like Asphalt Drum, Hot Mix Plants, Asphalt Paver Machine, etc., whereas the instant case relates to invocation of the provisions of the CGST Act, 2017, and it involves the installation of a comprehensive Air Separation Plant which do not fall within the ambit of 'Plant and Machinery'. Further, we find that the Appellant's reliance on the Hon'ble Supreme Court's judgment dated 20.11.2024 in the case of M/s.Bharti Airtel Ltd., is of no avail to them, in view of the fact that the case becomes distinguishable as discussed in para 6.11 above. Quite interestingly, we find that the contents of aforesaid judgment goes against the contentions of the Appellant, as discussed in detail in paras 6.12 to 6.15 above.

6.21 Accordingly, once it is held that the service in relation to acquisition of land received by the Appellant is meant for construction of an immovable property on their own account, the only available alternative is to examine and determine whether the installed facility falls within the ambit of 'plant and machinery', as the same stands excluded from credit blockage as envisaged under the provisions of Section 17(5)(d) of the CGST Act, 2017. In this regard, we find that the expression "Plant and Machinery" has been specifically defined under the 'Explanation' to Section 17 of the Act, as follows:-

*"**Explanation.**—For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" 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 **but excludes**—*

*(i) **land, building or any other civil structures;***
(ii) telecommunication towers; and
(iii) pipelines laid outside the factory premises."

6.22 Therefore, we now move on to discuss as to whether the resultant installation of the Air Separation Plant gets categorised as 'Plant and Machinery' or not. In general parlance, an installation or even a factory is referred to as a 'Plant', and a Machinery is taken to mean 'A group of parts or machines arranged to perform a useful function'. However, it is to be noted that the categorisation as to 'Plant and Machinery', for the purposes of availment of ITC, is not to be determined as it is meant in general parlance, and that the same is liable to be determined strictly in line with the definition prescribed under the statute. Further, the expression 'Plant **and** Machinery' is to be considered in toto per se, and that the same cannot be seen as a 'Plant' as such, or as a 'Machinery' as such, or as 'Plant **or** Machinery'. Accordingly, the expression "plant and machinery" as defined in the explanation under Section 17 of the CGST Act, 2017, is taken to mean an -

(a) apparatus, equipment or a machinery;
(b) which are fixed to earth either by foundation or by structural support;
(c) which are used for making outward supply of goods or services or both;

6.23 At this juncture, we take cognizance of the fact that the terms 'Apparatus', 'Equipment', 'Machinery' are not defined under the GST Law, and so we consider the definitions of the respective items drawing inference to Mc-Graw Hills dictionary, wherein these items have been defined as follows :

*"**Apparatus** - A compound instrument designed to carry out a specific function.*
***Equipment** - One or more assemblies capable of performing a complete function.*
***Machinery** - A group of parts or machines arranged to perform a useful function."*

It could be seen from the above, that a Machinery, Apparatus, or an Equipment are seen as individual units, meant for a specific or an intended function. On the other hand, the overall installation in relation to the setting up of a 'State of the Art' Ultra High Purity Cryogenic Liquid Medical and Industrial Oxygen plant, involves setting up of various components like 'Cooling Tower and Pumps', 'TSA Bed A & B', 'Warm and Cold Compressor', 'Lox Storage Tank 1000MT', 'Lin Storage Tanks 250KL x 2 Nos.', 'LAR Storage Tank 30 KL', etc., and other such infrastructure which are meant to perform a whole lot of functions in relation to the entire factory set-up, and its overall manufacturing process. Therefore, the Air Separation Plant cannot be treated as an Apparatus, Equipment, or Machinery by any means whatsoever, and it is to be understood that even in the event of treating the overall installation as a manufacturing Plant, the same is not capable of getting categorised as 'Plant and Machinery', since the same does not fit into the definition as provided under the 'Explanation' to Section 17 of the Act.

6.24 This apart, it could be seen that while the inclusive limb of the aforesaid explanation covers 'foundations and structural support', the exclusive limb of the same clearly excludes 'land, building and any other civil structure'. Thus the provisions of Section 17(5)(d) of the CGST Act, 2017, when read with the 'Explanation' to Section 17 of the Act, ibid, clearly establishes the intention to restrict/block the credit of GST paid on goods or services received for construction of an immovable property, except for construction of 'Plant and Machinery', and it also becomes clear that ITC of the GST paid on goods/services received in relation to construction or acquisition of 'land, building or any other civil structures' stands blocked.

6.25 From the foregoing, it is evident that the receipt of impugned service from IPL by the Appellant is meant for construction of an immovable property on Appellant's own account, and it is also evident that the said immovable property, i.e., the manufacturing facility do not get categorized as 'Plant and Machinery', as defined under the statute. We are therefore of the considered opinion that ITC of GST, if any, paid on the receipt of service from IPL, stands blocked under Section 17(5)(d) of the CGST Act, 2017.

7. In view of the detailed discussion supra, we pass the following order.

ORDER

The Appellant is not entitled to avail and utilize ITC of GST charged by IPL, as the same is restricted under Section 17(5)(d) of the CGST/TNGST Acts, 2017, if such transaction is considered to be a supply.

MADAN MOHAN SINGH
Principal Chief Commissioner of GST
& Central Excise, Tamil Nadu & Puducherry
Zone / Member AAAR

S. NAGARAJAN
Commissioner of Commercial Taxes
Tamil Nadu / Member AAAR

To
M/s. Inox Air Products Private Limited
66-1A1B2B1B 1A1A2, Manali Express Highway,
Sathangadu, Tiruvallur, Tamil Nadu, 600068.

//RPAD//

Copy submitted to :-

1. The Principal Chief Commissioner of CGST & Central Excise,
   No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam,
   Chennai – 600 034.

2. The Commissioner of Commercial Taxes,
   2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to :-

3. The Commissioner of CGST & C.Ex.,
   Chennai North Commissionerate.

4. The Assistant Commissioner (ST).
   Manali Circle, Tiruvallur Zone

5. Master File / spare – 1.