

<b>GUJARAT AUTHORITY FOR ADVANCE RULING</b> <b>GOODS AND SERVICES TAX</b> <b>A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,</b> <b>AHMEDABAD – 380 009.</b>	
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ADVANCE RULING NO. GUJ/GAAR/RULING/2019/1  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2017-18/AR/9)

Date: 22.2.2019

Name and address of the applicant	:	M/s. National Dairy Development Board Post Box No. 40, Near Jagnath Mahadev, Anand – 388 001.
GSTIN of the applicant	:	24AADCN2029C1Z5
Date of application	:	01.09.2017
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(e) admissibility of input tax credit of tax paid or deemed to have been paid;
Date of Personal Hearing	:	7.11.2017
Present for the applicant	:	Shri Hardik Shah, CA

The applicant, NDDDB, is a statutory body constituted by an Act of Parliament, namely the National Dairy Development Board Act, 1987 (NDDDB Act); the objectives of NDDDB include promoting dairy and other agriculture based industries; and the activities undertaken by NDDDB, to fulfill its objectives, not only include technical or administration assistance but also financial assistance.

1.1 The applicant submitted that the NDDDB Act has specifically authorized NDDDB to undertake the activity of financing, including lending and borrowing money, for diverse purposes. The applicant pointed out following relevant sections of the NDDDB Act.

“(d) designing, planning, promoting, developing, constructing, sponsoring and setting up of dairy industries and undertaking any other related promotional activity **including financing of the same;**”

“(I) **providing financial, technical, administrative, managerial or other assistance or taking**  
Such measures as may be necessary-

(A) for the development (if required by the import of quality semen) and preservation of High yielding cattle;

(B) for adopting improved methods of cattle breeding;

(B) for increasing production and supply of better and improved animal feed including fodder; and

(D) generally for the enhancement of the cattle wealth of the country”

“(j) processing, promoting or financing technological, **industrial or economic research in**

*milk and milk products in such manner as the Board may deem fit by the utilization of available institutions or otherwise;”*

*(k) financing, in such manner as the Board may deem appropriate (including contribution to capital), of co- operative federations, co-operative unions or co- operative enterprises or of any scheme in the co-operative or public sector intended to stimulate the production, preservation, distribution and consumption of milk and milk products nationwide.”*

*“(v) advancing or lending money upon security of movable or immovable property or otherwise”*

*“(w) borrowing money in such manner and upon such security as the Board may deem fit,”*

The applicant further submitted that apart from above, as per sub-section (5) of section 16 of the NDDB Act, it can participate, with the prior approval of the Central Government, in any organization, financially, managerially or in any other manner.

1.2 The applicant further submitted that it is engaged into activity of financing as its regular business activity; that it provides finance/lend money in similar manner as is done by a banking company or financial institution in general parlance; that it provides various kinds of financial assistance such as (a) term loans (b) short term loans (c) working capital assistance.

1.3 The applicant also stated that NDDB has been declared as Public Financial Institution vide Notification reference SO 219 (E) dated 23.2.2004, issued under Section 4A of the erstwhile Companies Act, 1956.

1.4 The applicant then referred to the Section 17 of CGST Act; extract of which is as under-

*“(4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advance shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty percent of the eligible input tax credit on inputs, capital goods and input services in that month and rest shall lapse”*

1.5 It is further submitted that the applicant is neither banking company nor non-banking financial institution which is clear from the NDDB Act and thus it is necessary to see that whether the applicant can be considered as ‘financial institution’ or not, for taking benefits of tax credit. The applicant stated that there is no provision which states or defines what could be considered as financial institution or the law is silent on this count, for the purpose of eligibility of input tax credit. The applicant stated further that Rule 2(bd) of the erstwhile Services Tax Rules, 1994 defined ‘financial institution’ as follows-

*“financial institution’ has the meaning assigned to it in clause (c) of section of the Reserve Bank of India Act, 1934.”*

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It is further stated that the definition of financial institution has limited applicability and those institutions which are considered as financial institution as per RBI Act would only be eligible for availing defined proportion of cenvat credit as per cenvat credit Rules which has narrowed down the scope of benefit, which is against the principle of seamless credit in GST; that the applicant believes that that restriction has been removed in GST regime and the scope of financial institution has widened to include all those organization which are dealing in financing or lending of money.

1.6 The applicant further stated that based on the provisions in respect of 'public financial institution' given under the Companies Act, 2013, the Government vide Notification Reference SO 219 (E) dated 23.2.2004 has prescribed NDDDB as Public Financial Institution. It is further stated that by virtue of that provision, the applicant is well considered as public financial institution which needs analysis to see whether the applicant is eligible to avail benefit of lump-sum input tax credit.

1.7 Considering above submissions, the applicant has set forth the following question to seek advance ruling of the Authority-

- (i) Whether NDDDB can be considered as financial institution for the purpose of availing credit to the extent of fifty percent of input tax credit, as prescribed in Section 17 of CGST Act, 2017?

2. Central Goods and Services tax, Vadodara\_ I Commissionerate, vide letter F.No. IV/16-12/GST/Adv.Ruling/Sec.97/T/2017-18 dated 3.11.2017 have offered comments on the issue under consideration. It is informed that Ministry of Finance (Department of Company Affairs) vide Notification dated 23.2.2004 has declared the NDDDB as a Public Financial Institution under sub section (2) of Section 4A of the Companies Act, 1956. In the new Companies Act, 2013, all Notifications issued under the earlier Act of 1956 have been saved vide provisions of Section 465(2) (a) and therefore, the tax payer is a Public Financial Institution. It is also submitted that the applicant may be considered as Financial Institution as they seem to be satisfying the requirement as provided in Section 45-I(c) (i) of the RBI Act. It has been opined that the applicant can avail of, every month, an amount equal to fifty percent of the eligible input tax credit on inputs, capital goods and input services in that month as prescribed under sub-section 4 of section 17 of the CGST Act, 2017.

3. We heard Shri Hardik Shah, Chartered Accountant, for the appellant on 07.11.2017. We have gone through the submissions made by the applicant in its application for advance ruling and made at the time of personal hearing. Further we have also gone through the comments offered by the department vide letter F.No. IV/16-12/CGST/Adv.Ruling/Sec.97/T/2017-18 dated 3.11.2017.

4. We find that objectives of NDDDB include promoting dairy and other agriculture based industries and to fulfill its objectives NDDDB undertakes the activities in the form of technical or administrative assistance and financial assistance. Further, NDDDB Act, 1987 is found to have specifically authorized NDDDB to undertake the activity of financing including lending and borrowing money for diverse purpose. According to Section 16 of the NDDDB Act the applicant provides finance/lends money solely to dairy co-operatives in a similar manner as is done by a banking company or a financial institution in general parlance. The applicant submits that they provide various kinds of financial assistance such as (a) term loans (b) short term loans (c) working capital assistance; that the loans are given on similar terms and conditions as prevailing in market such as secured loans against hypothecation of stock and properties.

5. As per the submissions of the applicant, NDDDB is neither banking company nor non-banking financial institution which is clear from the provisions of NDDDB Act. However, considering the above said activities performed by them, it is to be examined as to whether NDDDB can be as a 'financial institution' or not for taking the benefits of input tax credit as per Section 17(2) of the CGST Act.

6. Since the question related to determine the eligibility of input tax credit for a banking company or financial institution under GST Act/Rules, we would like to examine the same.

7. Section 17(4) of the CGST Act, 2017 says that a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of

section 17(2), or avail of, every month, an amount equal to 50% of the eligible input tax credit on inputs, capital goods and input services in that month.

8. The applicant is found to have stated that there is no provision which states or defines what could be considered as financial institution in GST law, for the purpose of eligibility of input tax credit. But we observe that the phrase 'financial institution' has been defined under Section 13(8) (c) of IGST Act, 2017 as under-

“(c) ‘Financial institution’ shall have the same meaning as assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934,”

Section 20 of IGST Act provides that provisions of CGST Act shall mutatis mutandis apply to IGST Act.

9. It is relevant now to examine the meaning assigned to the word 'financial institution' in clause (c) of Section 45-I of Reserve Bank of India Act, 1934. As per the said clause of RBI Act, 'financial Institution' is defined as under-

“Financial Institution” means any non-banking institution which carries on as its business or part of its business any of the following activities, namely:

- (i) The financing, whether by way of making loans or advances or otherwise, of any activity other than its own;
- (ii) .....
- .....”

10 It would be seen that as per the activities performed by the applicant, narrated above, NDDDB can be considered as a financial institution as they seem to be satisfying the requirement as provided in Section 45-I(C) of the RBI Act. Besides, NDDDB is also declared as a 'public of financial institution' under the company Act vide Notification No. So 219 (E) dated 23.02.2004.

11. Considering above, we are of the view that NDDDB can be considered as 'financial institution' for the purpose of availing credit to the extent of fifty percent of input tax credit, as prescribed in Section 17 of CGST Act.

12. In view of the foregoing, we rule as under:-

### **RULING**

M/s National Dairy Development Board (GSTIN 24AADCN2029C1Z5) is to be considered as 'Financial Institution' for the purpose of section 17(4) of the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017.

**(R.B. Mankodi)**  
Member

**(G.C. Jain)**  
Member

Place: Ahmedabad  
Date: 22.02.2019