GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.

ADVANCE RULING(APPEAL) NO. **GUJ/GAAAR/APPEAL/2026/04**
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2025/AR/08)

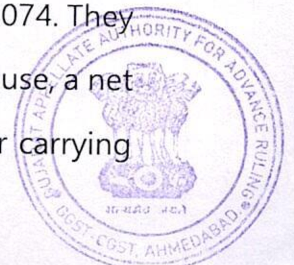
Date :04/04/2026

Name and address of the appellant	:	***M/s. Agratas Energy Storage Solutions Pvt. Ltd.*** Revenue Survey No. 2, North kotpura, Sanand GIDC, Ahmedabad, Gujarat-382170
GSTIN of the appellant	:	24AAYCA3941M1Z3
Advance Ruling No. and Date	:	GUJ/GAAR/R/2025/46, dated 03.11.2025
Date of appeal	:	11.12.2025
Date of Personal Hearing	:	21.01.2026
Present for the appellant	:	Shri Ishan Bhatt, Advocate, Ms. Shaifali Arora, Head Taxation, Agratas Energy Storage Solutions Pvt. Ltd. and Ms. Snehal Atre, DGM, IDT, Tata Motors Global Services.

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (for short - 'CGST Act, 2017' and the 'GGST Act, 2017') are *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. The present appeal has been filed under Section 100 of the CGST Act, 2017 and the GGST Act, 2017 by M/s. Agratas Energy Storage Solutions Pvt Ltd (for short - 'appellant') against the Advance Ruling No. GUJ/GAAR/R/2025/46, dated 03.11.2025.

3. Briefly, the appellant is a newly set up company for undertaking the business of manufacturing of battery cells for motor vehicles. They are a wholly owned subsidiary of Tata Sons. The appellant have entered into a lease agreement with the Government of Gujarat for a duration of 50 years for the period from 26 June, 2024 to 25 June, 2074. They have been granted lease hold rights from the Gujarat Government for industrial use, a net plot area admeasuring 321 acres approx. The appellant would use the land for carrying



out their business activities including industrial construction, erection, repair or demolition of construction for the concerned purpose etc. In consideration for the grant of lease, the appellant have agreed to pay annual lease rental at the rate of 6% of the total Market price (market price at the time of allotment of land) to the Government of Gujarat with an escalation of 10% of lease rent every five years.

4. The appellant is liable to discharge GST under the Reverse Charge Mechanism (RCM) in terms of Section 9(3) of the Act, ibid, in respect of the services supplied by the Government of Gujarat by way of grant of the long-term lease of land. The appellant posed the below mentioned question before the Advance Ruling Authority, viz

> *(1) Whether the Applicant would be eligible to avail the ITC of the GST charged on the lease rental, where the factory building would be constructed on lease land?*
>
> *(2) Without prejudice to the above, whether the ITC of GST charged on the lease rental paid would be available in the following periods:*
>
> > *(i) For the period prior to initiation of the construction of the factory building*
> >
> > *(ii) For the period after construction of the factory building*
>
> *(3) Without prejudice to the above, whether ITC of GST paid on lease rental would be available when the repairs, maintenance and renovation activities are undertaken on the factory building?*
>
> *(4) Without prejudice to the above, whether ITC of GST paid on lease rental would be available with respect to the area of the land on which no immovable property is constructed i.e. vacant portion of the land?*

5. The appellant, before the GAAR, further stated as under:-

(a). that they are eligible to avail the ITC of GST charged on the lease rental as the lease of land is not for 'construction' of immovable property. The term '*for*' used in section 17(5)(d) of the Act i.e. '*for construction*' should be applicable only to those goods and services which are directly used in the construction of factory building and would not cover supplies indirectly/remotely related to construction activities. This can cover goods/services viz. cement, steel, construction contractor, electrical, plumbing, engineering, architect etc.

Reliance is placed on the judgement of the Supreme Court in the case of *CCE, Pune Vs Tata Engineering and Locomotives Ltd . [2003-TIOL-15-SC-CX]*, which has put a restrictive meaning on the word '*for*'. If the intention of the law makers was to restrict the ITC in relation to construction activity, they would have used the term '*in relation to*' instead of '*for*'.

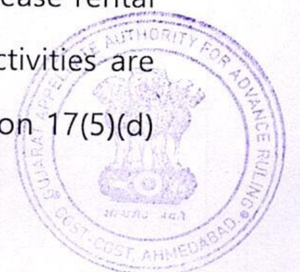
(b). that the restriction under Section 17(5)(d) of the CGST Act should be read in the context of Section 17(5)(c) of the CGST Act. Section 17(5)(c) only restricts ITC with respect to works contract services wherein the service element does not include land, therefore, the transaction related to land (such as lease) cannot be said to be covered under the service part of Section 17(5)(d) of CGST Act.

(c). that there cannot be differential tax treatment on the basis of the manner/periodicity of payment.

(d). that treatment of upfront premium and periodic payment would be different if the ITC on periodic premium payment is not allowed. Notification No. 12/2017-CT (R) dated 28.06.2017 exempts upfront premium paid for services involving the grant of long-term leases of industrial plots or plots for infrastructure development from GST if they are provided by certain government owned entities. However, this exemption is not available for annual lease payments, which are subject to GST. The differential treatment between upfront premium payments and annual lease may lead to inequitable outcomes for taxpayers engaging in similar lease transactions if the ITC on periodic lease premiums is disallowed.

(e). that without prejudice to the above, the appellant would be eligible for ITC of GST charged on the lease rental paid for the period pre and post the activity of construction, as the land would not be used 'for construction' of immovable property. Further, the portion of land on which construction activity would not be undertaken, is not used of construction. Therefore, the ITC on lease rentals with respect to the said portion of land would not be hit by the provisions of Section 17(5) of the CGST Act.

(f). that without prejudice to the above, the ITC of GST paid on lease rental would be available when repairs, maintenance and renovation activities are undertaken on the factory building. While restrictions under Section 17(5)(d)



apply to activities concerning the factory building, such as repairs, renovations, additions or alterations, they do not extend to the leasehold land itself.

6. The Advance Ruling Authority, post admittance & personal hearing, pronounced its impugned ruling vide Advance Ruling No. GUJ/GAAR/R/2025/46, dated 03.11.2025, wherein it was held that:-

(A). *the ITC of the GST charged on the lease rental, would not be available, where the factory building would be constructed on lease land.*

(B). *the ITC of GST charged on the lease rental paid would not be available for the period prior to initiation of the construction of the factory building and also for the period after construction of the factory building.*

(C). *the ITC of GST paid on lease rental would not be available when the repairs, maintenance and renovation activities are undertaken on the factory building.*

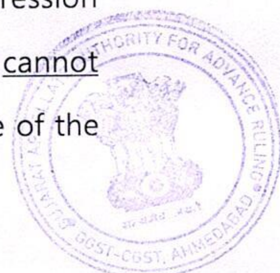
(D). *the ITC of GST paid on lease rental would not be available with respect to the area of the land on which no immovable property is constructed i.e. vacant portion of the land.*

7. The below mentioned findings, led the GAAR to arrive at the aforementioned ruling, *viz.*

(a). The Advance Ruling Authority in *Re: M/s Bayer Vapi Pvt Ltd [2023(9) TMI 165-AAR, Gujarat]*, while dealing with a similar matter, had held that it is clearly hit by the bar of Section 17(5)(d) of the CGST Act.

(b). The Advance Ruling Authority has also, in the case of *Re: M/s GACL-NALCO Alkalies and Chemicals Pvt Ltd.* [2021(12) TMI-36-AAR, Gujarat], on a similar issue of availability of ITC on the GST payable for the one time consideration paid to GIDC for transferring its leasehold rights of the plot to GNAL, has held that the same is blocked credit under Section 17(5)(d). The Appellate Authority, vide order dtd. 30.12.2024 [2025 (96) GSTL 211 (App. AAR-GST-Guj), has rejected the appeal filed by *GACL-NALCO Alkalies and Chemicals Pvt Ltd.*

(c). As per interpretation of the Supreme Court in the case of *Oblum Electrical Industries Pvt Ltd Vs Collector of Customs* [1997(94) ELT 449], the expression '*materials required to be imported* ***for the*** *purpose of manufacture of products*' cannot be construed as referring only to materials which are used in the manufacture of the



products. Therefore, the term '*for*' does not, in fact, restrict the scope of Section 17(5)(d) to materials having a direct nexus to construction, but enlarges it.

(d). Clause (c) of Section 17, specifically deals with work contract service supplied for construction of an immovable property whereas Clause (d) deals with any goods or services used for construction of an immovable property which is received by a taxable person. Therefore, both these clauses are independent of each other and one cannot be read in context of the other.

(e). Upfront payments and annual lease rentals are not the same. The Supreme Court in the case of *Commissioner of Income Tax, Assam Vs The Panbari Tea Co. Ltd* [1965 AIR 1871] has brought out the distinction between the upfront payment (called as premium, salami, cost, price, development charges etc.) and rent.

(f). GST Council was also aware of the non-availability of tax credit on leasing.

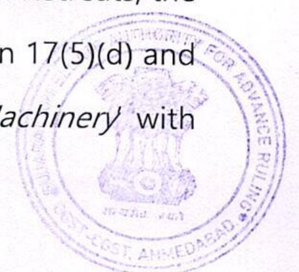
(g). The land has been given on lease specifically for construction of the factory. Thus, the land being used for industrial construction and the any services specific to land being blocked by virtue of Section 17(5)(d) of the Act, ibid, the eligibility of ITC is not contingent to the pre or post activity of construction.

(h). Any land kept vacant for meeting the mandatory environment guidelines would be a part of the industry being constructed by the appellant on the leased land.

(i). The expression '*construction*' also includes reconstruction, renovation, addition or alterations or repairs. Therefore, when ITC of GST paid on lease rental paid on land for construction of immovable property is blocked under Section 17(5)(d) and since construction includes repairs, ITC of GST paid on lease rental would not be available on repairs.

(j). The facts that in *Bayer Vapi* the advance ruling was on the eligibility ITC of GST paid on services received from Vapi Enterprise Ltd., in the form of leasehold rights in industrial land, whereas the appellant has sought an advance ruling on the eligibility of ITC of GST paid under reverse charge on annual lease rental paid to GIDC, would not make any difference as the services in both the cases are in relation to the land used for construction of immovable property.

(k). The '*functionality test*' laid down by the Supreme Court in *Safari Retreats* will not be applicable in their case as subsequent to the judgement of Safari Retreats, the legislature, vide Section 124 of the Finance Act, 2025, has amended Section 17(5)(d) and substituted the words '*Plant or Machinery*' with the words '*Plant and Machinery*' with effect from 01.07.2017.



8. Aggrieved, the appellant is before this Appellate Authority, against the impugned ruling dated 03.11.2025, raising the following averments, *viz.*

(a). The ruling is non speaking and is in violation of principles of natural justice; that the GAAR has given a contradictory finding because the GAAR had, in para 20, noted that there is no difference between upfront payment and annual lease rental, whereas in Para 15 of the ruling observed that the upfront payments and annual lease rentals are not the same and can be given differential treatments.

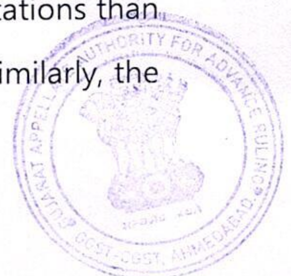
(b). The GAAR has not followed the decision of the Supreme Court in the case of *CCE Vs TELCO* quoted by the appellant and instead failed to distinguish the present case; that it has failed to provide any findings as to why the decision is not applicable in the instant case.

(c). The appellant had elaborated in the application for advance ruling that the leased land would be used for industrial purposes, wherein the construction would be expected to be completed by October 2026 and upon completion, the leasehold land would not be used 'for construction' of building and, therefore, for the period before the initiation of construction activity and after the completion of construction activity, the ITC ought to be allowed. However, this was not considered by the GAAR which has cherry picked certain clauses of the agreement and undertook limited reading of the said conditions to rule that no ITC would be available.

(d). The input services of long-term lease procured by the appellants are in the course of furtherance of business of the appellant in terms of Section 16 of the CGST Act.

(e). The appellant is eligible to avail the ITC of the GST charged on the lease rental as the lease of land is not for 'construction' of immovable property; the term 'for' has to be interpreted in a strict and narrow sense and not a liberal sense; the words used in Section 17(5)(d) i.e. for construction should be applicable only to those goods and services which are directly used in the construction of factory buildings; that they would like to rely on the judgement in the case of *Collector of Central Excise, Pune Vs Tata Engineering and Locomotives Co Ltd. [2003-TIOL-15-SC-CX]* wherein the Hon'ble SC held that the expression '*used for*' restricts applicability of exclusion clause to only those goods which are directly used in the actual production or processing or any change in substance.

(f). In *Mansukhlal Dhanraj Jain Vs Eknath Vithal Ogale etc*- the SC compared the words '*for*' and '*relating to*' and concluded that the later has wider connotations than the former; that Section 17(5)(d) used the word '*for*' and not 'in *relation to*'. Similarly, the



SC in *Doypack Systems Vs UOI* and in *Kisan Co-operative Sugar Factory* has held that 'in *relation to*' is of wide import.

(g). The GAAR has placed reliance on SC judgement *of Oblum Electrical Industries* to enlarge the scope of the expressions '*for*'. However, it has failed to record as to why the narrow interpretation of the term '*for*' by the SC in *TELCO* is not applicable; *Oblum Electrical Industries* pertained to interpretation of an exemption Notification i.e. Notification No. 210/82-Cus, whereas in the present case, the interpretation pertains to a statutory provision.

(h). The Supreme Court, in the case of *CC, Mumbai Vs Dilip Kumar & Company* [2018(361) ELT 577 (SC)], had held that regard must be made to the clear meaning of words and matter should be governed wholly by the language of the notification, equity or intendment having no place in interpretation of a tax statute. If words are ambiguous in a taxing statute (not exemption clause) and open to two interpretations, benefit of interpretation is given to the subject. Similar interpretation has been given by the High Court in the case of *Santani Sales Organisation Vs CESTAT New Delhi* and the Supreme Court in the case of *State Vs Parmeshwaran Subramaini*

(i). It would be illogical to assume that the appellant would be carrying out construction activity for the entire 50-year period of the lease.

(j). Restriction under Section 17(5)(d) should be read in the context of Section 17(5)(c) of the CGST Act; Section 17(5) restricts ITC on works contract service when supplied for immovable property. Therefore, where a person appoints a contractor for constructing an immovable property on his own account, he would not be entitled to ITC on works contract. Section 17(5)(d) restricts ITC even in a situation where the assessee decides to undertake construction on its own by procuring cement, steel, labour etc. Thus, sub clause (d) was to restrict ITC even in a situation where the assessee decided to undertake construction on its own by procuring cement, steel, labour etc. instead of appointing a works contractor. Works contract, by nature, does not involve an element of transfer of title of land. As Section 17(5)(c) only restricts ITC with respect to works contract services wherein service element does not include land and, hence, the transaction related to land cannot be covered under the service part of Section 17(5)(d). GAAR has failed to consider the object and purpose of introducing these two clauses as it has concluded that both are independent of each other.

(k). There cannot be a differential tax treatment on the basis of the manner/periodicity of payment.

(l). Treatment of upfront premium and period payment would be different if the ITC on periodic premium payment is not allowed. Upfront premium paid for services involving the granting of long-term leases of industrial plots are exempt from payment of GST under Sl. No. 41 of Notification No. 12/2017-CT(R). Differential treatment between upfront premium payments and annual lease may lead to inequitable outcomes for tax payers engaging in similar lease transactions.

(m). Some land is mandated to be designated as a green belt within the factory premises for environment compliance. Therefore, no construction is undertaken and the land is utilized for the development, maintenance and upkeep of gardens. Thus, ITC of any input services which is used in the upkeep of the said green belt will be available. Reliance is placed on the ruling of Tamil Nadu Authority for Advance Ruling in the case of *Re: M/s Faiveley Transport Rail Technologies India Private Ltd.* [2024 (3) TMI 738-AAR, Tamilnadu] , wherein the ITC on the input services received by the appellant in relation to gardening activities carried out within the factory premises is allowed.

(n). GAAR's reliance on the letter of Hon'ble Finance Minister of Punjab to deny the ITC of annual leave rental is misplaced as the same has no precedential value, as the GAAR has wrongly considered the representation made by the Finance Minister of Punjab to be the view of the GST Council.

(o). Appellant would be eligible to avail ITC of GST charged on lease rentals paid pre and post construction period, during which the land is not used for construction activity. The period of lease is for 50 years. For the period pre and post the activity of construction, the land would not be used for construction of immovable property. The GAAR, while denying the ITC, has erroneously used the expression 'for industrial use' and 'used for industrial construction' interchangeably, thereby, implying that the term for 'industrial use' is synonymous with 'construction'. This interpretation presumed that the appellant would be engaged in the activity of construction throughout the entire fifty years tenure of the lease.

(p). ITC of GST paid on lease rental would be available when repairs, maintenance, and renovation activities are undertaken on the factory building. Construction of the factory building and any repair, renovations, additions or alterations are distinct activities from the leasing of land itself. Therefore, ITC on GST paid for lease rental during which repairs etc. would be undertaken would be available to the appellant.

(q). The project is a part of the 'Make in India' initiative of the Government of India, which aim at transforming India into a global manufacturing hub with special focus

on increasing investments Thus, any denial of the ITC on the annual lease rental would burden any taxpayer who intends to lease a piece of land from the Government for setting up a factory under the 'Make in India' flagship initiative. This would result in the costs of the product so manufactured, thereby make the domestically produced goods uncompetitive in the global market.

9. Personal hearing in the matter was held on 21.1.2026, wherein Shri Ishan Bhatt, Advocate, Ms. Shaifali Arora, Head Taxation, Agratas Energy Storage Solutions Pvt. Ltd. and Ms Snehal Atre, DGM, IDT, Tata Motors Global Services appeared on behalf of the appellant and reiterated the submissions made in the appeal.

<u>FINDINGS:</u>

10. We have carefully gone through and considered the appeal papers, written submissions filed by the appellant, submissions made at the time of personal hearing, the Advance Ruling given by the GAAR and other materials available on record.

11. The issue involved is the eligibility of ITC of the GST charged on lease rental paid for the land, which has been taken on long term lease by the appellant, from the Government of Gujarat for a duration of 50 years, on which the appellant would be constructing a factory for manufacturing battery cells for motor vehicles. The appellant is before this appellate authority as the advance ruling authority has ruled that they would not be eligible for the ITC of the GST charged on the lease rental by the Government of Gujarat.

12. We find that the advance ruling authority has primarily relied on its rulings in the case of *Re: M/s Bayer Vapi Pvt. Ltd.* ***[2023(9) TMI 165-AAR, Gujarat]*** and *Re: M/s GACL-NALCO Alkalies and Chemicals Pvt Ltd.* ***<u>[2021(12) TMI-36-AAR, Gujarat].</u>*** The issue of eligibility of ITC on the GST paid on supply of transfer of lease rights was decided in the case of *GACL-NALCO Alkalies and Chemicals Pvt Ltd.* The advance ruling authority in *GACL-NALCO Alkalies and Chemicals Pvt Ltd.* had held that the subject ITC is not available, as the services pertaining to land received by a taxable person for construction of an immovable property on his own account is blocked under Section 17(5)(d) of the GST Act. The appeal against the ruling given in the case of *GACL-NALCO Alkalies and Chemicals Pvt Ltd.* has also been rejected by this appellate authority. We also note that the appellant

has not made any submissions before us as to why we should not follow the said order of *Re: M/s GACL-NALCO Alkalies and Chemicals Pvt Ltd.*

13. The appellant has contended that they had, in their letter dated 15.09.2025, distinguished the ruling in the case of *Bayer Vapi Pvt. Ltd.* on the ground that it dealt with eligibility of ITC of GST paid on upfront lease while in the case of the appellant the issue pertains to the eligibility of ITC of GST paid on annual lease rental. While dealing with the said submission at Para 20 of the order, the advance ruling authority had noted that there is no difference between upfront payment of premium and lease rental paid annually. However, in Para 15 (sic) (actually it is Para 16 and not Para 15 as submitted by the appellant) of the order, the advance ruling authority had observed that the upfront payments and annual lease rentals are not the same and can be given different tax treatments. Para 16 of the order of the advance ruling authority is reproduced below:-

> *" 16. The next averment of the applicant is that there cannot be differential tax treatment on the basis of the manner/periodicity of payment. As per the applicant, upfront premium paid for services involving the grant of long-term leases of industrial plots or plots for infrastructure development from GST, if they are provided by certain government owned entities, are exempted vide Notification No. 12/2017-CT (R) dtd. 28.06.2017, while annual lease payments are subject to GST. This differential between upfront premium payments and annual lease may lead to inequitable outcomes for taxpayers engaging in similar lease transactions, if the ITC on periodic lease premiums is disallowed. First of all, upfront payments and annual lease rentals are not the same. The Supreme Court in the case of Commissioner of Income Tax, Assam Vs The Panbari Tea Co. Ltd [1965 AIR 1871] has brought out the distinction between the upfront payment (called as premium, salami, cost, price, development charges etc.) and rent as under: -*
>
> > *"When the interest of the lessor is parted with for a price, the price paid is premium or salami. But the periodical payments made for the continuous enjoyment of the benefits under the lease are in the nature of rent. The former is a capital income and the latter a revenue receipt."*

Therefore, both the payments cannot be equated. Further, Notification No. 12/2017-CT(Rate) dtd. 28.06.2017 grants exemption of GST paid only on upfront amount for granting of long-term lease of industrial plots or plots, for development of infrastructure for financial business, provided by the State Governments, Union Territories, State Industrial Development Corporations or Undertakings. This was a conscious decision of the Government to promote setting up of industrial parks. However, no exemption from GST for lease rental has been provided. Thus, the Government has also treated both these payments differently. ....."

First of all, we find that in Para 16, the advance ruling authority was dealing with upfront payment called as premium, salami, cost, price etc. charged by the State Governments, Union Territories, State Industrial Development Corporations or Undertakings and not the ITC of the GST paid on the transfer of lease hold rights, which was the case in *Bayer Vapi*. Secondly, the discussion in Para 16 was with regard to the contention of the appellant that Notification No. 12/2017-CT(R), dtd. 28.06.2017 granted exemption to upfront payment called as premium, salami, cost, price etc. whereas the annual lease payments are subject to GST. The appellant was of the view that this differential treatment in both the payments may lead to inequitable outcomes for tax payers engaged in similar lease transactions if the ITC on annual lease payments is disallowed. It is in these circumstances that the advance ruling authority had held that both the payments are different. In para 20, the advance ruling authority was dealing with ITC eligibility of GST paid on one time transfer of leasehold rights vis-à-vis the annual lease rent. Thus, there is no contradiction in the views of the advance ruling authority in these two paras.

14. The appellant has submitted that they had made detailed submissions to substantiate how the word '*for*' as used in Section 17(5)(d) of the CGST Act needs to be interpreted restrictively and narrowly in light of the decision of the Supreme Court in the case of *Collector of Central Excise, Pune Vs Tata Engineering and Locomotives Co Ltd.* [2003-TIOL-15-SC-CX]. However, the advance ruling authority has not followed the said decision and neither distinguished it. We find that the advance ruling authority has dealt with the same in Para 14 of the order, which is reproduced below: -

"......The applicant has relied upon the judgement of the Supreme Court in the case of Collector of Central Excise, Pune Vs Tata Engineering and

Locomotives Co. Ltd [2003(158) ELT 130 (SC)] to put a restrictive meaning for the word 'for'. We have gone through this judgement. We find that the Supreme Court was comparing the expression 'used for producing or processing' with 'used in or in relation to the manufacture of the final product'. It is in these circumstances that the Supreme Court held that "used for producing or processing" must mean something less than "used in or in relation to the manufacture of the final products".

15. The appellant has further stated that the judgement of the Supreme Court in the case of *Oblum Electrical Industries Pvt. Ltd. Vs Collector of Customs - [1997 (94) ELT 449],* relied upon by advance ruling authority in its ruling, pertained to an interpretation of an exemption notification i.e. Notification No. 210/82-Cus. Therefore, the said judgement pertained to the interpretation of the wordings of exemption notification, where the Hon'ble Supreme Court has given a wider meaning to the word '*for*' to give effect to the intention of the legislature. We find that the decision of the Supreme Court in the case of *Collector of Central Excise, Pune, Vs Tata Engineering and Locomotives Co. Ltd.- [2003-TIOL-15-SC-CX].,* on which the appellant has strongly relied, was also dealing with an exemption notification viz. Notification No. 217/86-CE, dtd. 02.04.1986, wherein the Supreme Court was dealing with the exclusion clause in the explanation to the Notification. Further, as noted by the advance ruling authority, the Court was comparing the phrase *'used for producing or processing'* with *'used in or in relation to the manufacture of the final products".* It is also pertinent to reproduce Para 7 of the said judgement, which is as under: -

"7. If machinery/equipment manufactured in a factory captively used in relation to the final product are wholly exempt by the main part of the notification, the exclusion clause cannot be interpreted to extend to the very same machinery/equipment, as then the grant of exemption to such items in the first place was unnecessary. It would not be reasonable to impute a statutory exercise in futility by including goods for the grant of benefit in the substantive portion of the notification only to exclude the same goods by way of an explanation. The only reasonable construction that could be put on the exclusionary words in the explanation, in the circumstances, is the one contended by the respondent and accepted by the Tribunal. In other words, all machinery etc. which are inputs are entitled to exemption from excise duty excepting those which actually produce or process or bring about a change.

It is not the appellant's case that the items in question have any of the last-mentioned characteristics. They are, therefore, exempted from payment of excise duty under the 1986 Notification."

Thus, what led the Supreme Court to put a restrictive meaning to the exclusion clause was that, as the main part of the notification exempted the machinery/equipment manufactured captively in the factory, the exclusion clause cannot be interpreted to extend to the very same machinery/equipment. In other words, the phrase '*in or in relation to the manufacture of the final product*' in the main clause has to be interpreted differently from that in the exclusion clause, because of the phrase "*used for producing or processing*" and "*bringing about any change in any substance*" precedes the phrase '*in or in relation to the manufacture of the final product*'. Thus, the restrictive meaning given by the Supreme Court for interpreting the exemption Notification No. 217/86-CE, dated 02.04.1986 cannot be applied to an altogether different situation i.e. Section 17(5)(d) of the Act, which is reproduced below.

(5). Notwithstanding anything contained in sub-section (1) of section 16 and subsection (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 capitalization, to the said immovable property;

16. The appellant has submitted that the input services of long-term lease procured by them are in course of furtherance of business of the appellant in terms of Section 16 of the CGST Act. We do not agree with this proposition as Section 17, reproduced above, starts with a non-obstante clause "*Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following*". Therefore, the provisions of Section 17 have an over-riding effect over the provisions of Section 16 of the Act. Moreover, Section 17(5)(d) explicitly prohibits the availment of Input Tax Credit (ITC) on goods and services utilized for the

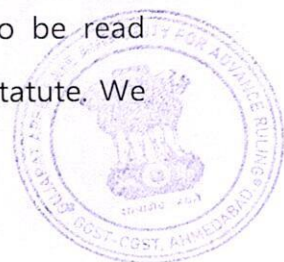
construction of immovable property. This restriction applies regardless of whether the construction is undertaken in the course or furtherance of business.

17. The appellants have also relied upon the judgements of the Supreme Court in the case of *Mansukhlal Dhanraj Jain Vs Eknath Vithal Ogle- [1995(2)TMI 439], Doypack Systems (Pvt.) Ltd. Vs UOI - [1988(36)ELT201(SC)]* and *Kisan Co-operative Sugar Factory Limited Vs CCE, Meerut-I - [2003(25)TMI1303-SC].* We find that in these judgements, the Supreme Court was examining the phrase '*in relation to*' or '*in or in relation to*', which do not find mention in the provisions of Section 17(5)(d). Further, reliance has been placed on the order of the Appellate Authority for Advance Ruling, Karnataka in the case of *M/s We Work India Management Private Limited-[2020-VIL-24-AAAR].* The said Appellate Authority has relied upon the judgement of the Supreme Court in the case of *Tata Engineering and Locomotives Co Ltd.*, while deciding the appeal. We have already discussed in the foregoing paras as to how the said judgement cannot be relied upon to interpret the provisions of Section 17(5)(d). Therefore, we are not inclined to follow the interpretation given by the said appellate authority.

18. The appellant, in the submissions as well as during the course of hearing, has laid emphasis on the judgement of the Supreme court in the case *Commissioner of Customs (Import), Mumbai Vs Dilip Kumar & Company - [2018 (361) ELT 577 (SC)].* The appellant has laid specific emphasis on the below mentioned view of the Supreme Court-

> *"Interpretation of taxing statute-Tax Liability-Regard must be had to the clear meaning of words and matter should be governed wholly by the language of the notification, equity or intendment having no place in interpretation of a tax statute-If words are ambiguous in a taxing statute (not exemption clause) and open to two interpretations, benefit of interpretation is given to the subject."*

As per the said judgement while interpreting the statute, regard must be had to the clear meaning of words and the matter should be governed wholly by the language of the notification, equity or intendment having no place in interpretation of a tax statute. Further, if the words are ambiguous in a taxing statute (not exemption clause) and open to two interpretations, benefit of interpretation is given to the subject. We would have agreed with the said contention of the appellant, if there was any ambiguity in the provisions of Section 17(5)(d). We do not find any ambiguity in the wordings of the statute. It is the appellant's case that the words '*for construction*' have to be read restrictively, whereas there is no such stipulation as per our reading of the statute. We



find that this aspect has been adequately dealt with by the Advance Ruling Authority in *Re: M/s GACL-NALCO Alkalies and Chemicals Pvt Ltd. - [2021(12) TMI-36-AAR, Gujarat],* which we reproduce below:-

> *"**14.** Further, besides the discussed legislative intent, the plain meaning of very wordings of Section 17(5)(d) itself blocks subject credit admissibility, detailed as follows:*
>
> > *i. We find that the words used in the said Section 17(5)(d) reads as: services received by a taxable person for construction of immovable property (other than plant or machinery). Hypothetically, if the word 'used' was in the place of 'for', then said Section 17(5)(d) would be read as: Services received by a taxable person (used in) construction of immovable property (other than plant or machinery) .... In such a hypothetical case and limiting to the wordings of Section 17(5)(d) only, there would have been a prima facie merit in the submission of the GNAL to consider that subject ITC is not blocked. But the word used in the said Parliamentary Act in said clause (d) is 'for' and not 'used'. The word 'for' indicates a purpose, an intended goal. Here, 'for' is to be construed to indicate the purpose to construct the buildings/ civil structures, administrative block et al on the leased land. The purpose to enter into the subject agreement with GACL for the subject land is to construct factory with administrative block, et al, so that GNAL may pursue its business."*

19. The appellant has submitted that the restriction under section 17(5)(d) of the CGST Act should be read in the context of Section 17(5)(c) of the CGST Act. The appellant's contention is that Section 17(5)(c) deals with works contract service availed by a tax payer for construction of immovable property whereas Section 17(5)(d) deals with goods and services received by the taxpayer, for construction of immovable property on his own account. In other words, in the first case the construction of immovable property is done by someone else for the tax payer and in the second case, it is the tax payer himself who engages in the construction of immovable property. The appellant's case is that the intention of the legislature would not have been to provide a differential treatment for the same transaction i.e. construction of immovable property, as in case of works contract, it is only the goods and service element forming part of the works contract, which is barred. The service element in a works contract does not include an element of transfer of title of land. Thus, the intention of the legislature would be to cover in clause

(d), those items used for construction of immovable property, which would have otherwise been covered by clause (c) of Section 17(5). The appellant themselves, have quoted the judgement of the Supreme Court in the case of ***Dilip Kumar & Company,*** wherein the Court has stated that in the interpretation of a taxing statute, if the meaning of the words is clear, there is no room for intendment. We have already seen that the words of the statute are not ambiguous so as to impute a different meaning than what is stated in the statute. Thus, the appellant cannot take shelter under the intention of the legislature. Besides, Section 17(5) contains nine sub clauses. Sub clause (a) restricts ITC of motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons, vehicles and aircraft except when used for making the taxable supplies prescribed therein; sub clause (ab) restricts ITC of services of general insurance, servicing, repair and maintenance relating to motor vehicles, vehicles and aircraft; sub clause (b) restricts ITC of food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft, life insurance and health insurance, membership of a club, health and fitness center, travel benefits extended to employees on vacation such as leave or home travel concession; sub clause (c) restricts ITC of works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service; sub clause (d) restricts ITC of 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; sub clause (e) restricts ITC of goods or services or both on which tax has been paid under section 10; sub clause (f) restricts ITC of goods or services or both received by a non-resident taxable person except on goods imported by him; sub clause (fa) restricts ITC of goods or services or both received by a taxable person for activities relating to his obligations under corporate social responsibility ; sub clause (g) restricts ITC of goods or services or both used for personal consumption; sub clause (h) restricts ITC of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples and sub clause (i) restricts ITC of any tax paid in accordance with the provisions of section 74 in respect of any period up to Financial Year 2023-24. All these subclauses deal with different goods or services and different situations. It cannot be, therefore, held that only in subsection (c) and subsection (d), the intention of the legislature is coterminous.

20. The next submission of the appellant is that upfront premium is exempted by way of Notification No. 12/2017-CT(R), dtd. 28.06.2017. This has been provided to prevent

capital blockages and encourage long term investments. Therefore, ITC should be allowed across all other lease payments, irrespective of their frequency or method. We find that the advance ruling authority has already dealt with this aspect, at Para 16 of its ruling, as under -

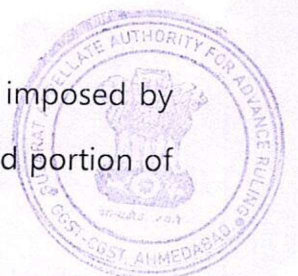
" First of all, upfront payments and annual lease rentals are not the same. The Supreme Court in the case of Commissioner of Income Tax, Assam Vs The Panbari Tea Co. Ltd [1965 AIR 1871] has brought out the distinction between the upfront payment (called as premium, salami, cost, price, development charges etc) and rent as under: -

> *"When the interest of the lessor is parted with for a price, the price paid is premium or salami. But the periodical payments made for the continuous enjoyment of the benefits under the lease are in the nature of rent. The former is a capital income and the latter a revenue receipt."*

Therefore, both the payments cannot be equated. Further, Notification No. 12/2017-CT(Rate) dtd. 28.06.2017 grants exemption of GST paid only on upfront amount for granting of long-term lease of industrial plots or plots, for development of infrastructure for financial business, provided by the State Governments, Union Territories, State Industrial Development Corporations or Undertakings. This was a conscious decision of the Government to promote setting up of industrial parks. However, no exemption from GST for lease rental has been provided. Thus, the Government has also treated both these payments differently. "

21. The appellant has also submitted that if the appellant takes on rent/lease a constructed premises/factory building (which would also include lease of land), then the ITC would be available to the appellant. Thus, if the ITC in the present facts is not allowed, then the same would result in disparity in the two methods of leasing. We do not agree with this contention of the appellant as both the situations are completely different. In the first case, the appellant is not constructing any immovable property whereas in the second case, the appellant is constructing an immovable property. The restriction is on the services used in the construction of immovable property. Therefore, the two situations cannot be equated.

22. The appellant has submitted that as per the statutory requirements imposed by the Gujarat Pollution Control Board, it is mandated to maintain a designated portion of



land as a green belt within the factory premises for environmental compliance. Consequently, no construction activity is undertaken on such portion of the leased land. Therefore, they are of the view that ITC attributable to the lease rentals paid for such areas ought to be admissible to the appellant. We do not agree with this view of the appellant for the simple reason that the land has been leased for the construction of the factory and the vacant land is a part of the statutory requirement of the factory. The vacant land does not constitute a separate entity; rather, it is integral to the factory premises. It's status as a vacant land is derived solely from the requirements of the factory's construction, establishing a *'part and parcel* relationship, where the land's utility is inextricably linked to the factory itself.

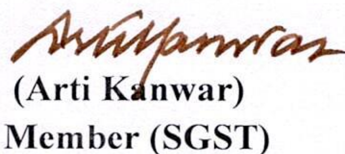
23. The appellants next submission is that the they would be eligible to avail ITC of GST charged on lease rentals paid pre and post construction period, during which the land is not used for construction activity. We find the appellant's contention untenable. Once it is established that Input Tax Credit (ITC) is restricted on land used for construction of immovable property, that restriction remains absolute and independent of the payment schedule. The tax treatment cannot be dictated by the periodicity of lease rentals. Adopting the appellant's view would allow taxpayers to circumvent Section 17(5)(d) by strategically deferring payments until after construction—a result clearly contrary to the legislative intent of the Act. Further, the appellants have themselves contended that there cannot be a differential tax treatment on the basis of the manner/periodicity of payment.

24. The appellants have also contended that ITC of GST paid on lease rentals would be available when repairs, maintenance, and renovation are undertaken on the factory building. We find that the explanation in Section 17(5) specifically includes reconstruction, renovation, additions or alterations or repairs to the immovable property in the expression '*construction*' used in Section 17(5)(c) and 17(5)(d). As per the appellant, the restrictions under Section 17(5)(d) apply to activities concerning the factory building, such as repairs, renovations, additions or alterations, they do not extend to the leasehold land itself. We reject this contention, as it is already established that the restrictions under Section 17(5)(d) extend to services related to land utilized in the construction of immovable property. Given that the Explanation to Section 17(5) explicitly brings *'repairs and renovations'* within the definition of 'construction,' the restriction on Input Tax Credit applies with equal force to GST paid on land-related services used for such activities.

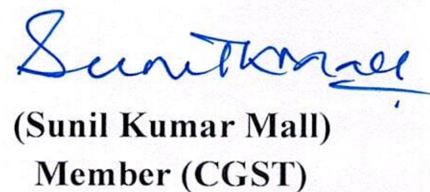
25. The appellant has also made a feeble attempt to portray the hardship encountered by them by way of the increase in cost of the product if the ITC is not granted. Further, any denial of ITC would break the chain of credit and, thus, would result into increase in the cost of the product so manufactured, thereby making the domestically produced goods uncompetitive in the global market. The appellant's contention is untenable, as it is a well-settled principle of law that there is no room for equity in the interpretation of taxing statutes. The legislature has in its wisdom made a conscious effort to restrict ITC for a select type of goods and services and in certain situations. We cannot interpret a statute in favour of the appellant because it would increase the cost of its product. That would amount to re-writing the statute, which is not permissible.

26. In view of the foregoing, we find that the appellant has not produced anything which would compel us to interfere with the findings of the impugned ruling. We also agree with the Advance Ruling Authority that the issue of ITC of the GST charged on the lease rental, is squarely covered by the ruling of authority in the case of *Re: M/s Bayer Vapi Pvt. Ltd.* ***[2023(9) TMI 165-AAR, Gujarat]*** and *Re: M/s GACL-NALCO Alkalies and Chemicals Pvt Ltd.* [2021(12) TMI-36-AAR, Gujarat]. The appeal against the ruling given in the case of *GACL-NALCO Alkalies and Chemicals Pvt Ltd.* has also been rejected by this appellate authority. We, therefore, are of the opinion that judicial propriety demands that we follow the findings arrived at by this appellate authority on a similar issue.

27. To sum up, we concur with the findings of the GAAR and, hence, uphold the impugned ruling dated 03.11.2025. In view thereof, we reject the appeal filed by appellant, M/s. Agratas Energy Storage Solutions Pvt. Ltd., against the Advance Ruling No. GUJ/GAAR/R/2025/46, dated 03.11.2025.



(Arti Kanwar)
Member (SGST)



(Sunil Kumar Mall)
Member (CGST)

Place: Ahmedabad
Date : 04/04/2026