

**AUTHORITY FOR ADVANCE RULING, TAMIL NADU  
No.207, 2<sup>nd</sup> FLOOR, PAPJM BUILDING, No.1, GREAMS ROAD,  
CHENNAI 600 006.**

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND  
UNDER SECTION 98(4) OF THE TNGST ACT, 2017**

**Members present:**

**Shri C. Thiyagarajan, I.R.S.,  
Additional Commissioner/Member (CGST),  
Office of the Commissioner of GST and  
Central Excise, Audit I Commissionerate,  
Chennai - 600 101.**

**Shri B. Suseel Kumar, B.E., MBA.,  
Joint Commissioner/Member (SGST),  
Authority for Advance Ruling,  
Tamil Nadu,  
Chennai - 600 006.**

**Advance Ruling No. 61/ARA/2025, dated 16.12.2025**

1. *Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-Section (1) of Section 100 of CGST Act 2017/TNGST Act 2017, within 30 days from the date on which the ruling sought to be appealed is communicated.*
2. *In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-*
  - (a) *On the applicant who had sought it in respect of any matter referred to in sub-section (2) Section 97 for advance ruling.*
  - (b) *On the concerned officer or the Jurisdictional Officer in respect of the applicant.*
3. *In terms of Section 103(2) of the Act, this Advance Ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.*
4. *Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.*
5. *The provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services Tax Act (herein referred to as the Act) are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Services Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act.*

GSTIN Number, if any/User id	33AAZPH0926M2Z9
Legal Name of Applicant	M/s SUPER CHIPS
Trade Name of Applicant	M/s SUPER CHIPS
Registered Address/ Address provided while obtaining User id	Building No. 508, 7 <sup>th</sup> Street Extension, Gandhipuram, Coimbatore, Tamil Nadu-641012
Details of Application	Advance Ruling Application no.28/2025/ARA dated 26/06/2025
Jurisdictional Officer	Centre- Zone - COIMBATORE, Commissionerate - COIMBATORE, Division - COIMBATORE - I, Range - COIMBATORE - IA  State - Tamil Nadu, Division - COIMBATORE, Zone - Coimbatore-III, Circle - GANDHIPURAM
Nature of activity (s) (proposed/present) in respect of which advance ruling sought for  A. Category  B. Description (in brief)	The Applicant is a proprietorship concern currently in the business of trading in various snacks such as potato and banana chips and also letting out of various commercial (non-residential) properties. The Applicant is currently in the process of construction of a mall/commercial complex with the intention of leasing/renting out the entire premises. For this purpose, the applicant will incur expenses on various goods and services, including construction materials, contractor services, architect fees, etc. The applicant wishes to claim ITC on such inputs and input services used in the construction of the building intended to be rented out.
Issues on which advance ruling required	1. Admissibility of input tax credit of tax paid or deemed to have been paid.
Question(s) on which advance ruling is required	1. Whether the applicant is eligible to claim Input Tax Credit (ITC) on goods and services used for construction of an immovable property (commercial building) which is intended to be used for the purpose of letting out on rental basis and on which output GST is charged.

M/s SUPER CHIPS, having place of business at Building No. 508, 7<sup>th</sup> Street Extension, Gandhipuram, Coimbatore, Tamil Nadu- 641012 (hereinafter called as the "Applicant") has registered with GSTIN 33AAZPH0926M2Z9 under the Goods and Services Tax Act. They have filed this application for advance ruling under Section 97 of the CGST Act, 2017, and corresponding provisions under the Section 97 of TNGST Act, 2017. The Applicant has made a payment of application fees of Rs.10,000/- under sub rule (1) of Rule 104 of CGST Rules, 2017 and TNGST Rules, 2017.

**2. Statement of relevant facts having a bearing on the questions raised.**

The Applicant is engaged in the business of constructing commercial buildings and leasing them to various tenants. The lease of immovable property is a taxable supply under the GST Act. The Applicant discharges GST liability on the rental income earned from the property. For the construction of the said building, the applicant has incurred expenses on various goods and services, including construction materials such as cement, sand, steel, aluminium, wires, plywood, paints, lifts, escalators, air conditioning plants, contractor services, architect fees, etc. The Applicant wishes to claim ITC on such inputs and input services used in the construction of the building intended to be rented out.

3. The applicant has filed the present application for advance ruling seeking clarification on the following question:

Whether the applicant is eligible to claim Input Tax Credit (ITC) on goods and services used for construction of an immovable property (commercial building) which is intended to be used for the purpose of letting out on rental basis and on which output GST is charged?

**4. Applicant's interpretation of law:**

4.1 As per Section 17(5)(d) of the CGST Act, 2017 ITC is blocked in respect of goods or services received for construction of an immovable property (other than plant or machinery) on own account, even when used in the course of furtherance of business.

- However, the term “on own account” should not include construction meant for renting/leasing as a taxable supply.
- Renting of commercial property is subject to GST and is considered a business activity.
- Therefore, since the applicant is using the property for providing a taxable output service (renting), the restriction under Section 17(5)(d) should not apply.
- The applicant believes ITC should be allowed as the construction is undertaken not for own use but for business purpose of renting.

4.2 Hon'ble Supreme Court in case of **Safari Retreats Pvt. Ltd. [(2024) 23 centax 62 (S.C)]**, held as below:

- (a) Whether 'Building' is a 'plant' Apex Court has laid down the functionality test. Apex court held that whether a building is a plant is a question of fact. If it is found on facts that a building has been so planned and constructed as to serve an assessee's special technical requirements, it will qualify to be treated as a plant for the purposes of investment allowance. The word 'plant' used in a bracketed portion of Section 17(5)(d) cannot be given the restricted meaning provided in the definition of “plant and machinery”, which excludes land, building or any other civil structures. Therefore, in a given case, a building can also be treated as a plant, covered by the expression “plant or machinery” used in clause (d) of the Section 17(5). The question whether a mall, warehouse or any building other than a hotel or a cinema theatre can be classified as a plant within the meaning of the expression “plant or machinery” used in section 17(5)(d) is a factual question which has to be determined keeping in mind the business of the registered person and the role that building plays in the said business. If the construction of a building was essential for carrying out the activity of supplying services, such as renting or giving on lease or other transactions in respect of the building or a part thereof, which are covered by clauses (2) and (5) of Schedule II of the CGST Act, the building could be held to be a plant. Then, it is taken out the exception carved out by clause (d) of Section 17(5) to sub-section (1)

of section 16. Functionality test will have to be applied to decide whether a building is a plant. Therefore, by using the functionality test, in each case, on facts, in the light of what we have held earlier, it will have to be decided whether the construction of an immovable property is a “plant” for the purposes of clause(d) of section 17(5).

(b) **Regarding ‘taxable person’s own account’:** Apex Court held 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
- ii. it is to be used by the person constructing as a setting in which business is carried out. However, construction cannot be said to be on taxable person’s “own account” if it is intended to be sold or given on lease or license. Since the Applicant intends to use the proposed building for carrying out supply of services (i.e., Renting/leasing out of non-residential property), the functionality test in both (a) and (b) above is satisfied.

4.3 Goods and Services Tax (GST) is applicable on the supply of goods and services utilized in the construction of immovable property, including buildings. Additionally, renting out such immovable property – whether in whole or in part – for business purposes is clarified as a ‘Supply of service’ and is subject to GST. The denial of Input Tax Credit (ITC) for the construction of buildings intended for rental use result in a cascading tax effect, contradicting the fundamental objectives of GST. By disallowing ITC on rentals received by the assessee who has constructed the property, the State unjustly benefits while infringing upon the right to ITC as enshrined under Section 300A of the constitution of India. The primary purpose of ITC is to prevent tax cascading; therefore, it should be granted when GST is paid on rental income from such properties. Restricting ITC in these circumstances undermines the core intent of GST.”

5. The applicant is under the administrative control of State. The concerned authorities of the Centre and State were addressed to report if there are any pending proceedings against the applicant on the issues raised by the applicant

in the ARA application and for comments on the issues raised. Since, no remarks have been received from the State Authority and from Centre authority, it is construed that there are no pending proceedings against the applicant on the issues raised by the applicant in the ARA application.

## **6. Personal Hearing**

6.1 The applicant was given an opportunity to be heard in person on 11.11.2025. Shri.Balu Prasanna Haridass, CA appeared for the personal hearing as the authorized representative (AR) of M/s. Super Chips. The AR reiterated the submissions made in their application for advance ruling.

6.2 The AR explained that the applicant is building a Mall for letting it out to various clients such as Lifestyle, Max, etc. Construction of the building is being done as per the contractual agreement between the applicant and M/s. Lifestyle International Pvt Ltd. The applicant has sought for advance ruling as to the eligibility of ITC on goods and services used for construction of a commercial building/Mall which is to be let out to Lifestyle, Max, etc. The AR referred to Hon'ble Supreme Court decision on Safari Retreats Pvt Ltd prescribing functionality test to decide whether the construction of a building is a 'plant' for the purposes of Section 17 (5) (d) of CGST Act, 2017 and as such, ITC on goods and services related to such construction would be eligible. The Members referred to the recent Amendment in Section 17(5) to replace the phrase "plant or machinery" with "plant and machinery", retrospectively, with effect from 1 July 2017 vide Notification no.16/2025-Central Tax dated 17.09.2025, by virtue of which, this issue is settled. The AR accepted that he is not aware of the same. AR had nothing more to add.

## **7. Discussions and Findings:**

7.1 We have carefully examined the submissions made by the applicant in their advance ruling application and the submissions made during the personal hearing. We have also considered the issue involved, the relevant facts and the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

7.2 We find that the query is liable for admission as it gets covered under Section 97(2)(d) of CGST/TNGST Act, 2017 under "Admissibility of input tax credit of tax paid or deemed to have been paid".

7.3. We find that the Applicant is engaged in the business of constructing commercial buildings and leasing them to various tenants. The lease of immovable property is a taxable supply under the GST Act. The Applicant discharges GST liability on the rental income earned from the property. For the construction of the said building, the applicant has incurred expenses on various goods and services, including construction materials such as cement, sand, steel, aluminium, wires, plywood, paints, lifts, escalators, air conditioning plants, contractor services, architect fees, etc. The Applicant wishes to claim ITC on such inputs and input services used in the construction of the building intended to be rented out. The applicant has sought for Advance Ruling as to the eligibility to claim Input Tax Credit (ITC) on goods and services used for construction of an immovable property (commercial building) which is intended to be used for the purpose of letting out on rental basis and on which output GST is charged.

To begin with, the relevant provisions of Section 16(1) of the CGST Act, 2017, that prescribes the eligibility and conditions for taking ITC, is as below :-

*"(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."*

It could be observed from the above, that the most crucial phrase to the entire scheme involving availment of ITC is "**used or intended to be used in the course or furtherance of his business**". While the said legal provision provides for entitlement of 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, it also comes up with a rider, viz., "**subject to such conditions and restrictions as may be prescribed**".

7.4 It may be seen that the provisions of Section 17 of the CGST Act, 2017 discusses about the blocked credits. However, the relevant provisions of sub-section (5) to Section 17, which impacts the issue in the instant case, is as given 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) 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 capitalization, to the said immovable property.’*

Accordingly, it becomes clear that the embargo in relation to availment of ITC in the instant case revolves very much around clause (d) of Section 17(5) of the Act, ibid, which restricts ITC availment on receipt of any goods or service or both, when made for construction of an immovable property ‘on his own account’.

7.5 The term ‘Immovable property’ is not defined under the GST Law. Section 3(26) of the General Clauses Act, 1897, provides for an expression to ‘immovable property’ as below:-

*“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.”*

Though the term “attached to the earth” has not been defined in the General Clauses Act, 1897, Section 3 of the Transfer of Property Act, gives the following meaning to the expression :-

*“(a) rooted in the earth, as in the case of trees and shrubs;*

*(b) imbedded in the earth, as in the case of walls and buildings;*

*(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.”*

In view of the above, the construction of Mall is a building attached to the earth and hence, would fall under the term ‘immovable property’.

7.6 Further, the expression "plant and machinery" as defined in the explanation under Section 17 of the CGST Act, 2017, is extracted as below:-

**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.

From the above, it can be inferred that 'plant and machinery' specifically excludes 'land, building or any other civil structures'. As Mall constitutes a building, the same falls outside the ambit of 'Plant and Machinery'. Hence, we are of the considered opinion that the ITC on inputs and input services used in the construction of a Mall which basically includes a building and other related civil structures, is not available to the applicant.

7.7 It is to be noted here that even the phrase 'other than plant or machinery' that was part of clause (d) of Section 17(5), now stands amended as 'other than plant and machinery', retrospectively with effect from 1.07.2017 onwards, through Sl.No.124 of the Finance Act, 2025 (No.7 of 2025) which reads as below:-

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

(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 1<sup>st</sup> 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 purpose 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".

Now, with this amendment, there is no scope left for the interpretation of the term 'plant' differently under section 17(5)(d) of the CGST Act. This amendment is introduced clarifies the position consequent to the Hon'ble Supreme Court's landmark judgement in the Safari Retreats case, which had differentiated the

two phrases i.e., 'plant and machinery' and 'plant or machinery'. Effectively, since this section has been aligned with Section 17(5)(c), ITC in relation to construction of immovable property shall not be available.


7.8 As per Section 17(5)(d) of CGST Act, 2017 Input Tax Credit is not available in respect of goods or services or both received for construction of an immovable property (other than Plant and Machinery) on his own account including when such goods or services or both are used in the course of furtherance of business. The interpretation is very clear that the provisions seeks to block credit when an immovable property is being constructed on own account. The said provision can be interpreted by the said phrase "on own account" which seeks to block input credit in respect of an immovable property "which is intended for the purposes of leasing out".

Now coming to the phrase "including when such goods or services or both are used in the course or furtherance of business", it has to be seen as to what is the meaning and purpose of this phrase. It is obvious that the goods and services referred to in the said phrase refers to the goods and services received by a taxable person for construction of an Immovable property and therefore the plain and simple meaning is that if such goods and services for construction of an immovable property which is used in the course or furtherance of business, then that is also covered under the 'blocked credit', category.


8. In view of the above, we rule as under:

**Ruling**

The applicant is **not eligible** to claim Input Tax Credit (ITC) on goods and services used for construction of an immovable property (commercial building) which is intended to be used for the purpose of letting out on rental basis.

  
(B.SUSEEL KUMAR)  
Member (SGST)



  
(C.THIYAGARAJAN)  
Member (CGST)

To

M/s. SUPER CHIPS  
Building no. 508, 7<sup>th</sup> Street Extension,  
Gandhipuram, Coimbatore-641012. (By RPAD)

**Copy submitted to**

1. The Principal Chief Commissioner of GST and Central Excise,  
26/1, Uthamar Mahatma Gandhi Road,  
Nungambakkam, Chennai 600 034.
2. The Commissioner of Commercial Taxes,  
2<sup>nd</sup> Floor, Ezhilagam, Chepauk, Chennai 600 005.
3. The Commissioner of GST and Central Excise,  
Coimbatore Commissionerate,  
6/7, A.T.D. Street, Racecourse, Coimbatore- 641018.

**Copy to**

1. The Assistant Commissioner,  
Coimbatore I Division,  
5<sup>th</sup> Floor, AP Arcade,  
Singapore Plazza, 333, Cross Cut Road,  
Coimbatore-641012.
2. The Assistant Commissioner (ST),  
Gandhipuram Circle,  
4<sup>rd</sup> floor, CTO Complex, Dr.Balasundaram Road,  
Coimbatore, Tamil Nadu, 641018
3. Stock File - A1

