

TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Constituted under Section 99 of Tamil Nadu Goods and Services Tax Act 2017)

A.R.Appeal No.04/2024 AAAR

Date: 21.08.2024

BEFORE THE BENCH OF

Sh. Ashish Varma, I.R.S., Pr. Chief Commissioner of GST & Central Excise, Member, Appellate Authority for Advance Ruling, Tamil Nadu	Dr. D. Jagannathan, I.A.S., Commissioner of Commercial Taxes, Member, Appellate Authority for Advance Ruling, Tamil Nadu
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Order No. AAAR/9/2024 (AR)

(Passed by Tamil Nadu State Appellate Authority for Advance Ruling under Section
101(1) of the Tamil Nadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamil Nadu Goods & Services Tax Act 2017 ("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the Order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.
2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate 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) of Section 97 for advance ruling;
 - (b) on the concerned officer or the jurisdictional officer in respect of the applicant.
3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.
4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

Name and address of the Appellant	M/s.Arthanarisamy Senthil Maharaj, No.114, Race Course Road, Coimbatore Central, Coimbatore – 641018.
GSTIN or User ID	33AEQPM3966D2ZA
Advance Ruling Order against which appeal is filed	Advance Ruling No.07/ARA/2024 dated 30.04.2024
Date of filing appeal	06.06.2024
Represented by	Shri A. Senthil Maharaj, Proprietor Shri K. Rajendran, Consultant
Jurisdictional Authority - State	Trichy Road Circle, Coimbatore Division
Jurisdictional Authority - Center	Divison-III, Coimbatore Commissionerate
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Payment of Rs.20,000/- (CGST-10,000/- and SGST-10,000/-) made vide Challan CPIN 24053300558796 dated 29.05.2024.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are in *pari materia* and have the same provisions in like matter and differ from each other only on few specific provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act, 2017 would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act, 2017.

2 The subject appeal was filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 (hereinafter referred to 'the Act') by M/s.Arthanarisamy Senthil Maharaj (hereinafter referred to as 'Appellant'). The Appellant is registered under the GST Act vide GSTIN 33AEQPM3966D2ZA. The appeal was filed against the Advance Ruling No.07/ARA/2024 dated 30.04.2024 passed by the Authority for Advance ruling, Tamilnadu ('AAR') on the Application for Advance ruling filed by the Appellant.

3.1 The Appellant is a proprietorship unit falling under the administrative control of 'STATE' and they are providers of taxable service falling under the category of 'Renting of Immovable Property Service' falling under Service Accounting Code 997212. The Appellant had applied for Advance Ruling vide application ARA-01 No.90/2023 dated 14.06.2023, seeking a ruling on the admissibility of Input Tax Credit (ITC) on the 'Rotary Parking System' falling under HSN code 8428. The AAR vide Ruling No.07/ARA/2024 dated 30.04.2024 ruled that ITC is not admissible on the 'Rotary Parking System' desired to be installed by the applicant.

3.2 Aggrieved over the said ruling pronounced by the AAR, the Appellant has filed the instant appeal. Under the grounds of appeal as submitted by the Appellant, they have put forth the following points in support of their defence, viz.,

- (i) That the supply of rotary car parking system involves two vital activities, viz., the goods falling under HSN : 8428 90 90 and Installation service falling under SAC : 995468, and accordingly is to be treated as a 'composite supply', where the supply of goods is the principal supply and that the supply of installation service is incidental and ancillary in the composite supply which gets subsumed;
- (ii) That the installation of car parking system is for furtherance of business, as the provisioning of renting service is naturally dependent on the various allied services which are essential for enhancement of the quality of output service;
- (iii) That this would result in increased contribution to the exchequer, in the form of taxes payable on (i) the enhanced rent receivable from the tenants, and (ii) from the consideration receivable separately towards the parking services provided to the customers of the tenants; that especially under the second category, the provision of service is solely dependent on the Rotary parking system and installation thereof;
- (iv) That all the eligibility and conditions for taking ITC on the goods/services as laid down in Section 16 of the CGST/TNGST Act, 2017, have been complied with, and that it is not the case of the Department that there was no compliance of legal provisions in the instant case by the appellant; they are therefore entitled to avail the ITC on the composite activity of supply of Rotary Car Parking system and the installation thereof, which are intended for furtherance of business (Renting of Immovable Property), for which registration has been obtained;
- (v) The AAR has observed that after installation only, it takes the shape of car parking and what was supplied were only constituent parts of the parking system, and thereby the AAR has failed to appreciate the practice followed in the industry for the sake of convenience in packing, safe handling and ease of transportation, as even in the case of a ceiling fan, the parts are dismantled for ease of transportation;
- (vi) That it would be anomalous to conclude that the execution of basic civil work to the tune of 5% of the total cost, which also was borne by the customer themselves and not forming part of the value of supply, would have the effect of eating away the legitimate benefit of ITC in the instant case;
- (vii) That there cannot be any justification in the denial of ITC on the plant and machinery, just because the civil foundation and structural support is created for the purpose of safety and stability. That the specific inclusion of such foundation and structural supports, which are required for placing the Apparatus or Equipment or Machinery, would establish the legal position that ITC cannot be blocked, even if the said activity falls under works contract service;
- (viii) That the credits are blocked only in respect of the activities relating to construction of an immovable property and not for the installation of parking system, which is a movable property;
- (ix) That as per the definition of 'immovable property', under the General Clauses Act, 1897, the qualifying statements "as in the case of trees and shrubs", as in the case of walls and buildings" and "imbedded for the permanent

beneficial enjoyment of that to which it is attached", would make it amply clear that the parking system is not attached to earth and therefore, the same cannot be construed to have attained the status of 'immovable property'.

- (x) That the commissioning of the parking system is an independent installation in the premises of the taxpayer and certainly not part of the building;
- (xi) That in terms of the guidelines contained in CBIC Circular No.58/1/2002-CX dated 15.01.2002, if the items assembled or erected at site and attached by foundation to earth cannot be dismantled without substantial damage to its components and thus cannot be reassembled, then the same would not be considered as movable and will therefore not be excisable goods; that though the clarification was provided in the context of considering a particular item as excisable goods, would throw the guiding light on the subject matter covered in the instant case;
- (xii) That there can be no legal sanctity for the observations of the AAR to the effect that the car parking system falls within the meaning of Section 3(26) of the General Clauses Act, 1897 (permanently fastened to anything attached to earth) and Section 3(c) of the Transfer of Property Act, 1882 (attached to what is imbedded for the permanent beneficial enjoyment of that to which it is attached), by placing reliance on the decision of the Hon'ble High Court of Allahabad, in the Tax Revision case No.910/2001, in respect of the Commissioner Trade Tax U.P. Lucknow Vs S/S Triveni N.L.Ltd.,;
- (xiii) That the observations of the AAR that rotary parking has been built in the own land of the applicant, with a view to retain the existing tenants and to have full occupancy rate, cannot prevent the appellant to sell or transfer to another place, or upgrade the system; Likewise, the observation of AAR that it is not the case of the applicant to dismantle and move the structure to some other place, and that the intention is to enjoy the benefit until the system ceases to exist or function, is not proper as the intention is the prerogative of the taxpayer;
- (xiv) That the appellant emphatically states that the car parking system can be easily dismantled by removal of bolts and screws with simple screw driver technology for installation elsewhere to have the same characteristics and discharge of similar functions;
- (xv) That the AAR had erred in equating the installation of Petrol tank as discussed in the case of Hon'ble Supreme Court of India involving Indian Oil Corporation and Municipal Corporation of Greater Bombay, and that the inference drawn from the said case is not applicable to the instant case, as the parameters for installation of petrol tank are entirely different from that of the Car Parking system and the attempt to draw parallel between the two contrast situations would be futile exercise; that the dismantling of petrol tank involves welding process and that the same would almost become a scrap while dismantling, whereas the car parking system can be installed without involving welding technology and can be assembled, disassembled and re-assembled any number of times.
- (xvi) That therefore, the parking system cannot be construed to have attained the status of immovable property, so as to fall under the category of works contract service and to attract disqualification under Section 17(5)(c)

and 17(5)(d) of the CGST/TNGST Act, 2017; That the specific exclusion of plant and machinery from the blocked credits and inclusion of civil foundation and structural supports as plant and machinery would have the effect of liberating the parking system from the clutches of 'blocked credits', even if the activity of installation is to be construed as works contract service;

(xvii) That the definition of 'plant and machinery', as per the explanation appended to Section 17 includes apparatus, equipment and machinery fixed to earth by foundation or structural support, but excludes (i) land, building or any other civil structures, (ii) telecommunication towers, and (iii) pipelines laid outside the factory premises.; that the inference from the inclusive part is that ITC is admissible on the construction of this activity for placing the Apparatus or Equipment or Machinery and that the ITC cannot be blocked, even if the said activity is falling under works contract service.; that the inference from the exclusion part is the ITC cannot be blocked on such foundation and structural supports for placing the Apparatus or Equipment or Machinery, that the parking system cannot fall within the scope of civil structures, and that there is no availment of ITC on that part of the civil structure, as the same is covered under the customer scope of work.;

(xviii) That with regard to the AAR's observations on the definitions of the terms like Civil Structure, Structure, Building, Foundation, etc., the appellant stated the following points, i.e.,

- Car parking is covered under the category of Apparatus, Equipment and Machinery
- The foundation and structural support is altogether different from the parking system and that the same are intended only for providing safety and stability of the parking system.
- The primary object is to handle and move vehicles from one place to another, and therefore it falls under the category of plant and machinery.
- The civil foundation work is required to be carried out by the customer as per the foundation drawings provided by the supplier, and since there is no mention of any other civil structure in the customer scope of works, the exclusion clause 'any other civil structure' does not have any application to this case.
- The definition of 'structure' as per the Tamil Nadu Combined Development and Building Rules, 2019 does not throw any light to suggest that there was construction of a structure in this case.
- There is an unambiguous coverage in the inclusion clause of 'plant and machinery' for such foundation and structural support for placing the Apparatus or Equipment or Machinery.
- The definitions relating to 'structure', 'foundation' and the observations of AAR relating to transmission of the load of parking system along with vehicles over it, etc., do not have any significant relevance to the subject matter.
- In any case, there is no availment of ITC on the civil foundation work and structural support, as the value of the said work executed by the customer as an independent activity, does not form part of the installation of the parking system.

(xix) That there is a distinct difference between the 'Lift' and 'Parking system.'; that as per the Ruling No.10/2020 dated 08.06.2020 in the case of M/s.Jabalpur Hotels (P) Ltd., the Authority for Advance Ruling, Madhya Pradesh, ruled that ITC is not admissible on the installation of lift, as it becomes an integral part of

the building upon piece-by-piece installation; whereas the parking system is kept outside and is not an integral part, can be dismantled and installed by simple screw driver technology without losing the identity; is intended for enhancement of service standards and not mandatory; it contributes for furtherance of business to fetch enhanced income and resultant GST; it does not require any approval or licence from any authority; and it is designed for movement of inanimate objects.;

- (xx) That the appellant has not obtained any approval from any authority for such installation, whereas in the case of lift, approval from the Local Planning Authority (LPA) and licence by the Electrical Engineer of the State Government are warranted; the appellant further stated that they were under the bonafide belief that there may not be any requirement of approval from the competent authority, based on the impression that the Tamil Nadu Combined Development and Building Rules, 2019, (as referred by the AAR), came into force on 04.02.2019, which may not have applicability in respect of the buildings constructed prior to that.; that in any case, the observations of AAR on this aspect may not have relevance for the impugned issue;
- (xxi) That the observations of AAR in considering the constituent parts/components to be analogous to that of building blocks utilized in the construction of multi-storeyed conventional car parking seems to be subjective in nature and without legal sanctity, as it cannot be equated to a civil structure.
- (xxii) That without prejudice to any of the arguments advanced, the inordinate delay of 238 days in pronouncing the original ruling by the AAR, amounts to denial of justice.

PERSONAL HEARING:

4.1 Shri A. Senthil Maharaj, Proprietor and Shri K. Rajendran, Consultant and the authorized representative (AR) of M/s.Arthanarisamy Senthil Maharaj, appeared for the Personal Hearing on 16.07.2024. The AR reiterated the submissions made by them in the 'Grounds of Appeal' filed along with the application. The AR stated that the appellant renders 'Renting of Immovable Property Service' of the premises owned by him. He clarified that the parking system is a separate structure falling under CTH 8428 and that the same is not part of the building.

4.2 The AR stated that the parking system is not to be compared to 'Lifts' which are part of a building, and the ITC of which is clearly blocked under Section 17(5) of the CGST/TNGST Act, 2017. While the parking system can be dismantled as such using a simple screw driver technology without any damage to it and the building, a lift on the other hand cannot be dismantled without substantial damage to it and the building to which it is attached.

4.3 The AR further added that the Authority for Advance Ruling, Tamilnadu has erred equating the instant case to the construction of a Petrol Tank, and in holding that the product emerges and attains the characteristics of CTH 8428 only on being installed at the premises of the appellant, whereas the rotary parking system is a separate, identifiable product that has emerged already at the point of billing by the supplier.

4.4. When the Members enquired as to whether the billing by the supplier is separate for the supply of goods and for the supply of service, i.e., installation and commissioning, the AR replied that the billing is composite in nature. The Members further enquired whether any permission is required to be obtained by the appellant from any local authority towards commissioning of the parking system. The AR replied that they have not sought any permission in this regard from any local authority so far. The Members then requested the AR to furnish the architectural design/drawing for the foundation work carried out in this case, and the copy of brochure relating to the goods in question, i.e., the rotary car parking system. The AR undertook to furnish the documents sought for by the Members in a couple of days' time, and explained further that the foundation work which is to be undertaken by them accounts for just 5% of the overall project cost, and that they are not availing any ITC in relation to the said foundation work carried out by them.

4.5 Accordingly, the AR concluded that the rotary parking system is not to be considered as a civil structure or an immovable property, and that the same is movable in nature and falls within the category of 'Plant and Machinery', as it fulfills all the criteria relating to it as defined in the Act. He added that as both the clauses (c) and (d) of Section 17(5) of the Act, clearly excludes 'Plant and Machinery' from its ambit, ITC on the same is eligible to be availed by the appellant even if it is fixed to earth by foundation or structural support, as provided for in the said definition.

4.6 As undertaken, the AR through their e-mail dated 17.07.2024 furnished the following documents, which are taken on record, viz.,

- (i) The Brochure in respect of the Parking system manufactured by M/s.Parklayer.
- (ii) Drawing in respect of the Foundation work.

On perusal of the documents furnished, it is seen that under the brochure, various types of parking systems, provided by the supplier (M/s.Park Layer), viz., Rotary Parking, Tower Parking, Pit Puzzle G+1-1, Puzzle Parking G+1, Puzzle Parking G-1, Stack Parking and Turn table Parking, alongwith the respective technical specifications are provided. In respect of the 'Rotary Parking', specifications relating to parking capacity, system dimensions, Gear Motor, Speed, Motor control, Electrical Power Source, Safety devices, etc., have been provided. Perusal of the design/drawing of the Foundation work to be carried out prior to installation of the rotary parking system, suggests that a specialized foundation as per the requirement is required to be created along with the steel structure which is a basic frame work of the parking system.

DISCUSSION AND ANALYSIS

5.1 We have carefully considered all the material available on record, the applicable statutory provisions, various submissions made by the appellant in the 'Grounds of Appeal', and during the personal hearing.

5.2 We find that under the 'Statement of facts', furnished along with the original Application form for advance Ruling in 'Form GST ARA-01', the appellant has inter-alia stated the following, viz.,

- They are providers of taxable service falling the category of Renting of Immovable Property (Commercial building), classifiable under SAC : 997212 for the purpose of GST compliance.
- Among the various facilities provided, one essential facility is provision of parking facility for the tenants of the commercial building as well as the customers of those tenants, who make frequent visits to the commercial building in connection with the official and business transactions happening on a regular basis between the tenants and their customers.
- That the rotary parking system is an independent installation and certainly not part of the building.
- That though the parking system is being fixed to the base bed, it is detachable.
- That the impugned goods and/or services are intended to be used for furtherance of business (output service).
- That the parking system is a separately identifiable and distinct product altogether falling under HSN code : 8428; the identity of the goods remains the same, even if the product is embedded to earth by bolts, nuts and screws on the bed created for that purpose; such installation is necessitated only for the purpose of protection of the equipment from falling down; that the same can be easily dismantled by removal of the bolts, nuts and screws with simple screw driver technology for installation elsewhere to have the same characteristics and discharge of similar functions.

5.3 Further, during the personal hearing on 09.01.2024 before the AAR, they have reiterated the following points, viz.,

- The work of bringing up the parking facility at the applicant's premises cannot be termed as works contract service, and that the same amounts only to a composite supply.
- That the parking facility is installed at the premises of the applicant and not in the building.
- That they have brought out a comparative study between a lift and a parking facility in their submission so that the difference could be appreciated in relation to the ITC eligibility.

5.4 From the above, we observe that the appellant renders 'Renting of Immovable Property Service' of the commercial premises owned by him, and that the appellant is proposing to install a 'Rotary Car Parking System', within the premises owned by him, but not within the building. We also observe that the provisioning of parking facility is for the tenants of the commercial building as well as the customers of those tenants.

5.5 To begin with, the relevant provisions of Section 17(5) of the CGST Act, 2017 that impacts the issue in the instant case, is reproduced below for facilitation, -

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

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

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

Further, the expression "plant and machinery" as defined in the explanation under Section 17 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.

5.6 It could be seen from the above that the exclusion clause, viz., 'other than plant and machinery', finds a place under both the clauses (c) and (d) of Section 17(5) of the CGST Act, 2017, from which it gets conveyed that availment of ITC on 'plant and machinery' is not blocked under the said provisions. It could also be seen from the explanation relating to 'plant and machinery' that apparatus, equipment and machinery gets covered under the said category along with foundation and structural support by which they are fixed to earth, but excludes land, building or any other civil structure.

5.7 In this regard, we note that the appellant has come up with the definitions of Apparatus, Equipment and Machinery in para 52 of the 'Grounds of Appeal', in support of their defence, as given below :-

Apparatus	A machine or device consisting of fixed or movable parts that work together to perform some function
Equipment	The articles or implements used for efficient functioning in respect of a specific purpose or activity.
Machinery fixed to earth by foundation or structural support	Mechanical contrivances which, by themselves or in combination with other mechanical contrivances, by the combined and inter dependent operation of their respective parts generate power, or evoke, modify, apply, or direct natural forces with the object in each case or effecting a definite and specific result.

Accordingly, the appellant has inferred that by virtue of the inclusion clause involving foundation and structural supports, ITC is admissible on the construction of this activity for placing the Apparatus or Equipment or Machinery, and that the ITC is not blocked even if the said activity falls under Works Contract Service. While taking up the three items referred above for discussion relating to the rotary parking system, we observe that an 'equipment' is to be effectively ruled out, as it refers to just articles or implements for a specific purpose of activity. Likewise, the term 'Machinery' refers to just a mechanical device or a gadget aimed at achieving a definite or specific result. An 'Apparatus' of course talks about *'a machine or device consisting of fixed or movable parts that work together to perform some function.'* Here again, it talks about one particular machine or device that performs a function along with fixed or movable parts.

5.8 On the contrary, a 'Rotary Parking System', as the name suggests, is a system in its own right, much more than an equipment, machinery or an apparatus, as it involves the functionality of various items like machines, equipments, motors, frame assembly, pallets, electrical panels, Hydraulic power packs, Operator boxes to floor/walls/columns and other electrical and electronic support system, a specialised civil foundation with steel structure to withstand the load, etc. Therefore, it could be seen that the overall system (Rotary Parking), takes shape and becomes operational only at the site of the appellant when all the constituent parts are assembled first and installed over the civil foundation and steel framework specifically designed for this purpose. At this juncture, it would be pertinent to have look at the definition of **"Foundation"** in terms of the Tamil Nadu Combined Development and Building Rules, 2019, (TNCDBR' in short) which means "part of the structure, which is in direct contact with ground and transmits loads over it". The term 'Structure' is also defined under TNCDBR, whereby **"Structure"** means *something constructed or built having a fixed base on or other connection to the ground or other structure*. Further, the term "Structure" in the context of Civil Engineering refers to anything that is constructed or built from different inter-related parts with a fixed location on the ground. And, civil structures are man-made structures built by utilising any material, viz., cement, steel etc., based on requirement and purpose of the structure. We are therefore of the opinion that the 'Rotary Parking system' ideally falls within the category of a 'civil structure', which is clearly excluded under the expression 'plant and machinery' as in the explanation referred above. Moreover, as they cannot be termed as equipment, machinery or an apparatus by any means whatsoever, we are convinced that they do not fall within the category of 'Plant and Machinery', and that they are very much part of the immovable property that is being rented out in the instant case.

5.9 Further, in order to appreciate and understand the dynamics of 'Renting of immovable property service', one needs to start with the definition of 'Immovable Property'. In terms of Section 3(26) of the General Clauses Act, 1897, the expression 'immovable property' shall include land, benefits arising out of land and things attached to the earth or **permanently fastened to anything attached to the**

earth. Further, as per Section 3 of the Transfer of Property Act 1882, the phrase "attached to earth" means

- (a) rooted in the earth, as in the case of trees and shrubs;
- (b) imbedded in the earth, as in the case of walls or buildings; or
- (c) **attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.**

5.10 Normally, when an immovable property is leased/rented out, especially in a commercial/residential complex, the aspect of 'common area' for general use by the tenants, gets attached to it by default. As per the 'Wikipedia website', a common area is the "area which is available for use by more than one person. The common areas are those that are available for common use by all tenants, (or) groups of tenants and their invitees." And, more specifically, as per Section 2(n) of the Real Estate (Regulation and Development) Act, 2016 (RERA),

(n) "**common areas**" mean—

(i) *the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;*

(ii) *the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;*

(iii) *the common basements, terraces, parks, play areas, open parking areas and common storage spaces;*

(iv) *the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;*

(v) *installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;*

(vi) *the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;*

(vii) *all community and commercial facilities as provided in the real estate project;*

(viii) *all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use;*

5.11 On a combined reading of the above, one can understand that when an immovable property, especially in the nature of a commercial/residential complex is rented out, it is not just the building or part of the building that gets rented out. Rather, it includes the land appurtenant thereto which is incidental to the use of such building or part of the building, the common or shared areas and the facilities

relating thereto, as well. We are therefore of the opinion that the service relating to 'Renting of Immovable property' includes the land, building, staircase, lifts, common basements, play areas, open parking areas, common storage spaces, water tanks, sumps, apparatus connected with installations for common use, all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use. The corollary is that all the common areas and facilities extended become part of the immovable property that is being rented out. Further, it is not the case here that rent is collected separately for the living space, and for the other common areas or facilities like lifts, basements, play areas, parking facility, water tanks, sumps etc., and that the same is collected for the single service, viz., 'Renting of Immovable Property'.

5.12 We further observe that the overall process relating to commissioning of the rotary parking system, involves three major activities to be carried out, viz.,

- (i) Supply of all the materials required for installation of the parking system.
- (ii) Foundation work to support the entire structure to be installed.
- (iii) Installation of the parking system at the site of the customer.

5.13 On perusal of the relevant invoices as available on file of M/s.Park Layer, who reportedly undertake supply and installation of the rotary parking system, it is seen that the car parking system is not supplied as such as a whole, and the constituent parts of the Car parking system, viz., Gauge Plate, Bolts, Hex nuts, Frame Assembly, and Pallet with Electricals have been supplied in three lots under three invoices dated 19.09.2023, 12.12.2023 and 15.12.2023. Perusal of the quotation dated 09.05.2023 reveals that the quotation is for 'supply, installation, testing and commissioning of Rotary Parking – SM18XL system'. The quotation also specifies the 'Customer Scope of Work' which involves completing the civil foundation and structural work as per the foundation drawings provided by Park Layer by the appellant (the customer). The customer scope of work, inter-alia involves the other work as given below:-

- Any violations from the furnished drawings would be intimated and corrections to be made accordingly.
- Provide erection support by way of obtaining required approvals, permissions and other local body issues. To arrange for all statutory permissions/Approvals from Government or any other relevant authorities pertaining to installation/inspection/certification of these equipment.
- To provide the material and assistance at site required for placing / fixing of equipments, electrical panel, hydraulic power packs, Operator Boxes to floor/walls/columns etc.
- To provide Single phase and Three Phase electric power supply for illumination, operation of required tools/machines and trials and trials and adjustment of Car Parking System free of cost during the installation.

- To install Backup Generator of suitable capacity to ensure power supply in case of power failure.

5.14 At this juncture, we take note of the claim of the appellant as in paragraph 24 of the 'Grounds of Appeal', that the cost of the works relating to civil foundation and structural support which works out to around Rs.4.5 lakhs has been borne by the appellant and that there is no availment of ITC on that part of the civil foundation work and basic frame work carried out by the appellant himself. Further, perusal of the design/drawing in respect of the foundation work as furnished by the appellant, suggests that a specialized foundation as per the requirement is created and the steel structure which is a basic framework of the parking system, is erected on such foundation. Under these circumstances, we observe that the specialised foundation and steel structure is very much a requirement for the installation of rotary car parking system on a permanent basis. We also notice that the explanation relating to the expression 'Construction', for the purposes of clauses (c) and (d), of Section 17(5), includes 're-construction, renovation, additions or alterations or repairs, to the extent of capitalization', to the said immovable property. In this regard, it could be seen that the rotary parking system apart from being an 'addition' to the immovable property that is being rented out, also becomes an 'immovable property' in its own right. Further, under normal circumstances, the expenses relating to the procurement and installations of such magnitude are required to be capitalised in the books of accounts of the taxpayer. Accordingly, we are of the opinion that the entire rotary parking system with all the specialised foundation, structural support and installation works, becomes an immovable property of the appellant, as it attains the status of an 'immovable property' on construction and commissioning of the same.

5.15 The appellant has contended that the AAR had erred in equating the installation of Petrol tank as discussed in the case of Hon'ble Supreme Court of India involving Indian Oil Corporation and Municipal Corporation of Greater Bombay, to that of the Car Parking system, as the parameters for installation of petrol tank are entirely different and the attempt to draw parallel between the two contrast situations would be a futile exercise. On perusal of the ruling of the AAR, we come to know that the AAR had actually attempted to apply the 'permanency test', discussed therein which is crucial to the instant case. Accordingly, it is to be understood here that irrespective of the comparison between the goods involved, it is the ratio of the 'permanency test' as pronounced by the Hon'ble Supreme Court, which needs to be considered. For the purposes of clarity on the issue, the operative portion of the judgment dated 27.11.1990 is reproduced below:-

*"The tanks, though, are resting on earth on their own weight without being fixed with nuts and bolts, they have permanently been erected without being shifted from place to place. **Permanency is the test. 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**"*

It could be seen from the above, that this ratio applies to any structure attached to earth, and that it could be used to determine whether the same is movable or permanently attached to earth. Applying the above test to the rotary parking system in the instant case, it becomes clear that the rotary car parking system is attached to earth permanently, whereby it attains the status of an 'immovable' property, as the car parking structure as such cannot be moved in the same position from the place of erection, but that the same could be moved only after dismantling the constituent parts for re-erection at some other place.

5.16 At this stage, we take note of the appellant's argument that the intention is the prerogative of the taxpayer, in so far as it relates to the installation, usage and disposal of the impugned parking system, as he can sell or transfer the same to another place. In this regard, while accepting the claim of the appellant that the intention is the prerogative of the taxpayer, we are of the opinion that the purpose behind installing the said facility within the premises of the taxpayer, assumes significance in the context of the instant case. It may be noted that the specific purpose behind installing the rotary car parking system within the premises of the taxpayer is to cater to the parking needs of the tenants, and their customers/invitees which in turn serves only the cause of the tenants. It is embedded to earth for the permanent beneficial enjoyment of the tenants of the complex for whom the premises along with facilities are rented out. Accordingly, the claim of the appellant that they may sell or transfer the same at a later date, and that the system is capable of being assembled, disassembled and re-assembled any number of times, cannot alter the basic purpose for which it is installed/created.

5.17 Likewise, we find that the installation of parking facility is now a requirement for high rise buildings in terms of the Tamil Nadu Combined Development and Building Rules, 2019, wherein under Rule 39(5), it has been stated as follows:-

"(5) Parking and Parking facilities.- For the use of the occupants and of persons visiting the premises for the purposes of profession, trade, business, recreation or any other activity parking spaces and parking facilities shall be provided within the site to the satisfaction of the competent authority and conforming to standards prescribed in the Annexure – IV."

Further, specific provisions have been provided for automated/ mechanically operated parking under Part-III of Annexure-IV as referred above, which reads as,

"For automated/mechanically operated parking, the Executive authority notwithstanding anything containing in the rules subject to such conditions as may be decided by the executive authority may permit parking lots/structures taking into account the safety and environmental aspects."

Hence, for the purposes of installation of rotary car parking system, it is felt that approval of the competent executive authority is now mandatory based on the floor area index of the building. Therefore the claim of the appellant in this regard that they have not obtained any approval so far, does not absolve them of the requirements to be complied with, which is statutory.

5.18 The appellant has claimed that the supply of rotary car parking system involves two vital activities, viz., the goods falling under HSN : 8428 90 90 and Installation service falling under SAC : 995468, and accordingly is to be treated as a 'composite supply', where the supply of goods is the principal supply and that the supply of installation service is incidental and ancillary in the composite supply which gets subsumed. In this regard, it could be observed that as discussed in detail in paras 5.12 and 5.13 above, the overall process of setting up the parking system involves three major activities, viz., supply of goods (constituent materials), installation work, and civil work (foundation and structural work). It is seen under the relevant quotation of M/s. Park Layer that while supply of goods and installation are within the supplier's scope of work, the civil work (foundation and structural support) is assigned as the customer's scope of work. As discussed already, the overall system (Rotary Parking), takes shape and becomes operational only at the site of the appellant when all the constituent parts are assembled first and installed over the foundation specifically designed for this purpose, whereby it attains the status of an immovable property at the site of the appellant. Accordingly, in the instant case, it becomes a case of 'composite supply' at the hands of supplier (Park Layer) for supply of goods and installation service, where supply of goods is the principal supply. This is precisely the reason as to why the AAR in its impugned ruling dated 30.04.2024, had ruled that the situation in the instant case is covered under the provisions of Section 17(5)(d) of the CGST Act, 2017, as it begins with the phrase "goods or services or both received by a taxable person for construction of an immovable property-----", rather than 17(5)(c) which begins with the phrase "works contract services when supplied for construction of an immovable property ----".

5.19 The appellant has contended that the installation of car parking system is for furtherance of business, as the provisioning of renting service is naturally dependent on the various allied services which are essential for enhancement of the quality of output service. It is reiterated here that once it is held that the receipt of goods and service by the appellant in the instant case is towards construction of an immovable property, the availment of ITC on the same is blocked under 17(5)(d) of the CGST Act, 2017, even if it is used in the course or furtherance of business.

5.20 The appellant has further claimed that this would result in increased contribution to the exchequer, in the form of taxes payable on (i) the enhanced rent receivable from the tenants, and (ii) from the consideration receivable separately towards the parking services provided to the customers of the tenants; that especially under the second category, the provision of service is solely dependent on the Rotary parking system and installation thereof. In this regard, it is to be stated that the admissibility or otherwise of the ITC involved on goods and services received, is not based on the enhanced rent receivable or enhanced taxes payable by the taxpayer, and that the same is determined under the provisions of Sections 16 and 17 of the CGST Act, 2017. As regards the second category of appellant's claim relating to parking services provided to the customers of the tenants, the fact that the parking system is installed within the premises of the appellant goes to prove the point that the facility provided is primarily for the use of tenants which is admitted by the appellant themselves. Even in rare situations, when the facility is

extended to the customers of the tenants, it actually serves the cause of the tenants as they are obliged to accommodate and engage the customers for business purposes. Admittedly, the primary objective in the instant case is to extend the facility to the tenants in relation to 'Renting of Immovable Property' service. Further, it is not the case of the appellant here that they are into providing 'Parking Service' to the general public. Even in the event of considering the fact that they are providing parking service to the customers of tenants or general public and receiving consideration for the same, the ITC eligibility in any case would depend upon the immovable nature or otherwise of the structure constructed for this purpose.

5.21 The appellant has brought out the distinct difference between the 'Lift' and Parking system, and have explained that as per the Ruling No.10/2020 dated 08.06.2020 in the case of M/s.Jabalpur Hotels (P) Ltd., the Authority for Advance Ruling, Madhya Pradesh, ruled that ITC is not admissible on the installation of lift, as it becomes an integral part of the building upon piece-by-piece installation, whereas the parking system is kept outside and is not an integral part, can be dismantled and installed by simple screw driver technology without losing the identity. While accepting and appreciating the fact that a 'lift' and a 'parking system' differ in many aspects, it needs to be clarified here that the ITC eligibility or otherwise, is to be determined based on the immovable nature of the structure installed, and that the same is not determined based on whether the structure is installed within the building or is installed within the premises (common area) of the taxpayer who is rendering 'Renting of Immovable Property service', as discussed in detail in paras 5.10 and 5.11 above. Apart from the above, it is brought to notice that the above mentioned ruling of the Authority for Advance Ruling, Madhya Pradesh, has since been upheld by the Appellate Authority for Advance Ruling, Madhya Pradesh vide Order No.MP/AAAR/04/2020 dated 23.10.2020, by holding that the ITC is not admissible on purchase of Lift as per Section 17(5)(d) of the CGST Act, 2017. Further, it is seen to be discussed in para 5 of the above referred order that, the lift so installed was not a customized lift but a pre-designed one which could be installed by fastening nuts, bolts and other fasteners in the building, and that the lifts can be disassembled without causing any structural damage to the building and reassembled on need and can be resold in open market. As the dynamics of this case appear to be more or less similar to 'rotary parking system' in the instant case, we are of the opinion that the ratio of the said decision applies squarely to the instant case.

5.22 The appellant has stated that without prejudice to any of the arguments advanced, the inordinate delay of 238 days in pronouncing the original ruling by the AAR, amounts to denial of justice. This contention of the appellant merits attention, and as referred by the appellant, such undue delay may in certain circumstances be prejudicial to interests of applicants and may be construed by some as denial of justice. The Authority for Advance Ruling, Tamilnadu, despite administrative and other constraints upon it that may be responsible for such delay, would do well to strictly adhere to the timeframe fixed under Section 98(6) of the CGST/TNGST Acts, 2017, and try to ensure that such delays do not happen in future.

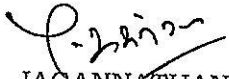
6. In fine, we are of the considered opinion that within the facts and circumstances of this particular case, the 'rotary parking system', installed and

commissioned at the premises of the appellant amounts to construction of an immovable property, whereby the input tax credit on the purchase of 'rotary parking system', by the appellant becomes ineligible under Section 17(5)(d) of the CGST/TNGST Acts, 2017.


7. In view of the detailed discussion supra, we pass the following order.

ORDER

The ruling pronounced by the AAR in Advance Ruling No.07/ARA/2024 dated 30.04.2024 is upheld and accordingly, the appeal filed by the appellant is dismissed.


(D. JAGANNATHAN)
Commissioner of Commercial Taxes
Tamil Nadu/Member AAAR

8/12


(ASHISH VARMA)
Pr. Chief Commissioner of GST
& Central Excise, Tamilnadu &
Pondicherry Zone/Member AAAR

To

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//By RPAD//

Copy submitted to:-

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