

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH

GOODS AND SERVICE TAX

O/o THE COMMISSIONER, COMMERCIAL TAX,

MOTI BUNGALOW,

MAHATMA GANDHI MARG, INDORE (M.P.) - 452007

e-mail : aar@mptax.mp.gov.in Phone : 0731- 2437315 fax. no. : 0731-2536229

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017

Members Present

1. Manoj Kumar Choubey

Joint Commissioner

Office of the Commissioner of Commercial Tax, Indore Division-1

2. Shri Virendra Kumar Jain

Joint Commissioner

Office of the Commissioner CGST and Central Excise, Indore

GSTIN Number. If any/User-id	23AABFU3009L1ZD
Name and address of the applicant	M/s. Unity Traders, Plot No.264, Bye Pass Road, Katangi Crossing, Jabalpur(Madhya Pradesh)
Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	(d) Admissibility of input tax credit of tax paid or deemed to have been paid.
Present on behalf of applicant	Shri Vishal Shrivstava, CA.
Case Number	26/2019
Order dated	10.02.2020

Order No.

06/2020

PROCEEDINGS

(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)

1. The present application has been filed u/s 97 of the Central Goods and Services Act,2017 and MP Goods and services Act, 2017 (hereinafter also referred to CGST Act and SGST Act respectively) on 12.11.2019 by M/s Unity



Traders, Jabalpur, M.P. (hereinafter referred to as the Applicant). The applicant registered with GSTN number **23AABFU3009I1ZD**.

2. The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

3. BRIEF FACTS OF THE CASE -

3.1 M/s. Unity Traders, Plot No.264, Bye Pass Road, Katangi Crossing, Jabalpur(Madhya Pradesh) (hereinafter referred to as the Applicant) is a partnership firm engaged in providing Clearing and forwarding Agent Service. As a C&F Agent, the firm stores goods of other company and charges Rent for the same. The firm has a two GSTR number, one for the unit located in Jabalpur(M.P.) & other for the unit located in Raipur(C.G.). The Revenue from operation of the firm consists of the following:-

- (i) C&F Commission,
- (ii) Warehouse Rent and
- (iii) Other reimbursement freight etc.

3.2 The Applicant is having a GST registration with GSTIN **23AABFU3009I1ZD**.

4. QUESTION RAISED BEFORE THE AUTHORITY

4.1 Whether ITC of GST paid on goods purchased for the purpose of construction & maintenance of Warehouse such as Vitrified Tiles, Marble, Granite, ACP sheet, Steel Plates, TMT Tor(saria), Bricks, Cement, Paint and other construction material can be claimed in full?

4.2 Whether ITC of GST paid on work contract service received from registered & unregistered Contractor for construction & maintenance contract of building can be claimed in full?

4.3 Whether ITC of GST paid on goods purchased & works contract service received during the FY 2017-18 for the purpose of construction & maintenance of Warehouse can be claimed in full?



nd

5. **DEPARTMENT VIEW POINT -** The view of concerned officer is that as per the Section 17(5)(d) of CGST Act 2017, no input tax credit is admissible on the goods and services used in the construction of Warehouse constructed by the applicant for letting out.

6. **RECORD OF PERSONAL HEARING -**

Shri Vishal Shrivastava, CA of the applicant appeared for personal hearing on 05.02.2020 and they reiterated the submission already made in the application and attached additional submission which goes as follows -

- (i) that the firm being a taxable person is liable to pay CGST as well as SGST in respect of the rent realized from warehouse. Therefore in view of Section 16 of the CGST Act as well as SGST Act and to avoid the cascading effect of various input taxes, the firm being a registered dealer is statutory entitled to avail of the benefit of taking credit of the input tax charged on the supply of goods and various services which are consumed or utilized for the construction of the aforesaid warehouse and set off the same against, the CGST and SGST payable on the rentals received as there is no break in the supply chain of applicant and the receipt of rentals and the tax payable thereon are the direct and inexorable consequence of the construction of the warehouse and the payment of the GST on the inputs goods and services which have been consumed and utilized for the construction of the warehouse. If the assessee is required to pay GST on the rental income arising out of the investment on which he has paid GST, it is required to have the input credit on the GST which is required to pay under Section 17(5) (d) of the GST Act.
- (ii) That as per the Section 17(5), it is clear that what it contemplates and provides for is a situation where inputs are consumed in the construction of an immovable property which is meant and intended to be sold. The sale of immovable property post issuance of completion certificate does not attract any levy of GST. Consequently, in such situation, there is a break in the tax chain and therefore there is full justification for denial of input tax credit as on the completion of the transaction, no GST would at all be payable and, therefore, no set-off of the input tax credit would be required or warranted or justified. But the position is totally different where the immovable property is constructed for the purpose of letting out the same, because, in that event the tax chain is not broken and on the contrary the construction of building will result in a fresh stream of GST revenues to the exchequer on the rentals generated by the building. The denial of



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input tax credit in such a situation would be completely **arbitrary, unjust and oppressive and would be directly opposed to the basic rationale of GST itself**, which is to prevent the cascading effect of multi-stage taxation and the inevitable increase in costs which would have to be borne by the consumer at the end of the day.

- (iii) That interpretation of Section 17(5)(d) that the ITC not allowed leads to double taxation, i.e. firstly, on the inputs consumed in the construction of the building and secondly, on the rentals generated by the same building. It is also a settled principal of interpretation of tax statutes that interpretation should be adopted which avoids or obviates double taxation. This principal is also directly applicable to the present case. It would also be violative of the applicants fundamental right to carry on business under Article 19(1)(g) of the constitution as it would a wholly unwarranted and unreasonable and arbitrary restriction which would render building now constructed for renting out uncompetitive, by consumed in the construction and, thereafter on the rentals generated by the warehouse. It is therefore, submitted that, in accordance with well settled principles of interpretation of unconstitutionality, by confining the provision to cases where the building in question is constructed for the purpose of sale of the same post issuance of completion certificate, thereby terminating the tax chain, and by not applying Section 17(5)(d) to cases where the building in question is constructed for the purpose of renting out the same and where the tax chain is not broken. It is further submitted that if this interpretation of Section 17(5)(d) is not accepted, then there would be no alternative except to declare that provision as unconstitutional and illegal and null and void.

- (iv) **That** it is further submitted that as the law was not clear the GST paid for the purpose of construction & maintenance of warehouse during the FY 2017-18 should be allowed to the applicant.

7. DISCUSSIONS AND FINDINGS -

7.1 We have carefully gone through the application, provisions and submission of the Applicant, we proceed to decide the case as under:-

7.2 Vide above application, applicant want clarification on the ITC of GST paid on goods and work contract services purchased/received for construction & maintenance of warehouse which is used for the purpose of renting out on which GST is paid.

MP



7.3 The relevant provision Section 16 and Section 17(5) of the CGST Act, 2017 is reproduced below:-

(16) Eligibility and conditions for taking input tax credit.

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

“Section 17(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:—

(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 capitalisation, to the said immovable property;

*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.”

7.4 As per the Section 16 of CGST Act, 2017, every registered person shall entitle for ITC subject to such conditions and restriction as may be prescribed. As per the Section 17(5) of CGST Act mentioned above, the Input tax credit shall not be available on the goods and 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. The definition of immovable property are as under :-

According to section 3(26) of the General Clauses Act, 1882, 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”.

According to Section 3 of the Transfer of Property Act, 1882, Immovable property means “Immovable property does not include standing timber, growing crops or grass”.



7.5 We find that the applicant constructed the building/warehouse which is a immovable property and as per the exclusion clause 17(5) (d) of CGST Act, 2017, the input tax credit is not available on the goods and services used in construction of immovable property as discussed below :-

7.6 The Section 17(5) of CGST Act is an exclusion clause in spite of the goods or services used in the course or for furtherance of his business as the Section 16 of CGST ACT, it is clearly mentioned that the entitlement of ITC is subject to the condition and restriction. We find that the view of applicant that they are entitled for ITC in view of Section 16 is incorrect as per law. Further the applicant stated that if the ITC is not allowed as per the Section 17(5) (d) then it is unwarranted, unreasonable, arbitrary, unconstitutional, illegal, violation of fundamental right, double taxation is baseless as the Section 17(5)(d) of CGST Act is very clear and there is no scope of interpretation but in spite of clearcut law, the Applicant has wrongly interpreted the Section to avail the benefit of inadmissible ITC.

7.7 The submission of Applicant that if ITC is not admissible, it would render building now constructed for renting out uncompetitive is also not correct as the said provision of Section 17(5)(d) of CGST Act, is applicable to all not only to the applicant only. Further the contention of the Applicant that ITC is admissible as there is no brake of supply chain, We find that there is no provision in law that the Section 17(5)(d) is not applicable and ITC is admissible where there is no brake of supply chain.

7.8 In view of above, it is concluded that the ITC is not admissible on the goods and services received and used in the construction of warehouse used for letting out on rent as per the Section 17(5)(d) of CGST Act, 2017.

8. RULING

(Under section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)

8.1 We hold that no ITC of GST paid on goods purchased for the purpose of construction & maintenance of Warehouse such as Vittrified Tiles, Marble, Granite, ACP sheet, Steel Plates, TMT Tor(saria), Bricks, Cement, Paint and other construction material is admissible under Section 17(5) of CGST Act, 2017.




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8.2 We hold that no ITC of GST paid on work contract service received from registered & unregistered Contractor for construction & maintenance contract of building is admissible under Section 17(5) of CGST Act, 2017.

8.3 We hold that no ITC of GST paid on goods purchased & works contract service received during the FY 2017-18 for the purpose of construction & maintenance of Warehouse is admissible under Section 17(5) of CGST Act, 2017.

8.4 The ruling is valid subject to the provisions under section 103 (2) until and unless declared void under Section 104 (1) of the GST Act.


(Virendra Kumar Jain)
(Member)


(Manoj Kumar Choubey)
(Member)

Copy to:- No. 26/2019/A.A.R./R-28/13

Indore, date - 10.02.2020

1. M/s. Unity Traders, Plot No.264, Bye Pass Road, Katangi Crossing, Jabalpur(Madhya Pradesh).
2. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore
4. The Commissioner, CGST & Central Excise, Indore
5. The Concerned Officer
6. The Jurisdictional Officer - State/Central

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