

**THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX**  
**(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)**

**ORDER NO. MAH/AAAR/RS-SK/29/2020-21**

**Date- 12.11.2020**

**BEFORE THE BENCH OF**

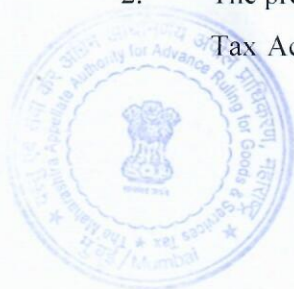
**(1) Shri Rakesh Kumar Sharma, MEMBER (Central Tax)**

**(2) Shri Sanjeev Kumar, MEMBER (State Tax)**

Name and Address of the Appellant:	M/s. SUNDHARAMS PRIVATE LIMITED, Flat No. 7, Chandan Apartment, Third Floor, LBS Marg, Kurla West, Mumbai-400070
GSTIN Number	27AAACS4949P1ZN
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised:	Clause (d): admissibility of input tax credit of tax paid or deemed to have been paid;
Date of Personal Hearing:	22.10.2020
Present for the Appellant:	Rajesh Sanghvi, C.A.
Details of appeal	Appeal No. MAH/GST-AAAR-/03/2020-21, dated 17.08.2020 against Advance Ruling No. GST-ARA-36/2019-20/B-41, dated 18.03.2020
Jurisdictional Officer	Dy. Commissioner of State Tax, MUM-VAT-E-601, Large Tax Unit-1, Mumbai

**(Proceedings under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)**

1. At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST 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 MGST Act.
2. The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 **[hereinafter**

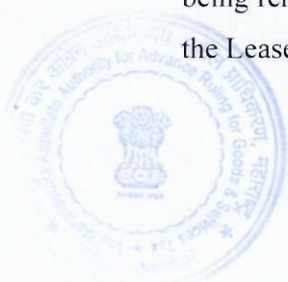




referred to as “the CGST Act” and “the MGST Act” respectively] by M/s. Sundharams Private Limited , Flat No. 7, Chandan Apartment, Third Floor, LBS Marg, Kurla West, Mumbai-400070 (hereinafter referred to as “the Appellant”) against the Advance Ruling No. GST-ARA-36/2019-20/B-41, dated 18.03.2020, passed by the Maharashtra Authority for Advance Ruling (hereinafter referred to as the MAAR).

### **BRIEF FACTS OF THE CASE**

- 3.1 The Appellant is a private Limited company registered in the state of Maharashtra under MGST Act, 2017 and CGST Act, 2017 holding GSTIN 27AAACS4949P1ZN and also registered under the Companies Act, 2013 having its registered office at No.3, Smith Road, Chennai -600 002.
- 3.1 The Appellant is engaged in providing warehousing, storage and support services to the Original Equipment Manufacturers (OEMs) in automobile industry having the varied customers such as Hyundai Motors, Mahindra & Mahindra, Ashok Leyland, TAFE etc.
- 3.2 The Appellant has a fleet of 80 car carrier vehicles with which it carries the cars/tractors of various automobile OEMs from their respective plants to the designated Regional Sales Depots/show rooms of their dealers. During the course of rendering these services, the cars are stored in the stock yard of the Appellant prior to their transit to the respective car dealers. On storage rentals of these vehicles, the Appellant collects and pays the applicable GST at the rate of 18% under the head ‘Stock Yard Management Services’.
- 3.3 The Appellant has purchased ‘Paver Blocks’ which is subject to tax at the rate of 18% as per HSN Code of 7016. These blocks are laid in the parking area of the land without any attachment to the earth. The object of laying such blocks is to ensure efficient and safe parking of cars of OEMs during the contract period. This way, the Appellant Company will ensure good maintainability of the cars and assure the OEMs of its valuable services relating to the storage of their vehicles.
- 3.4 Further, such blocks are not to be permanently embedded on earth, and are capable of being removed as such and re-layable elsewhere, without causing damage. Moreover, the Lease Deed executed by the Company with its land owners contains a clause to the





effect that the Company shall remove such Paver Blocks and take possession of the same on vacation of the premises. Hence such Paver Blocks are to be construed as moveable items.

3.5 Based on the above facts, the Appellant had filed an application under Section 97 of the CGST Act.,2017 read with Rule 98 of CGST Rules, 2017 seeking Advance Ruling from Maharashtra Authority for Advance Ruling(MAAR), on the question that whether the Appellant is entitled to avail input tax credit under SGST/CGST Acts in respect of taxes to be paid on its purchase of Paver Blocks laid on surface of the plain land.

3.6 The Appellant had submitted before the Maharashtra Advance Ruling Authority as under:

(a) They were eligible to avail Input Tax Credit in respect of the taxes payable on the purchase of Paver Blocks, laid on the land which are being used by them in the course of providing their taxable output supply to their customers chargeable to GST at the rate of 18% and the Appellant has complied with the condition contained in Section 16(2) of the CGST Act, 2017 for claiming Input Tax Credit.

(b) Laying of the Paver Blocks on the land does not amount to construction of immovable property under Section 17(5)(d) of the CGST Act.,2017.

(c) Expenses on the Paver blocks are not capitalized as a part of immovable property i.e. Land, in the books of accounts of the Appellant, rather the said expenses are debited and claimed as Revenue Expenditure and therefore, these expenses could not amount to "construction" as defined in the explanation to Section 17(5)(d) of the CGST Act.,2017. Accordingly, there is no bar on availing Input Tax Credit on the tax paid on the purchase of the 'Paver Blocks' in terms of the aforesaid explanation of Section 17(5)(d) of the CGST Act, 2017. It was further submitted that as per explanation to section 17(5)(d), the prohibition to avail input tax credit is applicable only in respect of expenditure, which is capitalized to be immovable property in the books of accounts. Even as per the accounting standards purchase of paver blocks has to be treated as revenue expenditure.

(d) These 'Paver Blocks' having interlocking facility and gaps therein getting filled with sands, are laid on the surface as movable property, which are capable of being removed, re-laid, and re-used on any other location after the contract





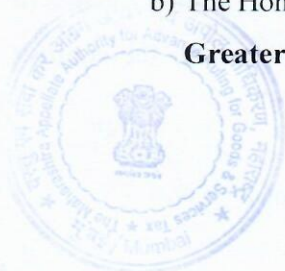
period gets over. It is to be noted here that its degree of attachment, and thus placement to the land is superficial and not deep, or permanent in nature. it is not very strong unlike a cement road; The object of annexation of paver blocks to the land is for a temporary purpose and can be removed and used elsewhere multiple times because it can withstand wear and tear.

(e) The Appellant had relied on the decision of Hon'ble Supreme Court in the case of *Sirpur Paper Mills Ltd. vs The Collector of Central Excise [97 ELT 3 (SC)]*, holding that “*just because a plant and machinery are fixed in the earth for better functioning , it does not automatically become an immovable property .*”

(f) They had further contended that even assuming without admitting that permanently fitted Paver Blocks acquire the character of "Immovable Property", the claim of the Appellant for Input Tax Credit has to be allowed based on the decision of the Hon'ble *Orissa High Court in Safari Retreats Pvt. Ltd. Vs. Chief Commissioner of CGST reported in 105 Taxmann 324*, wherein the Hon'ble High Court observed that ITC is not available to a taxable person who has constructed an immovable property "on his own account". This condition however cannot be applied in cases, where construction of immovable property is intended for letting out. Therefore, the narrow interpretation of the Department cannot be accepted as the Appellant in this case was not retaining the property for his own purposes, but to let out the same.

3.7 The MAAR, vide their order No. **GST-ARA-36/2019-20 /B-41, dated 18/03/2020**, held that the Applicant was not entitled to avail Input Tax Credit in respect of taxes to be paid on the purchase of 'Paver Blocks' in terms of Section 17(5)(d) of the CGST Act, 2017. The Maharashtra AAR has relied upon the following Court judgments to arrive at the conclusion that 'Paver Blocks', laid on the land, is part of an immovable property:

- a) The Hon'ble Bombay High Court judgment in the case of **M/s. Bharati Airtel Ltd. vs. The Commissioner of Central Excise (2014 SCC online Bom. 907: (2015) 77 VST 434)** wherein the credit was disallowed on the Telecom tower holding them to be immovable property;
- b) The Hon'ble Supreme Court judgment in the case of **Municipal Corporation of Greater Bombay and others vs. Indian Oil Corporation Ltd. (1991 Supp (2)**





**Supreme Court Cases 18)**, wherein it was held that the petroleum storage tanks are structure or things attached to the land and were exigible to the Property Tax;

- c) The Ruling pronounced by the Tamil Nadu Advance Ruling Authority in the case of ***Sree Varalakshmi Mahaal LLP, Tamil Nadu***, wherein it has been ruled that no Input tax credit is available against any goods or services received by applicant for construction of marriage hall on his own account even if used in the course or furtherance of the business of renting the place;

- 3.8 Being aggrieved by the aforesaid Advance Ruling, passed by the MAAR, the Appellant has preferred the present appeal.

### **GROUND OF APPEAL**

- 4 The Appellant, in their Appeal memorandum, have, *inter-alia*, mentioned the following grounds of appeal:
- 4.1 That the laying of Paver Blocks on the land does not amount to construction or building of an immovable property as per the explanation of Section 17(5)(d) of the CGST Act, 2017, especially when the expenses for the same has not been capitalized towards 'Land' in the audited books of accounts of the Appellant and factually these expenses have been debited and claimed as revenue expenditure by the Appellant;
- 4.2 That the Maharashtra AAR did not properly appreciate the technical nature, mobility and characteristics of Paver Blocks and its technology, thereby, denying it as a "Chattel";
- 4.3 That the MAAR erred in justifying the impugned order by relying on the decision of ***Hon'ble Supreme Court in the case of Municipal Corporation of Greater Bombay (1991 Supp (2) SCC 18)*** which was a case differing in facts and was concerning Petroleum storage tanks and was concerning levy of Municipal property tax;
- 4.4 That the MAAR erred in not applying the decision of ***Hon'ble Orissa High Court in the case of Safari Retreats Pvt Ltd***, which was substantially directed on related facts and under the same GST Act and which being a Hon'ble High Court decision, in favour of the taxpayer therein, the doctrine of judicial discipline and respect to judgements of higher authorities ought to have weighed upon the AAR as per the Hon'ble Supreme Court judgement in the ***Kamalakshi Finance Corp case [(1992) 1 SCC 648]***;





- 4.5 That the MAAR erred in applying the Advance ruling in the case of *Sree Varalakshmi Mahal LLP, passed by Tamil Nadu Advance Ruling Authority*, to the subject matter of the Appellant's case.
- 4.6 That the MAAR erred in not pronouncing the Advance Ruling (on 18-03-20) within 90 days from the date of receipt of application (09-08-2019) in accordance with Section 98(6) of the CGST Act, 2017.

### **RESPONDENT'S SUBMISSIONS**

- 5 The submission made by the Department/Respondent, is produced hereinunder:
- 5.1 As regards the Appellant's contention that the laying of 'Paver Blocks' does not amount to the 'construction of an immovable property' in terms of the explanation of Section 17(5)(d) of the CGST Act, 2017, especially when the expenses, incurred for the purchase of the 'Paver Blocks', has not been capitalized, the Respondent has submitted that explanation added to the said Section enlarges the meaning of the word 'construction', used in the main clause and not limits it to the reconstruction, renovation, additions, or alterations or repairs, to the extent of capitalization to the said immovable property. They further submitted that condition of capitalization provided in the explanation to Section 17(5)(d) of the CGST Act, 2017 is applicable for reconstruction, renovation, additions, alterations or repairs activity and not applicable for construction of immovable property in general. They have further submitted that in the present case, the Appellant have carried out construction of immovable property (Parking System) using the 'Paver Blocks' and other goods. Therefore, the condition of capitalization as provided under explanation to Section 17(5)(d) to the CGST Act, 2017 is not applicable as the impugned construction is not in the nature of reconstruction, renovation, additions, alterations or repairs of an immovable property.
- 5.2 As regards the Appellant's contention against the findings of the MAAR to the extent that the 'Paver Blocks' laid over the surface are permanent in nature and hence the activity of laying of the 'Paver Blocks' is considered to be "construction of immovable property", wherein the Appellant have argued that the MAAR has not appreciated the technical nature, mobility, and characteristics of the 'Paver Blocks', the Respondent has submitted that just because the 'Paver Blocks' laid over the surfaces of the stock yard can be removed and re-erected at some other places, the same would not be considered movable property as the mere mobility and reusability of the Paver Blocks

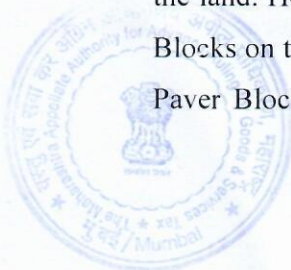


cannot be the only tests for the determining the permanency of the same. The permanency of the subject structure i.e. the 'Parking System' comprising of the 'Paver Blocks' would have to be tested under the light of the frequency of the relocation and the extent of ease of relocation of the Paver Blocks, laid on the surface with the help of, the gap filling materials, like sands, and the outer walls, which is executed by the skilled laborer, who carry out the laying task of 'Paver Blocks'. Thus, it is evident that the 'Paver Blocks' once laid over the stock yards' surface cannot be relocated and reused so frequently and so readily, as relocation requires dismantling using the skilled labour, which would definitely consume some time and effort. Thus, the findings of the MAAR that the Paver Blocks are placed on the earth as a 'Permanent Structure' is correct and proper.

- 5.3 As regards the Appellant's reliance on the Hon'ble Orissa High Court Judgment in the case of *Safari Retreats Pvt. Ltd. Vs. Chief Commissioner of Central Goods and Service Tax*, wherein the Hon'ble High Court has held that Input Tax Credit in respect the goods or services or both, used in the construction of immovable property, which is intended for letting out, is admissible to a taxable person, while maintaining that the provision of Section 17(5)(d) of the CGST Act, 2017 is not ultra vires. It has been submitted by the Respondent that the aforesaid judgment of the Hon'ble Orissa High Court may not be relied upon as the Department has preferred an appeal against this Hon'ble High Court Judgment and matter is still pending before the Hon'ble Supreme Court, and therefore has not attained finality.

#### **PERSONAL HEARING**

6. A personal hearing in the matter was held on 22.10.2020, which was attended by Shri Rajesh Sanghvi, C.A., as the representative of the Appellant, and Shri Prashant Patil, Deputy Commissioner, in the capacity of the Respondent/Jurisdictional Officer.
- 6.1 During the course of the said personal hearing, Shri Sanghvi, apart from reiterating the earlier submissions made before us, harped on the technical details of the Paver Blocks such as the interlocking pattern of the Paver Blocks, its light weight, its dimensions, etc., and the procedure and methodology of laying and removal of the same on, or from the land. He elaborated on the simple mechanism of laying and removal of the Paver Blocks on the surface which does not require cement or other adhesives for laying the Paver Blocks on the land, thereby, contending that the Paver Blocks laid over the





surface do not constitute the immovable property as the same is not permanently attached to the land attributing to the reason that the Paver Blocks have been laid without using any cement or other adhesive materials for keeping the blocks together, rather the blocks are joined together owing to the interlocking features/style of the said Paver Blocks and thus do not require the demolition of the Paver Blocks laid on the land before relocating the same on another piece of land as and when required.

- 6.2 He heavily relied upon the Karnataka AAR Judgment in the case of the ***Wework India Management Pvt Ltd***, wherein the Advance Ruling Authority held that the detachable wooden flooring would not be considered as immovable property as the same can be detached and reused elsewhere without being damaged and there is no permanence in the said wooden flooring. He also made mention of the Karnataka AAAR Judgement in the same case, i.e. ***Wework India Management Pvt Ltd***, wherein the Karnataka AAAR, while applying the dual test, i.e., (i) extent of annexation and (ii) object of annexation, to examine the permanency of the item attached to the earth, allowed ITC even on glass sliding and partitions which were fixed to the floor by nuts/bolts.
- 6.3 He also contested the Advance Ruling observation wherein the MAAR has not considered the Hon'ble Odisha High Court Judgment in the case of ***Safari Retreats Pvt. Ltd vs Chief Commissioner of CGST {105 Taxmann 324 / W.P (C) No. 20463/2018 dt:17-4-19}*** attributing to the reason that the Appeal filed by the Department is pending before the Hon'ble Supreme Court, and hence finality in the matter is still to be attained. He put forth the contention that the appeal preferred by the Department against the Hon'ble Odisha High Court Judgment is not even admitted before the Hon'ble Supreme Court, therefore, it cannot be said the Appeal is pending before the Hon'ble Apex Court.
- 6.4 The Appellant also filed rejoinder, dated 23.10.2020, to the Department's Submissions, wherein they argued that there was no building or permanent structure created. They further contended that the Paver Blocks are merely placed on the land without using the cements or other adhesive materials. They further contended that there is no such immovable property called or identified as 'PARKING SYSTEM' as the same is understood as mechanized stack parking or electrical car parking system or such a stilt structure, which can be rightly construed as immovable property, while in their case, the Paver Blocks, being in the nature of chattel, could not be construed as immovable property. The cost of these Paver Blocks is not capitalized either and the same is accounted as expenditure in their Books of Account.





- 6.5 Shri Prashant Patil, appearing in the capacity of the jurisdictional officer in the matter, reiterated his earlier submissions, wherein it was contended that the Appellant had used Paver Blocks and other materials to construct the parking lot for the vehicles, which would be construed as immovable property, and hence the Appellant are not eligible to avail ITC in respect of the such Paver Blocks in terms of the provisions of Section 17(5)(d) of the CGST Act, 2017. He further averred that that the contention, put forth by the Appellant to the extent the laying of the Paver Blocks on the land do not require the support of the outer wall, is factually incorrect as the laying of the Paver Blocks on the surface to construct footpath, pavements, parking area, road, etc. invariably require the edge restraints of some structures which are constructed along the perimeter of the interlocking Paver Blocks of the footpath, pavements, parking area, road, etc, thus, the edge restraints provided by the structures like outer wall etc. are essential component in the construction of such pavements, parking area, road, etc, which involve the uses of the interlocking paver blocks. This is also true in the Appellant's case, where the outer wall constructed along the perimeter of the parking area provide the edge restraints needed for keeping the Paver Blocks together to constitute the parking area for the vehicles in the stockyard maintained by the Appellant. Thus, the Paver Blocks, laid over the land, which is duly supported by the outer wall constructed along the perimeter of the parking area, result into construction of the immovable property. Accordingly, the Appellant are not eligible to avail ITC in respect of the Paver Blocks.

### **DISCUSSIONS AND FINDINGS**

7. We have carefully gone through the appeal memorandum encapsulating the facts of the case and the grounds of the appeal along with other relevant documents. We have also examined the impugned ruling passed by the MAAR, wherein it has been held that the Appellant was not entitled to avail Input Tax Credit in respect of taxes to be paid on its purchase of paver blocks in terms of Section 17(5)(d) of the CGST Act, 2017. The MAAR has relied upon the following Court judgments to arrive at the conclusion that 'Paver Blocks', laid on the land, is part of an immovable property:

- (a) The Hon'ble Bombay High Court Judgment in the case of *M/s. Bharati Airtel Ltd. vs. The Commissioner of Central Excise (2014 SCC online Bom. 907: (2015) 77 VST 434)*, wherein the credit was disallowed on the Telecom tower holding them to be immovable property;





- (b) The Hon'ble Supreme Court Judgment in the case of *Municipal Corporation of Greater Bombay and Others Vs. Indian Oil Corporation Ltd* wherein it was held that the petroleum storage tanks are structure or things, attached to the land, and were exigible to the Property Tax;
- (c) The Ruling pronounced by the Tamil Nadu Advance Ruling Authority in the case of *Sree Varalakshmi Mahaal LLP Tamil Nadu*, wherein it has been ruled that no Input tax credit is available against any goods or services, received by applicant for construction of marriage hall on his own account even if used in the course or furtherance of the business of renting the place.

8. Having gone through the facts of the present appeal, and the Rulings of the MAAR on the question raised by the Appellant, the moot issue, before us, is whether the laying of the 'Paver Blocks' amounts to construction of an immovable property' or not. To ascertain this, first we would like to discuss the term "immovable property". Since the term "immovable property" has not been defined in the CGST Act, 2017, we would like to refer to the General Clauses Act, 1897, wherein the term "immovable property" has been defined. The same is reproduced hereinunder

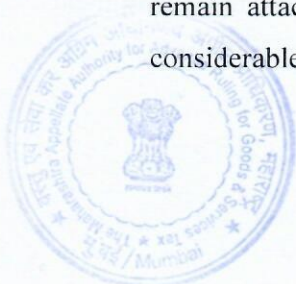
**Section 3**

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***(26) "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;***

9. On perusal of the above definition of the term "immovable property", it is conspicuous that immovable property inter-alia includes the things which are attached to the earth. Now, in the present case, it has been submitted that the 'Paver Blocks' are laid on the surface of the automobiles stock yard with the aid of the filling material, i.e. sand and the outer wall, constructed at the automobiles stock yard. Here, it is amply clear that the filling materials, i.e. sands and the outer walls helps the 'Paver Blocks' to remain attached and fixed to the earth. It can clearly be implied here that had there been no filling materials and the outer walls, the laying of Paver Blocks on the surfaces would not have yielded desired result attributable to the fact that the 'Paver Blocks' would not remain attached to the surface, and would get displaced once the vehicles having considerable weight starts moving on them while being parked at the intended

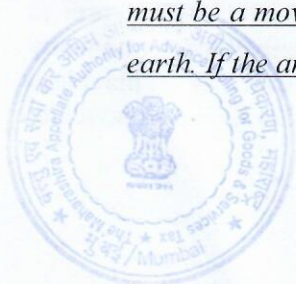




automobiles stock yard. Once it has been established that the 'Paver Blocks' are attached to the land/surface, the same is considered as an immovable property in terms of its definition provided under the General Clauses Act, 1897.

10. As regards the Appellant's reliance on the Hon'ble Supreme Court Judgment in the case of *Sirpur Paper Mills Ltd. vs The Collector of Central Excise [97 ELT 3 (SC)]* to contend that the merely laying of the 'Paver Blocks' on the surface for the creation of better parking facility would not be considered as construction of an "immovable property", it is observed that in the said case the issue was whether the machine which was affixed to the ground could be an immoveable property or not. In the said case the machine was not held as an immoveable property on the basis of the finding that the machine was fixed on the ground for operational efficiency, and to prevent wobbling of the machine. The facts are entirely different here. In this case, we have paver blocks, which have to be interlocked, and are fastened using sand and by their very nature, these blocks have to be lined and attached to earth as they have no individual existence unless these processes are done. Therefore, no comparison can be drawn with machines which can function on their own and are embedded just to prevent wobbling. Thus, the aforesaid Apex Court Judgment is not applicable in the present case as the facts and circumstances of the present case is entirely different from the case cited by the Appellant. Therefore, the aforesaid case is not of much assistance to the Appellant.
11. On the contrary, we would like to rely upon the case referred by the MAAR to arrive at the impugned conclusion. The MAAR, while arriving at the conclusion that the laying of the 'Paver Blocks' on the surface would amount to construction of an immovable property, has relied upon the Hon'ble Supreme Court Judgment in the case of *Municipal Corporation of Greater Bombay and others vs. Indian Oil Corporation Ltd.*, wherein the Hon'ble Supreme Court has laid down the principle of the "Permanency Test" to determine whether a given structure would be considered as movable property or immovable property. In this regard, the Hon'ble Supreme Court has propounded the question as under:

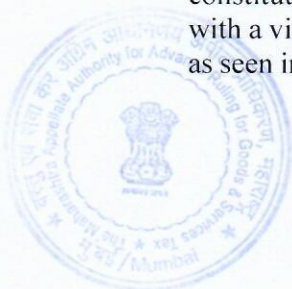
"the chattel whether is movable to another place of use in the same position or liable to be dismantled and re-erected at the later place? If the answer is yes to the former it must be a moveable property and thereby it must be held that it is not attached to the earth. If the answer is yes to the latter it is attached to the earth."





12. By applying the ratio decidendi ordained in the aforementioned Hon'ble Supreme Court Judgment in the present case, it is adequately clear that the 'Paver Blocks', once laid on the surface so as to form the parking facility, would be construed as attached to the earth and hence the "immovable property" as the "Paver Blocks" cannot be moved to another place in the same position without being dismantled.
13. The Appellant has contended that the MAAR did not appreciate the technical nature, mobility and characteristics of the 'Paver Blocks' before holding the laid out 'Paver Blocks' as an immovable property. It has further been contended that the subject 'Paver Blocks' can easily be moved from one place to another without being damaged and re-erected there, thereby, conforming to the inherent nature of movable property. In this regard, we observe that the 'Paver Blocks', once laid over the surface to comprise the parking system, cannot be moved "as it is" to another place as the same is also supported by the edge restraints provided by the outer wall constructed along the perimeter of the parking area of the said stock yard, which causes the paver blocks to get fastened or embedded to the earth permanently. It has to be dismantled before moving to some another place. The fact that it would clearly not be intention of the Appellant to move these 'Paver Blocks' from one place to another, lends certain degree of permanency to the 'Paver Blocks' laid over the surfaces, which is the essential characteristics of the immovable property. Hence, the aforesaid contention advanced by the Appellant is not tenable. We also hereby refer to the judgement of the Supreme Court in the case of *Duncan Industries Ltd vs State of U.P. dt 3/12/1999* where the issue before the Court was whether the Plant and Machinery used in the fertilizer plant are immoveable property. While deciding the question, the Apex Court laid down an important principle which can be applied to examine whether any property is immoveable or not. The Court observed,"

'The question whether a machinery which is embedded in the earth is movable property or an immovable property, depends upon the facts and circumstances of each case. Primarily, **the court will have to take into consideration the intention of the parties when it decided to embed the machinery whether such embedment was intended to be temporary or permanent.** A careful perusal of the agreement of sale and the conveyance deed along with the attendant circumstances and taking into consideration the nature of machineries involved clearly shows that the machineries, which have been embedded in the earth to constitute a fertiliser plant in the instant case, are definitely embedded permanently with a view to utilise the same as a fertiliser plant. The description of the machines as seen in the Schedule attached to the deed of conveyance also shows without any





doubt that they were set up permanently in the land in question with a view to operate a fertilizer plant and the same was not embedded to dismantle and remove the same for the purpose of sale as machinery at any point of time. The facts as could be found also show that the purpose for which these machines were embedded was to use the plant as a factory for the manufacture of fertiliser at various stages of its production. Hence, the contention that these machines should be treated as movables cannot be accepted. Nor can it be said that the plant and machinery could have been transferred by delivery of possession on any date prior to the date of conveyance of the title to the land. (*\*emphasis added*)

Thus, the issue which is important here is whether it was the intention of the Appellant to dismantle the paver blocks. It is seen that the Appellant has taken over the land on lease for a period of 5 years. It can be deduced from it that the paver blocks are intended to be a permanent structure and there is no intention to dismantle it frequently and take it to any other place.

14. The Appellant has referred to the judgement of the Orissa High Court in the case of *Safari Retreats (: W.P. (C) No. 20463 of 2018 dt 17/04/2019)* and have contended that the High Court has held that the provisions of Section 17 (5)(d) have to be read down and benefit of ITC has to be given on the construction of shopping malls. We have gone through the said judgement. The question in the present case is whether ITC is allowed to the Appellant – an eventuality which depends on whether paver block is immoveable property or not and we have already seen how the arguments both from the Appellant and the jurisdictional officer revolve around the same. In the Safari Retreats judgement, the High Court had to just decide whether ITC is available to the appellant – **the question whether malls is immoveable property or not was not before the Court.** Therefore, there being an integral difference in the issues, we say that the said judgement is not applicable to the present case.
15. The Appellant has contended that since the expenses incurred on the purchase of the 'Paver Blocks' are not capitalized in the books of account, rather the same is treated as revenue expenditure, therefore, they are entitled to the avail ITC as per the explanation of the Section 17(5)(d) of the CGST Act, 2017. We would like to examine the provisions of the aforesaid explanation. The same is being reproduced herein 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;**






On perusal of the above, it is observed that the clause “to the extent of capitalization, to the said immovable property” is applicable only with respect to the reconstruction, renovation, additions or alterations or repairs of the said immovable property, and not with respect to the original construction work of an immovable property. In the present case, the laying of ‘Paver Blocks’ over the surface of the stock yard would not come under the ambit of the aforesaid explanation as the same cannot be categorized as reconstruction, renovation, additions or alterations or repairs of an immovable property. The laying of ‘Paver Blocks’ will rather be construed as original construction work of immovable property which in the present case is ‘parking system’. Thus, the aforesaid contention advanced by the Appellant is not tenable.

16. Thus, in view of the above discussions, we pass the following order:

**ORDER**

17. We, hereby, uphold the Advance Ruling Order No. GST-ARA-36/2019-20/B-41, dated 18.03.2020, passed by the Maharashtra Advance Ruling Authority in the Advance Ruling application filed by the Appellant. As such, the Appeal filed by the Appellant is dismissed.

  
(SANJEEV KUMAR)  
MEMBER

  
(RAKESH KUMAR SHARMA)  
MEMBER



**Copy to the: -**

1. Appellant;
2. AAR, Maharashtra;
3. Pr. Chief Commissioner, CGST and C.Ex., Mumbai Zone;
4. Commissioner of State Tax, Maharashtra;
5. Jurisdictional Officer/Concerned Officer;
6. Web Manager, [WWW.GSTCOUNCIL.GOV.IN](http://WWW.GSTCOUNCIL.GOV.IN);
7. Office copy.