

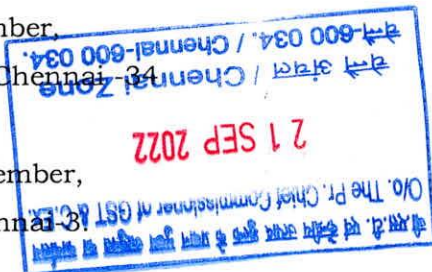
AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32,
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI – 600 003.

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.

Members present are:

1. Shri T.G.Venkatesh, I.R.S., Additional Commissioner/Member,
 Office of the Principal Chief Commissioner of GST & Central Excise, Chennai-34

2. Tmt K.Latha., M.Sc., (Agri), Joint Commissioner (ST)/ Member,
 Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-3



ORDER No. 33 /AAR/2022 DATED: 31-8-2022

GSTIN Number, if any / User id		33AAFFV9173N1ZI
Legal Name of Applicant		VBC ASSOCIATES
Registered Address/Address provided while obtaining user id		No. 47/49, VBC Solitaire, Bazullah Road, T Nagar, Chennai-600017
Details of Application		GST ARA- 01 Application Sl. No. 10/2022/ARA dated: 02.03.2022
Concerned Officer		Centre: Chennai South State: T.Nagar Circle
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Provision of service
B	Description (in Brief)	The applicant is a partnership firm in the business of maintenance of an immovable property.
Issue(s) on which advance ruling required		Admissibility of Input tax credit of tax paid or deemed to have been paid.

Question(s) on which advance ruling is required	Whether the input tax credit on solar power panels procured and installed is blocked credit under section 17(5) (c) and (d) of CGST/TNGST Act, 2017.
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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.

VBC ASSOCIATES, No. 47/49, VBC Solitaire, Bazullah Road, T Nagar, Chennai-600017 (hereinafter called the Applicant) are registered under GST with GSTIN 33AAFFV9173N1Z1. The applicant has sought Advance Ruling on the following question:

Whether the input tax credit on solar power panels procured and installed is blocked credit under Section 17(5) (c) and (d) of CGST/TNGST Act, 2017

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

2.1 The applicant has stated that they are a Partnership Firm in the business of maintenance of an immovable property located in T Nagar, Chennai. The said property is also the principal place of business of the applicant, as the said maintenance services for the immovable property is being provided from that premises. They have stated that they provide the services of maintenance of immovable property, covered under the main SAC 9972. The applicant, on a monthly basis, raises an invoice for 'EB and DG charges', to the tenants, with

applicable GST, and the same is being duly deposited to the government by the applicant on a monthly basis under the SAC 997221 at 18%. They have furnished sample invoice copies along with the computation of the consumption units of the said unit, which is the basis on which the said EB and DG charges are charged to the tenant. The applicant has stated that they pay the Electricity charges upfront to the Tamil Nadu Electricity Board ('TNEB') for the building as a whole and also incurs the expenses of running the DG, along with any other expenses incurred by the applicant for the business and claims Input Tax Credit charged by the applicant's supplier, on the inward supplies of the applicant, if any. They have stated that due to composite nature of the supply, the outward supply made by them is a taxable supply of services, and consequently, they have charged taxes on the Electricity charges and DG charges (EB and DG charges) which is being recovered from the tenant. Rate charged on the invoice raised by the TNEB is lumpsum and different from that charged by TNEB. Therefore, they are not excludible from taxable value under Section 15 of the CGST Act 2017. Accordingly, GST is charged on the entire amount as a composite supply.

2.2 The applicant has submitted that the agreement with tenants states the following:

- i. VBC Associates shall pay upfront common electricity charges and metered water charges or tanker lorry water charges hired, whenever necessary due to drying up of internal ground water resources like tube wells of the building.
- ii. VBC Associates will provide bills for such consumption of water and Electricity from Tamil Nadu Electricity Board (TNEB)/leased contractors and the Lessee shall pay /reimburse, such payments, to VBC Associates as per the due date so as to have uninterrupted services. The GST liability towards the above bills shall be borne by the Lessee..."

The applicant has stated that they have procured Solar Panels and the power so generated is proposed to be used for electrical consumption. The TNEB, on the electricity consumption charges of the building, would give a credit of the units generated against the overall bill raised for the building as a whole. Hence, the applicant has to pay the net cost of electricity consumption [Total consumption by the unit (A) - Credits availed due to generation of Solar power (B)] and remit the same to the TNEB. However, the applicant, at the time of raising the bill to the tenants, would raise a bill of the total consumption of the unit ((A) above), and taxes would be discharged on the said collection from the tenant. For the purpose of

computing the total consumption by the unit (from Electricity Board + Diesel Generator), sub-meters have been installed for each of the tenants, and on that basis, the electricity charges are collected and remitted to the TNEB.

2.3 The applicant has further stated that there would not be any sale of the power units generated from the Solar Power Panels, and the units so generated would be utilized against the consumption of electricity for the leased premises, on which the taxes are being charged to the tenants, on the entire value of services. For the purpose of availing such credit with respect to the Solar Power Panel, the applicant, as mentioned above, has incurred the expenses with respect to procurement of solar panels and erection and commissioning of solar power panel

2.4 On interpretation of law, the applicant has referred to the definition of 'inputs', 'capital goods' and 'input services' under section 2(59), 2(19) and 2(60) respectively, of the CGST Act 2017. The applicant has submitted that as per Section 17(5) (c) and (d) of the CGST Act 2017, input tax credit is not available for works contract services received for construction of immovable property and for goods and services received for construction of immovable property (other than plant and machinery) on own account. They have stated that in the instant case the solar panels do not get covered under the definition of immovable property, as panels are not attached to the earth.

2.5 The applicant has stated that as per Section 2(26) of the General clause Act, 1842 "immovable property shall include land, benefits to arise out of the land, and things attached to the earth, or permanently fastened to anything attached to the earth". Also, the meaning of "attached to the earth" is found in Section 3 of the Transfer of Property Act, 1882 where it is defined to mean (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 (c) attached to what is imbedded for the permanent beneficial enjoyment of that to which it is attached. They have submitted that in respect of section 17(5), the solar panels purchased by them qualify as 'plant and machinery' in the books of accounts, as a Fixed Asset, as they are "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. Hence, the applicant is of the view that the said Solar panels are strictly covered under the definition of Plant and Machinery as mentioned above, and the Input Tax Credit on the same is to be made available to the assessee, whether the said item is

movable or immovable, as it does not get covered under the restriction of claiming input tax credit u/s 17(5)(c) or 17(5)(d) and hence the applicant is eligible for input tax credit on Solar Panels and erection, commissioning / installation services in terms of Section 16/17 of the CGST/TNGST Act.

3.1 Due to the prevailing pandemic situation and in order not to delay the proceedings, the applicant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital media. The applicant consented and the hearing was held on 19.04.2022. The Authorized Representative (AR) CA Rishabh Singhvi appeared for the hearing and reiterated the email submissions made. The CGST Member questioned on where the solar power panels are installed, the AR submitted that they are installed at their additional premises. They further submitted that the electricity generated is used by them captively and not sold to anyone; that the GST component has not been capitalized. The SGST member required the applicant to submit the audited financial statements. In reply the AR submitted that their financials are not yet audited and that the fixed assets scheduled which has been submitted by them is audited.

The applicant furnished the following submissions during the hearing

- Synopsis – various judicial precedents to substantiate their contentions in the instant case.
- wheeling agreement with TANGEDCO, statutory provisions, extract from unaudited financial statements, copies of case laws relied by them viz. Advance Ruling issued by TNAAR in the case of Kumaran Oil Mill, KLF Nirmal Industries Private Limited.

The applicant was asked to submit the following documents:

- i. Whether the building which is said to be under maintenance of the applicant is owned by them. If so, proof for that. Whether the entire building is rented or if a portion is self- occupied, such details may be furnished along with details of floors available, agreement copy with tenants, invoices raised for tenancy.
- ii. If not owned, the agreement with owners for undertaking maintenance of the building at No.47 / 49, VBC Solitaire, Bazullah Road, T.Nagar, Chennai - 600017 along with whether they are permitted to install the solar panels and harvest power.

iii. When the solar power generated is netted against the consumption in the given place of business, substantiate the inclusion of the charges pertaining to the units transferred to the grid and utilized thereafter.

iv. Copy of agreement entered with the clients for maintenance of the building.

v. Copy of agreement entered with Solar panel supplier.

3.2 With regard to details of occupancy, the AR stated that the limited question before the AAR is whether the solar panels are blocked credits under Section 17(5) (c) / (d) which requires consideration of whether they are movable and / or plant & machinery. The AAR is not being sought on the taxability / non-taxability of output and hence the question of tenancy or use of the building has no bearing on the AAR in question. The applicant vide their email dated 05.05.2022 submitted the following

3.3 The applicant vide their email dated 05.05.2022 submitted the following documents:

- Maintenance Agreement dated 27.09.2020 between M/s VBC Associates and M/s Nissan Renault Financial Services India Private Limited.
- Lease deed dated 10.12.2020 between Mr V.S.Balaji, Mrs V.Suhasini, as Lessor and M/s Nissan Renault Financial Services India Private Limited.
- Letter of intent for end to end services for design, engineering, testing, supply, installation and commissioning of 1MW turnkey of Solar Photo Voltaic Power Plant at Kovilur, Dindigul District, Tamil Nadu
- Copy of Tax invoices raised on the tenants for Maintenance charges, DG charges, EB facilitation charges,
- TANGEDCO statement showing energy generated for March 2022
- Sample EB bill with reduction of solar power introduced in grid.

4. The Centre Jurisdictional Authority, Chennai South Commissionerate, who has administrative control over the applicant was addressed vide this office letter dated 16.02.2022 requiring to furnish comments on the issue raised by the applicant and report whether any proceedings are pending in respect of the applicant. The said authority has stated that no proceedings have been initiated or pending in respect of the ruling sought by the taxpayer and offered no comments on the issue.

5. The State Jurisdictional Authority has submitted that there are no pending proceedings in the applicant's case in their jurisdiction.

6. We have carefully examined the statement of facts, supporting documents filed by the Applicant, all the additional submissions made during the hearings and

the submissions of the Jurisdictional authorities. The applicant engaged in the business of maintenance of an immovable property at Chennai has procured, erected and commissioned Solar Power Panels for generation of electricity at their additional place of business at R.Kombai Village, Kujilyambarai Taluka, Dindigul District, Tamil Nadu. The applicant had executed an "Energy Wheeling Agreement for Solar power plant" agreement dated 28.09.2021 with M/s Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) for wheeling the Solar energy generated from their Solar Power Plant installed at R.Kombai village through TANTRANSCO / TANGEDCO's transmission and distribution network to their captive user HT SC No.019094022465 at Chennai Central EDC. There exists separate Lease Deed between Owners as Lessor and Tenants as Lessee, inter alia, states that Lessors have provided adequate power supply to the building including 100% power backup through Generator. Further, Maintenance Agreement between the applicant and Tenants, inter alia, states that applicant shall pay upfront, common electricity charges supported by bills issued by Tamil Nadu Electricity Board and the Tenants shall pay / reimburse such payments to the applicant including transmission loss of electricity from the electrical room to the various floors in operation. The applicant will also facilitate the process of effective 100% power back up facility provided in the building by keeping the Generator in operative readiness condition. The diesel consumption charges shall have to be borne by the tenants proportionately based in the area of occupation.

7. The question which needs to be answered is whether the input tax credit on Solar Panels procured and installed is blocked credit under section 17(5)(c) and (d) of CGST Act 2017 / TNGST Act 2017. In other words, the eligibility to credit of the tax paid on the Inputs/Capital Goods and 'Input services' procured by them for setting up the Solar Panels in view of the prohibition of input tax credit on construction of an immovable property other than plant and machinery. From the submissions before us, we find that the question which needs answer is covered under Section 97(2)(d) of the GST Act 2017 as mentioned in Sl. No.13(iv) of AAR application in Form GST ARA-01 and therefore admissible before this authority for consideration and pronouncement of ruling.

8. The applicant has submitted various documents including agreements in relation to various supplies on own account and supplies of third parties procured on behalf of the service recipients. The perusal of the said documents are essential to ascertain the nature and scope of supply.

8.1.1 Lease Deed dated 05.08.2021 between Mr V.S.Balaji, Mrs V.Suhasini as Lessor and M/s Nissan Renault Financial Services India Private Limited as Lessee

states that the Lessors are the absolute owners of entire 5th floor of the building at No.47&49, Bazullah Road, T.Nagar, Chennai – 600017, consisting of basement and first floor for two wheeler parking and ground floor for car parking and other services plus ten upper floors, more fully described in Schedule A and that they have absolute right, title and interest in Schedule A property.

8.1.2 The Lessors have provided adequate power supply to the building on the Schedule A property. Lessors have provided the demised premises with 100% power back up of 500 KVA x 2 nos for the Schedule A property. However, the running, repair and maintenance thereof shall be borne by the Lessee and the other lessees of the Schedule a property for which purpose the Lessee and other lessees shall enter into separate maintenance contact with the Lessors/Maintenance Company.

8.1.3 A separate Facility Management Services contract has been concluded this day between the Lessors and Lessee.

8.2.1 Maintenance Agreement dated 27.09.2020 between M/s VBC Associates, a Partnership Firm, represented by its partner Mr V.S.Balaji as first party and M/s Nissan Renault Financial Services India Private Limited (NRFSI) as second party states that the first party is into the business of maintaining and managing residential and commercial buildings by providing quality services in the areas of upkeep, security, maintenance of equipment, utility services like electrical, plumbing, painting, pest control, etc., to the owners / occupants of the apartments, commercial buildings and has expressed their willingness to do the maintenance of the building at Bazullah Road on a monthly consideration basis.

8.2.2 The first party has agreed to provide the Maintenance Services to the second party as enumerated under various major categories viz 1. Soft services, 2. Engineering services, 3. Support services, 4. Service standards, 5. Maintenance charges and taxes, 6. Electricity and Water charges, 7. Power back up, 8. Statutory compliance, and 9. Internal maintenance from the date of commencement of payment of lease rent by the second party to the first party under Lease deed. The second party will pay the said maintenance charges in advance to first party from the effective date on receipt of invoices from the first party.

8.2.3 The first party will receive from second party the following amounts for the aforesaid services. The first party shall charge a monthly maintenance charge of Rs.9.80 per sq ft calculated on the basis of area being occupied by the second party. The first party shall pay upfront, common electricity charges and metered water charges or tanker lorry water charges. The first party will provide bills for such consumption of water and electricity from Tamil Nadu Electricity Board / leased contractors and the second party shall pay / reimburse, such payments to the first

party as per the due date so as to have uninterrupted services. The GST liability towards the bills shall be borne by second party. The charges shall be calculated on the basis of area being occupied by the second party proportionately to what the total area bears to the entire area of the said building. It is clarified that the transmission loss of electricity from the electrical room to various floors in operation of common facilities, reflecting thereby in the common meter, shall have to be borne by the second party proportionately along with other tenants of the building and basis of calculation remains the same as that of common electricity charges of the building.

8.2.4 The first party will facilitate the process of effective 100% power back up facility provided in the building by keeping the Generator in operative readiness condition so as to provide uninterrupted power supply to 800KVA. However, the diesel consumption charges shall have to be borne by the second party proportionately based on the area of occupation of the area on monthly basis.

8.2.5 This Agreement shall be read as part and parcel of Lease Deed dated 27.09.2020 entered into between the parties and this Agreement shall co-exist and co-terminate with the Lease Deed dated 27.09.2020.

8.3 The maintenance agreement refers to Lease Deed dated 27.09.2020, but the copy of Lease Deed submitted by applicant is dated 05.08.2021 with effective date from 10.12.2020. However, the Tenant / service recipient in the Lease Deed and Maintenance Agreement respectively are same.

8.4 Invoice No. VBV/21-22/112 dated 01.03.2022 issued by the applicant to NRFSI, towards Maintenance charges for the month of March 2022 along with amount collected as GST.

8.5.1 Invoice No. VBC/EL/21-22/111 dated 31.03.2022 issued by the applicant to NRFSI, towards DG Charges for the month of March 2022 along with amount collected as GST supported by detailed workings with Energy Meter reading for DG energy consumption with diesel expenses incurred.

8.5.2 Invoice No. VBC/EL/21-22/110 dated 31.03.2022 issued by applicant to NRFSI, towards EB Charges for the month of March 2022 along with amount collected as GST supported by detailed workings with Energy Meter reading for EB Energy consumption with details of Units, Rate and amount separately for Energy consumption, Demand charges, Energy consumption – common area, Electricity tax and Meter Rent. Perusal of break-up of various charges in the detailed workings as Annexure to the said Invoice reveals that energy consumption of 12969 units has been reckoned on the basis of Energy meter reading and Rs.1,03,752/- has been charged @ Rs.8/- per unit. For the month of March 2022, total building energy

consumption (EB) is 92184 units and total building energy consumption (DG) is 595 units. Diesel cost for 200 liters is Rs.20,688/-, accordingly cost per unit of energy generated by DG is Rs.34.77.

8.5.3 TANGEDCO Bill No.114022465032211 dated 07.04.2022 HT Bill for the month of March 2022 reveals that Rs.42240/- has been charged as Total Energy charges for net consumption of 5280 units @ Rs.8/- per unit. HT Bill Working Sheet attached to the said Bill reveals gross energy consumption of 92184 units and after deducting 86729 units of Solar energy and 175 units for Wind adjustment, 5280 units has been arrived as Net Consumption. The applicant has paid for the net units consumed, after netting off solar energy generated, to TANGEDCO.

8.5.4 TANGEDCO has issued Statement dated 06.04.2022 showing Energy generated for March 2022 to the applicant, wherein import units, export units and various charges including transmission charges are mentioned. The said charges are included in OA Adjustment charges collected separately in the TANGEDCO Bill No.114022465032211 dated 07.04.2022.

8.6 Energy Wheeling Agreement for Solar Power Plant dated 28.09.2021 between the applicant and TANGEDCO, inter alia, provides for wheeling of power, and sell the surplus energy available after adjustment/allotment every month, from the applicant's Solar Power Plant at Dindigul District to Chennai, in lieu of various charges including Transmission charges and Wheeling Charges.

8.7 The applicant submitted copy of Letter of Intent dated 05.02.2020 issued to M/s SJ Engineers Renewable Energy Private Limited for end to end services for design, engineering, testing, supply, installation and commissioning of 1 MW turnkey of Solar Photo Voltaic Power Plant at Kovilur, Dindigul District in Tamil Nadu. The applicant also submitted copy of Invoice No.50-A dated 30.09.2021 issued to applicant by M/s SJ Engineers Renewable Energy Private Limited towards supply of material and erection, installation and commissioning 1MW Solar Power Plant at Kovilur and collected GST of Rs.34,28,652/-.

8.8 The AR submitted written submissions dated 19.04.2022, wherein various AAR decisions are relied. The AR also submitted photograph of the installed solar panels and put forth their view that Solar Panels are Plant and Machinery by quoting definitions, notification, depreciation schedule under Income Tax Act and extract of applicant's Fixed Assets schedule from unaudited Financial Statements for the year ending 31.03.2022.

9.1 The question before us to decide is whether the input tax credit on Solar Power Panels procured and installed is blocked credit under section 17(5)(c) and (d) of CGST Act and SGST Act. As the advance ruling application is filed for decision

with regard to the admissibility of input tax credit paid, a comprehensive study of facts of business activity and scope of service required to be provided by the applicant under various agreements, is required to be considered so as to decide the input tax credit eligibility or otherwise. Therefore, it is not possible to confine the discussion on eligibility to claim input tax credit restricted to section 17(5) (c) and (d) of CGST Act and SGST Act, as desired by the AR. Before proceeding further, the statutory provisions of the Acts and Rules relevant to claim of Input Tax Credit are analysed as under.

9.2 Section 17 of the Act deals with provisions relating to Apportionment of credit and blocked credits.

9.2.1 The provision relevant to apportionment in case of usage for both taxable and exempted supply is given under Section 17(2) of the Act, and the same is given below for ease of reference:

"(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly .. for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies."

9.2.2 The provision relevant to blocked credits is given under Section 17(5) of the Act, which is as under:

(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:-

(c) 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;

(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 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.

9.2.3 Rule 43. Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases.-

(1) Subject to the provisions of sub-section (3) of section 16, the input tax credit in respect of capital goods, which attract the provisions of sub-sections (1) and (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

(a) the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in FORM GSTR-2[and FORM GSTR-3B]83and shall not be credited to his electronic credit ledger;

9.3 Rule 33.Value of supply of services in case of pure agent.-

Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation.- For the purposes of this rule, the expression —pure agentl means a person who-

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- (c) does not use for his own interest such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

10. Now, we proceed to deliberate on the scope of supply envisaged in the Lease Deed dated 05.08.2021 discussed in para 8.1 supra and Maintenance Agreement dated 27.09.2020 discussed in para 8.2 supra.

10.1 The Lessors have agreed to provide, inter alia, adequate power supply to the building along with 100% Generator Power back up.

10.2 The applicant vide Maintenance Agreement dated 27.09.2020, agreed to provide various maintenance services as discussed para 8.2.2, using the infrastructure made available by the Lessor in the building. The said maintenance service is provided by the applicant on their own account.

10.3 The said Maintenance Agreement also mandates the applicant to pay upfront, common electricity charges and metered water charges or tanker lorry water charges and reimburse such payments from the tenants, as discussed in para 8.2.3 and 8.2.4 supra.

10.4 Various documents perused and discussed in para 8.5.2 to 8.6 reveal that the applicant procured electricity from TNEB, which includes electricity generated by Solar Power Panels installed at additional place of business and wheeled by TNEB for captive use at the principal place of business of the applicant. The applicant has paid for the net units consumed after deducting energy units generated by Solar Power Plant. However, the applicant has recovered amount through separate invoice, for the gross energy units consumed by the tenants in the building at the rate charged by TNEB, which implies that the energy generated by Solar Power Plant are sold by the applicant to the tenants on their own account. In the instant case as discussed in para 8.5.3 supra, 92184 gross units were consumed and billed by applicant to the tenants. After adjusting 86904 captive generated units by Solar Power Plant and wheeled by TNEB against wheeling charges, the applicant has paid to TNEB for 5280 units supplied by TNEB. The applicant has sold 86904 units of power to the tenants of the building through invoices discussed in para 8.5.1 and 8.5.2 supra.

10.5 Electrical Energy is goods classified under HSN 2706 and exempted by Notification No.02/2017 CT(R) dated 28.06.2017 vide Sl. No.104. Therefore, electrical energy generated by Solar Panel installed by the applicant is exempted goods supplied to tenants and consequently input tax paid on the Solar Panels are ineligible as credit of input tax on Capital Goods used exclusively for supply of exempted supply are not eligible under Section 17(2) read with Rule 43(a). In view of

the above, the question of further deliberation whether Solar Panels are covered under blocked credit as per section 17(5)(c) and (d) does not arise.

10.6 The applicant has relied on various AAR Rulings viz M/s KLF Nirmal Industries Private Limited (TN-AAR), Shri Kesav Cement and Infra Limited (KA-AAR) and M/s Kumaran Oil Mill (TN-AAR). In the said rulings, the Solar Power Panels are recognized as Plant and machinery and other facts in the said rulings does not fit into the facts of the applicant and the same is distinguished. The applicants in the cited rulings are manufacturers who have used the electrical energy generated by Solar Panels for taxable supplies or taxable and exempted supplies. However, the applicant has used the electrical energy exclusively for exempted supply, as supply of electricity to tenants is covered by Lease Deed between Lessor and Lessee, whereas the applicant is bound to provide maintenance service through Maintenance Agreement to the tenants using the infrastructure made available by the Lessor in the building.

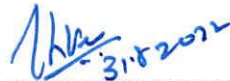
10.7 The Maintenance Agreement provides for upfront payment of expenses by applicant to third parties for various supplies, such as electricity, water, etc and reimbursement of the same proportionately from tenants upon furnishing Bills. Therefore, payment of GST on the electricity charges and other expenses collected from the tenants needs to be examined in the light of Rule 33 dealing with value of services in case of pure agent. We refrain from expressing any opinion on the value of output supplies for payment of GST, as desired by the applicant.

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

RULING

The applicant is not eligible for claim of Input Tax Credit, as per Section 17(2) of the CGST /TNGST Act read with Rule 43(a) of CGST /TNGST Rules 2017, on the Goods/Services used in installation of Solar Power Panels, which are considered as Plant and Machinery.


Smt. K. LATHA
Member (SGST)


Shri. T.G. VENKATESH
(Member CGST)



To

M/s VBC Associates,

// BY SPEED POST WITH ACK.DUE //

No. 47/49, VBC Solitaire, Bazullah Road,

T Nagar, Chennai-600017

Copy submitted to:

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

Copy to:

3. The Commissioner of GST & Central Excise,
Chennai South Commissionerate,
4. The Assistant Commissioner (ST)(FAC),
T.Nagar, Assessment Circle,
No.46, Greenways Road, Chennai – 600028.
5. Master File/ Spare – 2.