
 सत्यमेव जयते	RAJASTHAN APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX NCR BUILDING, STATUE CIRCLE, C-SCHEME JAIPUR – 302005 (RAJASTHAN) Email : aaarjpr@gmail.com	
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Proceedings under Section 101 of the Central GST Act, 2017 read with Rajasthan GST Act, 2017

Before the Bench of

1. Sh. Pramod Kumar Singh, Member (Central Tax)
2. Sh. Ravi Jain, Member (State Tax)

ORDER NO. RAJ/AAAR/06/2020-21 DATED 17.06.2021

Name and address of the Appellant	:	M/s RIICO, Tilak Marg , Jaipur Rajasthan 302005
GSTIN of the appellant	:	08AABCR4695J1ZW
Issues under Appeal	:	Whether the Appellant can claim input tax credit on input services of construction or works contract procured for the development of an industrial area.
Date of Personal Hearing	:	04.06.2021
Present for the appellant	:	Sh. R.K. Limba, G.M. (Taxation RIICO) Sh. Virendra Parwal, Authorised Representative
Details of Appeal	:	Appeal No. RAJ/AAAR/APP/06/2020-21 against Advance Ruling No. RAJ/AAR/2020-21/12 dated 22.02.2021

(Proceedings under section 101 of the Central GST Act, 2017 read with section 101 of the Rajasthan GST Act, 2017)

At the outset, we would like to make it clear that the provisions of both the Central GST Act, 2017 and the Rajasthan GST Act, 2017 are same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central GST Act, 2017 would also mean a reference to the same provisions under Rajasthan GST Act, 2017.

2. The present appeal has been filed under Section 100 of the Central GST Act, 2017 (**hereinafter also referred to as 'the CGST Act'**) read with Section 100 of the Rajasthan GST Act, 2017 (**hereinafter also referred to as 'the RGST Act'**) by M/s RIICO, Tilak Marg, Jaipur, Rajasthan 302005 (**hereinafter also referred to as 'the Appellant'**) against the Advance Ruling No. RAJ/AAR/2020-21/12 dated 22.02.2021

BRIEF FACTS OF THE CASE



3. M/s Rajasthan State Industrial Development and Investment Corporation Ltd. (RIICO) (hereinafter referred to as the Appellant) has been set up by the Rajasthan

Government for the purpose of development of various industrial areas to set up Industries and other supportive services in the state of Rajasthan. The Appellant is a registered person under GST for the purpose of providing various taxable and exempt outward supplies of leasing of Industrial and Non-Industrial Plots as well as financing activities of providing term loan to various projects. The Appellant for the development of industrial areas first identifies the suitable governmental/ private land. Thereafter Appellant starts the acquisition process of such land and later planning for the development of such land.

3.1 As the Appellant acquires the raw/undeveloped land, the Appellant has to initially carry out the development work like leveling of the land, development of the basic amenities like construction of roads, drainage system, boundary wall, water and power supply system, dumping yard and various other types of related development works. After development of a new industrial area, Appellant also shoulders responsibility of maintenance/ upkeep of infrastructure as well as up gradation of infrastructure from time to time in future.

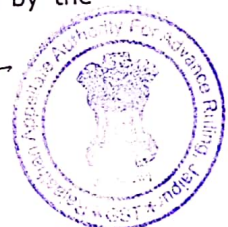
3.2 The brief nature of the development work and the expenditure carried out by the applicant for the development of various Industrial areas (as mentioned in the appeal memo) is provided herein below.

(a) **Nature of Development works:** - This includes civil works like roads, drainage, approaches, culverts, rain water harvesting system, power supply related work like laying of new power lines, street light work, work for common facilities in the industrial area like Administrative office, Building for fire tenders, Post office/Bank building etc. Development expenditure for creation of infrastructure for new industrial area is incurred generally in the initial years. These expenditures cover expenditure on land compensation, civil works like roads, drainage, approaches, culverts, rain water harvesting system, power supply related work like laying of new power lines, street light work, work for common facilities in the industrial area like Administrative office, Building for fire tenders, Post office/Bank building etc. Administrative cum financial sanction for incurring above development expenditure is sanctioned by competent authority for each new industrial area.

(b) **Nature of Special Maintenance:** -This includes improvement/up-gradation of industrial infrastructure in subsequent years after initial development of any industrial area is approved under above sanctions.

3.3 It is reported that the main activity of Appellant is development and leasing of the developed land to various industrial/ non-industrial users. The Appellant considers the land as its stock in the books of accounts. Hence, the Appellant is charging all the development and special maintenance expenses in its profit and loss account considering the same as revenue expenditure.

3.4 After the development work, the plot of the land is allotted on 99 years lease to the various persons who apply for the same. In the area developed by the



Appellant, certain part of the area is demarcated as to be used for Non-industrial purpose which can be allotted for commercial/institutional/residential purpose and is supportive to the industrial projects. The Appellant charges upfront amount in the name of 'Development Charges' for recovery of the cost of land including the development expenses incurred for the development of such land from the allottee of the plot of land. The appellant has not paid GST on lease of an industrial plot in view of the Notification No. 12/2017- Central Tax (rate) and paid GST on Non - Industrial plot/commercial plot

3.5 It is reported that the Appellant recognizes the revenue in the books of accounts according to the various accounting principles. The mechanism of recognizing the revenue is provided here in below;

- a. In case of land component, the revenue is recognized as lease revenue as per "IND AS 17 - Leases".
- b. In case of component of development activities, revenue is recognised as per the percentage of completion method after reasonably measuring the progress of performance obligation, as per "IND AS 115 - Revenue recognition from contracts".

3.6 For carrying out the development and maintenance work in the various areas, the appellant procures various input services by way of construction/works contract services from contractors. There is certain time gap between the development of an area and allotment of plots in that area. The allotment starts only after the basic development work is carried out like roads; power-water supply system etc. is done in that industrial area. Thus, the cost is incurred first by way of development expenses and thereafter the revenue is received when the plot of land is allotted.

4. The Appellant filed an Application for Advance Ruling under section 98 of CGST/SGST Act, 2017 before Authority for Advance Ruling, Rajasthan on 3-9-2020 on the following questions:

- (i) Whether the Applicant can claim the ITC on the Input services of construction or works contract procured for the development of an Industrial area or the special maintenance expenses of the area?
- (ii) If the answer of question No. 1 is in affirmative then what would be the mechanism for apportionment of ITC between exempt and taxable supplies as in an industrial area, long term leasing of 'industrial plot' of land is exempt under N.No. 12/2017-Central Tax (Rate) but leasing of 'non-industrial plot' of land/commercial plot of land is a taxable supply?



5. The Rajasthan Authority of Advance Ruling vide order no. RAJ/AAR/2020-21/12 dated 22.02.2021 did not agree with the applicant's view that the land development work on immovable property is not a capital expenditure. The term 'extent to which capitalized', only suggests that the extent of such expenses are expected to be capitalized or else will be treated as capitalized to such immovable property. Since, the work done by the applicant on the acquired land is not of the nature of any type of repair or maintenance on immovable property, but a new fixed asset is constructed and it appreciates the value of the property/land. Hence, such expenses, which enhance the value of the property permanently and as per accounting convention, the expenditure are capital in nature, have to be capitalized and cannot be treated as revenue expenditure. Therefore, as per Section 17(5)(c) &(d) of the CGST/SGST Act, 2017, No ITC is available to the applicant."

6. Aggrieved by the ruling the Appellant has filed present appeal before the Appellate Authority of Advance Ruling, Rajasthan on 22.03.2021 on online portal and in hardcopy on 25.03.2021 on following grounds:-

6.1 The ruling given by Ld. Authority of Advance Ruling is based on incorrect interpretation of law/facts. The peculiar facts of the applicant and the accounting done by the applicant in charging the expenses incurred on development of land to the profit & loss account being part of cost of inventory has not been appreciated. They have further erred in holding that the expenditure incurred by the applicant are capital in nature and has to be capitalized and cannot be treated as revenue expenditure. They also erred in holding that the work done by the applicant on the acquired land is not of the nature of repair and maintenance on immovable property but a new fixed asset is constructed and it appreciated the value of the property/land.

6.1.1 Appellant submitted that Sec. 17(5) of the Central Goods & Services Tax ("CGST") Act, 2017 provides for certain restrictions on claim of input tax credit ("ITC"). Clause (c) & (d) of Sec. 17(5) along with Explanation is relevant for our discussion and the same is reproduced below:

"17. Apportionment of credit and blocked credits. —

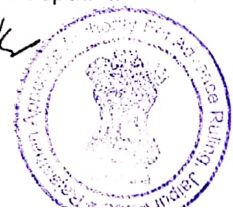
(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely :—

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(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;"*

The aforementioned explanation clearly states that the construction services of new construction or re-construction or renovation or additions / alternations or repair if



capitalized with the immovable property in the books of accounts, then the ITC is blocked under section 17(5)(c) /17(5)(d). The term 'to the extent of capitalisation' denotes the quantum of amount which is capitalized to the said immovable property. The capitalization here means the addition to the fixed asset. When any expenses on construction are capitalized then it becomes immovable property and loses the character of goods and/or service. The capitalization or extent of capitalization is decided based on accounting parameters, accounting standards/ guidance note pronounced by the ICAI.

6.1.2 Appellant submitted that in this case, as mentioned above the expenses on development is debited to profit & loss account and becomes part of the cost of inventory. These expenses are not capitalized to fixed assets. Thus, GST paid on inward supply of works contract service or goods or services received for the purpose of construction is eligible for ITC if the expenses are not capitalized to respective fixed assets in the balance sheet / books of accounts. In other words, if expenses incurred are of revenue expense debited to P&L account, the ITC in respect of the same is eligible to be claimed. 'Capitalization' is defined by Cambridge Dictionary as recognizing a cost as part of the cost of an asset.

6.1.3 The Uttar Pradesh AAR in case of M/s DWARIKESH SUGAR INDUSTRIES LIMITED has held that in respect of restriction of ITC on construction, section 17(5)(c) & 17(5)(d) of the CGST Act specifically restricted the ITC on construction /work contract service to the extent of capitalization. Accordingly, the Input Tax Credit of goods and services used for construction of school building will not be available to the applicant to the extent of capitalization in the books of accounts.

6.1.4 It is submitted that the Rajasthan Government allots land on lease for a period of 99 years to the applicant as per The Rajasthan Industrial Areas Allotment Rules, 1959. The applicant is given right to sub-lease the leased land or part thereof for industrial purposes. It is also mentioned in above rules that the land shall revert back to the Government free of all encumbrance and without payment of any compensation where the land is used for any purpose other than industrial or where breach of any condition is made of the lease or sub-lease.

6.1.5 The appellant accordingly develops the land and allots the plot to various industrialists /persons on lease for 99 years. The land is allotted for sub-lease of the same for industrial development as per Rule 11A of The Rajasthan Industrial Areas Allotment Rules, 1959. The activity of sub-lease is a supply under GST. Therefore the land is commodity for the appellant and it is not a Fixed Assets as appellant deals into it.

6.1.6 The appellant prepares books of accounts in accordance with the provisions of Companies Act, 2013 read with applicable Accounting Standards. The accounting treatment of appellant has been approved by the C&AG, statutory auditors and other departments over the period. The C&AG regularly carry out the audit of the accounts of the applicant. Such accounting cannot be challenged/questioned by the AAR. Therefore the observation of AAR regarding that such expenditure should have been capitalized is incorrect and overreach to the question raised.



6.1.7 Similar type of issue came up before the Apex Court under the Income Tax Act, 1961 in the case Apollo Tyres Ltd. v. Commissioner of Income-tax [2002] 122 TAXMAN 562 (SC). The issue was with respect to calculation of book profits for the purpose of MAT liability u/s 115J of the Income Tax Act, 1961. Appellant had provided for arrears of depreciation in its profit and loss account while determining its net profit as per the provisions of the Companies Act, 1956. Assessing officer took a view that such arrears of depreciation cannot be claimed in accordance with Parts II and III of Schedule VI to the Companies Act, 1956 and hence added the same and recomputed the book profit. Issue thus before the Court was whether assessing officer has the power to question the correctness of the financial statements and re-compute the profit when the said financial statements have been certified by the auditor and have also been accepted by the general meeting of the Shareholders as well as Registrar of Companies ("ROC"). The Court while allowing the appeal on the issue held as under:

"For the said purpose, section 115J makes the income reflected in the companies' books of account as the deemed income for the purpose of assessing the tax. If we examine the said provision in the above background, we notice that the use of the words 'in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act' was made for the limited purpose of empowering the assessing authority to rely upon the authentic statement of accounts of the company. While so looking into the accounts of the company, an Assessing Officer under the Income-tax Act has to accept the authenticity of the accounts with reference to the provisions of the Companies Act which obligates the company to maintain its account in a manner provided by the Companies Act and the same to be scrutinized and certified by statutory auditors and will have to be approved by the company in its General Meeting and thereafter to be filed before the Registrar of Companies who has a statutory obligation also to examine and satisfy that the accounts of the company are maintained in accordance with the requirements of the Companies Act. In spite of all these procedures contemplated under the provisions of the Companies Act, we find it difficult to accept the argument of the revenue that it is still open to the Assessing Officer to rescrutinise the accounts and satisfy himself that these accounts have been maintained in accordance with the provisions of the Companies Act. In our opinion, reliance placed by the revenue on sub-section (1A) of section 115J in support of the above contention is misplaced. Sub-section (1A) of section 115J does not empower the Assessing Officer to embark upon a fresh inquiry in regard to the entries made in the books of account of the company. The said sub-section, as a matter of fact, mandates the company to maintain its account in accordance with the requirements of the Companies Act which mandate, according to us, is bodily lifted from the Companies Act into the Income-tax Act for the limited purpose of making the said account so maintained as a basis for computing the company's income for levy of income-tax. Beyond that, we do not think that the said sub-section empowers the authority under the Income-tax Act to probe into the accounts accepted by the authorities under the Companies Act. If the statute mandates that income prepared in accordance with the Companies Act shall be deemed income for the purpose of section 115J, then it should be that income which is acceptable to the authorities under the Companies Act. There cannot be two incomes one for the purpose of Companies Act and another for the purpose of the Income-tax Act both maintained under the same Act. If the Legislature intended the Assessing Officer to reassess



the company's income, then it would have stated in section 115J that 'income of the company as accepted by the Assessing Officer'. In the absence of the same and on the language of section 115J, it will have to held that view taken by the Tribunal is correct and the High Court has erred in reversing the said view of the Tribunal."

6.1.8 Explanation (supra) u/s 17(5) of the CGST Act, 2017 provides that repairs to the extent of capitalization shall be treated as "construction" for the purpose of clause (c) & (d) of the said provision. The capitalization is accounting treatment and that treatment is to be decided by the appellant based on nature of business activity/regulation/ activity and the authoritative pronouncements. The Authority (AAR) cannot question the books prepared as per relevant Accounting Standard / Financial Statements as per Companies Act, 2013 duly audited and accepted by the Board & Comptroller and Auditor General as held in the case (*supra*).

6.1.9 For the purpose of GST the accounting treatment would not be different. The accounting treatment would be common for the GST as well as the Income Tax.

6.1.10 The whole basis of AAR denying Input tax credit of development expenses is accounting treatment given by the assessee which according to them should have been capitalized. Therefore, when the basis itself is incorrect and overreach of the law, obvious the ruling given is also not correct and thus the ruling of AAR is liable to be set aside. As per the accounting treatment made the expenses incurred on development is not capitalized to any immovable property. Rather it is part of the cost of inventory. Hence the ITC on such expenses should be allowed.

6.2 The Ld. Authority of Advance Ruling has also erred in wrongly interpreting that the input tax credit on input services of construction or works contract service procured is only allowed for further supply of works contract service as per provisions of section 17(5)(c) /17(5)(d) of the CGST Act 2017.

6.2.1 The interpretation of the AAR that ITC of works contract service is allowed only when there is further supply of works contract service is incorrect. The clause (c) of sec. 17(5) as mentioned above provides that-

- The ITC of works contract service when supplied for construction of an immovable property is blocked.
- However the ITC of works contract service is available in case of construction of plant & machinery which is not immovable property for the purpose of GST law.
- It further allows that the ITC of works contract service is available when the output supply is also of works contract service.

Similarly the clause (d) of Sec. 17(5) provides that ITC on goods and services received by a taxable person for construction of an immovable property on his own account is blocked even though it is in the course or furtherance of business. However where it is used for construction of plant or machinery, it is not blocked. Hence the interpretation made by AAR in order dated 10-3-2021 is incorrect and liable to be set aside.



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6.2.2 It is submitted that the scope of supply under section 7(1) of the GST Act includes all forms of supply of goods and services, including a sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made. Section 7(1A) read with Schedule II under the GST Act provides which of such supplies shall be treated as supply of goods or services. Paragraph 2 of Schedule II provides that transactions relating to land and buildings, any lease, tenancy, easement, license to occupy the land, letting out of a building including a commercial, industrial or residential complex for business or commerce is the supply of services. In other words, benefits arising from land in the forms specified in paragraph 2 of Schedule II are not to be treated as transactions in immovable property but it is the supply of service for the purpose of the GST Act. For providing such outward supply of leasing of plot of land, it is essential to incur the development and special maintenance expenses. Hence the ITC in relation to the inward supplies of development and special maintenance for providing such outward services is eligible and not blocked by the provisions of section 17(5).

6.2.3 The applicant relied on the judgment of Hon'ble High Court of Orissa in case of SAFARI RETREATS PRIVATE LIMITED Versus CHIEF COMMISSIONER OF CGST 2019 (25) G.S.T.L. 341 (Ori.). As per the said decision the ITC is held allowable and not blocked u/s 17(5)(d) when the mall was constructed for giving on lease. In the present case also the land was received on lease from government and it was given on sub-lease to the industrialist after the development work. The ITC related to such development work on the land which is given on sub-lease is not blocked u/s 17(5)(c)/(d). Therefore the ITC should be available to the applicant.

6.2.4 In view of above, the benefit of ITC both on the development expenses and special maintenance expenses should be allowed to the applicant and consequently the decision of AAR is liable to be set aside.

PERSONAL HEARING

7. A virtual hearing in the matter was held on 04.06.2021. Sh.R. K. Limba, G.M. (Taxation RIICO) and Sh. Virendra Parwal, Authorized Representative of the appellant has attended hearing on 04.06.2021. They reiterated the submissions already made under grounds of appeal. During the course of the personal hearing, the members of the Appellate Authority directed the appellant to submit their balance sheet and copies of the contract to understand the nature of work and services within five days.

DISCUSSION AND FINDINGS:

8.1 We have carefully gone through the Appeal papers filed by the Appellant, the Ruling of the AAR, Rajasthan, written as well as oral submissions made by the authorized representative(s) of the Appellant, at the time of personal hearing held on 04.06.2021. The appellant has submitted balance sheet on 10.06.2021 but not submitted copies of the works orders till passing of this order.

8.2 From the facts of the case, it would appear that the appellant is providing taxable and exempt outward supplies of leasing of Industrial and Non-Industrial Plots as well as financing activities of providing term loan to various projects. Appellant acquires the undeveloped land and carry out the development work in initial years like roads, drainage, approaches, culverts, rain water harvesting



system, laying of new power lines, street light work, Administrative office, Building for fire tenders, Post office/Bank building etc. In subsequent years the appellant also incurred expenditure for special maintenance like up-gradation of damage BT road to Cement Concrete Road (CC), up-gradation of masonry drain to RCC drain, up-gradation of sodium vapour/Tube light based street light to LED based street light system, etc. It is claimed that the Appellant debits the entire expenses incurred on the development and maintenance of the areas including GST charged by the contractor in the profit and loss account as revenue expenditure. Inputs and input services procured for the development of such land is included in the cost of stock and charged to Profit and Loss account as revenue expenditure. After the development work, the plot of the land is allotted on 99 years lease for Industrial and Non-Industrial use. The appellant has not paid GST on lease of an industrial plot in view of the Notification No. 12/2017- Central Tax (rate) and paid GST on Non -Industrial plot/commercial plot.

8.3 The Appellant filed an Application for Advance Ruling under section 98 of CGST/SGST Act, 2017 before Authority for Advance Ruling, Rajasthan on 3-9-2020 on the following questions:

- (i) Whether the Applicant can claim the ITC on the Input services of construction or works contract procured for the development of an Industrial area or the special maintenance expenses of the area?
- (ii) If the answer of question No. 1 is in affirmative then what would be the mechanism for apportionment of ITC between exempt and taxable supplies as in an industrial area, long term leasing of 'industrial plot' of land is exempt under N.No. 12/2017-Central Tax (Rate) but leasing of 'non-industrial plot' of land/commercial plot of land is a taxable supply?

8.4 The Rajasthan Authority of Advance Ruling has held that the term 'extent to which capitalized', only suggests that the extent of such expenses are expected to be capitalized or else will be treated as capitalized to such immovable property. Since, the work done by the applicant on the acquired land is not of the nature of any type of repair or maintenance on immovable property, but a new fixed asset is constructed and it appreciates the value of the property/land. Hence, such expenses, which enhance the value of the property permanently and as per accounting convention, the expenditure are capital in nature, have to be capitalized and cannot be treated as revenue expenditure. Therefore, as per Section 17(5)(c) &(d) of the CGST/SGST Act, 2017, No ITC is available to the applicant.

8.5 Aggrieved by the Ruling, the appellant came before us by way of an appeal filed at online portal on 22.03.2021 mainly on ground that the appellant has not capitalized the expenditure in fixed assets and prayed that benefit of ITC both on the development expenses and special maintenance expenses should be allowed to them and consequently the decision of AAR is liable to be set aside.



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8.6 Section 16 (1) of the CGST Act provides for entitlement of registered person to take credit of the input tax charged on any supply of goods or services or both made to him, which are used or intended to be used in the course or furtherance of his business subject to fulfillment of certain conditions such as possession of invoice, receipt of goods/service, payment of tax to Government etc. as provided under Section 16(2) of the GST Act, 2017. However, certain inward supply of goods or services, as enumerated under Section 17(5) of CGST Act, 2017, has been specifically barred from taking input tax credit. These supplies may also be termed as blocked credit.

8.7 The relevant portion of sub-section 5 of Section 17 of CGST Act, 2017 in this regard is reproduced below:-

(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: -

- (a) -----
- (b) -----

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(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.

8.8 From the above it emerges that sub-section 17(5) carves out certain exceptions to Section 16(1) by way of the non-obstante clause - "notwithstanding", making it clear that the restriction imposed herein is absolute in nature as it seeks to override Section 16(1) which entitles a registered taxpayer to avail credit on works contract services/goods or services used or intended to be used in the course or furtherance of business. Though the appellant was directed to submit copies of works contracts also, but they have not supplied the same; and it would appear from the facts of the case that they are not providing output service of works contract. In view of these facts, we find that, input tax credit in general is not available for construction of an immovable property, in view of the above said provisions. The only exception to this provision is 'plant and machinery'. In other words the input tax credit is available to the taxpayer in respect of works contract services/goods or services used for construction of 'plant and machinery' in spite of their being an immovable property.

8.9 However, the appellant's main thrust is on the point that the restricting provisions under Section 17(5)(c) and (d) of CGST Act should not be read in isolation but the same must be read together with the explanation given just below the section 17(5) which reads as under-

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 capitalization, to the said immovable property;

8.10 According to the appellant, Section 17(5)(c) and (d) of CGST Act read in combination with the above explanation, entitles them to take Input Tax Credit of

works contract services/ goods and services used for construction of even immovable property if the same is not capitalized in the books of accounts.

8.11 Therefore, whole issue to be decided in the current appeal is as to whether the appellant is entitled to take Input Tax Credit of works contract services/ goods and services, used for construction of even immovable property, if the same is not capitalized in their books of accounts? Looking at the Explanation to Section 17(5)(c) and (d), reproduced earlier, it is clear that the same seeks to **expand** the scope of the term '**construction**', to include re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property'. There is difference between construction and re-construction, renovation, additions or alterations or repairs; and the above said explanation merely expand scope of re-construction, renovation, additions or alterations or repairs to the said provisions provided certain conditions are fulfilled.

8.12 The apex court of India, in the case of Commercial Taxation officer, Udaipur V Rajasthan Taxchem Ltd. 2007 (appeal no. CA 177 of 2007), has held that the word "includes" in the definition clause, gives a wider meaning to words or phrase in statute. It is usually used to enlarge meaning of words in statute. When it is used in words or phrases, it must be construed as comprehending not only such things as they signify according to their nature and impact but also those things which interpretation clause declares they shall include.

8.13 In the above said back ground of the judicial interpretation, we find that the word "includes" refers to something more (i.e. re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property), to be included in the original thing (i.e. construction of an immovable property) mentioned in the statute, which is otherwise not includable. While interpreting this explanation, there is a need to keep in mind the expansive definition of 'construction' to include additions, alterations, etc., that can only be applied to an existing immovable property, as the words 'to said immovable property' have been used in the said Explanation.

8.14 Thus we find that Input Tax Credit is not only restricted to the goods and services used for construction of immovable property(whether capitalized or not) but also restricted for those goods and services which are used for re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property. It is not the other way round that the Input Tax Credit is available to all the goods and services used for construction of immovable property which is not capitalized in the books of accounts. It is not the case of the appellant that said works contract is related to repair, reconstruction, renovation, etc.

8.15 We therefore observe that the appellant's undertaking of development work of the land to be leased out to various industrial/ non-industrial users, is construction of an immovable property and any goods and services or both / works contract, used for construction of an immovable property shall attract the provisions of clauses (c) and (d) under sub-section (5) of Section 17 of the CGST Act, 2017 which specifically deny such input tax credit.


8.16 The case of M/s DWARIKESH SUGAR INDUSTRIES LIMITED of the AAR Uttar Pradesh as relied by appellant has not only been passed in different context but also has no precedence value being not passed by the higher forum than the present one. The Appellant has also mentioned about the judgment rendered by the Hon'ble High Court of Orissa in the case of "M/s. Safari Retreats Pvt. Ltd., and Another v. Chief Commissioner of Central Goods & Service Tax & Others". It can be

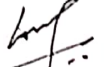


seen that in the case of Safari Retreats, the prayers are (a) eligibility to credit of input tax paid on goods/services used for construction which is rented for commercial purposes, (b) to hold Section 17(5)(d) as *ultra-vires*. While the Hon'ble High Court has granted the prayer at (a), has not accepted the prayer at (b) stating that they are not inclined to hold the provision *ultra-vires*. On a case to case basis, the Hon'ble High Court has granted the credit. In as much as the said section is found to be valid by the Hon'ble High Court, we do not find any reason to go beyond the Statutory Provisions. However, since the appeal against the High Court order supra is pending before the Hon'ble Supreme Court and thus has not yet attained the finality, we refrain from commenting on the eligibility of the ITC in the cited case. As regard to reliance of the appellant on the decision in case of Apollo Tyres Ltd., we find that the same has been passed in respect of other statute and also the relevant provisions of CGST Act 2017, specifically provides for blocking of such ITC, in terms of section 17 (5) and explanation given as discussed here above, hence the cited case law is not relevant to facts of this appeal.

ORDER

9. In view of the above discussion and findings, we hold that the appeal filed by the appellant is liable to be rejected for want of any merit, and hence rejected.


(Pramod Kumar Singh) 17/06/2021
Member (Central Tax)


(Ravi Jain) 17/6/21
Member (State Tax)

SPEED POST

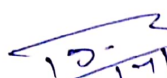
To

M/s Rajasthan State Industrial Development and Investment Corporation Ltd. Tilak Marg, Jaipur Rajasthan 302005

F. No. IV (16)AAAR/RAJ/06/2020-21/ 845 Date. 17.06.2021

Copy to:-

1. The Chief Commissioner of CGST (Jaipur Zone), NCR Building, Statue Circle, Jaipur
2. The Chief Commissioner of SGST, Rajasthan, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
3. The Commissioner, CGST Commissionerate, Jaipur
4. The Deputy Commissioner, State Tax (SGST) Circle-N, Jaipur (Rajasthan)
5. The Member, Rajasthan Authority for Advance Ruling, Goods and Service Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005
6. Guard File


(Shiv Kumar Gupta) 17/06/2021
Superintendent

