समक्ष अग्रिम विनिर्णय प्राधिकारी उत्तराखण्ड(माल और सेवा कर)

BEFORE THE AUTHORITY FOR ADVANCE RULINGS FOR THE STATE OF UTTARAKHAND

(Goods and Services Tax)

Present:

श्री अनुराग मिश्रा (सदस्य)

Shri Anurag Mishra (Member)

श्रीमती श्रिया गुप्ता(सदस्य)

Ms Shriya Gupta (Member)

The Twenty Nineth day of July, 2026

अग्रिम विनिर्णय संख्या.:03/2026-27

Ruling No: 03/2026-27

in

आवेदन संख्या. 01/2026-27

Application No: 01/2026-27

1	आवेदक Applicant	M/s Chemizone Private Limited, SIDCUL Industrial Park, Sitargunj, Udham Singh Nagar, Uttarakhand - 249402.
2	अधिकारिता अधिकारी Jurisdictional Officer	-----------
3	आवेदक की ओर से उपस्थित Present for the Applicant	Sh. Abhishek Kapoor, Director and Shri Nitesh Chaudhary, Director
4	अधिकारिता अधिकारी की ओर से उपस्थित Present for the Jurisdictional Officer	None
5	Concerned Officer	Ms. Maneesha Saini, Deputy Commissioner, AAR, SGST Uttarakhand
6	आवेदन प्राप्ति की तिथि Date of receipt of application	02.05.2026
7	सुनवाई की तिथि Date of Personal Hearing	22.07.2026

नोटः इस अग्रिम विनिर्णय की प्राप्ति के 30 दिन के अन्दर उत्तराखण्ड माल और सेवाकर अधिनियम 2017 की धारा–99 के अन्तर्गत गठित अग्रिम विनिर्णय अपीलप्राधिकारी के समक्ष धारा–100(1) के अन्तर्गत अपील दायर की जा सकती है।

Note: An appeal against this ruling lies before the appellate authority for advance ruling under Section 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, constituted under Section 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order.

AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX
UTTARAKHAND

PROCEEDINGS

This is an application under Sub-Section (1) of Section 97 of the Central Goods & Service Tax Act, 2017 and Uttarakhand State Goods & Service Tax Act, 2017 (hereinafter referred to as CGST/SGST Act) and the Rules made there under filed by **M/s Chemizone Private Limited, SIDCUL Industrial Park, Sitargunj, Udham Singh Nagar, Uttarakhand** (herein after referred to as the "applicant") and registered with GSTIN **05AANCC6257H1ZG** under the CGST Act, 2017 read with the provisions of the UKGST Act, 2017.

2. At the outset, we would like to state that the provisions of both the CGST Act and the SGST 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 SGST Act.

3. The Advance Ruling under GST means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub section (1) of section 100 in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

4. As per the said sub-section (2) of Section 97 of the Act advance ruling can be sought by an applicant in respect of:

(a) Classification of any goods or services or both
(b) Applicability of a notification issued under the provisions of this Act,
(c) Determination of time and value of supply of goods or services or both,
(d) Admissibility of input tax credit of tax paid or deemed to have been paid
(e) Determination of the liability to pay tax on any goods or services or both

(f) Whether the applicant is required to be registered

(g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both within the meaning of that term.

4.2 In the present case applicant has sought advance ruling on the **Admissibility of Refund/Input Tax Credit of tax paid /payable on upfront payment of lease amount to Eldeco Sidcul Industrial Park Limited**, covered under Section 97(2)(d) of the Act.

5. BRIEF FACTS

5.1 **In their application dated 02.05.2026**, the applicant submitted that:

a) They intend to secure a plot of land on long term lease from Eldeco Sidcul Industrial Park Limited (herein after referred to as ESIPL) at SIDCUL, Sitargunj.

b) For this lease they have paid/will be paying an upfront payment of lease amount to M/s ESIPL.

c) M/s ESIPL will be charging GST at appropriate rate on the said upfront payment.

d) They intend to construct their factory on this leased land and use it for their manufacturing activities.

QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT

5.2 In view of the above facts, *'the applicant'* is seeking advance ruling as to;

1. Whether they can claim refund/claim ITC of GST paid/payable on the upfront payment of lease amount to Eldeco Sidcul Industrial Park Limited ?

APPLICANT SUBMISSION

5.3 On analysis of the application and supporting documents filed by the applicant the following is observed:-

i. The Applicant intends to secure an industrial plot on long term lease from M/s ESIPL, a joint venture Special Purpose Vehicle (SPV) created by SIDCUL, a government body of the State Govt. of Uttarakhand, and Eldeco Industrial Park Limited at their industrial project at Sitargunj, US Nagar.

ii. For this M/s ESIPL will be charging an upfront lease amount from the applicant and appropriate GST too would be levied on this amount.

iii. The leased out plot/land in the Industrial Park at Sitargunj, US Nagar will be used by the applicant for constructing their manufacturing unit. The applicant appear to seek advance ruling on the GST paid by them on the upfront lease amount in the light of above scenario.

iv. They have also tendered downloaded material/text which records various course of action that the GST Department may take and also suggests alternative manners in which they may treat the lease amount & GST paid thereon, in their records/books of account. The material also informs about various judicial pronouncements of Supreme Court/High Court/ AAAR and the retrospective amendments made in Section 17(5)(d) of the Central Goods and Services Tax Act, 2017 (herein after referred to as the CGST Act) which have an impact on the present issue.

v. The applicant in the concluding part of the enclosed text has framed his question as "*can the company claim refund/claim ITC of GST paid/payable on upfront payment of lease amount to Eldeco Sidcul Industrial Park Ltd.*"

6. PERSONAL HEARING

6.1 To meet the ends of natural justice, opportunity of personal hearing was granted to the applicant on 22.07.2026. Sh. Abhishek Kapoor and Shri Nitesh Chaudhary, both Directors of the applicant appeared online for personal hearing on the said date and re-iterated the submission already made in their application. It was further stated that as the industrial plot was purchased from ESIPL, of which SIDCUL - a government entity, too was a part, the ITC should be allowed. It was also stated that they intend to construct their factory on this plot.

6.2 Ms. Maneesha Saini, Deputy Commissioner, State Tax (herein after referred to as the Concern Officer) also appeared during the personal hearing on behalf of the State Tax Deptt. At the outset she pointed out that admissibility of refund was governed by the provisions of Section 54 of the CGST Act and that the same was not covered under any clause of Section 97(2) of the CGST Act. She stated that in the light of the statutory provision the ruling sought to this extent was violative of the provisions of the Act and was outside the jurisdiction of the Authority.

6.3 In her written submissions, as regards the admissibility of ITC, she pointed out that the credit of ITC paid by the applicant on upfront lease was inadmissible in the light of bar placed under Section 17(5)(d) of the CGST Act. It was submitted that land was specifically excluded from the purview of "plant and machinery", therefore, tax paid on leased land used for construction of immovable property was inadmissible. Reliance was also placed upon the AAAR, Gujarat Ruling No. GUJ/GAAR/R/2025/46 dated 21.11.2025, passed in the case of *M/s Agratas Energy Storage Solutions Pvt. Ltd.*

7. DISCUSSION AND FINDINGS

7.1 In the present case, it is observed that the ruling was sought by M/s Chemizone Private Limited, SIDCUL Industrial Park, Sitargunj, Udham Singh Nagar, Uttarakhand regarding refund/ITC of the tax paid/payable by them on upfront amount paid for recuring long term lease of an industrial plot from M/s ESIPL. Thus, the applicant wants to seek ruling on availability of Refund and eligibility of ITC of the GST paid on the said upfront amount.

7.2 At the outset, we are in agreement with the point of jurisdiction raised by the Concern Officer in as much as the application relates to seeking a ruling regarding **admissibility of refund** of tax paid by the applicant. Having gone through the provisions of Section 97(2) of the CGST Act, 2017 we find that a ruling can only be sought on either of the following seven issues:

(a) Classification of any goods or services or both
(b) Applicability of a notification issued under the provisions of this Act,
(c) Determination of time and value of supply of goods or services or both,
(d) Admissibility of input tax credit of tax paid or deemed to have been paid

(e) Determination of the liability to pay tax on any goods or services or both

(f) Whether the applicant is required to be registered

(g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both within the meaning of that term.

7.3 We find that it is clear from the above that seeking a ruling on the issue of refund of ITC of tax paid by an applicant is not within the purview of Section 97(2) of the Act and therefore the Authority has no jurisdiction to pronounce a Ruling thereon. We hold that the application of the applicant, to this extent, is accordingly set aside.

7.4 Now we take up the issue of **admissibility of ITC** on the tax paid on the upfront payment for securing lease of an industrial plot. It was also stated by the applicant that the intended use of the said industrial plot would be construction of their factory building.

7.5 Legal Position

7.5.1 The admissibility of Input Tax Credit is governed by the provisions of Section 16 of the CGST Act, 2017. However, the goods/services and the situations thereof, under which the ITC would be blocked, irrespective of the recipient fulfilling the conditions of Section 16, are listed under Section 17(5) of the CGST Act. The relevant extract of the same is reproduced hereunder for reference:-

***17.* Apportionment of credit and blocked credits.**

(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:-

(a) motor vehicles for transportation…

(b) the following supply of goods or services or both-

(i)food and beverages, outdoor catering, beauty treatment,…

(ii)membership of a club, health and fitness centre; and

(iii)travel benefits extended to employees …

(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 and machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation1. - 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;

Explanation 2.--For the purposes of clause (d), it is hereby clarified that notwithstanding anything to the contrary contained in any judgment, decree or order of any court, tribunal, or other authority, any reference to "plant or machinery" shall be construed and shall always be deemed to have been construed as a reference to "plant and machinery.

(e)goods or services or both on which tax has been paid under section 10;

(f)goods or services or both received by ...

(fa) goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility...

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

(h)goods lost, stolen, destroyed ...; and

(i)any tax paid in accordance ....

(6)....

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.

7.5.2 It would be pertinent to mention here that in the above Section 17(d), for the earlier words "other than plant or machinery", the words "other than plant and machinery" were substituted by section 124 of the Finance Act (No. 7), 2025 with effect from the 1st day of July, 2017. Further, the explanation in Section 17 also provides that the expression "plant and machinery" specifically excludes land, building or any other civil structures.

7.5.3 We also note that the issue was also dealt by the Authority for Advance Ruling for the state of Gujarat in the case of *M/s Agratas Energy Storage Solutions Pvt. Ltd.*, **supra**. Vide their Ruling No. GUJ/GAAR/R/2025/46 dated 21.11.2025 after following the earlier case *Re: M/s Bayer Vapi Pvt. Ltd* [**2023(9) TMI 165- AAR Gujarat**] and *Re: GACL-NALCO Alkalies and Chemicals Pvt. Ltd.* [**2021 (12) TMI 36 AAR, Gujarat**], it was concluded that the ITC of GST paid on lease rental is not eligible as the same is blocked under Section 17(5)(d) of the CGST Act.

(i) In *M/s Bayer Vapi Pvt. Ltd.*, **ibid**, it was held that as the applicant intended to set up a new industrial unit/ expand existing manufacturing plant on the newly acquired land on lease from GIDC, the ITC of GST paid on such lease stands blocked in terms of Section 17(5)(d).

(ii) In *GACL-NALCO Alkalies and Chemicals Pvt. Ltd.*, **ibid,** on the similar issue of availability of ITC on GST payable for one time consideration paid for transferring the leasehold rights of the plot, it was considered that the legislative intent was always to block the ITC in respect of services pertaining to land received by a taxable person for construction of an immovable property on his own account including when such services are used in the course or furtherance of business. It was concluded therein that GST borne by the recipient was blocked credit under Section 17(5)(d) of CGST Act for the land leased to it will be for the construction of civil structure, factory et al.

7.5.4 It is further noted that appeal filed against the rulings given in *GACL-NALCO Alkalies and Chemicals Pvt. Ltd.* and *M/s Agratas Energy Storage Solutions Pvt. Ltd.*, were challenged before the Appellate Authority for Advance Ruling, Gujarat and the Appellate Authority rejected them vide Order dt. 30.12.2024 [2025 (96) GSTL 211 (App. AAR- GST-Guj)] and Advance Ruling (Appl) No. GUJ/GAAAR/2026/04 dated 04.04.2026, respectively.

7.5.5 Further, the conclusion arrived at by the Appellate AAR in appeal filed by M/s Agratas Energy Storage Solutions Pvt. Ltd. in para 26 of the Order dated 04.04.2026 is reproduced for ready reference:-

> 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.

8 We find that in the present case too, as in the case of M/s Agratas Energy Storage Solutions Pvt. Ltd., the applicant intends to construct his factory building on the land secured on long term lease from M/s ESIPL. In the light of the provisions of Section 17(5)(d) of the CGST Act we are of the opinion that the ITC is blocked in respect of goods and services used in construction of immovable property, except plant and machinery. The Explanation appended to Section 17 clearly excludes land, building or any other civil structure from the purview of "Plant and Machinery". Thus, the intended use of the land is not the construction of any plant and machinery. Therefore, we are of the opinion that the applicant would not be eligible for availing ITC of GST charged by M/s ESIPL on upfront payment of lease amount.

9 Thus, in view of the above discussions and findings, we pass the following Ruling in respect of ruling sought by the applicant:

RULING

Question	*Can the company claim refund/claim ITC of GST paid/payable on upfront payment of lease amount to Eldeco Sidcul Industrial Park Ltd.?*

Ans. (a) Query regarding claim of refund is outside the purview of the provisions of Section 97(2) of the CGST Act, 2017, hence is not required to be answered by the Authority. Accordingly, the same is rejected on this ground.

(b) The applicant would not be eligible for claim of ITC of GST paid/payable on upfront payment of lease amount to M/s Eldeco Sidcul Industrial Park Ltd.

ANURAG MISHRA
(MEMBER)

SHRIYA GUPTA
(MEMBER)

AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX: UTTARAKHAND
OFFICE OF THE COMMISSIONER, SGST, UTTARAKHAND
LADPUR RING ROAD, UPPER NATHANWALA, DEHRADUN

F. No.: 01 / आयुक्त राज्य कर-UKD /AAR/Sec-97/2026-27/DDN/1831 Date:29.07.2026

Copy to:

1. The Chief Commissioner, CGST, Meerut Zone, Meerut for information please.
2. The Pr. Commissioner, CGST, Commissionerate, Dehradun for information and necessary action please.
3. The Commissioner, SGST, Commissionerate, Uttarakhand for information and necessary action please.
4. The Commissioner, CGST, Audit Commissionerate, Dehradun for information please.
5. The Assistant Commissioner, CGST, Division- Rudrapur, for information and necessary action as per law.
6. The Assistant Commissioner, SGST, Sector -01, Khatima for information and necessary action.
7. The Concerned Officer, CGST, Dehradun.
8. The Concerned Officer, SGST, Dehradun.
9. The Appellate Authority of Advance Ruling, Uttarakhand for information please.
10. Guard File.