



BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING

for the State of Andhra Pradesh (Goods and Service Tax)

(Office at O/o Chief Commissioner of State Tax, Govt. of A.P., D No 5-56, Block-B,
R.K. Spring Valley Apartment, Bandar Road, Edupugallu, Vijayawada, A.P – 521151)

Present:

Sri PEEYUSH KUMAR, (Member) (State Tax)

Sri NARESH PENUMAKA, (Member) (Central Tax)

The 7th day of July, 2020

Order /AAAR/AP/ 01(GST)/2020

In

Application No. AAAR/01(GST)/2020

1	Name and address of the appellant	The Superintendent of Central Tax, Central GST Range, Ravulapalem, Rajamahendravaram, Andhra Pradesh.
2	GSTIN	37AADFV5348K1ZP
3	Date of filing of Form GST ARA-03	29.01.2020
4	Date of Hearing (Video Conference)	16.06.2020
5	Authorized Representative	Sri. G. Srinivas, Chartered Accountant
6	Jurisdictional Authority – Central	Superintendent, Ravulapalam Range, CGST Division Rajamahendravaram

ORDER

The Superintendent of Central Tax, Central GST Range, Ravulapalem Rajamahendravarm Division, (hereinafter referred to as appellant) filed an appeal in case of M/s. Vinayaka Construction, ubalanka, East Godavari District, as per Rule 106(2) of CGST Rules 2017 against the Advance Ruling issued under sub-section (6) of section 98 in FORM GST ARA-03 and no fee shall be payable by the appellant for filing the appeal. The appeal dated: 29.01.2020 is filed contending the Ruling passed by the Authority for Advance Ruling, A.P vide Ruling AAR NO. 37/AP/GST/2019, Dated 12.12.2019. As per sub section 2 of section 100 of APGST Act 2017/CGST Act 2017, the appeal shall be filed within a period of 30 days from the date on which the ruling sought to be appealed against is communicated to the applicant. The appellant in this case approached this authority within the time limit.

1. Brief History of the Case:

The appellant i.e., Superintendent of Central Tax, Central GST Ravulapalem Range filed an application in Form GST ARA-03 on 29.01.2019 before the Appellate Authority for Advance Ruling, Andhra Pradesh seeking clarification in the case of M/s. Vinayaka Constructions, ubalanka, East Godavari District.

M/s. Vinayaka Constructions is a works contractor executing the works awarded by the Government of Andhra Pradesh, Panchayat Raj Department, Eluru Circle. The name of works being executed by the applicant is "Reconstruction of the road work "Penugonda to Munamaru" in Penugonda Mandal of Achanta Assembly Constituency, West Godavari District.

The scope of the work is clearing and grubbing, stripping excess soil, earthwork, GSB & WMM, BT Prime coat, Tack Coat & BM, CD works BT tack coat, BM, SDBC, CC pavement Shoulders & Road Furniture by mechanical means and disposal of unserviceable materials and stacking of serviceable material as per schedule-A of the agreement.

The predominant goods and services being utilised in execution of the above works are: Batching plant using for mixing of bitumen and metals to prepare hot mix for use in laying of roads; Road Rollers; Paver finisher Bitumen; Metal Chips, Gravel; Repairs & Maintenance expenses of machinery and vehicles (tippers). The services of Engineers, Sub Contractors, Consultants, Hiring of machinery and vehicles are being used in execution of the above works.

Queries raised by the dealer / applicant in ARA-01

1. Whether the applicant is eligible for Input Tax Credit (ITC) in respect of the GST paid on goods and services used as inputs in execution of "Works Contracts" specifically in execution of Road work contracts to Government Engineering Departments.
2. If not, on which type of goods/ services the ITC is not eligible.

The Authority for Advance Ruling had ruled that

The applicant is eligible for Input Tax Credit (ITC) in respect of the GST paid on goods and services used as inputs in execution of "Works Contracts". Input Tax Credit restriction under Section 17(5) (c) and 17(5)(d) will not apply to the applicant as his output is works contracts service.

Aggrieved by the Ruling passed by the AAR, A.P vide CCST Ruling No.37/AP/GST/2019, Dated 12.12.2019, the appellant preferred the present Appeal before the Appellate Authority for Advance Ruling, in ARA-03, with the following contention

- a) To remand back the AAR No.37/AP/GST/2019, dated 12.12.2019 passed by the Authority for Advance Ruling, Andhra Pradesh Goods and Services Tax, Vijayawada so as to provide the opportunity of Personal Hearing for submission of their views and comments by the Department in the case to the Authority for Advance Ruling;
- b) Grant a Personal Hearing; and
- c) Pass any such further or other (s) as may be deemed fit and proper in facts and circumstances of the case.

2. Grounds of appeal:

The appellant made the following submissions

1. Provisions of Section 17(5) (c) of CGST Act, 2017:

Section 17 (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:

(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;

ILLUSTRATION:

When reading the above sentences in continuity as below, eligibility/admissibility of ITC may be able to be understood in respect of works contract service when supplied for construction of immovable Property (other than Plant and machinery) under GST;

Input tax credit shall not be available in respect of 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 from the above two sentences, what this office understood that the words "it" and "input service" in the second sentence relates to or speaks about the work "works contract services" in the first sentence.

Therefore, in common parlance, as per first sentence, the input tax credit shall not be available in respect of works contract service.

However, on harmonious reading the second sentence combining with the first sentence, the eligibility / admissibility of input tax credit may be very clear that receiver of service and supplier of service both shall be in the same line of works contracts service as defined under Section 2(119) of CGST Act, 2017 i.e. input service and output service both shall be works contract services.

2. In this regard, the appellant referred to the case of Hero Motocorp Limited vs. CST, Delhi 2013 (32) STR 371 (Tri-Del) wherein it was held that "The relevant legislative provision must thus receive a strict construction." A true and fair construction of the relevant legislative provision, in accordance with settled and applicable principles of statutory interpretation is therefore the non-derogable obligation of an executor / interpretator of legislation. It is also settled principle of statutory interpretation that where the verbal formula of a legislative provision on its grammatical construction corresponds to the legal meaning of the expression used, full faith and unreserved fidelity must be accorded to the provision.

3. Therefore, as per provision of Section 17(5)(c) with the help of its corresponding ideal illustration provided by the jurisdictional CGST Range officer in the show cause notice, as per this case law, legal meaning of provision 17(5) (c) is clearly interpreted / executed by the Government of India and as per that, input service supplier and output service supplier shall be in the same line of business that is both shall be pertaining to works contract service when supplied for construction of immovable property (other than plant and machinery)

4. It is further submitted that the said restriction under Section 17(5) (c) is pertaining to the works contract service, only when supplied for construction of immovable property (other than plant and machinery). The definition of works contract is furnished hereunder for reference and further discussion:

Definition of works contract:

"As per Section 2(119) of the CGST Act, 2017 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."

Further, an explanation was given below on the provisions of sub-sections 17(5) (c) and 17(5) (d):

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

5. Upon the study and examination of the provisions of Section 17(5) (c) and the definition of works contract, the appellant submitted that there are "14" activities for which execution of works contract may be undertaken. However, out of "14", the activity of construction of immovable property (other than plant and machinery) under Section 17(5)(c) and 17(5) (d) only is restricted in respect of availment of input tax credit under CGST Act, 2017. Therefore, it appears that the Govt. of India had taken care of providing input tax credit benefits to the GST Credit aspirants very cautiously, in all respects. Therefore, it appears that the Govt. of India would not have erred in drafting the provisions of Sections 17(5) (c) and 17(5)(d) of GST Act, 2017 which have specific inbuilt restrictions.

6.1: Further, it is submitted that the findings given on clause (c) of sub section 5 of Section 17 of the GST Act, 2017 by the Hon'ble the authority for advance ruling under GST, Madhya Pradesh, 2018(17) GSTL 690 (AAR-GST) in respect of M/s. Jabalpur Entertainment complexes P.Ltd. (order NO.12/2018, dt.27.8.2018 in case No.12/2018. Though the decision was not in favour of the applicant namely M/s. Jabalpur Entertainment complexes P.Ltd., the requirement of

provision of Sub-section 17(5) (c) for ITC on works contract service was provided in their findings as below:

"We find that as far as availability of ITC on works contract services is concerned the law is very categorical and unambiguous. ITC on works contract services are allowable only in case when such works contract service is used as an input service for providing further output service of works contract. Sub-section 17(5) (c) specifically deals with availability of ITC on works contract service".

6.2: In the case of applicant under this advance ruling, input service is works contract service but output service was not works contract services and hence, ruling was not issued in favour of applicant.

Whereas in the case of M/s. Vinayaka Constructions on record, input service was not works contract service but the output service was works contract service.

He further submits another advance ruling pronounced by one more authority for advance ruling under GST, Rajasthan – Advance Ruling NO.RAJ/AAR/2018-19/17, dt.15.9.2018 in respect of M/s. Nagaur Mukangarh Highways pvt. Ltd., Udaipur pronounced on eligibility of input tax credit on goods and services used for construction of the project namely construction of Roads during the construction period. Their findings are given as below:

" The applicant is providing 'works contract service' for construction of road and the issue is to be clarified whether they are restricted to claim input tax credit in terms of clause (c) or (d) of sub-section 5 of section 17 ibid. In the given circumstances they find that the above restriction is not applicable the applicant is a supplier of works contract services for construction of an immovable property and goods and services received by them for construction of immovable property are not owned and capitalized by them, hence restriction contained under clause (c) & (d) ibid is not applicable for the applicant.

Advance Ruling:- The applicant is rendering taxable services during the construction of road which is liable to tax; hence they are entitled to claim full ITC under the provisions of Section 16(1) of the CGST Act, 2017."

The appellant opined that, upon perusal of the above findings and Advance Ruling, the Authority for Advance Ruling might have read out clauses (c) and (d) along and not made efforts to read in combination of (c) & (d) with sub-section 17 (5) as furnished hereunder. Had they done so, they might have understood the meaning of sub-section 17(5)(c) properly and the advance ruling would have been otherwise.

Section-17(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:

(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;

Further, the provisions of Section 16(1) and Section 18(1) were overriden or overruled by sub-section 17(5) i.e., notwithstanding anything contained in sub-section (1) of Section 16 and sub-section (1) of Section 18.

Therefore, it is submitted that though the circumstances and output service of works contract service of the above case are akin to the instant case, reliance on the above advanced ruling appears to be not sustainable as per the provisions of CGST Act, 2017 since the input service is not works contract service in these two cases for allowing input tax credit under Section 17(5) (c).

Therefore, if the same analogy is applied to the instant case, there may not be any objection under Section 17(5) (c) for availing input tax credit by the receiver of works contract service namely M/s. Vinayaka Constructions if the above manufacturers /suppliers have supplied the cement under works contract service as defined under Section 2(119) of Central GST Act, 2017.

7. In view of their submissions above, the applicant M/s. Vinayaka Constructions being a provider /supplier of works contract service, appears to be examined under Section 17(5) (c) of CGST Act, 2017 and to be decided eligibility of ITC to the applicant based on the status of his suppliers / sub-contractors i.e., whether they are works contract service suppliers or not.

8. Therefore, it is respectfully prayed that the Ld. Appellate Authority for Advance Ruling, A.P. GST, Vijayawada is requested to pass any such further or other order(s) as may be deemed fit and proper in facts and circumstances of the case.

3. Personal Hearing

An opportunity of Personal Hearing was granted on 03.03.2020 to the appellant and the tax payer as well. Upon the request of the tax payer the hearing was adjourned to 07.04.2020. Due to the special circumstances that led to nationwide Lockdown, the Personal Hearing was cancelled and postponed to 16.06.2020. The appellant and the authorized representative of M/s. Vinayaka Constructions, Sri G.Srinivas, Chartered Accountant attended through video conference and reiterated their written submissions on the said date.

The tax payer i.e., M/s. Vinayaka Construction made the following submissions

1. Superintendent of Central Tax, Ravulapalem in his grounds of appeal failed to appreciate the fundamental aspects of works contracting business, interpretation of statute, core principles of GST input tax credit. Ld. Superintendent Central Tax vaguely interpreting Sec 17(5)(c) without appreciating the legislative intent.

1.1 The respondent i.e., the tax payer submitted that they are engaged in the business of works contract more specifically Government works and they use the following goods and services as inputs for rendering the output service i.e. works contract service.

1. Crushed metal chips
2. Bitumen
3. Gravel
4. Hot mix or Batch Mix plant
5. Road rollers,
6. Paver Finishers
7. Tippers, earth moving machinery,
8. Using the services of consultants, hiring of machinery, vehicles and sub contractors
9. Repairs and maintenance of machinery etc.
10. Any other inputs, services and machinery used for executing the works, which was not specified above.

It is submitted that they strongly and vehemently object the stand taken by the learned Superintendent Central Tax. He totally misread and misinterpreted the provisions related to blocking of input credit. Fundamentally the eligibility and conditions for claiming input credit will be governed by Sec 16 of the CGST Act but not by Sec 17. Sec 17 of CGST Act deals with apportionment and blocking of input tax credit.

1.2 Every registered person is eligible to take credit of input of GST paid on the goods purchased and incorporated in the works and services taken for completion of works as per the provisions of Sec 16 of the CGST Act 2017. Section 16 of the CGST Act speaks about eligibility and conditions for taking input credit where as Section 17 of CGST Act speaks about apportionment of credit and blocking of credit.

Section 16(1) reads as under:

"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 of furtherance of his/its business and the said amount shall be credited to the electronic credit ledger of such person".

From the above it is understood and inferred that in order to claim input tax credit, the goods or services must be used in the course of furtherance of business. **The litmus test is that goods or services must be used in the course or furtherance of business.**

Here the inputs, input services are used in the course of furtherance of the business i.e. works contract business and said works contract service is a taxable service under GST Act.

- 1.3** The Government incorporated Sec 17 in the CGST Act in order to apportion or block the input credit under specified circumstances. Section 17(5) (c) restricts allowability or claiming of input credit in certain circumstances.....and those circumstances are.....,

The Section 17(5)(c) is restricting rather barring the claim of ITC, if that input goods or services are used for construction of an immovable property. However, there is an exception to this. That exception is "if input goods or service are used for further supply of works contract service" input shall be allowed. Here "further supply of works contract service" means the goods or services shall be used for the execution of works contract and that works contract service must be his/its (Registered person) output service. In simple terms and in general parlance the registered person must be engaged in the business of "works contract" as defined in sec 2(119) of the CGST Act 2017.

- 1.4** Sec 17(5) (c) put a restriction on claiming of input by end user of the works contract services but not to the registered person who purchases goods and services and used for further supply of works service. That means if rendering of works contract itself is the business activity of the registered person and for rendering such works contract service if he/it purchases goods and services provisions of sec 17(5)(c) are not applicable and that is the reason in Sec 17(5)(c) exception clause was incorporated.

- 1.5** Clause (c) and clause (d) of Sec 17(5) are by its very nature when read in isolation point to blocking of input tax credit vis a vis building construction expenditure. Explanation below the two clauses (c) and (d) of Sec 17(5) excludes from the ambit of input tax credit certain amounts of expenditure and in this regard limit such blocking to the extent amount of expenditure capitalized in the books of account.

In other words, any expenditure that is not capitalized but charged to revenue in the books will not be subject to credit blocking. Thus, ITC on input goods and services supplied within the scope of the two clauses (c) and (d) as well as under the explanation when capitalized will be subject to credit blocking.

Here in the instant case all the inputs and input services used for execution of works will be charged as revenue expenditure in the books hence will not be subject to credit blocking.

- 1.6** Intention of the legislature is also important while interpreting the provisions of law. As per Sec 16 of the CGST Act the intention of the legislature is to allow credit of any 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. Except when supplied for construction of immovable property and such immovable property is constructed for his own account.

But it is not the intention of the legislature and not intended by the law makers to allow input only if the supplier of service and receiver of service shall be in the same line of service (works contract) as argued by the learned superintendent of Central Tax.

1.7 While interpreting the statutes, Interpretation which leads to absurd results should be avoided:

If a literal interpretation leads to absurd consequences, it should be avoided and a purposive interpretation be given – Rishab Chand Bhandari v. National Engg(2009) 10 /SCC 601 – same view in Sarah Mathew v. Institute of Cardio Vascular Diseases (2014)2 SCC 62 (Sc 5- member bench).

In Belapur Sugar v. CCE 1999 AIR SCW 1316, it was held that law is well settled that unless there is anything contrary in the Act, Rules or Notification, if there be two possible interpretations, it is that interpretation which sub serve the object and purpose should be accepted-

Same view in state of Maharashtra v. Swanstone Multiplex Cinema (P.) Ltd. (2010) taxmann.com 534(SC)

When plain literal interpretation produces manifestly absurd result, which could never have been intended by legislature, Court might modify the language or even do some violation to it, so as to achieve the obvious intention of the legislature and produce a rational construction-KP Varghese v. ITO (1981) 7 Taxman 13(SC).

In printers (Mysore)Ltd. V. Asst. CTO 1994 taxman.com 755(SC), it was held that where the context does not permit or where it would lead to absurd or unintended result, the definition of an expression need not be mechanically applied.

Literal rule of interpretation of statute can be departed from if literal interpretation leads to absurd consequences-

Sonic surgical v. National Insurance co. Ltd. (2010)1 SCC 135

Sate of Jharkhand v. Tata Steel Ltd. (2016)55 GS 102/68 taxmann.com 33 (SC) –quoted with approval in Southern Motors v. State of Karnataka (2017)59 GST 502/77 taxmann.com 251 (SC)

1.8 Section 17(5)(c) and explanation to Sec 17(5)(c) reads as under:

17(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:

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;

Explanation – For the purpose of clauses (c) and (d), the expression “construction” includes reconstruction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;

As explained in paras 1.3, 1.4 and 1.5 above

Sr No. 6(a) of Schedule II of CGST Act states that composite supply of ‘works contract’ shall be treated as ‘supply of service’. This is a deeming provision, as clarified in section 7(1A) of CGST Act.

For executing works contracts both input and input services will be procured/ used. Ld. Superintendent wrongly interpreted the expression “except where it is an input service for further supply of works contract service” as “only when the input service is also works contract service then only input credit will be allowed”, Which is absurd and wrong interpretation.

As per the understanding of law, the intention of the legislature is “if any person supplied works contract services for construction of immovable property (if it is capitalized) (refer explanation to Sec 17(5)(c) and (d) ITC not allowable. However, if that immovable property is constructed (i.e. laying road) as a part of works contract service business (i.e. if furtherance of business is there) /ITC shall be allowable on both inputs and input services.

In the interpretation of the Ld. Superintendent of Central tax is considered, “if any person also supplied inputs (apart from works contract service) for construction of immovable property (if it is capitalized), ITC on such inputs has to be allowed. But our understanding to above situation is No. If that immovable property is capitalized in the books of accounts, no ITC will be allowed either on works contracts service or on inputs utilised for construction of such immovable property.

At the same time if that immovable property is constructed as a part of works contract service business ITC shall be allowed on both inputs and input services. For claiming ITC on works contract service furtherance of business shall be there.

We are explaining this legal position by way of an Example.

Description of the work	Nature of Property	Is ITC available for Contract or	Is ITC available for R & B Dept	Is ITC Available for factory
Construction of Building for own office use (capitalized by contractor)	Immovable Property	No	NA	NA
Construction of a Road for R & B Department	Immovable Property	Yes	No	NA
Construction of Road in a factory by own	Immovable property	NA	NA	NO
Construction of Road in a factory by contractor	Immovable property	YES	NA	NO

1.9 It is also submitted that vide GO MS No 58 Dt 08/05/2018 issued by Finance Department of the Andhra Pradesh Government, clause no 5 clearly mentioned that ITC is available for Government works contracts. That is the reason the Government eliminated all the subsumed taxes while finalizing the SOR rates for 2017-18. The Government finalized the basic rates in the SOR 2017-18 without any tax elements.

As per this G.O estimated contract values quoted by Government Engineering department are basic rates only exclusive of all indirect taxes. AP Government has done like this because the ITC is available to works contractors on inputs and input services utilized for executing works.

In view of the above submissions and legal position the respondent humbly submitted that argument put forth by the Ld. Superintendent of Central Tax has no weight and legal backing.

4. Discussion & Findings:

We have gone through the entire records of the appeal, facts of the case, and also considered the written and oral submissions made at length by the appellant and the respondent as well, in light of the Ruling pronounced by the AAR.

4(i) Consequent upon the extension of time limits for "*completion of any proceeding or passing of any order ...*" vide Notification No. 35/2020-Central Tax dated 3-4-2020 and as further extended by Notification No. 55/2020-Central Tax dated 27-6-2020 to 31st August, 2020, this ruling / order is being taken up for issue.

The issue at hand for discussion is whether the applicant is eligible for Input Tax Credit (ITC) in respect of the GST paid on goods and services used as inputs in execution of "Works Contracts" specifically in execution of Road work contracts to Government Engineering Departments.

4(ii) At the outset we seek to examine the nature of activity (supply) of the applicant (M/s. Vinayaka Constructions), taxability and whether their activity is eligible for ITC in general.

Section 2(119) of CGST Act 2017, defines Works contract as,

*" '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."*

As described in the agreement copy submitted by the applicant, it is evident that the applicant is engaged in the activity of construction (reconstruction) of roads for the Engineering Department, GoAP in which the following predominant **goods and services** are incorporated in execution of the above works.

- Batching plant using for mixing of bitumen and metals to prepare hot mix for use in laying of roads;
- Road Rollers;
- Paver finisher Bitumen;
- Metal Chips, Gravel;
- Repairs & Maintenance expenses of machinery and vehicles (tippers).
- The **services** of Engineers, Sub Contractors, Consultants, Hiring of machinery and vehicles are being used in execution of the above works.

From the above it is evident that the nature of activity undertaken by the applicant is a composite supply involving both goods and services used for construction /reconstruction of roads, which is an immovable property and therefore satisfies the definition of "Works Contract Service" as defined under Section 2(119) of the CGST Act, 2017.

The service of Works Contract Service (WCS) provided for the construction of a "road" is liable to GST @ 12% (6% CGST + 6% SGST) as per Sl. No. 3 (iv) (a) of Notification No.11/2017-CT(Rate) dated 28-6-2017 as amended. There is no restriction on availment of ITC in the said Notification.

4(iii) Next in line is to determine the eligibility of the applicant to claim input tax credit in respect of the supply of Works Contract Service. Section 16 of the CGST Act, 2017, is reproduced hereunder for ready reference:

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

16. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,--

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both. *Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;*

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

It is evident that the inputs and input services of the applicant are used in the course or furtherance of business i.e., works contract business and the said works contract service is a taxable service under GST and liable to tax at the rate of 12% as mentioned above. At this juncture we wish to make it clear, that

compliance with the provisions of Section 16(2) is a matter of fact and procedure and the applicant is to comply with the same to be finally eligible for ITC. This procedural compliance is not being challenged here and hence not commented upon by this Authority. Having said that, it is noted that the applicant is a Registered Taxpayer under the GST law, he is engaged in the provision of a taxable service (works contract service) in the course of business. As such, the applicant satisfies the basic requirements of Section 16 and is entitled to Input Tax credit (ITC) in general, of course subject to the compliance with the other procedural requirements mentioned above.

4(iv) Now we examine the crucial question; whether the ITC sought to be availed by the applicant is "Blocked" under Section 17 (5)(c) or Section 17(5)(d) of the CGST Act, 2017.

Section 17 (5) (c) reads as follows:

(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:—

...

(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;

The scope and import of the said Section 17(5)(c) is best revealed by the explanation given by **CBIC in its e-flyers on Works contract** is presented below.

*"As per section 17(5) (c) of the CGST Act 2017, input tax credit shall not be available in respect of the 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. Thus, ITC for works contract can be availed only by one who is in the same line of business and is using such services received for further supply of works contract service. **For example a building developer may engage services of a subcontractor for certain portion of the whole work. The subcontractor will charge GST in the tax invoice raised on the main contractor. The main contractor will be entitled to take ITC on the tax invoice raised by his sub-contractor as his output is works contract service.** However if the main contractor provides works contract service (other than for plant and machinery) to a company say in the IT business, the ITC of GST paid on the invoice raised by the works contractor will not be available to the IT Company".*

It is clearly evident that what is blocked Under Section 17(5)(c) is the ITC of tax paid on the Works Contract service when sought to be availed by the Principal (i.e., Engineering Departments). This is not the case in this appeal. The applicant in this appeal seeks a ruling on whether he can avail credit on goods and services used **to provide** Works Contract Service to the Principal. As seen from the narration above, there is no bar under Section 17(5)(C) to prevent the applicant from availing ITC on goods and services used in supplying Works Contract Service.

The final provision to be examined to ascertain the eligibility of ITC to the applicant in providing Works Contract Service, is Section 17(5)(d) of the CGST Act, 2017.

Section 17(5) (d) reads as

*(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.*

As per the records of this case, the applicant is engaged in the supply of works contract services for reconstruction of roads for the APPR Department. As such, the applicant cannot be said to be undertaking the activity on his own account. The embargo of section 17(5)(d) of the CGST Act, 2017 is when the construction activity is undertaken "on his own account". As such, the restriction of the said Section 17(5)(d) is not applicable in the present case and it does not bar the applicant from availing ITC in providing Works contract service for road construction to the APPR Department.

4(v) In summary therefore, the applicant, a registered person under the GST law, engaged in the business of Works Contract Service, liable to GST at the rate of 12% vide Notification No.11/2017-CT(Rate) dated 28-6-2017 as amended, and where no restriction on availment of ITC is prescribed therein, is also not affected by the restriction under Section 17(5)(C) and Section 17(5)(d) of the CGST Act, 2017 and is therefore entitled to credit on the inputs i.e, goods and services used for providing the output service of Works contract service for construction of roads for the State Government Departments. The Order of the Authority for Advance Ruling (AAR), Andhra Pradesh, is to be upheld on merits.

Order


In view of the foregoing, the original order of the AAR is upheld.

Sd/-Peeyush Kumar
Chief Commissioner (State Tax)
Member

Sd/- Naresh Penumaka
Chief Commissioner (Central Tax)
Member

//t.c.f.b.o//

JA


Deputy Commissioner (ST)
DEPUTY COMMISSIONER (ST)
O/o. Chief Commissioner of State Tax,
Government of A.P., Vijayawada

To:

- 1) The Superintendent of Central Tax, Central GST Range, Ravulapalem stationed at room no.102&103, 1st floor, office of the Deputy Commissioner of Central Tax, Central GST Division, GST Bhavan, Srinagar, Morampudi Road, Rajamahendravaram, East Godavari District-533107. **(By Regd. Post)**
2. M/s Vinayaka Construction, D.No. 1-277, Venu Gopal Swamy Temple, Ubalanka, Ravulapalem, East Godavari District, Andhra Pradesh-533237**(By Registered Post)**

Copy to:

1. The Authority for Advance Ruling, A.P O/o the Chief Commissioner (ST), Edupugallu, Vijayawada
2. The Assistant Commissioner, Ambajipet Circle, Kakinada Division. **(By Regd Post)**
3. Stock file / spare copy