



HARYANA AUTHORITY FOR ADVANCE RULING,  
GOODS AND SERVICES TAX,  
HARYANA VANIJYA BHAWAN, PLOT NO 1-3, SECTOR 5,  
PANCHKULA-134151 (HARYANA)



ADVANCE RULING NO.HAR/HAAR/R/2019-20/02  
(In Application No.: 02/2019-20, dated 05.04.2019)

Name & Address of the Applicant	:	M/s VDM Hospitality Private Limited, FF-15, Block-C, Omaxe, Guragon Mall, Sohna Road, Gurgaon, Haryana.
GSTIN of the Applicant	:	06AAFCV5809A1ZL
Date of Application	:	05.04.2019
Clause(s) of Section 97(2) of CGST/HGST 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	:	03.06.2019
Present for the Applicant	:	Sh. Ritesh Wahal (C.A)

Memo No.: 1042/AAR

Dated: 28/08/2020

**1. Annexure I**

**Question on which advance ruling is required:**

- 1.1 Whether the Temporary Structure (i.e. hall or pandal or shamiana or any other place) built up with Iron/Steel Pillars tight up with Nuts and Bolts (as shown picture enclosed) specially created for functions would be treated as Movable or Immovable property in pursuance to the GST Law ?
- 1.2 Whether credit of the tax paid on Iron/Steel Pillars tight up with Nuts and Bolt used for the creation of Temporary Structure (i.e. hall or pandal or shamiana or any other place) especially for functions are admissible under section 16 of the CGST Act, 2017?

**2. Annexure II**

**Statement of relevant facts having a bearing on the question raised:**

- 2.1 The Appellant is a company engaged in the business of organizing wedding & other banquet functions on a large scale, from its premises at Ambience Golf Drive, Near Cairtriona Apartment, Behind Ambience Mall, Gurugram, Haryana. The said location is among the premier locations for wedding functions in Delhi NCR.
- 2.2 The Appellant creates a temporary structure (i.e. a hall) on the above mentioned premises, though the following process:



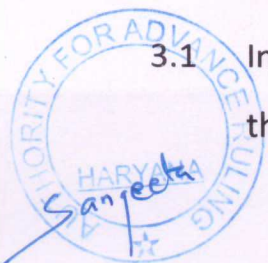


- 2.2.1 A hangar/frame is created for the entire structure by using Iron and steel pillars and sheets, pipes, 'ballies', and angles and the same has been tightened up with nuts and bolts.
- 2.2.2 This frame is covered with iron sheets, and canvas, for coverage and water-proofing and Plywood is used in the inner portion to make the roof smooth and then the decoration is done. The said frame is also decorated on the outside, through design modifications and sheet material, to resemble the thematic identity of the interior;
- 2.2.3 Pictures of the structure & the hall during construction and dismantling process, along with the exterior and interior view of thematic product season-by-season, attached for your kind perusal.
- 2.2.4 Further, there is no permanent affixation of pillars and pre-fabricated shelters to the earth. The structures were custom made and these are fixed to foundations by nuts and bolts, not with the intention to permanently attach them to the earth or for the beneficial enjoyment thereof, but only since securing these to a foundation is necessary to provide stability and wobble/vibration free operation and to ensure stability of such temporary structure (i.e. hall or pandal or shamiana).
- 2.2.5 An attachment of this kind without the necessary intent of making the same permanent cannot, in our opinion, constitute permanent fixing, embedding or attachment in the sense that would make that structure a part and parcel of the earth permanently. In that view of the matter we see no difficulty in holding that such temporary structure (i.e. hall or pandal or shamiana) in question were not immovable property.

### 3. Annexure III

**Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant's view point and submissions on issues on which the advance ruling is sought):**

- 3.1 In our case, the fundamental issue which needs to be decided is whether the said temporary structure (i.e. hall or pandal or shamiana or any other





place) created especially for functions is movable or immovable property. However, Movable and Immovable property have nowhere defined under the Act. In this regard, it would be useful to refer the relevant statutory provisions to examine, what would constitute as moveable or immovable property. The expression "*moveable property*" has been defined in Section 3(36) of General Clause Act, 1897 as under:

*"Section 3(36): "movable property" shall mean property of every description, except immovable property".*

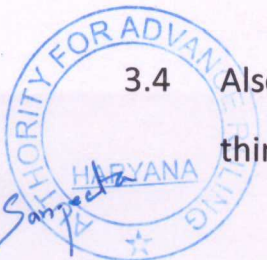
- 3.2 It is obvious that the answer to the question whether the said temporary structure (i.e. hall or pandal or shamiana or any other place) in question are movable property, would depend upon whether they are immovable property. That is because anything that is not immovable property is by its definition "*movable*" in nature. Section 3 of the Transfer of Property Act, 1882 does not spell out an exhaustive definition of the expression "*immovable property*". It simply provides that unless there is something repugnant in the subject or context, 'immovable property' under the Transfer of Property Act, 1882 does not include standing timber, growing crops or grass. Section 3(26) of the General Clauses Act, 1897 similarly does not provide an exhaustive definition of the said expression. It reads:

***"Section 3(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."***

- 3.3 A plain reading of Section 3(26), shows that it defines "*immovable property*" as things attached to the earth or permanently fastened to anything attached to the earth. The term "*attached to the earth*" has not been defined in the General Clauses Act, 1897. Section 3 of the Transfer of Property Act, however, gives the following meaning to the expression "*attached to earth*":

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

- 3.4 Also, Supreme Court in the Case of Triveni Engineering (supra), has defined things which is said to be Movable and Immovable. Also, Supreme Court





heavily relied on the Test of Marketability to decide whether the thing is Movable or Immovable.

4. **Relevant Para of the Judgment is as follows:-**

4.1 Triveni Engineering (supra), highlighted the marketability of the goods: whether they can be taken to the market and sold. From the above finding, it follows that to be taken to the market and sold, the turbo alternator has to be separated into components – turbine and other alternator – but then it would not remain turbo alternator. Therefore, the court held that since turbo alternator gets dismantled into steam turbine and alternator, the test of permanency fails.

4.2 Issue in the case of Sirpur paper Mills Ltd. (supra), is that whether the paper machine assembled at site mainly with the help of components bought from the market was dutiable under the Excise Act. The assessee's argument was that as the machine was embedded in a concrete base, it was immovable property though embedding was meant only to provide a wobble free operation of the machine. Repelling that contention, this court held that just because the machine was attached to earth for a more efficient working and operation the same did not *per se* become immovable property. The Court observed:

***“5. Apart from this finding of fact made by the Tribunal, the point advanced on behalf of the appellant, that whatever is embedded in earth must be treated as immovable property is basically not sound. For example, a factory owner or a householder may purchase a water pump and fix it on a cement base for operational efficiency and also for security. That will not make the water pump an item of immovable property. Some of the components of the water pump may even be assembled on site. That too will not make any difference to the principle. The test is whether the paper making machine can be sold in the market. The Tribunal has found as a fact that it can be sold. In view of that finding, we are unable to uphold the contention of the appellant that the machine must be treated as a part of the immovable property of the company. Just because a plant and machinery are fixed in the earth for***

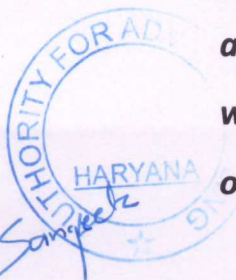




***better functioning, it does not automatically become an immovable property."***

- 4.3 The Supreme Court after taking into consideration of judgment in Sirpur Paper Mills Ltd. V. Collector of Central Excise Hyderabad (1998) 1 SSC 400 and after taking into account the earlier view in the Triveni Engineering & Indus Ltd. v Commissioner of Central Excise 2000 (120) ELT 273 (SC): finally concluded what is the "permanency test" in the case of Solid and Correct Engineering (supra). In Solid and Correct Engineering (supra), the court after analyzing its previous judgments, stated the controlling principle as follows:

***"33. It is noteworthy that in none of the cases relied upon as specified above was there any element of installation of the machine for a given period of time as is the position in the instant case. The machines in question were by their very nature intended to be fixed permanently to the structures which were embedded in the earth. The structures were also custom made for the fixing of such machines without which the same could not become functional. The machines thus becoming a part and parcel of the structures in which they were fitted were no longer moveable goods. It was in those peculiar circumstances that the installation and erection of machines at site were held to be by this court, to be immovable property that ceased to remain movable or marketable as they were at the time of their purchase. Once such a machine is fixed, embedded or assimilated in a permanent structure, the movable character of the machine becomes extinct. The same cannot thereafter be treated as moveable so as to be dutiable under the Excise Act. But cases in which there is no assimilation of the machine with the structure permanently, would stand on a different footing. In the instant case all that has been said by the assessee is that the machine is fixed by nuts and bolts to a foundation not because the intention was to permanently attach it to the earth but because a foundation was necessary to provide a wobble free operation to the machine. An attachment of this kind without the necessary intent of making the same permanent cannot, in our opinion, constitute permanent fixing, embedding or attachment in the***



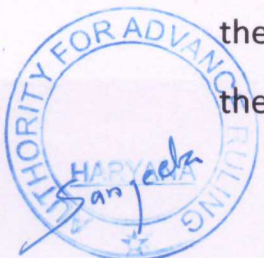


*sense that would make the machine a part and parcel of the earth permanently. In that view of the matter we see no difficulty in holding that the plants in question were not immovable property so as to be immune from the levy of excise duty."*

- 4.4 Here, the distinction between Triveni Engineering (supra) and the later judgment of Solid and Correct Engineering (supra), that in Triveni (supra), the Supreme Court applied dismantling of components and re-assembly as failing the permanency test.

*"20. Further, in the instant case, it is a common ground that a turbo alternator comes into existence only when a steam turbine and alternator with all their accessories are fixed at the site and only then it is known by a name different from the names of its components in the market. The Tribunal recorded the finding that fixing of steam turbine and the alternator is necessitated by the need to make them functionally effective to reduce vibration and to minimize disturbance to the coupling arrangements and other connections with the related equipments. It also noted that the removal of the machinery does not involve any dismantling of the turbine and alternator in the sense of pulling them down or taking them to pieces but only undoing the foundation bolts arrangement by which they are fixed to the platform and uncoupling of two units and, therefore, the turbo alternator did not answer the test of permanency laid down by his court in the case of Municipal Corporation of Generator Bombay (supra). In our view, the findings recorded do not justify the conclusion of the Tribunal in as much as on removal a turbo alternator gets dismantled into its components – steam turbine and alternator. It appears that the Tribunal did not keep in mind the distinction between a turbo alternator and its components. Thus, in our view, the test of permanency fails."*

The Supreme Court, however, later, in Solid and Correct Engineering (supra) concluded that any plant fixed by nuts and bolts to a foundation involving no assimilation of the machinery with the structure permanently and where the civil foundation was necessary to provide a wobble free operation to the machine, the test of permanency fails.



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- 4.5 Further, also in the case of Ispat Industries Limited v Commissioner of Central excise 2006 ELT 164, was a case where the High Court allowed credit of duty paid on angles, channels, plates, etc. which were used in erection, installation and commissioning of the machinery (immovable). The Revenue's appeal against this judgment was rejected by order dated 19.07.2007 in Central excise Appeal No.187 of 2006, by the Supreme Court.
- 4.6 Also, in Lloyds Steel Industries v Commissioner of Central Excise 2004 (64) RLT 732, the High Court allowed credit of cement and steel used for the construction of foundation that were not excisable goods. The Revenue's appeal against the judgment was dismissed. Commissioner of Central Excise v. ICL Sugars Limited 2011 (271) ELT 360 (Kar.) was a Karnataka High Court decision, rejecting the Revenue's appeal holding that plates, etc. used for fabrication and installation of a storage tank would be admissible for credit. The Revenue's sole contention to deny credit was that the storage tank was an immovable property and once erected to the earth becomes non-excisable. Negating this contention, the High Court allowed the credit.
- 4.7 The Revenue contends that the towers and shelters are not per se immovable property but transform and become immovable as they are permanently imbedded in earth in as much as they are fixed to a foundation imbedded in earth. This argument has to be considered in the light of the decisions discussed above. Attachment of the towers in question with the help of nuts and bolts to a foundation (not more than one foot step), intended to provide stability to the working of the towers and prevent vibration/wobble free operation does not *per se* qualify its description as *attached to the earth* in any one of the three clauses (of Section 3 which defined "*attached to the earth*") extracted above. Clearly attachment of the towers to the foundation is not comparable or synonymous to trees and shrubs rooted in earth. It is also not equivalent to entrenching in the earth of the plant as in the case of walls and buildings, for the obvious reason that a building imbedded in the earth is permanent and cannot be detached without demolition. Imbedding of a wall in the earth is not comparable to attachment of a tower to a foundation meant only to provide stability to the plant especially because the attachment is not permanent and what is attached can be easily detached from the





foundation. So also attachment of the tower to the foundation on which it rests would not fall in the third category (attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached), for an attachment to fall in that category it must be for permanent beneficial enjoyment of that to which the tower is attached.

4.8 A number of Apex Court judgments have been delivered on this issue in the recent past and some of the important ones are mentioned above.

4.9 Further, CBEC through its Circular No. 58/1/2002-CX dated 15.01.2002, was relied on, to say that when the final product is considered as an immovable and hence, non-excisable, the same product in CKD condition or unassembled form will also not be dutiable as a whole by applying Rule 2 (1) of the Credit Rules of Interpretation of the Central Excise Tariff. The relevant portion of the circular is extracted hereunder for reference:

***"4. (vi) if any goods installed at site ( example paper making machine) are capable of being sold or shifted as such after removal from the base and without dismantling into components/parts, the goods would be considered to be movable and excisable. The mere fact that the goods, though being capable of being sold or shifted without dismantling, are actually dismantled into their components/parts for ease of transportation etc. they will not cease to be dutiable merely because they are transported in dismantled condition. Rule 2(a) of the Rules for the Interpretation of Central excise Tariff will be attracted as guiding factor is capability of being marketed in the original form and not whether it is actually dismantled or not, into its components. Each case will therefore have to be decided keeping in view the facts and circumstances, particularly whether it is practically possible (considering the size and nature of the goods, capability of goods to move on self-propulsion ships etc.) to remove and sell the goods as they are, without dismantling into their components. If the goods are incapable of being sold, shifted and marketed without first being dismantled into components parts, the goods would be considered as immovable and therefore, not excisable to duty.***





4.10 On an application of the above tests to our case, we are of the opinion that the creation of temporary structure (i.e. hall or pandal or shamiana or any other place) especially for the functions do not constitute annexation and hence cannot be termed as immovable property for the following reasons:

- a) The structure in question are not per se immovable property.
- b) Such structures cannot be said to be *"attached to the earth"* within the meaning of that expression as defined in Section 3 of the Transfer of Property Act.
- c) The fixing of the structure to a foundation is meant only to give stability to the structure and keep its operation vibration free.
- d) The setting up of the structure itself is not intended to be permanent at a given place. The structure can be moved and indeed moved after the repair project for which it is set up is completed.

5. **Discussion:**

5.1 Dealing with the contention of the applicant, it is important to discuss the relevant provision contain in the CGST/ HGST Act, 2017. Section 2(52) defines goods as ***"every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply"***.

5.2 Section 16(a) of the Act provides for eligibility of Input Tax Credit. It reads as ***"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"***.

5.3 Section 17 of the GST Act deals with Apportionment of credit and blocked credits. Section 17(5)(d) reads as ***"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"***.

5.4 Now, as per the definition of goods some movable property is excluded from the category of goods whereas at the same time, some immovable properties are treated as goods. But the terms movable and immovable





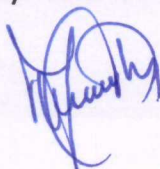
property have not been defined under the GST Act. In laymen terms, any goods that can moved is a movable property and which cannot be moved is immovable property.

5.5 But the General Clauses Act 1897 and the Transfer of Property Act defines both these terms. Section 3(26) of the General Clauses Act says: ***"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"***. Whereas, Section 3(36) defines movable property as ***"property of every description, except immovable property"***. So as per this definition, any property which does not qualify to be immovable property, is a movable property. This definition of immovable property under the General Clauses Act is affirmative in nature as against the definition contained in the Transfer of the property Act 1882, which is negative in nature. As per TPA, immovable property does not include standing timber, growing crops or grass. It further says that *"attached to the 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.

5.6 Now, section 17(5)(d) bars any taxpayer to avail the benefit of Input Tax Credit in case where the goods or services or both received by the said person are used for the construction of an immovable property even if it is in the course or furtherance of business. But the applicant has contended that the structure i.e. the hall or pandal or shamiana constructed/ erected by it is not immovable property.

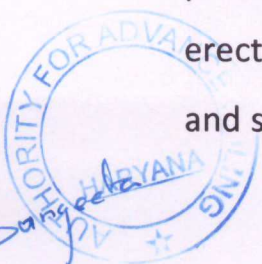
5.7 As per the definition of immovable property contained in the General Clauses Act and the Transfer of Property Act, it is clear that things attached to the earth or permanently fastened to anything attached to the earth is immovable property. Anything imbedded in the earth or attached to what is so imbedded for the permanent beneficial enjoyment of that to which it





is attached, qualifies to be attached to the earth. In the case of applicant, it is an admitted fact that the structure (shamiana, pandal or tent) constructed/ erected by the applicant is fixed to the foundation by nuts and bolts. But the applicant holds that this affixation of pillars and pre-fabricated shelter to the earth is not permanent. So, in essence, the question which needs to be dealt with by this Authority is whether this affixation of the structure with the earth or pillar imbedded in the earth is permanent or temporary. The applicant has quoted some excerpts from the judgment of Hon'ble Supreme Court in Triveni Engineering and Industry Limited (2000) case in support of its case. But it has ignored an important observation of the Apex Court in this case wherein it was observed that in order to determine whether an article is permanently fastened to anything attached to the earth, both the intention as well as the factum of fastening has to be ascertained from the facts and circumstances of each case. The English Law also attaches great significance to the degree and nature of annexation. The Allahabad High Court in S/S Triveni N L Limited has observed that "*permanently fastened to anything attached to the earth*" has to be read in the context for the reason that nothing can be fastened to the earth permanently so that it can never be removed. If the article cannot be used without fastening or attaching it to the earth and it is not removed under ordinary circumstances, it may be considered permanently fastened to anything attached to the earth.

- 5.8 In this case, the applicant company is in the business of organizing wedding and other functions from its own premises at Ambience Golf Drive, Gurugram Haryana. Since, the premises where the structure has been erected is company's own premises, it suggests that the shamiana/ tent/ pandal has been constructed/ erected for permanent enjoyment. It is not the case of applicant that it plans to dismantle and move the structure to some other place. The pictures attached with the application also depict that the civil work has been undertaken on a very large scale at the premises and this also indicates the permanent nature of the construction/ erected. Further, the concretionary base and the pillars used as platform and support to the structure is also of large dimensions and the platform or



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the structure cannot be put to beneficial use without the existence of the other. Merely because the walls and roofs have been replaced with pre-fabricated structure (an Engineering marvel), an immovable property cannot be categorized as movable property. Since, both the degree and nature of annexation/ attachment of the structure to the earth is strong and permanent, the structure in question is an immovable property.

**6. Ruling:**

- 6.1 The structure created by the applicant is an immovable property for the purposes of GST Law.
- 6.2 The applicant is not entitle to the credit of input tax in view of the provisions of Section 17(5)(d) of the CGST/ HGST Act, 2017.

Ordered accordingly.  
To be communicated.

21.06.2019  
Panchkula.

  
(Sangeeta Karmakar)  
Member CGST

  
  
(Madhubala)  
Member SGST

**Regd. AD/Speed Post**

M/s VDM Hospitality Private Limited,  
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Sohna Road, Gurgaon, Haryana.

Copy to:

1. The Principal Commissioner of Central Goods & Service Tax, GST Bhawan, Plot No. 36-37, Sector-32, Gurugram, Haryana.
2. Deputy Excise and Taxation Commissioner (ST), Gurugram (South).

*o/c*