



**RAJASTHAN AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX**

**KAR BHAWAN, AMBEDKAR CIRCLE, NEAR
RAJASTHAN HIGH COURT
JAIPUR - 302005 (RAJASTHAN)**



ADVANCE RULING NO. RAJ/AAR/2019-20/23

J.P.Meena Additional Commissioner	:	Member (Central Tax)
Hemant Jain Joint Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s Indag Rubber Limited, SP 86-88, Industrial Area Bhiwadi, Bhiwadi, Alwar, Rajasthan 301019
GSTIN of the applicant	:	08AAACI0868D1ZS
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;
Date of Personal Hearing	:	10.10.2019
Present for the applicant	:	Mrs. Disha Jain, Advocate (Authorised Representative)
Date of Ruling	:	21.10.2019

Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of receipt of this order.



- At the outset, we would like to make it clear that the provisions of both the CGST Act and the RGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the RGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / RGST Act would be mentioned as being under the "GST Act".
- The issue raised by M/s Indag Rubber Limited, SP 86-88, Industrial Area Bhiwadi, Alwar, Rajasthan 301019 (hereinafter called as "the applicant") is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2)(d) given as under:

d. admissibility of input tax credit of tax paid or deemed to have been paid;

- Further, the applicant being a registered person (GSTIN is 08AAACI0868D1ZS as per the declaration given by him in Form ARA-01) the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. Based on the above observations, the applicant is admitted to pronounce advance ruling.

1. SUBMISSION AND INTERPRETATION OF THE APPLICANT:

- The applicant is incorporated under the Companies Act, 1956 bearing CIN L74899DL1978PLC009038 and has its registered office at 11 Community Centre, Saket, New Delhi - 110017. The Applicant also has its office in Rajasthan from where it undertakes its business operations. Accordingly, it is registered in Rajasthan and falls within the jurisdiction of Bhiwadi, Distt.



Alwar, Rajasthan. Its GSTIN in Rajasthan is 08AAACI0868D1ZS and its state jurisdiction authority is Special Circle - 1, Bhiwadi.

The Applicant inter-alia manufactures precured tread rubber, un-vulcanized rubber strip gum, universal spray cement and tyre envelopes for the tyre retreading industry. Elcom Systems Pvt. Ltd (hereinafter referred to as "Elcom") is a private company incorporated in India and is engaged in the business of repair, maintenance, overhaul, upgrade and modernization of Unmanned Aerial Vehicles (UAV).

- Elcom has approached Applicant for taking on lease a Maintenance Repair and Overhaul facility (hereinafter referred to as "MRO"). According to the agreement between the Applicant and Elcom, the Applicant will construct MRO facility at Bhiwadi as per the specifications given by Elcom. The said MRO facility will thereafter be given on lease to Elcom by the Applicant. Elcom will install its equipments in the MRO facility and will render MRO services to Israel Aerospace Industries.
- The scope of work of Applicant for setting up the MRO facilities would include the following:
 - a. Civil Work (Earth work, concrete work, brick work, steel work, wood work, aluminium/ metal work, waterproofing, flooring/ skirting, finishing)
 - b. External Development Works (Area Grading, site levelling and roads)
 - c. Fire-fighting system(Fire pumps, internal hydrant, sprinkler system, fire extinguishers, external fire hydrant system, electrical works)
 - d. Internal and External Plumbing and sanitary works (Sanitary fixtures and fittings, internal drainage, internal water supply,



external sewage, external water supply, pumps, treatment station)

- e. Heating, ventilation and Air Conditioning ('HVAC') in Hanger Building, warehouse building and paint shop (variable refrigerant flow system, air handling system, air distribution system, piping, insulation, ventilation system and electrical works)
- f. Electrical installations (11KV HT Panel, transformers, 11KV HT cable, bus duct, diesel generator, UPS, Battery charger cum DCDB, earthing, lighting protection, LT Cables, cable trays, wirings, distribution board, poles, fixtures & fans, civil and miscellaneous works, fire alarm and public-address system, CCTV, voice, video & data networking, LT Panels).

- It is submitted that the Applicant procures inputs and inputs services for undertaking work with respect to point no. iii. to vi. In respect of these inputs and inputs services input tax credit is being availed by the Applicant.
- The Applicant has entered into agreement with M/s Akanksha Contracts Pvt. Ltd. (hereinafter referred to as the "Agreement 1") for supplying various goods and services for setting up the MRO facility on the Industrial Land. Copy of the Agreement 1 is enclosed herein as Annexure-A.
- The Applicant issues purchase order on M/s Akanksha Contracts Pvt. Ltd for supplying the goods and services for setting up of MRO facility. Copy of the sample purchase orders issued by the Applicant is enclosed herein as Annexure-B.
- The goods are procured by M/s Akanksha Contracts Pvt. Ltd on a bill to ship to basis. In the invoice issued by the supplier, the bill to party is M/s Akanksha Contracts Pvt. Ltd. and ship to



party is the Applicant. A copy of sample invoices is enclosed as Annexure-C.

- Against the material receipts, the Applicant has paid Rs. 97.37 lacs amount in advance for procuring of goods and services. Further, it has been agreed that M/s Akanksha Contracts Pvt. will raise a consolidate invoice for each month, which will include value of both goods and services so supplied along with adjustments regarding the advance so received. The copy of the documents issued by M/s Akanksha Contracts Pvt. Ltd. to the Applicant seeking advance payment is enclosed herein as Annexure-D.
- M/s Akanksha Contracts Pvt. is charging applicable rate of Goods and Service Tax (hereinafter referred to as "GST") on the goods and services being supplied to the Applicant. Further, when the Applicant will lease out the MRO facility to Elcom, it will be paying GST at applicable rate on the amount of rent received for leasing out of MRO facility.
- The issue in the present application is whether the Applicant is eligible to take input tax credit (hereinafter referred to as "credit") on the goods and services supplied by M/s Akanksha Contracts Pvt. for carrying out the following activities for setting up of MRO facility which will be rented out: Civil Work

Statement containing the applicant's interpretation

- In the understanding of the Applicant, it is eligible to take credit of GST charged by M/s Akanksha Contracts Pvt. on goods and services supplied to it for performing the activities of civil work and external development work for setting up of MRO facility.

- In order to analyze the instant matter, attention is invited to the following relevant provisions:

- ❖ Section 2(59) of the CGST Act provides for the definition of 'inputs' as following:

"means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business."

- ❖ Section 2(60) of the CGST Act defines "input service" as following:

"means any service used or intended to be used by a supplier in the course or furtherance of business."

- ❖ Section 2(62) of the CGST Act defines "input tax" as following:

"in relation to a registered person, mean the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes: the integrated goods and services tax charged on import of goods; the tax payable under the provisions of sub-sections (3) and (4) of Section 9; the tax payable under the provisions of sub-section (3) and (4) of Section 5 of the Integrated Goods and Services Tax Act; the tax payable under the provisions of sub-section (3) and sub-section (4) of Section 9 of the respective State Goods and Services Tax Act; or the tax payable under the provisions of sub-section (3) and sub-section (4) of Section 7 of the Union Territory Goods and Services Tax Act, but does not include the tax paid under the composition levy."

- ❖ Section 16 of the GST Act provides for the eligibility and conditions for taking input tax credit. Relevant portion of this provision is extracted as following:

"Section 16



(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."

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless--

(a) he is 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;

(b) he has received the goods or services or both.

Explanation-For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

- Further, Section 17(5) of the CGST Act provides a list of inputs and input services in respect of which credit is not available.

Section 17(5)(d) of the CGST Act provides that the credit will not be available with respect of goods or services or both received by taxable person for the 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 extract of relevant portion of Section 17(5)(d) is provided below for quick reference:



(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.*

- Section 16 (1) of the CGST Act specifically provides that every registered person shall be entitled to take credit of the input tax charged on any supply of goods or services or both made to him, which are used or intended to be used in the course or furtherance of his business. Such entitlement is subject to fulfillment of certain conditions such as possession of invoice, receipt of goods/service, payment of tax to Government etc.



It can be seen that one of the objective behind introduction of GST viz. seamless flow of credit is being fulfilled with Section 16(1) of the CGST Act. The major intent behind GST is that wherever, the supplier is engaged in providing taxable supply, it should be given credit of the inputs and input services used by it for providing the said supply.

- As mentioned earlier, the eligibility of credit is subject to fulfillment of conditions under Section 16(2) of the CGST Act. In the instant case, the Applicant before availing the credit will be fulfilling all the conditions such as receipt of tax invoice, receipt of goods/service, payment of tax to Government by supplier, furnishing of returns etc.
- Section 17(5) of the CGST Act is a non-obstante clause to Section 16(1) of the CGST Act. Section 17(5) of the CGST Act provides certain cases in which credit is not available. Clause (d) of Section 17(5) provides that goods and services received by taxable person for construction of an immovable property (except plant and machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.
- In the light of objective and provisions under GST, it can be said that Section 17(5)(d) deals with unavailability of credit of inputs/input services in case where the output is not taxable. Sale of building is neither supply of service nor supply of goods by virtue of Entry no. 5 of Schedule III. However, according to Entry No. 5 of Schedule II, renting of immovable property is a supply of service. Accordingly, the Applicant at the time of providing the industrial land with MRO facility on lease will be liable to pay tax as the same is a taxable supply of service.

- In order to substantiate the understanding of the Applicant, reference is made to Circular No. 74/2018 dated 08.12.2018 which provides that credit will be available for construction materials, capital goods and input services used for construction of flats, houses, etc. where completion certificate has not been issued.



Thus, it can be concluded that the intent behind incorporating Section 17(5)(d) is to restrict the credit where the immovable property is being supplied after the completion certificate, as supply of immovable property does not attract levy of GST. However, for all other cases, such as renting of immovable property, as supply of service is being undertaken, credit of inputs and input services is available.

- In the light of aforementioned, it is submitted that where the immovable property is constructed for the purpose of leasing out, the tax chain is not broken and accordingly, credit is available.
- In the instant case, the Applicant is involved in setting up of MRO facility and further leasing it out to Elcom. Therefore, the Applicant is liable to pay GST on the outward supply, i.e. renting of MRO facility. Accordingly, the Applicant is eligible to claim credit of the tax charged by M/s Akanksha Contracts Pvt. while providing the goods and services by virtue of Section 16(1), on fulfillment of conditions enunciated under Section 16(2) of the CGST Act.
- In this regard reliance is placed on the case of M/s Safari Retreats Private Limited and Another vs. Chief Commissioner of Central Goods & Service Tax & Others, 2019 (5) TMI 1278, Orissa High Court, wherein the credit has been allowed on goods and services

procured for the construction of shopping malls and then letting out the same.



In that view of the matter, in our considered opinion the provision of Section 17(5)(d) is to be read down and the narrow restriction as imposed, reading of the provision by the Department, is not required to be accepted, inasmuch as keeping in mind the language used in (1999) 2 SCC 361 (supra), the very purpose of the credit is to give benefit to the assessee. In that view of the matter, 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 CGST Act.

- It is further submitted that in the case of *Tara Exports v. Union of India*, 2018 (9) TMI 1474, Madras High Court, it has been observed by the Hon'ble High Court that one of the progressive ideal of GST is to avoid cascading taxes. GST Laws contemplate seamless flow of tax credits on all eligible inputs.
- It is submitted that when the output is taxable, the inputs and input services used for undertaking the output supply are eligible for credit. In this regard, reliance is placed on the case of *Eicher Motors Ltd. v. Union of India*, (1999) 2 SCC 361, wherein it has been observed that the credit of the tax paid on inputs shall be available, if the tax has been paid on such goods on the basis of the fact that these goods will be utilised as inputs in the manufacture of further products.
- Similar view has been taken in the case of *Collector of Central Excise, Pune v. Dai Ichi Karkaria Ltd.*, (1999) 7 SCC 448 wherein it has been observed that the credit is an indefeasible right of the assessee.

- Further reliance in this regard is required to be made to the ruling of Punjab Authority of Advance Ruling in the matter of In Re: K.P.H. Dream Cricket Private Limited, 2018 (18) G.S.T.L. 278 (A.A.R. - GST), credit of inputs and input services was allowed to the assessee for the act of providing complimentary tickets, as this act was taxable.



On the basis of the aforementioned submissions, it is submitted that as the Applicant is engaged in the provision of renting of immovable property which is a taxable supply, the goods and services procured by it for making such supply are eligible for credit.

- Further reliance in this regard is placed on the case of Oxford University Press vs. Commissioner of Income Tax, (2001) 3 SCC 359, wherein purposeful interpretation of a statutory provision was validated.
- Furthermore, in the case of K.P. Varghese v. Income-Tax Officer, Ernakulam and another, Vol.131 (1981) ITR 597, it has been observed that literal construction in certain cases leads to an absurd interpretation of a statutory provision and such practice is required to be avoided.

In the light of aforementioned submissions, it is submitted that in the view of the Applicant, the restriction under Section 17(5) (d) of the CGST Act is not applicable in cases where the inputs and input services are used for making a taxable output supply.

2. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT



Whether the applicant is eligible to claim credit of the GST charged by vendor at the time of supply of goods and services to it, which are used for carrying out the following activities for setting up of MRO facility which will be rented out:

- a. Civil Work
- b. External Developmental Works

3. PERSONAL HEARING


In the matter, personal hearing was granted to the applicant on 27.09.2019 at Room no. 2.29 NCRB, Statue Circle, Jaipur. The applicant vide letter dated 26.09.2019 requested for adjournment of PH. Accordingly second PH was granted on 10.10.2019. Mrs. Disha Jain, Advocate, authorized representative of the applicant appeared on personal hearing and she reiterated the submissions already made in the application and submitted a compilation of brief facts of case and interpretation. She further requested that the case may be decided at the earliest.

4. COMMENTS OF THE JURISDICTIONAL OFFICER

The jurisdictional officer (Deputy Commissioner, State Tax (SGST), Special Circle-I, Kar Bhawan, UIT Sector-6, Bhiwadi, Alwar, Rajasthan 301019) has submitted his comments vide letter dated 22.08.2019 which can be summarized as under:

In the present case if the outward supply of the applicant is taxable on which it will be paying GST at applicable rate, it is eligible to claim credit of inputs and input services which are being used for making further taxable supply which is renting of immovable property. The fact of the case of M/s Safari Retreats are also similar to the present application.

5. FINDINGS, ANALYSIS & CONCLUSION:

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- The Applicant inter-alia manufactures precured tread rubber, un-vulcanized rubber strip gum, universal spray cement and tyre envelopes for the tyre retreading industry. Applicant also has its office in Rajasthan from where it undertakes its business operations. Accordingly, it is registered in Rajasthan and falls within the jurisdiction of Bhiwadi, Distt. Alwar, Rajasthan. Its GSTIN in Rajasthan is 08AAACI0868D1ZS.
 - While going through the submissions made by the applicant, we find that the applicant has entered into agreement with M/s Elcom Systems Pvt. Ltd for providing on lease a Maintenance Repair and Overhaul facility (MRO). That, the applicant further engaged M/s Akanksha Contracts Pvt. Ltd. for supplying various goods and services for setting up the MRO facility on its land.
 - The applicant in the instant case is contending that he is eligible to claim input tax credit in respect of goods and services supplied by M/s Akanksha Contracts Pvt. for carrying out the activities of Civil Work and External Development Works for setting up of MRO facility which will be further leased to M/s Elcom Systems Pvt. Ltd. by the applicant.
 - Further nature of work undertaken in the activity of MRO is for supply of goods and services leading to creation of immovable property.
 - The relevant provisions of the act in this regard is reproduced below:



- ❖ Immovable property is defined in Section 3(26) of the General Clauses Act, 1897 as under:

Immovable Property shall include land, benefits to arise out of land and things attached to earth, or permanently fastened to anything attached to the earth.

In view of the facts as mentioned above and provisions under GST Act, we find that the activity of MRO involving supply of goods and services is leading to creation of an immovable property.

- ❖ Section 2(59) of the GST Act provides for the definition of 'inputs' as following:

"means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business."

- ❖ Section 2(60) of the GST Act defines "input service" as following:

"means any service used or intended to be used by a supplier in the course or furtherance of business."

- ❖ Section 2(62) of the GST Act defines "input tax" as following:

"in relation to a registered person, mean the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes: the integrated goods and services tax charged on import of goods; the tax payable under the provisions of sub-sections (3) and (4) of Section 9; the tax payable under the provisions of sub-section (3) and (4) of Section 5 of the Integrated Goods and Services Tax Act; the tax payable under the provisions of sub-section (3) and sub-section (4) of Section 9 of the



respective State Goods and Services Tax Act; or the tax payable under the provisions of sub-section (3) and sub-section (4) of Section 7 of the Union Territory Goods and Services Tax Act, but does not include the tax paid under the composition levy."

- The Section 16 of GST Act, 2017 provides eligibility and conditions for taking Input Tax Credit (ITC) which are reproduced as below-
 - (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.*
 - (2) *Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-*
 - (a) *he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other taxpaying documents as may be prescribed;*
 - (b) *he has received the goods or services or both.*

Thus, Section 16 (1) of the GST Act specifically provides that every registered person shall be entitled to take credit of the input tax charged on any supply of goods or services or both made to him, which are used or intended to be used in the course or furtherance of his business. Such entitlement is subject to fulfillment of certain conditions such as possession of invoice, receipt of goods/service, payment of tax to Government



etc. as provided under Section 16(2) of the GST Act, 2017. However, the availability of credit is subject to the restrictions as prescribed under Section 17(5)(d) of the GST Act, 2017.

The relevant portion of sub-section 5 of Section 17 of GST Act, 2017 in this regard is reproduced below: -

(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: -

(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 capitalisation, to the said immovable property;

In view of the provisions as mentioned under Section 17(5)(d) of GST Act, we find that ITC is not available for construction of an immovable property even when such goods or services or both are used in course or furtherance of business.

The applicant's claim that Section 17(5)(d) deals with unavailability of credit of inputs/input services in case where the output is not taxable is only one dimension of the law. This is an implicit interpretation which is not the intentional outcome of the said section. The purposive dimension of the said section is blocking of credit for construction of immovable property. It is clear while going through the facts that, the activity has two

phases viz. construction of immovable property and leasing of the same for MRO purposes. The question raised by the applicant regarding ITC is restricted with first phase of construction itself. Therefore, contention of the applicant that output supply which will take place post construction is taxable or not is immaterial in determining eligibility of ITC.




The applicant is paying GST on goods and services supplied by M/s Akanksha Contracts Pvt. Ltd. for construction of MRO facility on the applicant's land. The provisions of Section 17(5)(d) of GST Act, 2017 is clear that if the goods or services are used for the construction of an immovable property, the ITC shall not be available irrespective of the use of the said property.

- The various case laws referred by the applicant in their submission viz. Tara Exports vs. Union of India, 2018 (9) TMI 1474, Madras High Court, Eicher Motors Ltd. v. Union of India, (1999) 2 SCC 361, Collector of Central Excise, Pune vs. Daiichi Karkaria Ltd., (1999) 7 SCC 448 etc. are not relevant in the present case as the facts of this application are different from the facts referred in above said cases.


6. In view of the foregoing, we rule as follows: -

RULING

The applicant is not eligible to claim credit of the GST charged by vendor for supply of goods and services to it, which are used for carrying out the activities (Civil Work and External Developmental Works) for setting up of MRO facility.


J.P. MEENA 21/10/19
Member
(Central Tax)

o/c


HEMANT JAIN 21/10/19
Member
(State Tax)

SPEED POST

M/s Indag Rubber Limited,
SP 86-88, Industrial Area Bhiwadi,
Bhiwadi, Alwar, Rajasthan 301019

F.No. AAR/INDAG/2019-20/ 168-171

Dated: 22/10/19



Copy to: -

1. Commissioner, SGST & Commercial Taxes, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
2. Commissioner, Central Tax, CGST and Central Excise Alwar Commissionerate, "A" Block, Surya Nagar, Alwar, Rajasthan 301001.
3. Deputy Commissioner, State Tax, Special Circle-I, Kar Bhawan, UIT Sector-6, Bhiwadi, Alwar, Rajasthan 301019.