

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/2025/ 15
(IN APPLICATION NO. Advance Ruling/SGST& CGST/2024/AR/06)

Date: 30.04.2025

Name and address of the applicant	:	M/s. HMSU Rollers (India) Pvt. Ltd., Block No. 4 (Paiki), 8, Vireshwar Estate, Village: Kerala, NH 8A, Bavla Bagodra Road, Tal. Bavla, Ahmedabad, Gujarat 382 220.
GSTIN of the applicant	:	24AACCH8350B1Z0
Jurisdiction Office	:	Office of the Assistant Commissioner of State Tax, Unit-11, Range- 3, Division-1, Ahmedabad.
Date of application	:	21.03.2024
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(d)
Date of Personal Hearing	:	23.01.2025
Present for the applicant	:	Shri Jagdish Shah, Shri Ketan Rana, Shri Lalit Pandey

Brief facts:

M/s HMSU Rollers (India) Pvt. Ltd., Block No. 4 (Paiki) 8, Vireshwar Estate, Village: Kerala, NH 8A, Bavla-Bagodra Road, Tal. Bavla, Ahmedabad-382 220, (for short - 'applicant') is engaged in the business of manufacturing of rollers.

2. The applicant for their expansion project, is required to install a PEB¹ which falls under the SAC 995441 (Installation, assembly and erection services of pre-fabricated buildings).

3. The applicant has further stated as under:

- that they had placed an order for supply of the PEB with M/s.Shree Steel Building Technology;
- that consequent to supply of the PEB, the supplier raised Tax Invoice (E-Invoice) for 1,11,06,750/- (supply of Rs. 94,12,500/- + CGST Rs. 8,47,125/- + SGST Rs. 8,47,125/-);

¹ Pre-Engineered Building Structure



- that they have made the payment for the said supply except 5% of the contract value as per payment terms;
- that the installation of a 10 Ton Crane in the PEB was as per the specifications mentioned in the layout drawing provided by M/s. Konecranes and Demag Private Limited;
- that the load of the crane is borne by the PEB;
- that it is not possible to install the crane independently without the support of the PEB;
- that they have enclosed the Chartered Engineer's certificate dated 28/08/2023 along with the load calculations and crane loads with the application.

4. The applicant further stated that the PEB is a special kind of multi utility building; that it is not merely a conventional roofed factory building meant to protect the men, materials and machineries from the weather **but** is a plant and machinery in itself as it is incrementally strong with large foundation, pillars and beams with support mountings across the length and breadth; that it facilitates the operation of overhead crane(s) which makes the entire PEB a plant and machinery in itself; that the overhead crane is installed with the support of the foundation of the PEB structure and that the PEB bears the load of the crane.

5. In view of the foregoing, the applicant has sought ruling on the below mentioned question *viz*:

Whether **proportionate** Input Tax Credit is admissible for supply of the following goods and services:

- a) Steel, Cement and other consumables etc., to the extent of their actual usage in the execution of works contract service when supplied for construction of immovable property, in the form of the factory which is an Integrated Factory Building with Gantry Beam, which in turn is used for mounting across the pre-cast concrete beams, poles over which the crane would be operated;
- b) Installation and Erection Services of the PEB when supplied for construction of immovable property, in the form of the factory which is an Integrated Factory Building with Gantry Beam, which in turn is used for mounting across the pre-cast concrete beams, poles and over which the crane would be operated;
- c) Other capital goods like rails, electrification, etc. installed or erected for smooth operation of the crane.



6. Personal hearing was held on 23.01.2025, wherein Shri Jagdish Shah, Shri Ketan Rana and Shri Lalit Pandey appeared on behalf of the applicant and reiterated the submission already made in the application and further stated that PEB structure is a must to support the crane.

Discussion and findings

7. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

8. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

9. To summarize, the short issue involved is regarding eligibility of the proportionate ITC on *inputs* and *input services* used in the execution of Works contract service when supplied for construction of an immovable property. The applicant also intends to avail proportionate credit on other capital goods like rails, electrification, etc installed or erected for smooth operation of the crane.

10. Before dwelling on to the question on which the applicant has sought ruling, it would be prudent to reproduce the relevant sections, for ease of understanding *viz*

➤ Section 2. Definitions.-

In this Act, unless the context otherwise requires,-

(59) "input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;

(60) "input service" means any service used or intended to be used by a supplier in the course or furtherance of business;



➤ **Section 16. Eligibility and conditions for taking input tax credit**

(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.

➤ **Section 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.

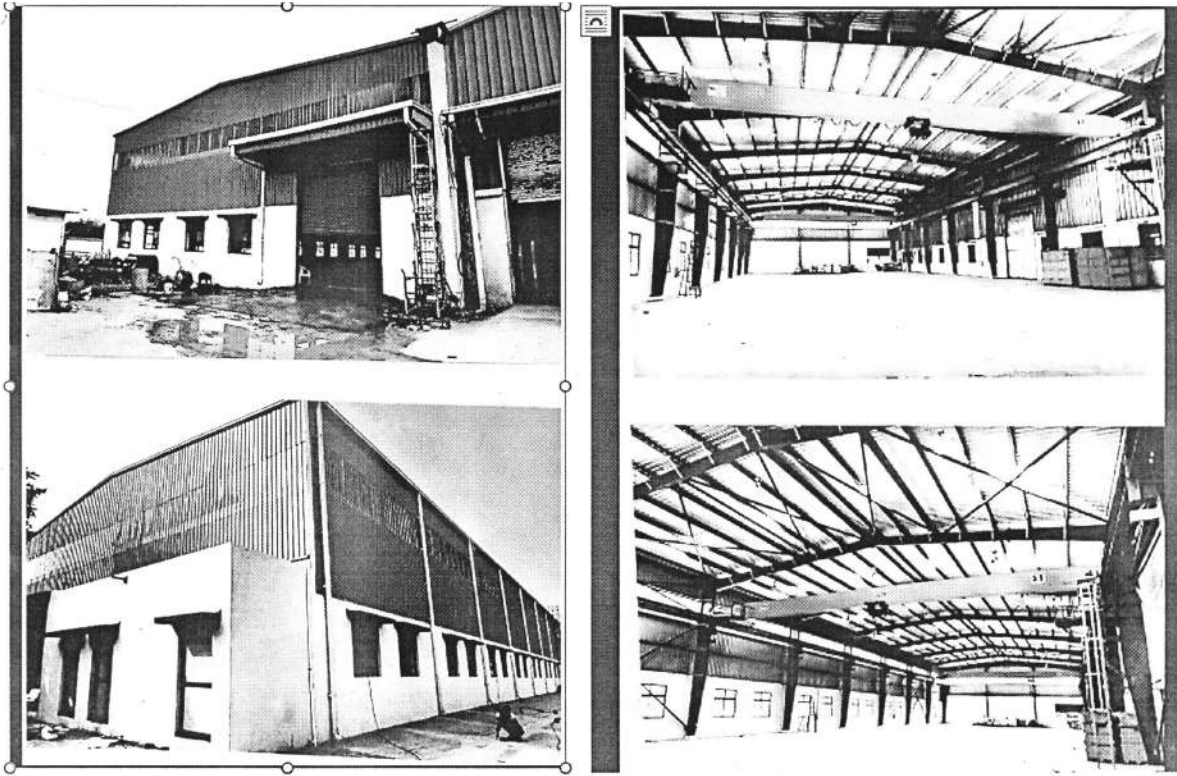
Explanation.-For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

Explanation.- For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means 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.*

11. During the course of personal hearing, the applicant provided certain photographs, to substantiate their averments. A scanned copy of the relevant photographs is reproduced below for ease of reference.





The averment made is that basis since the crane is installed on the structural support of the PEB [as is evident from the photograph], they are eligible for proportionate ITC. The applicant has explained the averment as under:

1	Weight contribution of the crane for the primary structure of PEB	27.10 tonnes
2	Weight of the gantry beam	10.80 tonnes
3	Total weight capacity of PEB	37.90 tonnes
4	Total weight capacity of the PEB as per invoice dated 18.8.2023	75.23 tonnes
5	Thus total weight eligible for ITC credit is	37.90 tonnes ie 50.36% of the total weight.

12. Now, moving on to the first & second part of the question, viz eligibility of proportionate ITC on [a] steel, cement & other consumables used in the execution of the works contract; and [b] installation and erection services of the PEB, when supplied for construction of immovable property in the form of the factory which is an integrated factory building with gantry beam, which is used for mounting across the pre-cast concrete beams, poles over which crane would be operated.

13. At the cost of repetition, the applicant has received works contract service from M/s. Shree Steel Building Technology, Ahmedabad, regarding installation and erection services of PEB, valued at Rs. 1.11 crores. Works contract, is defined under section 2(119) of the CGST Act, 2017 as a *contract for building, construction, fabrication, completion, erection, installation, fitting*



out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract. As per the copy of the invoice attached with the application papers, the service received by the applicant is classified under SAC 995441 involving GST of Rs. 16,94,250/-. Now, SAC 99544 is in respect of 'assembly & erection of prefabricated constructions', while SAC 995441 is in respect of 'installation, assembly and erection services of prefabricated buildings'. It is in this context that we are required to examine the averments made by the applicant.

14. What needs examination is whether the ITC, in this case is blocked by sub-sections viz section 17(5)(c) and (d), *ibid*. The Hon'ble Supreme Court, in the case of M/s. Safari Retreats P Ltd², while examining the above sub-sections has held as follows:

ANALYSIS OF CLAUSES (c) & (d)

31. Now, we analyse clauses (c) and (d) of Section 17(5). Clause (c) applies when works contract services are supplied for constructing immovable property. The definition of "works contract" under Section 2(119) is extensive. It reads thus:

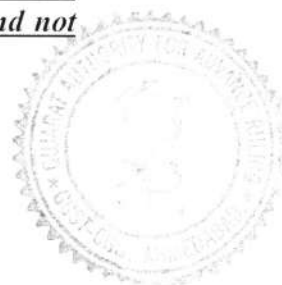
"2. Definitions:-

(119) "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;"

Thus, in the case of works contract services supplied for the construction of immovable property, the benefit of ITC is not available. However, there are exceptions to clause (c). First is when goods or services, or both, are received by a taxable person for the construction of "plant and machinery", as defined in the explanation to Section 17. The second exception is where the works contract service supplied for the construction of immovable property is an input service for further supply of the works contract.

32. Clause (d) of Section 17(5) is different from clause (c) in various aspects. Clause (d) seeks to exclude from the purview of sub-section (1) of Sections 16 and 18, goods or services or both received by a taxable person to construct an immovable property on his own account. There are two exceptions in clause (d) to the exclusion from ITC provided in the first part of Clause (d). The first exception is where goods or services or both are received by a taxable person to construct an immovable property consisting of a "plant or machinery". The second exception is where goods and services or both are received by a taxable person for the construction of an immovable property made not on his own account. **Construction is said to be on a taxable person's "own account" when (i) it is made for his personal use and not**

² 2024 INSC 756



for service or (ii) it is to be used by the person constructing as a setting in which business is carried out. However, construction cannot said to be on a taxable person's "own account" if it is intended to be sold or given on lease or license.

33. Section 17(5) incorporates an explanation which provides that the word "construction" used in clauses (c) and (d) includes reconstruction, renovation, additions, alterations or repairs, to the extent of capitalisation, to the immovable property. Thus, a very wide meaning has been assigned to the expression "construction" by the said explanation.

34. There is hardly a similarity between clauses (c) and (d) of Section 17(5) except for the fact that both clauses apply as an exception to sub-section (1) of Section 16. Perhaps the only other similarity is that both apply to the construction of an immovable property. Clause (c) uses the expression "plant and machinery", which is specifically defined in the explanation. Clause (d) uses an expression of "plant or machinery", which is not specifically defined.

35. Now, what is material is the explanation to Section 17, which reads thus:

"Explanation.—For the purposes of this Chapter and Chapter VI, the expression—plant and machinery means 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."

The explanation defines the meaning of the expression "plant and machinery". However, as stated earlier, the expression "plant or machinery" has not been defined under the CGST Act. It is pertinent to note that clauses (c) and (d) do not altogether exclude every class of immovable property from the applicability of ITC. In the case of clause (c), if the construction is of "plant and machinery" as defined, the benefit of ITC will accrue. Similarly, under clause (d), if the construction is of a "plant or machinery", ITC will be available.

[emphasis supplied]

15. Further, vide Finance Act, 2025, section 17 of the CGST Act, 2017, was amended as under, viz

124. In section 17 of the Central Goods and Services Tax Act, in sub-section (5), in clause (d),—

Amendment of
section 17.

(i) for the words "plant or machinery", the words "plant and machinery" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017;

(ii) the Explanation shall be numbered as Explanation 1 thereof, and after Explanation 1 as so numbered, the following Explanation shall be inserted, namely:—

"Explanation 2.—For the purposes of clause (d), it is hereby clarified that notwithstanding anything to the contrary contained in any judgment, decree or order of any court, tribunal, or other authority, any reference to "plant or machinery" shall be construed and shall always be deemed to have been construed as a reference to "plant and machinery";".

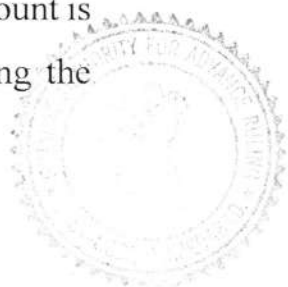


16. We find that the Hon'ble Supreme Court, while analyzing section 17(5)(c), *ibid*, has concluded that in the case of works contract, benefit of ITC is not available in respect of services supplied for the construction of immovable property, subject however to two exceptions [a] when the goods, services, or both, are received for construction of 'plant and machinery'; and [b] where the works contract service supplied for the construction of immovable property is an input service for further supply of the works contract. What however cannot be ignored is also the fact that in the second Explanation under section 17(5), *ibid*, land, building or **any other civil structures** have been excluded from the definition of plant and machinery.

17. Further, while analyzing section 17(5)(d), *ibid*, the Hon'ble Supreme Court has concluded that it seeks to exclude from the ambit of sub-sections 16(1) & 18(1), *ibid*, services received by a taxable person to construct an immovable property on his own account subject however, to two exceptions, where goods or services or both are received by a taxable person to

- [a] construct an immovable property consisting of a "plant or machinery"; and
- [b] for the construction of an immovable property made not on his own account;

The Hon'ble Supreme Court further, explains that construction is said to be on a taxable person's "own account" when [i] it is made for his personal use and not for service; or [b] it is to be used by the person constructing as a setting in which business is carried out further stating that construction cannot be said to be on a taxable person's "own account" if it is intended to be sold or given on lease or license. In view of the foregoing, looking to the facts of the case, the wordings of section 17(5)(c) and (d) *ibid*, and its interpretation by the Hon'ble Supreme Court of India, the ITC is blocked. By no stretch of imagination can it be called a plant and machinery, which is the only exception. Further, assuming for a moment, that it were to be a plant and machinery [which we do not agree with], even then, in terms of the second explanation under section 17(5), *ibid*, civil structures are excluded from the definition of plant and machinery. We find that the aforementioned judgement lays down the law as far as section 17(5)(c) & (d), *ibid*, is concerned, ITC on works contract and on services received for construction of immovable property on his own account is blocked subject however, to exceptions, as listed *supra*. On examining the



applicant's case in light of the above, we find that the ITC on inputs and input services used for construction of immovable property, is hit by section 17(5)(c) & (d), *ibid* and hence we hold that ITC is not eligible on this count. Our finding is also substantiated vide the amendment in section 17(5)(d) through Finance Act, 2025.

18. Moving on to the last part of the question, that is whether proportionate ITC is admissible for supply of other capital goods like rails electrification, etc. installed or erected for smooth operation of crane, we find that once these are embedded in the civil structure and become an immovable property, the credit stands blocked in terms of section 17(5)(c) and (d), *ibid*. Thus, the averment regarding availment of proportionate credit in respect of other capital goods like rails electrification, etc. installed or erected for smooth operation of crane, is not legally tenable.

19. The applicant has relied upon the order of the Tamil Nadu Appellate Authority for Advance Ruling in the case of M/s. Coral Manufacturing Works India P Ltd³ wherein the ITC has been allowed as under:

7.10 From the materials made available before us, the integrated factory building *per se* is not to be categorized as plant and machinery. The overhead crane and its proportionate structural support would be categorized as plant and machinery as per the explanation to Section 17 of the TNGST Act, 2017. Such structural support would not fall under the category of blocked input tax credit. Hence the appellant would be eligible for input tax credit proportionate to the extent of structural support erected in relation to overhead crane alone subject to fulfillment of conditions stipulated in section 17(5)(c) and (d) of the CGST Act, 2017 and explanation thereunder. However, they are not eligible for input tax credit relating to construction of other civil structure like side walls, roof of the Integrated factory building.

However, with due respect, we find that the reliance to the aforementioned order is not applicable in the present case since the above order has been issued before the judgement of the Hon'ble Supreme Court in the case of M/s. Safari Retreats P Ltd., *ibid*.

³ AAAR/01/2023(AR) dated 17.4.2023




20. In view of above, we rule as under:

RULING

No proportionate Input Tax Credit is admissible for supply of the following goods and services:

- a) Steel, Cement and other consumables etc., to the extent of their actual usage in the execution of works contract service when supplied for construction of immovable property, in the form of the factory which is an Integrated Factory Building with Gantry Beam, which in turn is used for mounting across the pre-cast concrete beams, poles over which the crane would be operated;
- b) Installation and Erection Services of the PEB when supplied for construction of immovable property, in the form of the factory which is an Integrated Factory Building with Gantry Beam, which in turn is used for mounting across the pre-cast concrete beams, poles and over which the crane would be operated;
- c) Other capital goods like rails, electrification, etc. installed or erected for smooth operation of the crane.


(Kamal Shukla)
Member (SGST)




(P.B.Meena)
Member (CGST)

Place: Ahmedabad
Date: 30.04.2025