

KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD,
GANDHINAGAR, BANGALORE – 560009

(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018)

BEFORE THE BENCH OF

SHRI. D.P.NAGENDRA KUMAR, MEMBER

SHRI. M.S.SRIKAR, MEMBER

ORDER NO.KAR/AAAR-14//2019-20

DATE: 06-02-2020

Sl. No	Name and address of the appellant	M/S Tarun Realtors Pvt Ltd Mantri House, 41, VittalMallya Road, Bangalore 560001
1	GSTIN or User ID	29AACCT1512D1ZS
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 103/2019 Dated: 30th Sept 2019
3	Date of filing appeal	08-11-2019
4	Represented by	Shri. Badrinath N R, Chartered Accountant
5	Jurisdictional Authority- Centre	Commissioner of Central Tax, Bangalore North
6	Jurisdictional Authority- State	LGSTO- 020 - Bengaluru
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Payment of Rs. 20,000/- made vide CIN NO. 19112900049108 Dated 07.11.2019

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, Act 2017 are in *parimateria* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by M/s Tarun Realtors Private Ltd, 'Mantri house', 41, Vittal Mallya Road, Bangalore 560001 (herein after referred to as Appellant) against the advance Ruling No. KAR/ADRG 103/2019 dated: 30th Sept 2019.

Brief Facts of the case:

3. The appellant is developing a shopping Mall - '*Mantri Arena Mall*' which will include a hypermarket, multiplex cinema theatre complex, departmental stores, retail shops and food courts. The Applicant has entered into various lease agreements with their customers / tenants (Service recipients) and will be leasing all unit(s) at the Mall together with the right to use the staircases, common areas and other common facilities.

4. To undertake development of the said property, the appellant is required to procure numerous goods and avail numerous services including works contract service from many suppliers. Accordingly, the appellant placed purchase orders on various suppliers for goods and work order on various suppliers for services and the suppliers have raised invoices on the appellant.

5. Amongst other goods and services, the appellant has procured goods and / or services for the installation of Chillers, Air Handling Unit (AHU), Lift, Escalator, Travellator, Water Treatment Plant (WTP), Sewage Treatment Plant (STP), High-speed Diesel yard (HSD) Mechanical Car Park and Indoor/Outdoor Surveillance System (CCTV), DG sets, Transformers, Electrical wiring and fixture, Public Health Engineering (PHE), Fire-fighting and water-management pump system. Supply of all the aforesaid goods and services are taxable supplies under the GST Acts and, accordingly, tax has been charged by such suppliers and paid by the appellant to such suppliers. A brief description of the nature of these installations is given below:

- i. Chiller – It is air-conditioning equipment that generates chilled water, essential for overall temperature control of the building.
- ii. Air Handling Unit (AHU) – AHU is a device used to regulate and circulate air as part of a heating, ventilating, and air-conditioning (HVAC) system. The basic

function of the AHU is to take in outside air, re-condition it and supply it as fresh air at controlled temperature to a building.

- iii. Lift, Escalator, Travellator – It is a form of vertical transportation between building floors, levels or decks, commonly used in offices, public buildings and other types of multi-storey building.
- iv. Water Treatment Plant (WTP) – WTP is plant where the supplied water (municipal/ bore well/ brought out water) is treated for prescribed permissible limits for the prescribed purposes within the building.
- v. Sewage treatment plant (STP) – STP is a plant where the wastewater (used) is treated, recycled, is made re-usable and then supplied for the prescribed purposes within the building.
- vi. High-speed Diesel Yard – This is required for storage of diesel and pumping the same to Diesel Generators during power outages, thereby restoring all mechanical equipment functionality in the building.
- vii. Mechanical Car Park (MLCP) – A system of car parking solution that enables automatic parking and retrieving cars that typically use a system of pallets and lifts and signalling devices for retrieval of cars.
- viii. Indoor/Outdoor Surveillance System (CCTV) – A CCTV system is a TV system in which signals are not publicly distributed but are monitored, primarily for surveillance and security purposes within the building.
- ix. DG Sets – These generate required power that is required for all electro-mechanical equipment in the building.
- x. Transformers – This equipment bring down the voltage of the power supplied by BESCOM, as per stipulated norms.
- xi. Electrical wiring and fixtures – These fixtures, through cables & wires, carry power to various electro-mechanical equipment and are related to lighting and associated accessories.
- xii. Public Health Engineering (PHE), Fire-fighting and water-management pump system – This is essential for life safety of the building which includes Fire protection and detection, and water supply management for the building.

All the above-mentioned installations are used, directly or indirectly, for making outward supply of services (i.e. lease rentals.)

6. The appellant sought advance ruling in respect of the following question:

Whether taxes paid on procurement of goods and/or services for installation of the following, are regarded as blocked credits under Section 17(5) of the CGST Act, 2017?

(a) Chillers, (b) Air Handling Unit (AHU), (c) Lift, Escalators and Travellator, (d) Water Treatment Plant (WTP), (e) Sewage Treatment Plant (STP), (f) High Speed Diesel Yard (HSD), (g) Mechanical Car Park (MLCP), (h) Indoor / Outdoor Surveillance System (CCTV), (i) D.G.Sets, (j) Transformers, (k) Electrical wiring and fixtures (l) Public Health Engineering (PHE), Fire-fighting and water management pump system.

7. The Authority for Advance Ruling vide order No KAR ADRG 103/2019 dated 30th Sept 2019 held that *"the taxes paid on procurement of goods and/or services for installation of the Installations as listed in the application are regarded as blocked credits under Section 17(5) of the CGST Act, 2017"*.

8. Aggrieved by the said ruling, the appellant has filed this appeal on the following grounds.

8.1. On a conjoint reading of the provisions of Section 17(5)(d) of the CGST Act and the definition of "Plant and Machinery" as given in the explanation to Chapter V and Chapter VI of the said Act, it can be deduced that the taxes paid on goods or services received for construction of plant or machinery on one's own account is available as input tax credit and is not blocked under Section 17(5) of the CGST Act.

8.2. On application of Rule of literal interpretation of statutes, the appellant submitted that the explanation to Chapter V of the CGST Act i.e "Plant and Machinery" cannot be applicable to the phrase "Plant or Machinery" used in Section 17(5) of the said Act. Although the phrase "Plant and Machinery" is defined under the GST laws, the phrase "Plant or Machinery" has not been defined; that Section 17(5) uses the phrase "Plant or Machinery", which has not been defined under the GST laws; that therefore, references must be drawn from the dictionary meanings ascribed to it under other laws and judicial pronouncements.

8.3. The appellant submitted that as per the Law Lexicon, "Plant" means the fixtures, machinery, tools, apparatus, appliances, etc, necessary to carry on any trade or mechanical

business, or any mechanical operation or process. "Machinery" means something more than a collection of ordinary tools. It means more than a solid structure built upon the ground, whose parts either do not move at all or if they do move the one with or upon the other in interdependent action with the object of producing specific and definite results.

8.4. The appellant relied on the following judicial pronouncements which attempt to determine whether an item is a 'machinery' or not and to justify their case that all the installations of the appellant qualify as "Plant" or "Machinery":

a) Corporation of Calcutta vs Chairman of the Cossipore and Chitpore Municipality – AIR 1922 PC 27

b) Industrial Machinery Manufacturers Pvt Ltd vs State of Gujarat – 16 STC 380.

c) Ambica Wood Works vs State of Gujarat – 43 STC 338

d) Dani vs State of Karnataka – 44 STC 276

e) India Leaf Spring Mfg Co (P) Ltd vs Commissioner of Income Tax – 1989 175 ITR 639 AP

f) Sirpur Paper Mills Ltd vs CCE, Hyderabad – 1998 (97) ELT 3 (SC)

8.5. The appellant also relied on the analogy of certain judicial pronouncements rendered under the erstwhile Cenvat Credit laws, wherein it has been held that Cenvat credit of inputs/input services used for construction is admissible.

a) M/s Rattha Holding Co Pvt Ltd vs Commissioner of Service Tax, Chennai – 2018 (9) TMI 1722

b) Commissioner of Central Excise, Vishakapatnam-II vs M/s Sai Samhmita Storages (P) Ltd – 2011 (2) TMI 400

c) Commissioner of central Excise, Salem vs Ashok Agencies – 2016 (5) TMI 782

8.6. The appellant submitted that parts, components, accessories come into existence before the installation of the machinery and credit of taxes paid on the same cannot be denied even if they become part of the immovable property after installation of the plant and machinery. They relied on the following judicial pronouncements in support of this stand:

a) Commissioner of Central Excise & Service Tax vs India Cements Ltd 2014 (310) ELT 636 (Mad)

b) Commissioner of Central Excise Jaipur vs Rajasthan Spinning & Weaving Mills Ltd 2010 (255) ELT 481 (SC)

c) Saraswati Sugar Mills vs commissioner of Central Excise, Delhi III 2011 (270) ELT 465 (SC)

8.7. The appellant also relied on the order dated 17.04.2019 passed by the High Court of Orissa in the case of Safari Retreats Pvt Ltd and another vs Chief Commissioner of CGST & other (W.P. © No 20463/2018) wherein it was held that the petitioner is allowed to avail input tax credit on inputs like cement, sand, steel, aluminium, plywood, paint, electrical wires, lifts & escalators, air-conditioning plant, chillers, electrical equipment, DG sets, transformers, building automation systems, consultancy services, architectural services, legal and professional services, engineering services, etc on the following grounds:

a) Restriction of input tax credit on goods and/or services used in construction of plant or machinery in terms of Section 17(5) of the CGST Act, 2017 leads to narrow interpretation of statute, which destroys the very object of the statute.

b) The petitioner had retained the property not on own account but had let out the property on rent and had remitted applicable GST on the same. Since the output tax was remitted on such rental income, the High Court held that restriction of input tax credit on inward supplies would lead to obscure interpretation of the statute.

8.8. The appellant submitted that the installations are recorded in the books of accounts under separate heads as per Indian Accounting Standards which is sufficient justification that these installations are distinct from the land and building. Hence the same do not form a part of the exclusion portion of the explanation to Chapter V and Chapter VI of the CGST Act, 2017 and are accordingly, not excluded from the definition of "Plant and Machinery".

8.9. They further submitted that although the installations are fixed to the building/earth, they qualify as "Plant" or "Machinery" under the CGST Act and accordingly the taxes paid on procurement of goods or services for such installations should not be regarded as blocked credits in terms of Section 17(5)(d) of the CGST Act read with Explanation to Chapter V and Chapter VI of the CGST Act.

PERSONAL HEARING

9. The appellant was called for a personal hearing on 10th Jan 2020 but the same was postponed to 31st Jan 2020 on their request. The appellant was represented by Shri. Badrinath N.R, Chartered Accountant who reiterated the submissions made in the grounds of appeal. He stressed on the submission that the term "Plant" is to be looked at independently and not in conjunction with 'machinery'. He submitted that when the building is rented out, the tenant is given the right to use the installations which are part of the common facilities provided. For use of the common facilities, separate common area maintenance charges are collected from the tenants which is separate from the rental charge. On a specific query by the Members, the appellant submitted photographs of the water treatment plant and sewage treatment plant installed at the Arena Mall.

DISCUSSIONS AND FINDINGS

10. We have gone through the records of the case and considered the submissions made by the Appellant in their grounds of appeal as well as at the time of personal hearing. It is seen from the records and the submissions made by the appellant that they are constructing a shopping mall which they intend to lease/rent out for housing departmental stores, retail shops, food courts, multiplex cinema theater complex and hypermarket. The appellant has procured various goods / services for the installation of Chillers, Air Handling Unit (AHU), Lift, Escalator, Travellator, Water Treatment Plant (WTP), Sewage Treatment Plant (STP), High-speed Diesel yard (HSD) Mechanical Car Park and Indoor/Outdoor Surveillance System (CCTV), DG sets, Transformers, Electrical wiring and fixture, Public Health Engineering (PHE), Fire-fighting and water-management pump system in the shopping mall under construction. The appellant has paid tax on the procurement of the goods/services for the installation of the above items.

11. The question is to decide whether input tax credit against purchases of goods and services used for installation of the aforesaid items in the shopping mall under construction can be claimed and utilized to pay GST on the outward supply of services of renting of the shopping mall as retail shops, food courts, cinema theater, etc.

12. Section 16(1) of the CGST Act, 2017 provides as follows:

“16.(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”.

The generalized interpretation of the aforesaid Section implies that the appellant is entitled to credit of input tax charged on any supply of goods and/or services made to the appellant and used by the appellant in furtherance of his business. However, this is subject to the conditions and restrictions as specified in Section 16(2) and Section 17 (5) of the CGST Act, 2017. Section 17(5) of the CGST Act, 2017 stipulates the situations wherein input tax credit shall not be available notwithstanding anything contained in Section 16(1) of the said Act. We are concerned with the provisions of clause (d) of Section 17(5) of the said Act.

13. Section 17(5)(d) reads as follows:

(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: -

.....

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

14. It is seen from the above that input tax credit in general is not available for construction, reconstruction, renovation, addition, alteration or repair of an immovable

property even when such goods or services or both are used in the course or furtherance of business. The exception to the restriction contained in Section 17(5)(d) is regarding "Plant" or "Machinery. In other words, the tax paid on the procurement of goods or services for construction of "Plant" or "Machinery" would not be hit by the provisions of Section 17(5)(d) of the CGST Act. The words "Plant" and "Machinery" have not been defined separately under the GST Acts. However, the expression "plant and machinery" is defined in the explanation to Section 17 of the CGST Act and such definition is for the purposes of Chapter V (Input Tax Credit) and Chapter VI (Registration) of the CGST Act.

15. It is the contention of the appellant that the definition of the expression "plant and machinery" as used in Chapter V and Chapter VI of the CGST Act cannot be applied to interpret the words "plant" or "machinery" used in clause (d) of Section 17(5) of the CGST Act. We find that in ordinary usage 'and' is conjunctive and 'or' disjunctive. From the well-known dictum of the Supreme Court that grammar is a good guide to meaning but is a bad master to dictate, it will appear that there is no hard and fast rule as to the meaning of the word 'or' and this word gets its proper meaning from the particular context from which it has been used. Justice G.P. Singh in the Principles of Statutory Interpretation (Thirteenth Edition) Chapter 7 page 485 has stated as follows:

"The word 'or' is normally disjunctive and 'and' is normally conjunctive but at times they are read as vice versa to give effect to the manifest intention of the Legislature as disclosed from the context. As stated by Scrutton L.J, "You do sometimes read 'or' as 'and' in a statute. But you do not do it unless you are obliged because 'or' does not generally mean 'and' and 'and' does not generally mean 'or'. Further as pointed out by Lord Halsbury, the reading of 'or' as 'and' is not to be resorted to, "unless some other part of the same statute or the clear intention of it requires that to be done". Where provision is clear and unambiguous the word 'or' cannot be read as 'and' by applying the principle of reading down. But if the literal reading of the words produces an unintelligible or absurd result 'and' may be read for 'or' and 'or' for 'and' even though the result of so modifying the words is less favourable to the subject provided that the intention of the Legislature is otherwise quite clear. Conversely if reading of 'and' and 'or' produces grammatical distortion and makes no sense of the

portion following 'and', 'or' cannot be read in place of 'and'. The alternatives joined by 'or' need not always be mutually exclusive."

16. Applying the above principle to the instant case, we are of the opinion that in this case, the word 'or' in clause (d) of Section 17(5) of the CGST Act can be read as 'and' since it appears to give effect to the intention of the legislature to allow input tax credit on the construction of plant and / or machinery. Therefore, we are of the view that this argument of the appellant is not of much relevance. We will not labour over the case laws cited by the Appellant on this issue, as we do not rely upon those submissions of the Appellant.

17. Having said thus, we find that the restriction contained in Section 17(5)(d) is applicable to goods and services received by a taxable person for construction of an immovable property. When goods and services are received by a taxable person for construction of plant or machinery, there is no bar on eligibility to input tax credit. The appellant has argued that all the installations mentioned in his application qualify as 'Plant' or 'Machinery'. The Explanation to Section 17 defines "Plant and machinery" to mean 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.

18. The appellant has only provided information on the use of the various items mentioned in his application. A general understanding of the items such as Lift, Escalator, Travellator, Water treatment Plant, Sewage Treatment Plant, HSD yard, Mechanical Car Park, DG Set and, Transformers, mentioned in the appellant's application, is that they are fixed to the earth either by a foundation or with structural support and they qualify to be considered as "Plant and machinery".

19. On the other hand, the items such as Chiller, Air Handling Unit, Indoor/Outdoor Surveillance System (CCTV), electrical wiring and fixtures, Public Health Engineering (PHE), Fire-fighting and water management pump system do not appear to be

apparatus/equipment/machinery which are fixed to the earth. The appellant has also not submitted any information as to how these items are getting embedded to the earth since the criteria for terming such items as "Plant and Machinery" is that they have to be fixed to the earth either by foundation or structural support. In the absence of such information we hold that Chiller, Air Handling Unit, Indoor/Outdoor Surveillance System (CCTV), electrical wiring and fixtures, Public Health Engineering (PHE), Fire-fighting and water management pump system do not qualify as plant or machinery but are items which are procured for the purpose of construction of the immovable property. Hence, the appellant is not eligible for the input tax credit of the tax paid on the procurement and installation of Chiller, Air Handling Unit, Indoor/Outdoor Surveillance System (CCTV), electrical wiring and fixtures, Public Health Engineering (PHE), Fire-fighting and water management pump system.

20. As regards the Lift, Escalator, Travellator, Water treatment Plant, Sewage Treatment Plant, HSD yard, Mechanical Car Park, DG Set and, Transformers no information is furnished as to who is doing the installation of the said items. Therefore, we will examine the issue based on the available documents. It is seen from the copies of invoices furnished by the appellant that, in the case of Lifts, escalators and travellator, the vendor M/s OTIS Elevator Company has entered into a contract with the appellant for the supply and installation of passenger lifts, service lifts, escalator and travellator at the project site. No doubt lifts, escalator and travellators are fixed to the earth with structural supports and they qualify as plant and machinery. However, it appears that the supply of the lifts and its installation at the project site of the appellant are done by the vendor M/s OTIS. In such a case, M/s OTIS will not be hit by the restriction imposed under Section 17(5)(d) since they are engaged in the construction of lift, escalator, travellator which qualifies as plant and machinery. However, the appellant will not be eligible for the credit of the tax paid on such procurements since the appellant is not doing the installation of the lifts, escalators and travellators.

21. Similarly, in the case of the invoice issued by Wohr Parking Systems Pvt Ltd, it is seen that the vendor has raised an invoice on the appellant for the supply of 1 car parking system Combilift 551 for a value of Rs 2.69 cr. It is also stated in the said invoice that the supporting steel structure is in Wohr's scope. This evidences the fact that the complete supply and installation of the car parking system is done by the vendor. The car parking system being fixed to the earth with structural support qualifies as "Plant and machinery". However,

the appellant will be hit by the restriction imposed in Section 17(5)(d) and will not be eligible for the credit of the tax paid on such procurements in as much as the appellant is not doing the construction and installation of the car parking system.

22. Further, in the case of the invoice No 20 dt 5.11.2018 raised by M/s Veeresh Engineering Works, it is for the fabrication, supply and installation of the HSD yard. The work involves supply of single shell 25KL capacity MS tank for storing HSD, fabrication, testing and commissioning of single shell 25KL capacity MS tank and obtaining NOC from the Dy Commissioner after getting clearances from the local authorities. This evidences that the complete setting up of the HSD yard is done by the vendor M/s Veeresh Engineering Works and not by the appellant. Here again the appellant will not be eligible for the credit of the input tax paid on such supply as the construction of the HSD yard has not been done by him.

23. In respect of the Water treatment Plant and Sewage Treatment Plant, as can be seen from the photographs, they form part of the civil structure of the immovable property. Civil structures are specifically excluded from the definition of "Plant and machinery". So also, the DG Set and Transformer – they are procured as independent items and their installation becomes part of the civil structure of the immovable property. Therefore, we hold that the appellant is not eligible of the credit of the taxes paid on the procurement of the Water Treatment Plant, Sewage Treatment Plant, DG Set and Transformer. In view of the above, we hold that the ruling given by the lower Authority is correct in law.

24. The applicant has placed reliance on the judgment rendered by the Hon'ble High Court Orissa in the case of "*M/s. Safari Retreats Pvt. Ltd., and Another v. Chief Commissioner of Central Goods & Service Tax & Others*" reported in 2019 (5) TMI 1278-Orissa High Court. It is seen that in the said case, the prayers are

(a) eligibility to credit of input tax paid on goods/services used for construction which is rented for commercial purposes

(b) to hold Section 17(5)(d) as *ultra vires*.

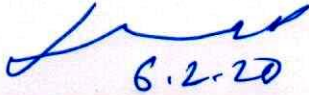
While the Hon'ble High Court has granted the prayer at (a), the Hon'ble High Court has not accepted the prayer at (b) stating that they are not inclined to hold the provision *ultra vires*.

We find that the order of the Orissa High Court has been appealed against by the Chief Commissioner of Central Taxes, Bhubaneswar in SLP (C) No 026696 and the same is pending in the Apex Court. Since the order of the High Court has not yet attained finality, the same does not have persuasive value.

25. In view of the above discussion, we pass the following order

ORDER

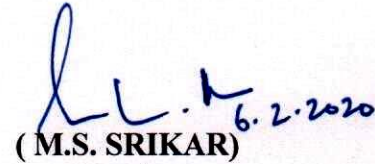
We uphold the order NO.KAR ADRG 103/2019 dated 30/09/2019 passed by the Advance Ruling Authority and appeal filed by the appellant M/sTarun Realtors Pvt Limited stands dismissed on all counts.



(D.P.NAGENDRAKUMAR)

Member

Karnataka Appellate Authority
for Advance Ruling



(M.S. SRIKAR)

Member

Karnataka Appellate Authority
for Advance Ruling

To,

The Appellant

Copy to

1. The Member (Central), Advance Ruling Authority, Karnataka.
2. The Member (State), Advance Ruling Authority, Karnataka
3. The Commissioner of Central Tax, Bangalore North Commissionerate
4. The Assistant Commissioner, LGSTO-020, Bangalore
5. Office folder