

Whether ITC is available on Inputs to the Assessee when the Godowns constructed by him is entirely meant for renting it out for Commercial purposes to registered dealers. HELD Answered in Negative

ADVANCE RULING ORDER No. 123/AAR/2023, Dated 19th December, 2023

AUTHORITY FOR ADVANCE RULING, TAMILNADU

NO. 206, 2nd FLOOR, PAPJM BUILDING, NO.1, GREAMS ROAD,

CHENNAI -600 006.

ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND UNDER

SECTION 98(4) OF THE TNGST ACT, 2017.

Members present are:

Smt. D.Jayapriya, I.R.S., Additional Commissioner / Member (CGST), Office of the Principal Chief Commissioner of GST & Central Excise, Chennai 600034	Smt. T Indira, Joint Commissioner/ Member (SGST), Office of the Authority for Advance Ruling, Tamil Nadu, Chennai 600006
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1. Any appeal against this Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Rulings, Chennai under Sub-section (1) of Section 100 of Central Goods and Service Tax Act / Tamil Nadu Goods and Service Tax Act 2017 ("the Act" in short) within 30 days from the date on which the ruling sought to be appealed against is communicated.

2. In terms of Section 103(1) of the Act, this Advance ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-^

(a) on the applicant who had sought it in respect of any matter referred to in subsection (2) of section 97 for advance ruling;

(b) on the concerned officer or the jurisdictional officer in respect of the applicant.~

3. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

4. In terms of Section 104 of the Act, where the Authority finds that advance ruling pronounced by it under sub-section (4) of Section 98 or under sub-section (1) of section 101 has been obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant as if such ruling had never been made.

5. 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.

GSTIN Number, if any / User id	33AAOCS2732E1ZI
Legal Name of Applicant	M/s. Suswani Foundations Private Limited

Trade Name of Applicant(Optional)		M/s. Suswani Foundations Private Limited
Registered Address/Address provided while obtaining user id		No. 125 - 90 and 90/1, Sydenhams Road, Choolai, Chennai - 600003.
Details of Application		Form GST ARA-01 Application Sl. No. 81/2023/ARA, dated 06.04.2023
Concerned Officer		State: Vepery Assessment Circle Centre: Chennai (North) Commissionerate.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Leasing Business
B	Description (in Brief)	The Assessee is constructing around 1.62 Lakhs square feet of industrial building to be rented out as Godowns for commercial purpose, at Mevalurkuppam Village, Sriperumbudur Taluk, Kancheepuram District. The Assessee will be purchasing Cement, Steel, PEB Sheet, Building Materials like bricks, sand, blue metals etc., and engaging Consultants / Architects for around Rs. 12 Crores for the construction of Godowns the approximate GST amount that the company may have to pay will be approx. Rs. 2.5 Crores. These Godowns are not for personal use, but meant for business purposes. The Assessee will be letting them for rent and in turn invoices of rent around 40 lakhs per month would be raised by the Assessee with GST. Advance Ruling is sought as to whether Input Credit available to the assessee.
Issue/s on which advance ruling required		1) Admissibility of input tax credit of tax paid or deemed to have been paid.
Question(s) on which advance ruling is required		Whether ITC is available on Inputs to the Assessee when the Godowns constructed by him is entirely meant for renting it out for Commercial purposes to registered dealers.

M/s. Suswani Foundations Private Limited, No. 125 - 90 and 90/1, Sydenhams Road, Choolai, Chennai - 600003(hereinafter referred to as the 'Applicant1) are registered under the GST Acts with GSTIN: 33AAVFK6262D1Z6. They have preferred an application seeking Advance Ruling on the following:-^

"Whether ITC is available on Inputs to the Assesses when the Godowns constructed by him is entirely meant for renting it out for Commercial purposes to registered dealers."~

2.1 The Applicant 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.

2.2 The jurisdictional authorities of the Centre and State were addressed to report if there are any pending proceedings against the Applicant on the issues raised in the ARA application and also for their comments on the issues raised.

3.1. In their application for Advance Ruling, the Applicant has stated that -^

> They are constructing around 1.62 Lakhs square feet of industrial building to be rented out as 'Godowns' for commercial purpose, at Mevalurkuppam Village, Sriperumbudur Taluk, Kancheepuram District.

> They will be purchasing Cement, Steel, FEB Sheet, Building Materials like bricks, sand, blue metals etc. and engaging Consultants/Architects for around Rs. 12 Crores for the construction of Godowns and the approximate GST amount that they may have to pay will be approx. Rs.2.5 Crores.

> These Godowns are not for personal use but meant for business purposes;

> They would be letting them for rent and in turn invoices of rent around 40 lakhs per month would be raised by the Applicant with GST.

> They also submitted-^

- Copy of Tax Invoices received from M/s.Armour Steels Buildings India Pvt. Ltd.

- Copy of Tax Invoices received from M/s. Suryadev Alloys & Power Private Ltd.~

> They seek Advance Ruling as to whether Input Credit on the goods and services used for construction activity, is available to them.~

3.2. The Applicant, on interpretation of law, submitted that-^

> Where the inputs are consumed in the construction of an immovable property which is meant and intended to be for the provision of taxable output services, they should be allowed to avail the Input Tax Credit(ITC).

> Section 17(5)(d) of the CGST Act is to give benefit to the person who has paid GST and it has to be interpreted in continuity of the transaction, since rent income is arising out of the Godowns which are constructed after paying GST on different items.

> Article 14 of the Constitution of India reads as under: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." The said Article is clearly in two parts - equality before law' prohibits discrimination. It is a negative concept. The concept of 'equal protection of the laws' requires the State to give special treatment to persons in different situation in order to establish equality amongst all. It is positive in character. Therefore, the necessary corollary to this would be that equals would be treated equally, whilst un-equals would have to be treated unequally.

> Based on the above Article of Constitution of India, as the Applicant is required to pay GST on the rental income arising out of the investment on which he had paid GST, it is required to have the ITC on the GST paid.

> Section 17(5) (d) is not applicable to them as they are not constructing the godowns for furtherance of business, but the building itself is the source of income for them and without which their business does not exist.

> The godowns are similar to a raw material input to a manufacturing industry, and as manufacturing operations cannot happen in a factory without raw material, their business cannot happen without the godown.

> The godown building referred is a direct input for them to earn their income and submits that Section 17(5)(d) of the CGST Act, 2017 is to be read for the purpose of interpretation to enable benefit to them, who has paid GST. Further, it has to be interpreted in the continuity of the transaction since rent income is arising out of the godowns which are constructed after paying GST on different items.

> GST Act has been introduced with the object of avoiding the cascading effect of various indirect taxes, therefore, the denial of ITC on goods and services used for further supply of services on which GST is payable may not be correct as there is no break in the tax chain.

> As they are paying GST on rental income which is arising out of investment on which GST has been paid and since there is no break in the chain of business from point of procurement of material and services for construction till renting of immovable property, ITC on immovable property used for renting should be allowed.~

4.1. The Centre jurisdictional Authority vide letter dated 07.08.2023, has submitted that -^

> As per Section 17(5)(d) of CGST Act, 2017, no ITC is available in respect of any goods or services received by a taxable person for construction of an immovable property on his own account or even if such inputs and input services are used in the course or furtherance of business.

> The scope of 'immovable property' is well emphasized and understood to be land and building but it also includes everything that is attached to or forming part of the land and rights in such land. The ITC is blocked on all inward supplies leading to the establishment of such immovable property such as services from real estate agent, architect, interior decorators and contractors are also blocked as these are involved in the establishment of the immovable property.

> In the instant case, the Applicant has himself built the godowns for which he has received various goods such as steel, cement etc. and inputs and services by architects etc. as input services. The Applicant is proposing to rent out the godowns to various customers which is furtherance of his business. As per Section 17(5)(d), no ITC is available on any goods or services received by them for such construction and the same cannot be claimed by them.

> Further, the sale of immovable property post issuance of completion certificate does not attract any levy of GST. Consequently, in such a situation, there is a break in the tax chain and therefore, there is full justification for denial of input tax credit as on the completion of the transaction, no GST would at all be payable and therefore, no set-off of ITC would be required or warranted.

> Hence, the ITC paid on the goods/services received for construction of an immovable property on one's own account for furtherance of business is unavailable in terms of Section 17(5)(d) of the CGST Act, 2017.

> As per available records, no pending proceeding or decided on tire issue raised in the AR application.~

4.2. The State jurisdictional Officer, did not submit any remarks and hence it is presumed that there are no proceedings pending or decided on the issue raised in the application by the Applicant.

PERSONAL HEARING

5. The Applicant, after consent, was given an opportunity to be heard in person on 01.12.2023. Smt. Anuradha Jayaraman, Chartered Accountant who is the Authorized Representative (AR) of the Applicant appeared for the hearing. The AR reiterated the submissions made in their application.

DISCUSSION AND FINDINGS:

6.1. We have carefully considered the submissions made by the Applicant in their application, submissions made during the personal hearing and the comments furnished by the Centre Tax jurisdictional Officer.

6.2. In terms of Section 97(2) of the CGST/TNGST Act, questions on which advance ruling is sought under the Act, falls within the scope of Section 97(2)(d) of the CGST/TNGST Act, 2017, and therefore the application is admissible.

6.3. The Applicant is before us seeking Advance ruling on the issue whether ITC is available on the inputs and input services used by them for construction of godowns which they are proposing to rent out for commercial purposes to registered tenants.

Their main defense in the case is that Section 17 (5)(d) of the CGST Act, 2017 is not applicable to them as they are not constructing the godowns for furtherance of business, but the building itself is the source of income for them, without which their business does not exist.

6.4. Section 17(5)(d) reads as follows:-^

"(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:-

(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.

Explanation: For the purposes of clauses (c) and (d), the expression "construction" includes

reconstruction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property."~

Section 17(5) (d) provides that no ITC is available in respect of any goods or services received by a taxable person for construction of an immovable property on his own account even if such inputs and input services are used in the course and furtherance of business. In the instant case the applicant has himself built the godown for which he has received various goods such as cement, steel, sand, PEB Sheets, bricks, blue metals etc. as inputs and services by architect, consultancy etc. as input services. The Applicant is proposing to rent out to large companies for storing their stock for future sale i.e. for furtherance of his business. Therefore, as per section 17(5) (d), no ITC is available on any goods or services received by them for such construction and the same cannot be claimed by them.

6.5. The Applicant has contended that based on Article 14 of Constitution of India, the Applicant is required to pay GST on the rental income arising out of the investment on which he had paid GST, it is required to have the ITC on the GST paid. They argued that the concept of 'equal protection of the laws' under the said Article, requires the State to give special treatment to persons in different situation in order to establish equality amongst all and therefore, the necessary corollary to this would be that equals would be treated equally, whilst un-equals would have to be treated unequally. We do not agree with the contentions of the applicant. The Legislative Scheme is amply clear. The input tax paid on the goods/services received for construction of an immovable property 'on one's own account' is unavailable. The restriction is provided in the Act which is passed by the Legislature. The power to restrict flow of credit exists under Section 16(1) of the GST Act, which shows a Legislative intent that Input Tax credit may not always be allowed partially or fully. As the suitability and requirement of tax payer varies from person to person, rule/Act, cannot be changed/amended accordingly and it is mandatory for the tax payers to adhere the restrictions prescribed in Act and Rule.

Based on the above discussions, we rule as under:

RULING

No Input Tax Credit is available on Inputs to the Applicant when the Godowns constructed by him is meant for renting it out for Commercial purposes to registered dealers.

T Indira
Member (SGST)

D. Jayapriya
Member (CGST)