

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Smt. P Vinitha Sekhar, Additional Commissioner of Central Tax, (Member)
(2) Shri. A. A. Chahure, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		27AAACS4949P1ZN
Legal Name of Applicant		M/s. SUNDHARAMS PRIVATE. LTD
Registered Address/Address provided while obtaining user id		Flat No. 7, Chandan Apartment, Third Floor, LBS Marg, Kurla West, Mumbai - 400070
Details of application		GST-ARA, Application No. 36 Dated 09.08.2019
Concerned officer		MUM-VAT-E-001, LTU-001, Mumbai
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Warehouse/Depot
B	Description (in brief)	STOCKYARD MANAGEMENT SERVICES (Warehousing /Storage Services/Depot Services)
Issue/s on which advance ruling required		(iv) Admissibility of input tax credit of tax paid or deemed to have been paid
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 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 MGST Act" respectively] by M/s. SUNDHARAMS PRIVATE. LTD, the applicant, seeking an advance ruling in respect of the following question.

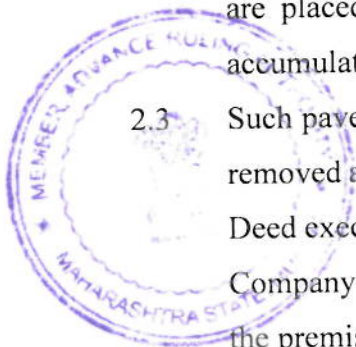
Whether applicant is entitled to avail Input tax credit under CGST/IGST Act in respect of taxes to be paid on its purchase of Paver Blocks laid on the land. It is reiterated once again that such blocks are not to be fastened on earth, rather they are only laid on plain surface to park the cars of Company's customers.

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 any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions made by the applicant are as under:-

- 2.1 M/s Sundharams Private Limited, the Applicant, engaged in providing warehousing, storage and support services to the Original Equipment Manufacturers (OEMs) of automobile industry, transports cars/tractors using its fleet of car carrier vehicles. During the course of these services, the cars are stored in the applicant's stock yard prior to their transit to the respective car dealers. On storage rentals of these vehicles, the applicant Company has been collecting and paying applicable GST.
- 2.2 Applicant has purchased tax paid Paver Blocks which 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 automobiles of OEMs during the contract period. If the cars are placed on the ordinary surface, it will be subject to quicker wear & tear due to accumulation of water, dust etc. in the wheels of such automobiles.
- 2.3 Such paver blocks are not to be permanently embedded on earth and are capable of being removed as such without causing damage to them for reuse elsewhere. 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.
- 2.4 Therefore, Applicant feels that it is eligible to avail Input Tax Credit in respect of taxes paid on purchase of such Paver Blocks laid on land being used in the course of providing its output services to customers under the head stockyard management services.
- 2.5 Laying of Paver Blocks on land does not amount to construction of Immovable property u/s. 17(5) (c) of the CGST Act, 2017. Expenses on the Paver Blocks are not capitalized as a part of immovable property (Land) in the applicant's books of accounts, hence the input



credit on the same is not disallowable u/s. 17(5) (d) r.w. explanation to section 17(5) of CGST Act, 2017. Further, as per explanation to Section 17(5)(c) & (d) of CGST Act 2017, the prohibition to avail input tax credit is applicable only in respect of expenditure which is capitalized in the books of account. Hence, if the expenditure on purchase of paver block is not capitalized & treated as revenue expenditure, there is no bar on availing credit.

- 2.6 These paver blocks are laid on the land as movable property and therefore, can be easily dismantled and re-laid at any other location. Paver blocks are not fastened or permanently embedded on the earth as part of the land, rather they are only laid on the plain surface for parking of cars. Applicant company has fully complied with the conditions contained in the section 16(2) of CGST Act for claiming of ITC.
- 2.7 Laying of the paver blocks cannot amount to works contract service for construction of the immovable property under section 17(5)(c) of CGST Act since, the expression “construction” for the purpose of section 17(5)(c) and 17(5)(d) includes reconstruction, renovation, addition or alteration or repairs to the extent of capitalization to the said immovable property. In the case of the applicant the expenditure on the paver block has not been booked as revenue expenditure in the books of account and therefore the same will not amount to construction of immovable property. Accordingly, the input tax credit claimed by the applicant cannot be hit by restriction placed u/s. 17(5)(c) of the CGST Act.
- 2.8 Applicant has discussed the definitions of ‘Immovable property’ “Movable Property” and the term ‘Goods’ and have submitted that the paver blocks have been laid on the entire yard. Cars are parked on the paver block surface. In rainy season no mud is formed on the paver block surface and helps car to be removed from its slot easily; Bay marking can be done on the paver block which helps to identify the car easily and the paver block surface gives a strong grip for the movement of the cars. For placing the paver blocks, the base is prepared with stone and dust which are rolled very firmly. Then coarse aggregate is added on the surface and rolled. Grit powder of 30 mm is applied on the surface. After levelling the paver blocks are placed on the surface manually. The paver blocks are having interlocking and the gaps are filled with sand. Paver blocks are easily detachable and removable and therefore the same being movable goods could be used at any other land or site. It does not become the part and parcel of immovable property. If the goods are



movable from one place to another in the same position or liable to dismantled or re-erected at a later place, it will be movable property which is the exact case of the present applicant.

- 2.9 Even assuming without admitting that permanently fitted Paver Blocks acquire the character of “Immovable Property”, the claim of Appellant for input tax credit has to be allowed based on the decision of Orissa High Court’s decision in Safari Retreats Pvt Ltd. Vs. Chief Commissioner of CGST reported in 105 Taxmann 324.

03. CONTENTION – AS PER THE JURISDICTIONAL OFFICER:

The submissions made by the jurisdictional officer are as under:-

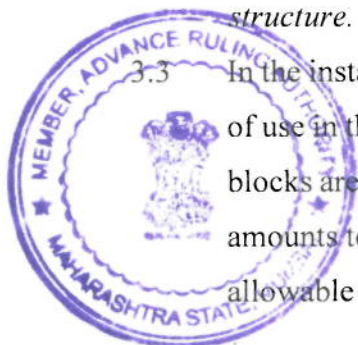
- 3.1 The submissions of the applicant that laying of paver blocks on the land does not amount to construction is not acceptable on the following grounds:-
- 3.1.1 The purpose of laying of paver blocks as per applicant is to ensure efficient parking of automobiles during contract period. If the cars placed on the ordinary ground, it will be subject to the quicker wear and tear due to accumulation of water, dust etc. in the wheels. Hence only laying of paver blocks in loose form on the land is not sufficient. To serve the applicant’s purpose, compact, firm structure and close fixing of blocks is required. However, applicant is silent on whether cementing material or interlocking blocks used or not. But it appears from photographs attached by the applicant that, paver blocks are fastened to land using interlocking blocks and firm support of outer wall. These blocks are not kept loosely on the ground. Hence, mere cementing material not used doesn’t mean paver blocks are not fasted to earth. Rather with support of outer wall and interlock system blocks are fastened to earth. Further, laying of such block is time consuming, skill full job requires to be carried out with due diligence and same way activity of dismantling also. Therefore mere capability of removal and reuse elsewhere, doesn't mean blocks are not permanently embedded to earth. One cannot shift paver blocks as when required like moveable goods. It requires certain period of permanency and also without fixing paver block using either cementing material or interlocking system, you cannot enjoy benefits of laying paver blocks. The flexibility to re-use does not mean that blocks will be removed and re-erected frequently. They are meant to be permanently fixed to earth however when the need arise, client may remove them and re-erect. So primarily nobody will lay paver blocks with intention to remove it. It appears that to give permanence, dealer has entered into contract with OEM and land owner also.



3.2 In the case of "Municipal Corporation of Greater Bombay and others Vs. Indian Oil Corporation Ltd., (1991 Supp (2) Supreme Court Cases 18", it was held that the petroleum storage tanks are structures or things attached to the land and were exigible to the property tax. In paragraph 32 it was observed as under:

32" 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. For instance a shop for sale of merchandise or eatables is a structure. The same could be sold by keeping in a push cart which has its mobility from place to place. Merely because it is stationed at a particular place and business was carried on, it cannot be said that push cart is a shop. The fact that no nuts and bolts were used to imbed the tank to the earth by itself is not conclusive. Though the witness stated that the tank is capable of being shifted, as a fact the tanks were never shifted from the places of erection. By scientific process, the tanks stand on their own weight on the earth at the place of erection as a permanent structure.

3.3 In the instant case also; paver blocks once laid on the land are not movable to another place of use in the same position unless dismantled and laid again at later place. Hence, the paver blocks are permanently embedded to earth and hence laying of the paver blocks on the land amounts to construction of immovable property u/s 17(5). Therefore, input tax credit is not allowable to M/s Sundharams Pvt Ltd.



04. HEARING

Preliminary hearing in the matter was held on 26.11.2019. Sh. Subhash Chhajed, C.A. along with Sh. Muthuswami, G.M. appeared, and requested for admission of their application. Jurisdictional Officer Sh. Prashant Patil, Dy. Commr. of S.T.(E-601), Large Tax Unit-1, Mumbai also appeared.

The application was admitted and called for final hearing on 22.01.2020. Sh. Subhash Chhajed, C.A., Ms. Kajol Jain, C.A., Sh. Muthuswami, G.M. Sh. M Ganeshan, V.P. and

Sh. Balakrishna G.M. appeared made oral and written submissions. Jurisdictional Officer Sh. Prashant Patil, Dy. Commr. of S.T.(E-601), Large Tax Unit-1, Mumbai appeared and made written submissions. We heard both the sides.

05. DISCUSSIONS AND FINDINGS:

5.1 We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the jurisdictional office.

5.2 The main issue before this authority is whether the Paver Blocks in the subject case are to be treated as immovable or movable property

5.3 The applicant has made submissions in support of their contention that Laying of Paver Blocks on land does not amount to construction of Immovable property u/s. 17(5) (c) of the CGST Act, 2017 and are to be construed as moveable items. With respect to eligibility of ITC applicant has stated that, the prohibition to avail input tax credit is applicable only in respect of expenditure which is capitalized in the books of account and since, expenses on Paver Blocks are not capitalized as a part of immovable property (Land) in their books of accounts, ITC is allowable to them. Applicant has finally surmised that even if it is assumed that Paver Blocks as in the subject case, acquire the character of "Immovable Property", they should be allowed ITC as per the decision of Orissa High Court's decision in Safari Retreats Pvt Ltd. Vs. Chief Commr. of CGST reported in 105 Taxmann 324.

5.4 The jurisdictional officer, citing the case law of "Municipal Corporation of Greater Bombay and others Vs. Indian Oil Corporation Ltd., (1991 Supp (2) Supreme Court Cases 18" has contended that laying of the paver blocks on land amounts to construction of immovable property u/s 17(5) and therefore, ITC is not allowable to the applicant.

5.5 The Paver Blocks brought to the site wouldn't serve any purpose unless the same are placed on land on their own weight, fitted by way of interlocking, and made working. The site would be an immovable property such as vacant land. The impugned activity does not involve supply of Paver Blocks as a chattel. Further, it is not the case that in case it is desired to do away with it, one can remove the system and put it into place on some other piece of vacant land, as it is, because the installation of Paver Blocks take support from the boundaries of vacant land and the contours of the new vacant land cannot/may not be the same as the present vacant land. Also, removal would always involve a total dismantling

which cannot be without loss or damage. Such systems have a longevity of existence in terms of the aspect that these are not set up and removed frequently. It is not the case that in case it is desired to do away with it, one can remove the system and put it "as it is" at another location. Hence the question in these set of facts is whether the impugned activity could be said to be one as resulting into immovable property.

- 5.5.1 The term 'immovable property' has not been defined under the GST Act. However, there are a catena of decisions of various Hon'ble Courts deliberating on what constitutes an 'immovable property'.
- 5.5.2 In the case decided by the Supreme Court in *T.T.G. Industries Ltd. v. CCE*, (2004) 4 SCC, the judicial member concluded that, erection of mudgun and tap hole-drilling machine results in erection of immovable property and found support in the decision of the Supreme Court in *Municipal Corpn. of Greater Bombay v. Indian Oil Corpn. Ltd.* [1991 Supp (2) SCC 18] and held that the twin tests laid down by this Court to determine whether assembly erection would result in immovable property or not were fully satisfied in the facts of this case. It was concluded that the test laid down by the Supreme Court is that if the chattel is movable to another place as such for use, it is movable but if it has to be dismantled and reassembled or re-erected at another place for such use, such chattel would be immovable.
- 5.5.3 In the subject case, the Paver Blocks have to be dismantled and disassembled from the vacant land before being erected or assembled elsewhere. Applying the test laid down by the Supreme Court, the laying of Paver Blocks to be used by the applicant for parking purposes results in immovable property'. It cannot be disputed that such Paver Blocks are not usually shifted from one place to another, nor is it practicable to shift them frequently. The Paver Blocks, once they are erected and assembled, continue to operate from where they are positioned and actually become a part of the parking facility. Having regard to the manner in which these parking facilities are erected using Paver Blocks, they do not answer the description of "goods".
- 5.6 The Hon. Courts in our country have evolved the term 'immovable property' when faced with the question of what constitutes movable and immovable property. Though not issued under the GST Act, we may mention herein the decision/order passed by the Hon. Bombay High Court in *M/s. Bharti Airtel Ltd.* (earlier known as Bharti Tele-Ventures Ltd.) v. The Commissioner of Central Excise (2014 SCC OnLine Bom 907 : (2015) 77 VST 434)



wherein the Hon'ble High Court had disallowed credit on telecom towers, holding them to be immoveable property. In the case of Tower Vision India Pvt Ltd v Commissioner of Central Excise (Adj), New Delhi & Ors (2016 (42) STR 249 (Tri.-LB)), the Customs, Excise and Service Tax Appellate Tribunal relied on Bharati Airtel when it disallowed credit on telecom towers to telecom infrastructure companies renting out such towers to telecom companies.

5.7 The principles laid down in the judgments discussed above stand good under all statutes unless any specific definition is available under the statute. What we want to say is that these principles cannot be circumscribed to any particular statute. An elaborate reproduction of the principles as laid down in the judgments along with their facts has made things clearer for us. The principles when seen in the light of the facts of the present case help us see as under:

- The impugned car parking system, to be installed on a vacant plot of land, by way of laying of Paver Blocks, does not result into supply as chattel. In fact, before installation, there can be no goods as such which could be called a 'parking system'.
- The system requires substantial work of interlocking of the Paver Blocks using support from the boundary walls of the said land ,to be done at the site to be called a 'parking system'.

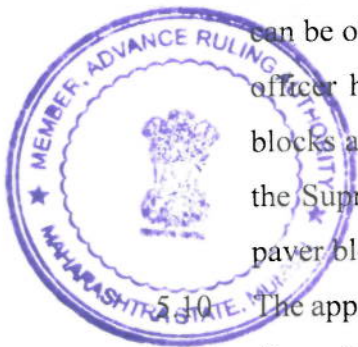
• Once made operational the 'parking system' obtains a state of permanency. It is not such as can be easily removed from the existing place and put into place at some other location. It is also not such that there is an intention to put it into some other place. Further, apart from that the goods cannot be re-erected as in the previous place as the requirement of each place is different.

5.8 From the submissions made by the applicant we find that the main reason for use of paver blocks is to keep the tyres of the vehicles in good condition with no wear and tear, to have longevity, durability and flexibility to re-use. The flexibility to re-use does not mean that blocks will be removed and re-erected frequently. They are meant to be permanently fixed to earth but whenever the need arises the applicant may remove them and re-erect. Hence we conclude that the applicant would not use the paver blocks as in the subject case with an intention to remove it and use the same as a movable property.



5.9 The facts of the case cited by the jurisdictional office is similar to the facts in the subject case and therefore the decision and reasoning in the case cited i.e. "Municipal Corporation of Greater Bombay and others Vs. Indian Oil Corporation Ltd., can be made applicable in the present facts of the matter to rule that paver blocks are to be considered as immovable property in the subject case. In the said case the Hon'ble Supreme Court held that the petroleum storage tanks are structures or things attached to the land and were exigible to the property tax. The Hon'ble Court observed that, the tanks, though, are resting on earth on their own weight without being fixed with nuts and bolts, have permanently been erected without being shifted from place to place and this Permanency is the test. The fact that no nuts and bolts were used to imbed the tank to the earth by itself is not conclusive. Though the witness stated that the tank is capable of being shifted, as a fact the tanks were never shifted from the places of erection. By scientific process, the tanks stand on their own weight on the earth at the place of erection as a permanent structure.

5.9.1 In the subject case, the Paver Blocks are also placed on their own weight on the earth at the place of erection as a permanent structure. The process of laying paver blocks includes preparation of base (on land) with stone and dust, rolling them very firmly, adding coarse aggregate on the surface and rolling again, application of Grit powder of 30 mm on the surface and after levelling, the paver blocks are placed on the surface manually. Thus, it can be observed that, the paver blocks are not simply arranged on land. The jurisdictional officer has also submitted that the paver blocks are fastened to land using interlocking blocks and firm support of outer wall. Thus we find that the above mentioned decision of the Supreme Court can be made applicable in the present facts of the matter to rule that paver blocks are to be considered as immovable property.



5.10 The applicant has submitted that *"Even assuming without admitting that permanently fitted Paver Blocks acquire the character of "Immovable Property", the claim of Appellant for input tax credit has to be allowed based on the decision of Crissa High Court's decision in Safari Retreats Pvt Ltd. Vs. Chief Commissioner of CGST"*.

5.10.1 Eligibility of cenvat credit is governed by the provisions of Chapter V of the CGST Act consisting of Sections 16 to 21. While Section 16 mentions the eligibility and conditions for taking input tax credit, Section 17 speaks about apportionment of credit and blocked credit. Section 17 (5) states that notwithstanding anything contained in sub-section (1) of

Section 16 and sub-section (1) of Section 18, input tax credit shall not be available in certain cases. Thus in the subject case it is imperative to find out whether the applicant is barred from taking under Section 17 (5) of the said Act.

5.10.2 We now reproduce the provisions of Section 17 (5) (d) of the CGST Act, which is as under:

“Notwithstanding anything contained in sub-section (1) of Section 16 and sub-section (1) of Section 18, input tax credit shall not be available in respect of 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.”

5.10.3 Section (17) (5) (d) bars a taxable person, in the subject case the applicant, from taking input tax credit for construction of immovable property (as in the subject case), even when such goods or services or both are used in the course or furtherance of business. Further, it is also seen from the submissions that the immovable property in the subject case is neither plant nor machinery. Thus we find that, Section 17(5) (d) provides that no ITC is available in respect of any goods or services received by a taxable person for construction of an immovable property on his own account even if such inputs and input services are used in the course and furtherance of business. In the instant case the applicant has himself built the immovable property (parking) for which he has received goods i.e. Paver Blocks. Therefore, as per Section 17(5)(d), no ITC is available on any goods or services received by him for such construction and the same cannot be claimed by him. Thus, the provisions of Section (17) (5)(d) squarely applies in the subject case and thus the applicant cannot avail input tax credit.

5.10.4 We find that, in the case of Sree Varalakshmi Mahaal LLP, the Advance Ruling Authority in Tamil Nadu, while deciding application u/s 97(2)(d) raised on the question "Whether the Input Tax Credit available on spent for construction of building materials can be claimed and utilized to nullify the cascading effect of taxation?" has ruled that, No Input Tax Credit is available against any goods or services received by the applicant for construction of Marriage Hall on his own account even if used in the course, or furtherance of his business of renting the place. The decision made in the Sree Varalakshmi Mahaal LLP case is squarely applicable in the subject case also.



5.10.5 The applicant has placed reliance on the judgment rendered by the Hon'ble High Court Orissa in the case of M/s. Safari Retreats Pvt. Ltd., and another V/s Chief Commissioner of Central Goods & Service Tax & others. In the said case it is seen that the party had constructed malls which were given further on lease. While holding that Section 17 (5) (d) was not ultra vires, the Hon'ble Court ruled that the party was eligible for credit.

5.10.6 We find that the department has filed an appeal against the said judgement of the Hon'ble Orissa High Court, in case of Safari Retreats Private Limited Vs Chief Commissioner of Central Goods & Service Tax, which is presently pending. The Hon'ble Supreme Court, in the case of Union of India V/s West Coast Paper Mills Ltd., as reported in [2004 (164) ELT375 (SC)], has held that once a special leave to appeal is granted and appeal is admitted, correctness or otherwise of judgement of Tribunal becomes wide open and in such appeal, Court is entitled to go into both questions of fact and as well as law and correctness of judgement is in jeopardy. Appeal is considered to be a continuation of suit and a decree becomes executable only when the same is disposed by the final Court of Appeal.

5.10.7 Hence in view of the above, we are of the opinion that since the case of M/s. Safari Retreats Pvt. Ltd. is pending with the Hon'ble Supreme Court, the same has not attained finality.

We also find that the Hon'ble High Court has given the relief to the party invoking its writ jurisdiction while categorically holding that they are not inclined to hold Section 17(5)(d) to be ultra vires. Therefore, we are not relying upon the judgement of the Hon'ble High Court.

5.11 In view of the above discussions, we are of the considered opinion that the subject would qualify as immovable property and therefore Applicant cannot avail ITC in the subject case as per Section 17(5) (d) of the CGST Act, 2017.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:



ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 36/2019-20/B-

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Mumbai, dt.

18/03/2020

For reasons as discussed in the body of the order, the question.s are answered thus –

Question. Whether applicant is entitled to avail Input tax credit under CGST/SGST Act in respect of taxes to be paid on its purchase of Paver Blocks laid on the land?

Answer:- Answered in the negative.



—sd—
A. A. CHAHURE
(MEMBER)

—sd—
P. VINITHA SEKHAR
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint Commissioner of State Tax, Mahavikas for Website.

CERTIFIED TRUE COPY

A. A. Chahure
MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai – 400021.