

**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-17//2019-20

DATE:06-03-2020

Sl. No	Name and address of the appellant	M/s WEWORK INDIA MANAGEMENT PRIVATE LIMITED 1 st Floor, Embassy Point, Infantry Road, Bengaluru 560001
1	GSTIN or User ID	29AADCH8710J2ZB
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 106/2019 Dated 30th Sept 2019
3	Date of filing appeal	09-12-2019
4	Represented by	Shri. Vinayak Parameshwaran, Authorised Representative
5	Jurisdictional Authority- Centre	Commissioner of Central Tax, Bangalore North Commissionerate.
6	Jurisdictional Authority- State	LGSTO 020, Bangalore
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. CIN No HDFC19122900045177dated 06.12.2019 for Rs 20,000/-

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 WEWORK INDIA MANAGEMENT PRIVATE LIMITED, 1st Floor, Embassy Point, Infantry Road, Bengaluru 560001 (herein after referred to as Appellant) against the advance Ruling No. KAR/ADRG 102/2019 dated 30th Sept 2019.

Brief Facts of the case:

3. The Appellant is a private limited company engaged in providing shared workspace/Office Space to the freelancers, start-ups, small businesses and large enterprises. The Appellant provides a "space-as-a-service" membership model wherein it offers individuals and organizations the flexibility to scale work space up and down as needed, with the ability to consume space by the minute, by the month or by the year. The Appellant business model offers their members, 24/7 access to their locations, beautifully designed workspaces, flexible workspace configurations as needed, a common set of amenities, on-site community teams, a growing number of value-added products and services and a member experience powered by technology.

4. The Appellant procures goods and services from various contractors for fitting-out of the workspaces and provides the said workspace on rent, to various companies and individuals as sharing work-spaces. The Appellant has paid applicable GST on such procurements. Section 16(1) of the CGST Act entitles a registered person to take credit of input tax charged on any supply of goods or services or both which are used or intended to be used in the course or furtherance of business. However, as per Section 17(5) of the CGST Act, a restriction is imposed with respect to input tax credit (hereinafter referred to as "ITC") on procurement of goods and services or both received by the taxable person for construction of an immovable property. However, the term 'construction' is limited to supplies to the extent capitalized to an immovable property. The two major components which are in the nature of furniture and fixtures, that are used in the Appellant's buildings are-

- Detachable 14mm Engineered wood with Oak top wooden flooring;
and

- Detachable sliding and stacking glass partitions.

5. The Appellant sought an advance ruling in respect of the following question:

- Whether input GST credit can be availed by the applicant on the detachable 14mm Engineered Wood with Oak top Wooden Flooring which is movable in nature and capitalized as "furniture and fixture", and is not capitalized as "immovable property"?*
- Whether input GST credit can be availed by the applicant on the detachable sliding and stacking glass partition which is movable in nature and capitalized as "furniture and fixture", and is not capitalizes as an immovable property?*

6. The Karnataka Authority for Advance Ruling vide ruling No KAR ADRG NO 106/2019 dated 30-09-2019 held as follows:

- The input tax credit of GST can be availed by the applicant on the detachable 14 mm Engineered wood with Oak top wooden flooring which is movable in nature and capitalized as "furniture" and*
- The input tax credit of GST is not available on the detachable sliding and stacking glass partitions.*

7. Being aggrieved by the portion of the impugned order relating to the denial of input tax credit on detachable sliding and stacking glass partitions, the Appellant filed this appeal on the following grounds.

7.1. the Appellant submits that the as per Section 16 of the CGST Act, they are eligible to avail credit on the Detachable sliding and stacking glass partitions as the same are being fitted in the building for the co-working space being let out to its members and thus qualifies to be used in the course or furtherance of Applicant's business. They submitted that Section 16 details the criteria of availment of ITC on tax paid on input and input services; that Section 16 of the CGST Act entitles ***every registered person*** to take ***input tax credit of tax charged on supply of goods or services or both which are used or intended to be used in course or furtherance of business***; that while business has been defined under the CGST Act, the terms "in the course" or "furtherance of business" are not defined anywhere

under

the

CGST

Act or the CGST Rules made thereunder. "In the course of" generally means something "in the progress of process of"; that the meaning of "Furtherance" as per Black's law dictionary: 6th edition 11th reprint 1997, is "act of furthering, helping forward, promotion, advancement or progress"; that "furtherance of business" will, thus mean, act of furthering business, helping forward business, promotion of business, advancement of business or progress of business; that the Appellant is into the business of constructing physical shared spaces and office services. Given that the Appellant procures detachable sliding and stacking glass partitions, which are installed in office spaces rented out by the Appellant, the condition as provided under Section 16 for availment of ITC stands satisfied.

7.2. The Appellant submitted that the restriction provided under Section 17(5) does not apply to Detachable sliding and stacking glass partitions; that the credit restriction under Section 17(5) is only in so far as inputs/ input services are used "for construction of an immovable property"; that the term "for" used in Section 17(5)(d) is more specific than "in relation to"; that the word "for" generally means "for the purpose of". The Appellant placed reliance on the case of the Hon'ble Supreme Court in *Mansukhlal Dhanraj .Jain & Ors. Etc. v. Eknath Vithal Ogale wherein the Apex Court* compared the words "for" and "relating to" and concluded that the latter has wider connotations than the former; that based on the above ruling, it can be concluded that in order to be covered by the restrictions provided under Section 17(5)(d), the goods or services must be used directly for construction of immovable property. The Appellant also submitted that the direct or immediate use in construction or the remote use in construction determines the coverage of in-eligibility. The Appellant relied on the decisions in the case of CCE vs Tata *Engineering and Locomotives Co. Ltd. 2003 (158) ELT 1.30 (S.C)* and *Indian Chamber of Commerce v. Commissioner of Income Tax, West Bengal II, Calcutta* reported in (1976) 1 SCR 830 to substantiate their claim that the phrase "used for" means "used for the purposes of".

7.3. The Appellant further submitted that as per Section 17(5)(d) of CGST Act, read with the explanations provided therein, credit eligibility of goods or services or both is restricted only when the same is "for construction of an immovable property";

that the detachable sliding and stacking glass partitions are not inextricably linked to the construction itself, which is explicitly clear from the business model of the Appellant, as detailed in the para below, the Appellant provides its members with the following three options:

- **HOT DESK** - A Hot desk is an On-demand workspace. A hot desk is the ultimate flexible office space. The member can wherever they want in any of Appellant's co-working common areas get access to that location's amenities. In such cases, no glass partition is created for hot desk member. Various Hot desk members can use any desk across the common area together.
- **DEDICATED DESK** - A dedicated desk is one that is always reserved for the member. Dedicated desks come equipped with a chair, trashcan, and and lockable filing cabinet - akin to a permanent desk provided by the Appellant. In these cases, there will be no glass partition to separate offices for different dedicated desk members. There will be are served area where members will use their specific dedicated desk.
- **PRIVATE OFFICES** - An office with enclosed spaces for teams of one to 100 or more, with access to all amenities. In such cases, glass partitions can be removed or placed as required by the members. If a certain member requires a small private space, a glass partition can be placed swiftly. On the other hand, if a member requires a bigger private space, glass partitions can be removed.

The Appellant therefore submitted that it is clear from the above business model, that fixture of glass partitions can be made very quickly. Any and all alterations can be made in case of Private offices, with great flexibility, since the same are not permanent and solely made for the members' requirements and needs.

7.4. The Appellant submits that anything embedded to the earth and which cannot be dismantled and moved, strictly are covered under the ambit of "immovable property" thus restricting the same from availment of ITC as per Section 17 (S)(c) & (d) of the CGST Act; that the detachable sliding and stacking glass partitions are not covered under "embedded to the earth" or "cannot be dismantled and moved", since such glass partitions, are detachable. The Appellant submits that the term immovable property has not been defined under GST Act, therefore reference needs to be taken from Section 3(26) of the General Clauses Act, 1897, which reads as follows:

"immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth."

7.5. The Appellant also submitted that though the terms "attached to the earth" is not defined in the GST law, reference can be drawn to Section 3 of the Transfer of Property Act, 1882 which defines it as anything

- Rooted to the earth, as in case of trees and shrubs;
- Imbedded in the earth, as in the case of walls and buildings;
- Attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached

In view of the above, they submitted that the detachable sliding and stacking glass partitions are fixed with the help of nuts and bolts to a foundation intended to provide stability to the working of the same; that they are neither rooted to the earth nor embedded in the earth nor attached for the permanent beneficial enjoyment as the same can be detached and re-used. Therefore, detachable sliding and stacking glass partitions are not immovable property. The Appellant placed reliance on the Advance ruling issued by the Authority of the advance ruling in the case of ***Nipro India Corporation Private Limited*** where the question was whether the input tax credit of tax paid on cost proposed to be incurred in relation to civil works, mechanical works and electrical works can be admissible under the CGST Act, 2017 and it was held that the goods in question, are used or intended to be used in course of furtherance is business. And hence, credit respect to various plant and machinery is admissible as per Section 16 of the CGST Act. They also submitted that the Hon'ble Orissa High Court in the case of ***Safari Retreats Pvt. Ltd. and Anr. V. Chief Commissioner of Central Goods and Service Tax and Others*** allowed the ITC of goods/services used for construction of shopping mall meant for letting out. Since the facts of the decision as held by the Hon'ble Orissa High are similar to the facts of the present case, the Appellant is rightly entitled for credits with respect to the impugned goods.

7.6. Further, the Appellant also submits that the provision of Section 17(5)(d) restricts credit with respect of construction, only when capitalized as immovable

property, since the expression 'construction' has been defined to include reconstruction, renovation, additions or alterations or repairs, to the extent of capitalization of the said immovable property. They submitted that, so far the business activity of the Appellant is concerned, such fixtures of partitions are not capitalised as immovable property but are in fact recorded as 'furniture and fixtures', since the glass partitions can be detached and re-used and are not considered to be the permanent civil assets. It is for this very reason that the said glass partitions cannot be capitalized as immovable property; that the classification of glass partition in their books of accounts as 'furniture and fixture' is in accordance with appropriate legal accounting standards and compliant with the requirements under the Companies Act; that a chartered accountant certificate, certifying the Detachable sliding and stacking glass partitions fittings as furniture and fixture was submitted to the lower Authority and therefore, the said glass partitions must be classified as movable property, since the same can be dismantled and re-used.

7.7. The Appellant submits that in the process of fitting the detachable glass partitions, an aluminium store front is fixed to the structure with the help of nuts and bolts, and to the same, the glass is attached. Therefore, the Appellant submits that since it is evident that detachable sliding and stacking glass partitions would qualify as a "movable property", on account of it being possible for them to be dismantled and re-used, would clearly qualify such glass partitions for input tax credit under GST. They further submitted that there is no provision under the GST law which mandates for an earmarked closed physical space, as an office space to carry out business operations; that when a member chooses any of its models, Hot Desk and Dedicated Desk the same does not give a member, an earmarked closed physical space. However, in case of private office, the Appellant provides flexibility to its members for placing or removing glass partitions. The Appellant also places reliance on the cases of the High Court in *Sri Sundha Metals v. Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai* and *Another* 2012 (7) TMI 865 - Madras High Court and *Jaya Granits v. Assistant Commissioner (CT)* 2016 (7) TMI 479 - Madras High Court, which support the Appellant's contention that, the requirement of an earmarked closed physical space or a specific size of such physical space for conducting business, is unlawfully created only by the impugned order, and is not mandated by law. In light of the above submissions, the Appellant submits that input GST credit on the

detachable sliding and stacking glass partition which is movable in nature and capitalized as "furniture and fixture", and is not capitalized as an immovable property, must be allowed and eligible to the Appellant.

7.8. The Appellant also submitted that as per Section 100 of the CGST Act, the present appeal ought to have been filed on or before November 10, 2019, ie, thirty days from the date of receipt of order. However, as per the same Section, a condonation can be requested for another thirty days, which expires on December 10, 2019. They submitted that the delay in filing the present appeal was on account of the fact that the impugned order is passed partially in favour of We Work; that deliberations with the parent company and relevant stakeholders took a considerable amount of time. They requested to accept the appeal, since it is within the condonable period and is being filed before December 10, 2019.

PERSONAL HEARING:

8. The Appellants were called for a personal hearing on 31st January 2020 but the same was adjourned to 24th February 2020 on their request. The Appellants were represented by Shri. Vinayak Parameshwaram, Authorized Representative who reiterated the submissions made in the grounds of appeal. They also emphasized the fact that the glass partitions are only screwed to the flooring and are not permanently fixed to the earth and that the observation of the lower Authority on this aspect is not correct.

DISCUSSIONS AND FINDINGS

9. 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.

10. We find that the Appellant has sought for condonation of delay of 29 days in filing the present appeal. The impugned order of the lower Authority dated 30.09.2019 was received by the Appellant on 11.10.2019. In terms of Section 100(2) of the CGST Act, every appeal to this Authority should be filed within a period of 30 days from the date on which the Advance Ruling order is communicated to the aggrieved party. The proviso to Section 100(2) empowers this Authority to condone the delay in filing the appeal by another period of 30 days. In this case, the due date for filing the appeal was 10-11-2019 but the Appellant has

filed the appeal on the 9th December 2019 after a delay of 29 days from the due date for filing appeal. The Appellant has stated that the delay had occurred since deliberations with the parent company and the stakeholders on filing the appeal took time resulting in the delay. Considering the submissions made by the Appellant, the delay in filing the appeal is hereby condoned in exercise of the power vested in terms of the proviso to Section 100(2) of the CGST Act.

11. The issue which is in appeal is limited to the point of eligibility of input tax credit on detachable sliding and stackable glass partitions. The Appellant procures these items for the purpose of creating work spaces which are given out on rent to various companies and individuals as sharing work spaces. The detachable glass partitions are fixed to the ground with the help of nuts and bolt and the same can be dismantled and re-used. They had sought a ruling on the admissibility of credit on the afore said items. The lower Authority denied the input tax credit in terms of Section 17(5)(d) of the CGST Act by holding that the detachable sliding and stackable glass partitions are fixed to the building to create office space and amounts to construction of immovable property; that since the expression 'construction' has been defined in the said Section 17(5) to include addition and alternation to the immovable property which have been capitalised in the books of accounts they are not eligible for the input tax credit on the above said items.

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. When we read the text of Section 17(5)(d) together with its explanation, we find that for triggering the restriction under this clause, certain criteria have to be satisfied viz:

- a) The goods or services should be used for construction of immovable property.
- b) The construction can be in the form of re-construction, renovation, additions or alterations or repairs to the immovable property.
- c) The construction should be on his own account.
- d) The goods or services received are capitalised in the books of account.

Only when all the above criteria are satisfied can it be said that the credit is restricted and the goods and services are ineligible for input tax credit.

15. In the instant case, the foremost test to be applied for triggering the restriction under Section 17(5)(d) is whether an activity of fixing the detachable sliding and stackable glass

partitions qualifies as 'construction of an immovable property' or not. The normal understanding of the term 'construction' is to 'make or build' something. For the purpose of Section 17(5)(d), the term 'construction' has been defined to include 're-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.' In the Appellant's case, as per the above said explanation, the addition of glass partitions qualifies as 'construction'. This construction is done by the Appellant on his own account. What remains to be determined is whether the fixing of glass partitions amounts to construction of 'immovable property'?

16. The term 'immovable property' has not been defined in the GST law but rather it is defined in Section 3(26) of the General Clause Act, 1897 as including *land, benefits arising out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.* "Attached to earth" is defined in section 3 of the Transfer of Property Act as meaning (a) rooted in the earth, as in the case of trees and shrubs; (b) imbedded in the earth, as in the case of walls or buildings; or (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached. In case of fixtures like the glass partitions, the rule is permanent attachment, that is, such attachment, whereby, removing the item in question will require demolition. To ascertain whether the item is permanently attached to earth, many courts have consistently used two-fold tests – (i) the extent of annexation and (ii) the object of annexation. The extent of annexation means annexing the fixture or object by which it ceases to be detachable. It would need to be demolished if one were to remove it. The object of annexation test lays down that where a movable property gets annexed with an immovable property, if the intent of annexation is of permanent beneficial enjoyment of the immovable property, then the fixture becomes an immovable property. If the intent of annexation is the beneficial enjoyment of the movable property, then the property still remains movable. Applying the above tests to this case, we find that the glass partitions are not permanent and are not embedded to the earth. They can be dismantled and moved according to the requirements of the clients of the Appellant. Although they are fixed to the earth with nuts and bolts, they can be dismantled without demolishing the civil structure. Therefore, the detachable sliding and stackable glass partitions do not qualify as immovable property.

17. Further, we find that the detachable sliding and stackable glass partitions are accounted in the Appellant's books of account as fixed assets under the head "furniture and

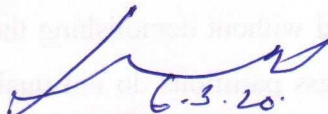
fixtures". They are not capitalised as immovable property but rather as movable assets. The lower Authority has observed that declaring the fixtures under the head "Furniture and Fixtures" does not make the items movable and they continue to be immovable property. However, as opined by us, we have held that the glass partitions are movable property by applying the tests of extent and object of annexation. Therefore, we do not agree with the lower Authority's finding on this aspect. The lower Authority has also observed that since there is a certain degree of permanence in the office space provided, it is to be considered as immovable property. We disagree on this aspect also. The intent of fixing the glass partitions is only to provide the clients a certain sense of privacy and for the purpose of demarcation of work space area. There is no permanency in affixing such partitions as the same can be dismantled and re-fixed to signify a change in the dimensions of the work space. The fixing of the partitions to the ground using nuts and bolts only serves to give a false sense of permanency while in reality it is not so. The detachable sliding and stackable glass partitions are movable property and addition /fixing of glass partitions does not amount to construction of immovable property. Therefore, the procurement of detachable sliding and stackable glass partitions will be eligible for input tax credit and will not be hit by the provisions of Section 17(5)(d) of the CGST Act.

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

ORDER

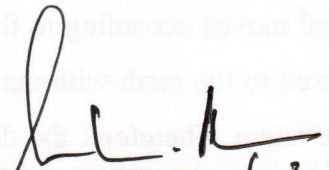
We set aside the portion of the Advance Ruling order No KAR ADRG 106/2019 dated 30th September 2019 which deals with the eligibility of input tax credit on detachable sliding and stackable glass partitions. We answer the question in appeal as follows:

"Input tax credit can be availed by the Appellant on the detachable sliding and stackable glass partitions which is movable in nature."


(D.P. NAGENDRAKUMAR)
6.3.20

Member

Karnataka Appellate Authority
for Advance Ruling


(M.S. SRIKAR)
6.3.2020

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