

**IN THE AUTHORITY FOR ADVANCE RULING
TAMILNADU ADVANCE RULING AUTHORITY**

ORDER No. 31/AAR/2019

Legal Name of Applicant	M/s CHENNAI PORT TRUST
Details of application	GST ARA-01 Applications Sl. No. 28/2018 dated 20.06.2018
Concerned officer	State: The Assistant Commissioner(ST), Harbour Assessment Circle, Centre: Chennai North Commissionerate-Division - Egmore
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Service provision
B Description (in brief)	The Applicant is engaged in supply of port services and incidental supply of goods like disposal of discarded assets.
Issue/s on which advance ruling required	Admissibility of input tax credit of tax paid or deemed to have paid and determination of time and value of supply of services
Question(s) on which advance ruling is required	ARA No. /28/2018 dated 20.06.2018: 1. Whether the applicant is entitled to take credit of input tax charged on the inward supply of medicines which are used or intended to be used in the course or furtherance of business of the applicant subject to fulfillment of (1) such conditions and restrictions as may be prescribed in CGST Rules 2017 particularly in rules 36 to 45(both inclusive), (2) such conditions stipulated in sub sections (2) to (4) of section 16, (3) in the manner specified in section 49 and on the presumption that these queried inward supply of medicines does not fall under the blocked credit under section 17(5)(e), section 17(5)(h) and section 17(5) (i) of the Act?

Manasa Gangotri Kata, IRS, Joint Commissioner/Member & Thiru Kurinji Selvaan V.S., M.Sc., (Agri.), M.B.A., Joint Commissioner (ST)/Member

Dated: July 25, 2019

GST - Applicant is engaged in supply of port services and seeks a ruling on whether they are entitled to take credit of Input Tax charged on inward supply of medicines.

Held: Applicant has their own in-house hospital for use by the employees, retirees and their dependents - same is a free center where all the services and medicines are provided free to the employees and no consideration is charged from the employees for these services - such provision of free medical care is mandatory as per the Regulations made under Major Ports Act - Such medicines and medical facilities are provided by the applicant to its employees for their personal use, therefore, as per Section 17(5)(g) of the Act, input tax credit is not available for the medicines that the applicant is procuring: AAR

ITC - Applicant states that these are not "goods for personal consumption" as the applicant pays for the same - However, this argument does not hold any water since the fact of who pays for the medicines here is irrelevant to the usage of the said medicines - Inasmuch as such medicines are used by the employees and dependents and hence are for personal consumption and the applicant is ineligible to take input tax credit on the inward supply of medicines: AAR [para 8.2]

Application disposed of

RULING

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

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

M/s. Chennai Port Trust, No. 1, Rajaji Salai, Chennai-600001, (hereinafter called the Applicant) is engaged in supply of port services and incidental supply of goods like disposal of discarded assets. They are registered under GST with GSTIN 33AAALC0025B1Z9. They have preferred Applications seeking Advance Ruling on the following questions:

1. Whether the applicant is entitled to take credit of input tax charged on the inward supply of medicines which are used or intended to be used in the course or furtherance of business of the applicant subject to fulfillment of (1) such conditions and restrictions as may be prescribed in **CGST Rules 2017** particularly in rules 36 to 45(both inclusive), (2) such conditions stipulated in sub sections (2) to (4) of section 16, (3) in the manner specified in section 49 and on the presumption that these queried inward supply of medicines does not fall under the blocked credit under section 17(5)(e), section 17(5)(h) and section 17(5)(i) of the Act?

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted the copy of Challans evidencing payment of Application Fees of Rs.5,000 per application - each under Sub-rule (1) of Rule 104 of **CGST Rules 2017** and SGST Rules 2017. The applications filed by the applicant are taken up for consideration and passing of Rulings.

2. The Applicant has stated that they are engaged in supply of port services and incidental supply of goods like disposal of discarded assets. They are notified as a major port by the Centred Government under Section 3(8) of Indian Ports Act 1908 r.w.s. 2(m) of Major Port Trusts Act, 1963 vide notification No. GST(E) dt 01.02.1975. The affairs of the applicant are administered by a Board constituted by the Central Government from time to time as per the provisions of Major Port Trusts Act, 1963. The applicant is functioning under the administrative control and supervision of Ministry of shipping of Government of India. The Statement of facts on the questions raised by the applicant is as under:

3. The applicant in Application ARA No. 28, has stated that as a part of Service Rules, they are providing health and medical cover to its employees and pensioners. For this purpose, the Central Government has notified the following two regulations under section 124(1) r.w.s 132(1) of Major Port Trusts Act, 1963.

i. Chennai Port Trust Employees (Contributory Outdoor and Indoor Medical Benefit After Retirement) Regulations, 1989- notified vide Notification No. GSR 605 (E) dated 08.06.1989.

ii. Chennai Port Trust Employees (Medical Attendance in the Trust's Hospital and reimbursement of Hospital Charges) Regulations 1994- notified vide Notification No. GSR 51(E) dt.01.02.1994.

The applicant is maintaining an in-house hospital for providing health and medical cover exclusively to their employees and pensioners. The hospital is only a cost centre and the inward supplies of medicines are provided to the employees and pensioners without charging any separate consideration.

The applicant has submitted that these inward supplies of medicines are used by the applicant only for the purposes of his business. No apportionment of ITC is applicable under Section 17(1) to (4). The term "health services" are not defined in the ACT or Rules. The health and medical cover provide by the applicant will not get covered under the definition of "services" under Section 2(102) of the Act as no separate consideration is charged. Hence, the ITC for these inward supplies are not blocked credits under Section 17(5) (b)(i). These medicines cannot be considered as "goods used for personal consumption" since the cost of these medicines are borne by the applicant as a part of service contract with its employees and pensioners as held in the case of Hindustan Coca Cola Beverages Pvt Ltd vs CCE as reported in [2015] 56 taxmann.com 378 (Mumbai CESTAT).

The medicines are used in the course or furtherance of business as per Section 16 and are not blocked credit under Section 17(5) (g), consequently the applicant is eligible for ITC on inward supply of medicines under Section 16(1) subject to fulfillment of Rules 36

to 45 of CGST Rules. The applicant submitted copies of the two notifications mentioned in Para 3 above.

4.1 The Applicant was granted personal hearing on 24.09.2018 in respect of all the above applications ARA 28 dated 20.07.2018. The applicant represented through authorized representative. The submissions during the hearing are as under:

The learned representative stated that medicines are being given to the employees free of cost and the medicinal equipment is used to render health benefits to the employee which is part of the package to the employee. They stated that they will submit a sample contract with the employee. They claimed these are used for the furtherance of business of the applicant.

4.2 The applicant through their authorized representative furnished the following documents on 26.10.2018.

Copy of an appointment order dated 13.06.2016 issued to Asst. Director (ED) furnished to substantiate that the free medical facilities provided by them are as per the service conditions.

Further, the applicant furnished CESTAT, Mumbai Bench order in case Hindustan Coca Cola Beverages(P) Ltd Vs Commissioner of Central Excise, Nashik wherein the Tribunal has held that the outdoor catering services provided by an employer to employee is qualified to avail CENVAT credit

5.1 As requested by the applicant and on account of change in the SGST Member of the authority, another personal hearing was extended on 22.02.2019. The applicant appeared through their Authorised Representative and stated as follows: They have a hospital facility inside the Chennai Port Trust which is used by employees. They will furnish the details of the Hospital regarding the registration of the same, employee contract, documents/invoices for provision of health services for employee and kin, financial documents, balance sheets, statements showing how income from hospital is accounted in the Chennai Port Trust.

The applicant undertook to submit the documents in 2 weeks. The State jurisdictional officer appeared and submitted written comments.

5.2 The applicant vide their letter dated 21.05.2019, furnished the following documents: (1) Write up on the Chennai Port Trust Hospital; (2) Details of the trail of Treatment of Employees/dependents. They have a written submission in which they stated that that the Chennai Port Trust Hospital was started originally as a Dispensary in 1939. Based on the Industries (Development and Regulation) Act 1951, the hospital started functioning as a full-fledged hospital. In 1985, a surgical block was also added. The hospital caters only to the employees, their dependents, pensioners, their spouses for in-patient and out-patient treatments. There is a casualty, intensive care, laboratory, wards and outpatient sections. The employees, their dependents, pensioners, family pensioners and CISF employees and their dependents posted in Chennai Port are issued medical identity cards. Pensioners and family pensioners are entitled for treatment on payment of onetime contribution i.e. last basic pay of the retiring month. Medicines are supplied free of cost at the pharmacy and in case not available they are

purchased and distributed free of cost to the patients. Free food to the patients is supplied from hospital kitchen. Employees/pensioners are entitled to medical reimbursement at CGHS rates subject to production of all original case records in emergency cases in case of inpatients. Employees can recommend outsiders as patients but the payment for treatments is deducted from salary of the employee who recommended. In case patients are critical can be referred to empanelled hospitals. In such a case, the bills are received from the empanelled hospital and paid by the applicant after due verification.

6. The remarks of the State Jurisdictional Officer on the questions raised by the applicant in the ARA application are detailed below:

The activity of the applicant is providing port services and sale of disposal of discarded assets. Providing medical cover to their employees and pensioners are not part of their business activity and providing medical facility is being done only under service rules. The applicant has stated that the medicines were supplied without any consideration. In other words, the medicines supplied to their employees and pensioners are free of supply. In view of the above fact, the applicant is not eligible to claim ITC on inward purchases of medicines to be supplied to their employees and pensioners for the reason that this activity is not their part and parcel of their activity and supply of medicines without any consideration amount to free supply, hence the applicant is not eligible for Input Tax Credit.

7. We have carefully considered the submissions made by the applicant in the advance ruling application, the additional submissions made during the personal hearings and the comments furnished by the State Jurisdictional Officer. The applicant has stated that the Chennai Port Trust Hospital was started originally as a dispensary in 1939. Based on the Industries (Development and Regulation) Act 1951, the hospital started functioning as a full-fledged hospital. The applicant has an in house hospital for its employees, their dependents, pensioners and family pensioners for in-patient and out-patient treatments. They are governed by Two regulations under Section 124(1) read with section 132(1) of Major Port Trusts Act 1963, which are (i) Chennai Port Trust Employees' (Contributory Outdoor and Indoor Medical Benefit After retirement) Regulations, 1989; (ii) Chennai Port Trust Employees' (Medical Attendance in the Trust's Hospital and Reimbursement of Hospital Charges) Regulations 1994. The treatments, food for in patients and medicines are provided free of charge to them. The hospital has a 24x7 casualty and Intensive Care unit, High end laboratory, State of art operation theatre, computed Radiography and imaging technology in addition to wards and outpatient sections. The hospital is a cost center and the inward supply of medicine is provided to the employees and pensioners without charging any separate consideration. No outsiders are treated except on recommendation by employees and the payment for that is recovered from the salary of such employees. In the case the employees are referred to empanelled hospitals, the costs are borne by the applicant themselves. The retired employees and dependents are eligible only on payment of a nominal lump sum after retirement and the expenditure for providing the medical benefit will be met from the Chennai Port Trust Employees Welfare Fund to this these lump sum amounts are paid into.

8.1 Before determining whether the applicant is eligible for Input Tax credit for the inward supply of medicines, the relevant statutory provisions are referred to as under:

Section 16(1) to (4) of **CGST Act 2017 & TNGST Act 2017** provides the "Eligibility and conditions for taking Input tax credit" of is as follows:

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

Section 17(5) of the Act, which blocks/restricts certain credits, states as under:

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

.....

(g) Goods or services or both used for personal consumption;

8.2 In the instant case, the applicant has their own in-house hospital for use by the employees, retirees and their dependents. This is a free center where all the services and medicines are provided free to the employees. No consideration is charged from the employees for this. This provision of free medical care is mandatory as per the Regulations made under Major Ports Act. These are mandated to be provided to the applicant's employees, their dependents, pensioners and family pensioners for their own in-patient and out-patient treatments. These treatments include medicines which are also provided free of charge to the employees for their personal use. The medicines and medical facilities are provided by the applicant to its employees for their personal use. Therefore, as per Section 17(5) (g) of CGST/TNGST ACT, input tax credit is not available for the medicine that the applicant is procuring for the consumption of its employees and pensioners and their dependents. The applicant has stated in their application that these are not "goods for personal consumption" as the applicant pays for the same. The argument does not hold. The fact of who pays for the medicines here is irrelevant to the usage of the said medicines. They are used by the employees and dependents and hence are for personal consumption and the applicant is ineligible to take input tax credit on the inward supply of medicines used to provide health facilities to its employees in its hospital. 9. In view of the foregoing, we rule as under:

RULING

The applicant is not entitled to take credit of input tax charged on the inward supply of medicines which are used to provide medical facilities to the employees, pensioners and dependents in the in-house hospital.