

TAMILNADU ADVANCE RULING AUTHORITY
PAPJM Buildings, IstFloor, No.1, Greams Road, Chennai-600 006.

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT 2017.**

Members present are:

1. Ms. Manasa Gangotri Kata, IRS, Joint Commissioner/Member,
Office of the Commissioner of GST & Central Excise, Chennai.

And

2.Thiru KurinjiSelvaan V.S., M.Sc. (Agri.), M.B.A., Joint Commissioner (ST) / Member
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6

ORDER No. 51 /ARA/2019 Dated: 25.11.2019

GSTIN Number, if any / User id	33ADGFS2195B1ZB	
Legal Name of Applicant	M/S. Sree Varalakshmi Mahaal LLP	
Trade Name of The applicant	M/S. Sree Varalakshmi Mahaal LLP	
Registered Address / Address provided while obtaining user id	No. 320, Shri Varalakshmi Divyaa Tower Vivekananda Street , New Fairlands, Salem , Tamil Nadu. 636 016.	
Details of Application		
Concerned Officer	State :The Assistant Commissioner (ST), Azhagapuram Assessment Circle, 17, Pitcharts Road, IInd Floor, Government Buildings, Salem 636 007. Centre : Salem Commissionarate. Division: Salem-I	
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Leasing Business
B	Description (in brief)	Leasing of the building(Marriage Hall) with all amenities for short term period
Issue/s on which advance ruling required	Admissibility of input tax credit of tax paid or deemed to have been paid	
Question(s) on which advance ruling is required	Whether the Input Tax Credit available spent for construction of building materials can be claimed and utilize to nullify the cascading effect of taxation?	

Note: Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Rulings, Chennai as under Sub-Section (1) of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

M/S. Sree Varalakshmi Mahaal LLP, No. 320, Shri Varalakshmi Divyaa Tower Vivekananda Street New Fairlands, Salem , Tamil Nadu. 636 016. (hereinafter referred as 'Applicant') is registered under the GST Act 2017 vide GSTIN No. 33ADGFS2195B1ZB. The applicant is engaged in leasing out the building (Marriage Hall) with all amenities for short term period. The applicant has sought Advance Ruling on the following questions:

Whether the Input Tax Credit against purchases of materials construction of building materials can be claimed and utilize to nullify the cascading effect of taxation?

The applicant submitted a copy of challan evidencing payment of application fees of Rs.5, 000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The applicant has stated that they have spent several crores of amount as investment in construction of Marriage hall and other all auxiliary amenity buildings. In this aspect huge quantities of materials and other inputs in the form of steel, cement, sand, aluminum, wires, cables, plywood, paints, lifts, escalators, air condition plant, electrical equipment's, DG sets, other decorative items and also services in the form of consultancy service, architectural service, legal & professional service, engineering service and other all related services were utilized for construction purpose. All these goods and services which are purchased / received for such construction are taxable under the CGST, SGST & IGST Acts and as such the applicant has paid about Rs. 2 crores approximately towards payment of CGST, SGST & IGST levies. It is an undisputed fact that the activity of letting out the building (i.e. marriage hall) attracts CGST & SGST levy of 18% as output

tax. It is stated by the applicant, that they are prevented from taking the credit of input tax paid as per section 17(5) (d) of the CGST Act 2017 as well as TNGST Act 2017. In the blocked credit condition, input tax credit shall not be available in respect of the goods & services or both received by a taxable person for construction of an immovable property (other than plant machinery) on his own account including when such goods or services or both are used in the course of furtherance of business.

2.2 The applicant has submitted that in general on a plain reading of Section 17(5) (d), it is inferred by the authorities that what is contemplated and provided for a particular 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 a situation, there is a break in the tax chain and therefore, there is full justification of 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. The applicant has submitted that 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 the building will result in a fresh stream of GST revenue to the Exchequer on the Rental generated by the building. The denial of 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. The applicant further added that because they had paid huge amount of GST for construction of the building intended to be let out and thereafter for the same building rental revenue generation, again 18% GST has to be paid as output taxation, which is clear cascading effect of the same goods as defined by the Act. No law permits double taxation for the same goods. The denial of 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. In this aspect, there is a clear violation of Article 14 of Indian Constitution.

2.3 The applicant in support of their claim, cited the decision of the Hon'ble Orissa High Court in Safari Retreats Pvt. Ltd. And another's (Vs) Chief Commissioner of Central Goods and Service Tax and others in W.P. (C) No. 20463/2018 which allowed the petitioner to take the Input Tax Credit spent on Construction of Building materials (in their case is Mall) towards output tax liability i.e. renting of immovable property and provided a copy of the verdict.

3.1 The applicant was extended a personal hearing on 26.09.2019 and authorized representative of the applicant, Mr.M.Muthu Kumar, appeared for the hearing. They stated that they have constructed a marriage hall which they are currently giving it for rent. They stated that they have procured various input services such as civil works, design work, etc., and goods such as cement, bath fittings etc., they wanted to clarify whether they are eligible for the input Credit. They stated that they have correctly availed the ITC but not utilized it till now. They quoted Hon'ble Orissa High Court case M/s Safari Retreats Pvt ltd. in W.P. 20463 of 2018 dt. 17.04.19 where the High court has permitted use of ITC and held section 17(5)(d) is not valid. They undertook to submit details of all the inputs and input services along with contracts copies and invoices for goods in two weeks time. They submitted a few invoices.

3.2 State jurisdiction officer appeared for the hearing and submitted a written submission stating that no show cause notice has been issued to them and in view of the provisions of Section 17(5)(d) and Explanations, input tax credit in general, is not available for construction, reconstruction, renovation, addition, alteration or repair of an immovable property even when such goods or services or both are used and the applicant are not eligible to avail ITC on the materials purchased for construction of various building materials and services.

3.3 The applicant submitted the copies of the contract and invoices of purchases on 11.10.2019. They also requested for another hearing. The applicant was again heard on 06.11.2019. The authorized representative Mr.M.Muthu Kumar, appeared and stated that they have submitted all the documents as per previous personal hearing. The Jurisdictional state GST authority have submitted a written write up that the applicant is not eligible to avail ITC on the materials purchased and services rendered. The applicant did not have anything further to add.

4. We have carefully considered the submissions made by the applicant in the advance ruling application, the additional submissions made during the personal hearings and the comments furnished by the State Jurisdictional Officer. It is seen from the submissions made by the applicant that the applicant has built a marriage hall at Itteri Road, Meyyanoor, Salem which they lease /rent for occasions on which they charge GST as seen from the invoices. It is seen from the invoices submitted that the applicant has received various materials such as cement, steel, wood, fittings etc. alongwith various services from labour , architect etc. which have been used by the applicant to construct the marriage hall. The question is to decide whether ITC against purchases of materials and services used for construction of building (constructed by him) can be claimed and utilized to pay GST on the outward supply of services of renting of the building.

5.1 Section 17(5)(d) reads as follows:

(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 and 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 reconstruction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property:

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 marriage hall for which he has received various goods such as cement, steel, sand, tiles, bathroom fittings etc. as inputs and services by architect, labour contractor etc. as input services. He is using the hall to rent out to customers for occasions i.e. for furtherance of his business. 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.

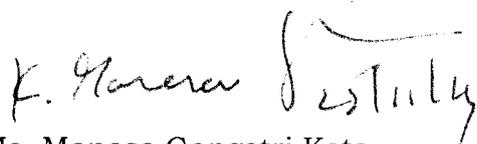
5.2 The applicant contends that the above provides for denial of credit of input tax paid on goods/services used in the construction of an immovable property which is sold subsequently only, as there is no GST liability on the sale of immovable property and that in their case the immovable property constructed on their account is used for furtherance of business, i.e., letting out as marriage hall, which is liable to GST @ 18%. We do not agree with the contentions of the applicant. The Legislative Scheme is amply clear. The input tax paid on the goods/services received for construction of an immovable property 'on one's own account' is unavailable. The restriction is provided in the Act which is passed by the Legislature. The power to restrict flow of credit exists under Section 16(1) of the GST Act, which shows a Legislative intent that Input Tax credit may not always be allowed partially or fully. As the suitability and requirement of tax payer varies from person to person, rule/Act, cannot be changed/amended accordingly and it is mandatory for the tax payers to adhere the restrictions prescribed in Act and Rule.

5.3 The applicant has further placed reliance on the judgment rendered by the Honorable High Court Orissa in the case of "M/s. Safari Retreats Pvt. Ltd., and another Vs Chief Commissioner of Central Goods & Service Tax & others". It is seen that in the said case, the prayers are (a) eligibility to credit of input tax paid on goods/services used for construction which is rented for commercial purposes (b) to hold Section 17(5) (d) as ultra-vires. While the Hon'ble High court has granted the prayer at (a) has not accepted the prayer at (b) stating that they are not inclined to hold the provision ultra-vires. On a case to case basis, the High court has granted the credit. In as much as the said section is found to be valid by the Hon'ble High court, we do not find any reason to go beyond the Statutory Provisions.

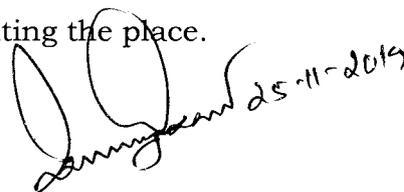
6. Accordingly We Rule as under

RULING

No Input Tax Credit is available against any goods or services received by the applicant for construction of the Marriage Hall on his own account even if used in course or furtherance of his business of renting the place.



Ms. Manasa Gangotri Kata,
Member, CGST



Shri. Kurinji Selvaan V.S.,
Member, TNGST

To

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Tamil Nadu



Copy submitted to :-

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2. The Additional Chief Secretary / Commissioner of Commercial Taxes,
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Copy to:

3. The Commissioner of GST & C.Ex., Salem Commissionerate.
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5. Master File / spare - 1.

