

GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/2024/01
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2023/AR/14)

Date: - 05.01.2024

Name and address of the applicant	:	Unique Welding Products P Ltd., Plot No. 701 B, GIDC Estate, Vitthal Udyognagar, Anand, Gujarat – 388 001.
GSTIN of the applicant	:	24AAACU2384G1ZH
Jurisdiction Office	:	Center Commissionerate - Vadodara-I Division - Division-VIII Anand Range - Range-II
Date of application	:	03.05.2023
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(d)
Date of Personal Hearing	:	29.8.2023 and 9.11.2023.
Present for the applicant	:	Shri Kamal Mulchandani and Shri Rohit Mulchandani.

Brief facts:

M/s Unique Welding Products Pvt. Ltd., Plot No. 701 B, GIDC Estate, Vitthal Udyognagar, Anand, Gujarat 388 121 engaged in the business of manufacturing and sale of welding wires is registered with the department and their registration number is 24AAACU2384G1ZH.

2. The applicant supplies its products & services after discharging GST @ 18%. The applicant has entered into an interconnection agreement with power distribution licensee (Madhya Gujarat Vij Company Ltd) for captive use of power generated by Roof Top Solar System and have recently installed a roof top solar system with a capacity of 440 KW (AC) on the factory roof for power generation. The applicant further states that the generated power is solely and captively used for manufacturing welding wires within the same premises.



3. The applicant further submits that their business of manufacturing and sale of welding wires from their manufacturing plant in Anand, constitutes 'business' as per section 2(17) of the CGST Act, 2017; that in terms of section 16(1), *ibid*, they are eligible for the benefit of ITC [input tax credit] on any supply of good or services which are used or intended to be used in the course of furtherance of business.

4. Further relying on sections 2(63), 2(59), 16 and 17 of the CGST Act, 2017, the applicant submits that they are eligible for ITC on the inputs, input services & capital goods used for erection, commissioning and installation of roof top solar power plant.

5. In light of the foregoing submissions, the applicant has sought advance ruling on the below mentioned question *viz*

1. Whether the applicant is eligible to take ITC as 'inputs/capital goods' or 'input services' on the purchased roof top solar system with installation & commissioning in terms of sections 16 & 17 of the CGST/GGST/IGST Act?
2. Whether the roof top solar system with installation and commissioning constitute plant and machinery of the applicant which are used in the business of manufacturing welding wires and hence not blocked input tax credit under section 17(5) of the CGST/GGST/ IGST Act?

6. Personal hearing in the matter was held on 29.8.2023 wherein the applicant was represented by Shri Kamal Mulchandani and Shri Rohit Mulchandani. They reiterated the submission made in the application. A further hearing in the matter was held on 9.11.2023 wherein Shri Kamal Mulchandani appeared and sought 15 days time to submit additional submissions along with photographs and accounting treatment in their books of accounts etc..

7. In the additional submission dated 20.11.2023 the applicant provided copies of the following

1. Copy of Ruling in the case of M/s The Varachha Co-op Bank Ltd, Surat;



2. Copy of Annual report of the applicant for the FY 2022-23 showing addition to Plant and machinery under fixed assets (Refer Note 9 of financial statement), wherein the value shown corresponds to the purchase of roof top solar plant without GST. Also mentioned in the Note 16 of financial statement is the GST amount ITC on Solar plant under review. This amount will be capitalized subsequently after the advance ruling order.
3. Copy of invoice from roof top solar plant supplier.
4. Copy of inter connection agreement signed with MGCL for roof top solar plant.
5. Photographs of roof top solar plant installed which reveals that the solar roof top plant is bolted to the factory roof by means of screws and bolts for operational efficiency and safety. Further, the roof top solar plant can be dismantled and sold, if required. In other words, the roof top solar plant is not permanently fastened to the building hence it will not be correct to call it the Roof top solar plant as an immovable property. Further, the roof top solar plant qualifies as plant and machinery that will be used for furtherance of business of supplying taxable goods. The electricity generated will be solely and capitvely consumed for the purpose of supplying taxable goods and the roof top solar plant is not an immovable property, hence, it is not covered under blocked credit as mentioned in 17(5)(d) of the CGST Act, 2017

Discussion and findings

8. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

9. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

10. Before dealing with to the submissions made by the applicant, we would like to reproduce the relevant sections for ease of reference:



CENTRAL GOODS AND SERVICES ACT, 2017 [relevant extracts]

➤ **Section 2. Definitions.-**

(17) "business" includes -

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) ⁵[activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and]
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

(59) "input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;

(60) "input service" means any service used or intended to be used by a supplier in the course or furtherance of business;

(63) "input tax credit" means the credit of input tax;

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

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

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

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

¹[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;

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

²[**Explanation.-** For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-
(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;



- (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;]
- ³[(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;]
- (c) subject to the provisions of ⁴[section 41 ⁵[***]], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and
- (d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

➤ **Section 17. Apportionment of credit and blocked credits.-**

(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(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.

(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

¹[**Explanation.** - For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule;]

(4).....

(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:-

²[(a)

(aa)



(ab)

(b)

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

(e)

(f)

(g)

(h); and

(i)

(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

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.

11. For ease of understanding it would be prudent to reproduce the relevant extracts from the letter dated 17.3.23023 of Additional Chief Engineer (RA&C), Madhya Gujarat Vij Company Limited, Vadodara addressed to Superintending Engineer, Circle Office, MGVCL, granting approval to the applicant, consumer No. 15453, for grid connectivity of Solar Roof Top Photo-Voltaic systems as per the provisions of the Gujarat Solar Power Policy-2021, viz

“With reference to above subject it is to state that application of M/s. Unique Welding Products P Ltd for installation of 440.00 KW(AC) Solar Roof Top Photo Voltaic System has been registered by GEDA.

Now regarding the connectivity with MGVCL network for injection of Solar Energy from 440.00 KW Solar Power Plant, consumer M/s. Unique Welding Products P Ltd bearing consumer no. 15453 has paid connectivity charges of Rs. 50000 and executed a connectivity agreement with MGVCL.

The connectivity has been granted for a period of 25 years. Accordingly, the connectivity agreement has been executed for 25 years and it shall be in force for the period of 25 years only.

Copy of the connectivity agreement, connectivity charge paid receipt, CEI approved single line diagram, earthing diagram, wiring diagram and installation charging approval received from CEI is attached herewith.



The Solar Power Generator (SPG) shall consume electricity generated from the roof top solar PV system at the same premise and the energy set off shall be allowed between 7:00 to 18:00 hrs of the same day ie. The generated solar energy during the day shall be consumed by the consumer during 7:00 to 18:00 hrs of the same day. If consumer is not able to consume all the generated electricity in the same relevant provisions defined in the Gujarat Solar Policy 2021 shall be applicable to surplus energy.

The date of meter installation shall be considered as commissioning date of the project. The commercial settlement shall be in effect from the date of commissioning as under:

Being HT consumer,

- 1. In the case of net import of energy by consumer from distribution grid during billing cycle, the energy consumed from discom shall be billed as per applicable tariff to respective category of consumers as approved by GERC from time to time. The energy generated by roof top solar system shall be set off against unit consumed (not against load/demand) and consumer shall pay demand charges, other charges penalty etc. as applicable to other consumers.*
- 2.*

12. The relevant extracts of the inter-connection agreement signed with MGVCCL for roof top solar plant states as follows viz

This Agreement is made and entered into at (location) Vadodara on this (date) 14th day of (month) March (year) 2023 between the Consumer, by the name of M/S UNIQUE WELDING PRODUCTS PVT LTD. Consumer Number 15453 having premises at (address) PLOT NO. 701/B, GIDC, IVth PHASE V.U. NAGAR-388121 (hereinafter 'referred to as "Consumer" which expression shall include its permitted assigns and successors) as first party

AND

Madhya Gujarat Vij Company Limited, a Company registered under the Companies Act 1956/2013 and functioning as the "Distribution company" or "DISCOM" under the Electricity Act 2003 having its Head Office at Sardar Patel Vidyut Bhavan, Race Course, Vadodara (hereinafter referred to as "MGVCL" or "Distribution Licensee" or "DISCOM" which expression shall include its permitted assigns and successors) a Party of the Second Part.

The solar project of M/s UNIQUE WELDING PRODUCTS PVT. LTD., has been registered by the Gujarat Energy Development Agency (i.e. GEDA) vide letter No. GUJ/RT/HT /10103600 dtd. 20-Feb-2023 to set up Photovoltaic (PV) based Solar Power Generating Plant (SPG) of 440 KW (AC) capacity at his/her/its premises in legal Possession including any rooftop or terrace PLOT NO. 701/B, GIDC IVth PHASE V. U NAGAR-388121 connected with MGVCL's grid at 415 Voltage level for his/her/its own use within the same premises and commissioned during the operative period of under Gujarat Solar Power Policy - 2021 under the option':

Option 1: MSME (Manufacturing) Enterprise

The Distribution Licensee agrees to provide grid connectivity to the Consumer and injection of the electricity generated from his Solar PV System of capacity 440KW (AC) into the power system of Distribution Licensee as per conditions of this



agreement and in compliance with the applicable Policy/rules/Regulations/ Codes (as amended from time to time) by the Consumer which includes

1. Government of Gujarat Solar Power Policy 2021
2. Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010.
3. Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007 as amended from time to time
4. Central Electricity Authority (Installation and Operation of Meters) Regulation 2006.
5. Gujarat Electricity Regulatory Commission (Electricity Supply Code & Related Matters) Regulations, 2015,
6. Gujarat Electricity Regulatory Commission Distribution Code, 2004 and amendments thereto,
7. Instruction, Directions and Circulars issued by Chief Electrical Inspector from time to time.
8. CEA (Technical Standards for connectivity of the Distributed Generation) Regulations, 2013 as amended from time to time.
9. Gujarat Electricity Regulatory Commission (Net Metering Rooftop Solar PV Grid Interactive Systems) Regulations, 2016 as amended from time to time.

Both the parties hereby agree as follows:

1. Eligibility

1.1 Consumer shall own the Solar PV System set up on its own premises or premises in his legal possession.

1.2 Consumer needs to consume electricity in the same premises where Solar PV System is set up.

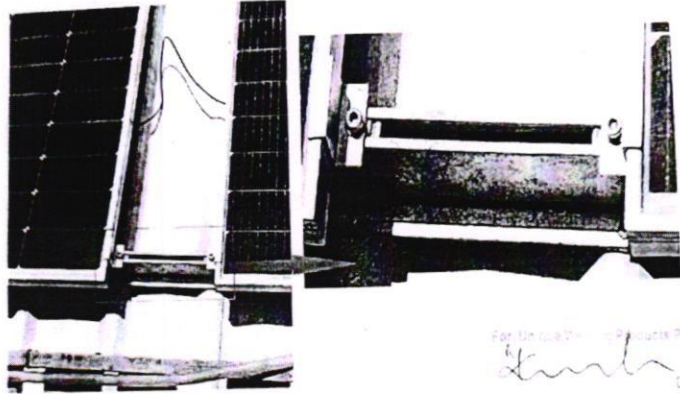
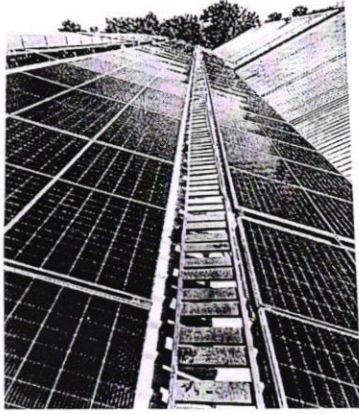
1.3 Consumer has to meet the standards and conditions as specified in Gujarat Electricity Regulatory Commission Regulations and Central Electricity Authority Regulations and provisions of Government of Gujarat's Solar Power Policy 2021 for being integrated into grid/distribution system.

13. As is already mentioned, the applicant has submitted that they will be installing a Roof Solar Plant on its factory roof to generate electricity which will be solely and captively used for manufacture of welding wires within the same premise.

14. We have reproduced the relevant extracts of the approval letter issued by Madhya Gujarat Vij Company Limited and copy of inter connection agreement signed with MGVCL for roof top solar plant.

15. The photographs depicting the roof top solar plant as submitted by the applicant in his additional submission is scanned and reproduced below for the ease of reference.





16. Further, the treatment of the roof top solar plant in the books of account of the applicant, as depicted in the Balance sheet as on 31.3.2022 is as under [scanned copy for ease of reference]

UNIQUE WELDING PRODUCTS PVT. LTD.
Note : * Property, Plant & Equipments
March 31 2023

DESCRIPTION OF ASSET	GROSS ASSETS				ACCUMULATED DEPRECIATION				NET ASSETS	
	BEGINNING BALANCE 01-04-2022	ADDITIONS DURING THE YEAR	DEDUCTION DURING THE YEAR	ENDING BALANCE 31-03-2023	BEGINNING BALANCE 01-04-2022	CURRENT PROVISION	TRANSFER TO GENERAL RESERVE	DEDUCTION DURING THE YEAR	ENDING BALANCE 31-03-2023	ENDING BALANCE 31-03-2023
LAND	14070	0	0	14070	0	0	0	0	0	14070
FACTORY BUILDINGS	53824	4954	0	58778	29516	2477	0	32293	25585	33193
BUILDING OTHERS	91	0	0	91	68	1	0	0	69	22
PLANT & EQUIPMENT	82738	26763	0	119499	68225	8364	0	77189	42310	77189
FURNITURE AND FIXTURES	0	0	0	2488	2341	7	0	2348	140	2488
VEHICLES	8324	5419	300	13443	4719	1567	256	6500	7583	5860
OFFICE EQUIPMENT	996	91	0	1087	850	31	0	901	186	901
ELECTRIC FITTINGS	5822	189	0	6011	3949	476	0	4425	1586	4425
EQUIPMENT & TOOLS	79	0	0	79	65	3	0	68	11	79
COMPUTER	658	71	0	729	812	20	0	632	97	729
LAB EQUIPMENTS	545	98	0	643	472	20	0	492	151	643
ETP PLANT	5020	0	0	5020	4802	1	0	4803	217	5020
SOFTWARE	120	0	0	120	113	0	0	113	7	120
TOTAL Rs in Thousands	184853	37585	300	222138	116632	13017	0	256	129393	92745

UNIQUE WELDING PRODUCTS PRIVATE LIMITED.

	CURRENT YEAR 31.03.2023	PRE 31.03.2022
NOTE : 15 - CASH AND CASH EQUIVALENTS		
a Balance with Banks	19,903	15,076
b Cash on hand	54	56
TOTAL Rs in Thousands	19,957	15,132
NOTE : 16 - SHORT TERM LOANS & ADVANCES (Unsecured, Considered good)		
Loans to Staff and others	182	129
Advance Income tax , TDS, TCS	13,659	8,668
Sales Tax-Assessment Tax	360	360
Advance Paid Against Order	2,969	3,563
Advance Paid-Factory License Fees	11	23
Balance with GST	446	29
Balance with GST(Solar plant GST credit under review)	3,533	
Misc. receivable (Interest from MGVCL)	182	111
TOTAL Rs in Thousands	21,342	12,883

17. It is therefore, clear that the roof solar plant, affixed on the roof of the building is not embedded to earth. Accordingly it is not an immovable property but a plant and machinery, which is utilized to generate electricity which is further solely and captively used in the manufacture of welding wires. The applicant is engaged in the business of supply of welding wires on payment of



GST at the applicable rates. The applicant has further stated that they have capitalized the roof solar plant in their books of accounts. The Roof Solar Plant, as is evident is **not** permanently fastened to the building. Thus, it qualifies as a plant and machinery and is not an immovable property, hence, it is not covered under blocked credit as mentioned in 17(5)(d) of the CGST Act, 2017. Therefore we hold that the applicant is eligible for input tax on roof solar plant.

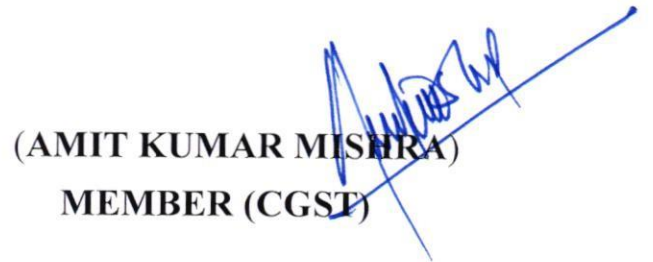
18. Our view is further substantiated vide the ruling of the Gujarat Appellate Authority for Advance Ruling No. GUJ/GAAR/APPEAL/2023/05 dated 4.10.2023 in the case of M/s. The Varachha Cooperative Bank Limited, Surat.

RULING

1. The applicant is eligible to avail ITC on roof top solar system with installation & commissioning under the CGST/GGST Act.
2. The roof top solar system with installation and commissioning constitute plant and machinery of the applicant and hence is not blocked ITC under section 17(5) of the CGST/GGST Act.



(RIDDHESH RAVAL)
MEMBER (SGST)



(AMIT KUMAR MISHRA)
MEMBER (CGST)

Place: Ahmedabad

Date: 05.01.2024

