

**THE MADHYA PRADESH APPELLATE AUTHORITY FOR ADVANCE RULING**

**OFFICE OF THE COMMISSIONER, COMMERCIAL TAX, MOTI BUNGLOW,  
MAHATMA GANDHI MARG, INDORE (M.P.) - 452007**

**BEFORE THE BENCH OF**

- (1) Shri V.K. SAXENA, MEMBER  
(2) Shri RAGHWENDRA KUMAR SINGH, MEMBER

ORDER NO. MP/AAAR/03/2020

DATE...27.08.2020

Name and address of the appellant	M/s.Unity Traders , Plot No.264, Bye Pass Road, Katangi Crossing , Jabalpur (Madhya Pradesh)-482003
GSTIN or User ID	23AABFU3009L1ZD
Order of AAR under Appeal before AAAR	06/2020 dated 10.02.2020

**PROCEEDINGS**

**(Under section 101 of the Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)**

1. At the outset, we would like to make it clear that the provisions of both the CGST Act and the MPGST Act are mirror image of each other except for certain specific provisions. Therefore, unless a specific mention is made to such dissimilar provisions, a reference to the CGST Act would mean a reference to the similar provisions under the MPGST Act and vice-versa. At places we may refer it as GST Act.
2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017 [hereinafter also referred to as "the CGST Act and MPGST Act"] by Unity Traders, Jabalpur (hereinafter also referred to as the "appellant") against the order of Authority for Advance Ruling No. 06/2020 dated 10.02.2020.

**BRIEF FACTS OF THE CASE**

The Appellant is a partnership firm engaged in providing Clearing & Forwarding Agent Service. As a C&F Agent, the firm stores goods of other company and charges rent for the same. The firm has 2 separate GST Registrations, one for the unit located in Jabalpur

(M.P.) & the other for the unit located in Raipur (C.G.). The revenue from operation of the firm consists of the following:

1. C&F Commission
2. Warehouse Rent
3. Other reimbursement Freight etc.

### **QUESTIONS RAISED BEFORE AUTHORITY FOR ADVANCE RULING (AAR)**

Questions raised before AAR, are as under: -

1. Whether ITC of GST paid on goods purchased for the purpose of construction & maintenance of Warehouse such as Vittrified Tiles, Marble, Granite, ACP Sheet, Steel Plates, TMT Tor(Saria), Bricks, Cement, Paint and other construction material can be claimed in full?
2. Whether ITC of GST paid on Work contract service received from registered & unregistered Contractor for construction & maintenance contract of building can be claimed in full?
3. Whether ITC of GST paid on goods purchased & works contract service received during the FY 2017-18 for the purpose of construction & maintenance of Warehouse can be claimed in full?

### **RULLING PRONOUNCED BY AUTHORITY FOR ADVANCE RULING (AAR)**

1. We hold that no ITC of GST paid on goods purchased for the purpose of construction & maintenance of warehouse such as Vittrified Tiles, Marble, Granite, ACP Sheet, Steel Plates, TMT Tor (Saria), Bricks, Cement, Paint and other construction material is admissible under section 17(5) of CGST Act, 2017.
2. We hold that no ITC of GST paid on work contract service received from registered & unregistered contractors for construction & maintenance contract of building is admissible under section 17(5) of CGST Act, 2017.
3. We hold that no ITC of GST paid on goods purchased & works contract service received during the FY 2017-18 for the purpose of construction & maintenance of warehouse is admissible under section 17(5) of CGST Act, 2017.



### **QUESTIONS RAISED BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)**

The following questions, which are the very same as posed before AAR, have been posed before the Appellate Authority: -

1. Whether ITC of GST paid on goods purchased for the purpose of construction & maintenance of Warehouse such as Vitrified Tiles, Marble, Granite, ACP Sheet, Steel Plates, TMT Tor(Saria), Bricks, Cement, Paint and other construction material can be claimed in full?
2. Whether ITC of GST paid on Work contract service received from registered & unregistered Contractor for construction & maintenance contract of building can be claimed in full?
3. Whether ITC of GST paid on goods purchased & works contract service received during the FY 2017-18 for the purpose of construction & maintenance of Warehouse can be claimed in full?

### **GROUND OF APPEAL**

1. The Order passed by Ld. ARA is bad in law.
2. That the Ld. ARA has erred both in law and fact of the case by not entitling to avail of the benefit of taking credit of the input tax charged u/s 17(5) of the CGST Act, 2017 on the supply of goods which are consumed or utilized for the construction and maintenance of the warehouse such as vitrified Tiles, Marbles, Granite, ACP Sheets steel plates and other construction material and set off the same against, the CGST and SGST payable on the rentals received as there is no break in the tax chain of applicant.
3. That the Ld. ARA has erred both in law and facts of the case by denying the availment of ITC on goods and work contract services received from registered and unregistered contractors for construction and maintenance of warehouse u/s 17(5) of the CGST Act, 2017 which is used for making taxable supplies of services as it will result into cascading effect of multi-stage taxation which is opposed to the basic rationale of GST itself.

4. That the Ld. ARA has erred both in law and fact of the case by not allowing the ITC on the goods and services used for maintenance of warehouse and cost of which is booked as revenue expenditure in Profit and Loss account and is not capitalized in the cost of warehouse and the same has not been covered by way of explanation to section 17(5)(d) of the CGST Act, 2017.

### **PERSONAL HEARING**

The appellant was issued notice for personal hearing to appear on 22.07.2020 and 25.08.2020 but he kept on asking for adjournment despite being offered hearing through Google Meet. The case is being decided as per written submissions on merit.

### **DISCUSSION AND FINDINGS**

1. We have carefully gone through the application of the Appellant.
2. Appellant as explained by him either intends to construct or but for his personal appearance, might have already constructed the warehouse / building for letting it out on rent to companies whose goods would be stored therein.
3. The appellant as per questions posed before AAR as well as before us in the appeal against AAR, intends to either purchase goods (inward supply) as per question 1 or wants to receive inward supply of works contract services from contractors for the construction of warehouse / building (question 2).
4. In the third question the appellant intends to purchase goods as well as intends to receive inward supply of work contract services for the purpose of construction and maintenance of warehouse during year 2017-18.
5. All the three questions deal with inward supply of goods or work contracts services for construction & maintenance of warehouse / building in his own account and thus the relevant provision is section 17(5) (d) of CGST Act, 2017.
6. The relevant provision of Section 17(5) of CGST Act, 2017 is reproduced below:-



*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:-*

*(a) motor vehicles . . .*

*(b) - - -*

*(c) - - - -*

*(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 re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property.*

7. As per the Section 17 (5) of CGST Act mentioned above, the Input tax credit shall not be available on the goods and 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.
8. The definition of immovable property is not provided under GST Act. According to section 3(26) of the General Clauses Act, 1882, "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". According to section 3 of the Transfer of Property Act, 1882, Immovable property means "Immovable property does not include standing timber, growing crops or grass".
9. It is undisputed as per the submissions of appellant as well as from the Order of AAR that appellant intends to construct building / warehouse which is immovable property.

10. In his submission appellant has pleaded that non- entitlement of ITC to him would break the chain of applicant. We do not find any mention of this principle / provision in the Law. Appellant has not elaborated his statement but for his absence hence, the argument is rejected. Appellant has next, argued that disallowance of ITC of GST paid on inputs would result in cascading effect of multi -state taxation which is opposed to the basic rationale of GST itself. Again, the statement has not been substantiated.
11. In last and final argument the appellant has put forth that AAR has erred by not allowing the ITC on the goods and services used for maintenance of warehouse and cost of which is booked as revenue expenditure in Profit and Loss account and is not capitalised in the cost of warehouse and the same has not been covered by way of explanation to section 17 (5) (d) of the GST Act.
12. Appellant in his all the three questions has not put forth such a question. He has never segregated construction from maintenance but rather has used only comprehensive phrase "Construction and Maintenance". He has never spelt out accounting treatment of inward supply of goods or services or both received by him for construction of an immovable property. The explanation appended at the end of sub-section allows ITC to the extent it is not capitalised. Capitalisation or Non-capitalisation of these expenses is certainly not a permanent indelible mark in the account books. These accounting entries may be modified, altered or deleted as per prevailing/ changing contingencies. These entries are not static but dynamic. Since such a question has not been raised, we are not inclined to discuss it.
13. In the third question appellant has combined the first and second questions by incorporating both inward supply of goods as well as works contract services for "Construction and maintenance" during year 2017-18. Here appellant has asked the question for a particular period i.e. 2017-18. He has not indicated in his question or written submissions about any change in law with respect to entitlement of ITC during this period or afterwards. At our own level we could not find any such change.



## ORDER

1. In respect of question 1 it is held

Input Tax Credit of GST paid on goods purchased for the purpose of construction & maintenance of Warehouse such as Vitrified Tiles, Marble, Granite, ACP Sheet, Steel Plates, TMT Tor(Saria), Bricks, Cement, Paint and other construction material cannot be claimed to the extent of capitalisation in terms of clause (d) of section 17(5) of GST ACT, 2017.

2. In respect of question 2 it is held

Input Tax Credit of GST paid on Works contract service received from registered & unregistered Contractors for construction & maintenance contract of building cannot be claimed to the extent of capitalisation in terms of clause (d) of section 17(5) of GST ACT, 2017.

3. In respect of question 3 it is held

Input Tax Credit of GST paid on goods purchased & works contract service received during the FY 2017-18 for the purpose of construction & maintenance of Warehouse cannot be claimed to the extent of capitalisation in terms of clause (d) of section 17(5) of GST ACT, 2017.



V.K. Saxena  
(Member)

Madhya Pradesh Appellate Authority



Raghendra Kumar Singh  
(Member)

Madhya Pradesh Appellate Authority

No. 03 /2020/A.A.A.R./..35

Indore, dated - 27.08.2020

Copy to:-

1. The Appellant
2. The AAR, Madhya Pradesh
3. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
4. The Commissioner of State Tax, Madhya Pradesh
5. The Commissioner, CGST and Central excise, Indore
6. The Jurisdictional officer State/ Central
7. The web Manager, [www.gstcouncil.gov.in](http://www.gstcouncil.gov.in)
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