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| <br>सत्यमेव जयते | <b>RAJASTHAN AUTHORITY FOR ADVANCE RULING</b><br><b>GOODS AND SERVICES TAX</b><br><br><b>KAR BHAWAN, AMBEDKAR CIRCLE, NEAR</b><br><b>RAJASTHAN HIGH COURT</b><br><b>JAIPUR - 302005 (RAJASTHAN)</b> |  |
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**ADVANCE RULING NO. RAJ/AAR/2019-20/05**

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| J.P.Meena<br>Additional Commissioner  | : | Member (Central Tax)   |
| Hemant Jain<br>Joint Commissioner   | : | Member (State Tax)   |
| Name and address of the applicant   | : | M/s Rambagh palace Hotels Pvt. Ltd.,<br>Bhawani Singh Road, Jaipur,<br>Rajasthan 302005  |
| GSTIN of the applicant  | : | 08AAACH6899P1ZL  |
| Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised | : | a. Classification of any goods or services or both;<br>d. Admissibility of input tax credit of tax paid or deemed to have been paid; |
| Date of Personal Hearing  | : | 03.04.2019   |
| Present for the applicant   | : | Shri Sanjiv Agarwal<br>(Authorised Representatives)  |
| Date of Ruling  | : | 30.04.2019   |

**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 service of this order.



The issue raised by M/s Rambagh palace Hotels Pvt. Ltd., Bhawani Singh Road, Jaipur, Rajasthan 302005 (hereinafter the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2) (a)(d) given as under :

- a. classification of any goods or services or both;
- d. admissibility of input tax credit of tax paid or deemed to have been paid;

Further, the applicant being a registered person (GSTIN is 08AAACH6899P1ZL 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:**

- a. The applicant is a five star deluxe heritage hotel having its registered office at Bhawani Singh Road, Jaipur, Rajasthan engaged in hospitality business operated under the brand name Taj group. The Applicant is registered under GST (GSTIN) with registration number 08AAACH6899P1ZL.
- b. Presently, it is providing and is registered under the following services:
  - (a) Short term accommodation service,
  - (b) Restaurant service,
  - (c) Mandap keeper service,
  - (d) SPA and other club facilities,
  - (e) Renting of Space or Lawn
  - (f) Misc. like Commission



All the services as mentioned above are taxable supplies and subject to levy of GST.

- c. The hotel is run under internationally reputed brand 'Taj' and therefore, there is a challenge to maintain its reputation at very high level. With these objectives, it has to up keep the hotel's building, equipments, furniture & fixtures, surroundings and its infrastructure in excellent operational condition. In this pursuit, it has to constantly incur expenditure on construction, renovation, repairs and maintenance of hotel's immovable and movable property. Hence, up-keep and maintenance of hotel building, equipments, electrical installation, furniture & fixtures and other infrastructures is crucial for continuity of its business.
- d. It is evident from the attached Exhibit 2 that the major portion of expense is towards repair and maintenance of the Hotel and thus, the applicant through this application seeks guidance on the availability of ITC or not. The aggregate Expense on repairs in FY'2018 was Rs 9.8 cr out of total Operating Expense of Rs. 36.99 Cr which is almost 26%.

## 2. **QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT**

### **Q1 Building Repair Work**

- Q1.1 Whether GST paid on building materials, such as cement, concrete, bricks, cement or marble or stone slabs or tiles, paint, polish and any other building materials meant for repair of building shall be available for ITC?



Q1.2 Whether GST paid on labour supply for carrying out repair of building shall be available for ITC, where material and supervision is provided by the applicant?

Q1.3 Will it make any difference if aforementioned works are carried out in a composite manner as a works contract, where material as well as labour is supplied by a contractor as a composite supply under works contract?

Being routine repairs, the amount spent on the above mentioned all scenarios are charged to revenue as per accounting standards.

#### Q2 Repair Work relating to Electric Installation / Sanitary Fittings

Q2.1 Whether GST paid on electrical fittings, such as Cables, Switches, NCB, and other electrical consumables meant for repair of existing electrical fittings shall be available for ITC?

Q2.2 Whether GST paid on sanitary fittings, such as tiles, commode, bath tub, wash basin, PVC pipes and other bath room sanitary fittings and consumables meant for repair of existing sanitary fittings shall be available for ITC?

Q2.3 Whether GST paid on labour supply for carrying out repair of electrical installation and/ or sanitary fittings shall be available for ITC, where material and supervision is provided by the applicant?

Q2.4 Will it make any difference if aforementioned works are carried out in a composite manner as a works contract, where material as well as labour is supplied by a contractor as a composite supply under works contract?

Being routine repairs, the amount spent on the above mentioned all scenarios are charged to revenue as per accounting standards.



**Q3 Furniture & Fixture repairing work**

Q3.1 Whether GST paid on wood, board, mica, tapestry, paint, polish and other consumables meant for repair of existing furniture & fixtures shall be available for ITC?

Q3.2 Whether GST paid on labour supply for carrying out repair of furniture & fixtures shall be available for ITC, where material and supervision is provided by the applicant?

Q3.3 Will it make any difference if aforementioned works are carried out in a composite manner as a works contract for carrying out repair and maintenance job on movable furniture & fixtures such as, Sofa, Table, Chairs, Door, Cabinets, etc. where material as well as labour is supplied by a contractor as a composite supply under works contract?

Being routine repairs, the amount spent on the above mentioned all scenarios are charged to revenue as per accounting standards.

Q3.4 whether input tax credit can be availed by the applicant of GST paid on purchase of new ready to use furniture such as chairs, etc, in terms of section 17 of the RGST Act, 2017?

**3. PERSONAL HEARING**

In the matter personal hearing was granted to the applicant on 03.04.2019 at Room no. 2.29 NCRB, Statue Circle, Jaipur. Shri Sanjiv Agarwal (Authorised Representative) of applicant appeared for PH. During the PH, he reiterated the submissions already made in the application and also submitted some additional documents. He further requested that the case may be decided at the earliest.



4. **COMMENTS OF THE JURISDICTIONAL OFFICER**

The jurisdictional officer (Assistant Commissioner, CGST Division-H, CGST Jaipur Commissionerate, Sector-10, Vidyadhar nagar, Jaipur 324001) has submitted his comments vide letter dated 15.03.2019 which can be summarized as under:

- a. ITC on building repair work is not allowed.
- b. ITC on labour supply for carrying out repair of building work is not allowed.
- c. ITC on repair work relating to electric installation/sanitary fittings is not allowed.
- d. ITC on supply of furniture is admissible to the extent non-capitalisation of said items as mentioned in *Explanation* to sub-section c and d of Section 17(5) (d) of CGST/RGST Act, 2017.

5. **FINDINGS, ANALYSIS & CONCLUSION:**

- a. While going through the submissions made by the applicant, we have found that the applicant is a hotelier engaged in supply of various services viz. Short term accommodation service, Restaurant service, Mandap keeper service, SPA and other club facilities, Renting of Space or Lawn etc.
- b. The applicant in routine manner or as and when required is involved in repair and maintenance of the building and its components in order to ensure that the high standards of hospitality service are maintained. In a way, the repairs of hotel are for furtherance of business in respect to hospitality and supply of services as mentioned above.
- c. The applicant in the instant case is contending that input tax credit in respect of repair and maintenance of hotel building, furniture and fixtures, sanitary and other items will be available



to him in accordance to provisions of Section 17 of CGST/IGST Act, 2017.

- d. Further nature of work undertaken by the applicant is predominantly for immovable property involving transfer of goods and services, therefore, the activity is works contract for carrying out repair and maintenance work. The relevant provisions of the act in this regard is reproduced below:

*Section 2(119) of CGST Act, 2017 defines “works contract” which means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.*

Hence, to qualify an activity as “works contract”:

- (i) The activities to be undertaken under a works contract may be one or more of the following in relation to any immovable property viz. Building, Construction, Fabrication, Completion, Erection, Installation, Fitting out, Improvement, Modification, Repair, Maintenance, Renovation, Alteration, or Commissioning etc.
- (ii) Such activities shall be in relation to any immovable property.
- (iii) Transfer of property in goods is involved.

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.*

e. The Section 16 of CGST/RGST Act, 2017 provides eligibility and conditions for taking input tax credit 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.*

f. Further, the Section 17 of CGST/RGST Act, 2017 debars certain activities/supplies/work from the eligibility to claim ITC. The relevant portion of sub-section 5 of Section 17 of CGST/RGST 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;*

- g. In view of above facts, we find that, 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 in course or furtherance of business. However, the limitation in such a scenario is extent of capitalization.
- h. The applicant is paying GST on building materials, such as cement, concrete, bricks, cement or marble or stone slabs or tiles, paint, polish etc and on some services such as labour supply. This activity of repair and maintenance which encompasses supply of goods for a construction activity is of immovable nature. The provisions of ITC for the said supply of goods is covered under Section 17(5)(d) read with *explanation* mentioned therein. Therefore, ITC on GST paid on such goods as mentioned above will not be available to the extent of capitalisation of the said goods as mentioned in *Explanation* of Section 17(5) of the CGST/RGST Act, 2017.

Further, the applicant is engaging manpower supply for the construction purpose which is a supply of service. The supply of manpower service is also covered under Section 17(5)(d) read with *explanation* mentioned therein. ITC on GST paid on such supply of service as mentioned above will not be available to the extent of capitalisation of the said service.



The aforementioned supply of goods and services supplied for construction work of an immovable nature can be done in composite manner also i.e. works contract. The works contract service for supply of above mentioned goods and service is covered under Section 17(5)(c) read with *explanation* mentioned therein. Therefore, ITC on GST paid on above said works contract service will not be available to the extent of capitalisation of the said goods as mentioned in Explanation of Section 17(5) of the CGST/SGST Act, 2017.

- i. The applicant is paying GST on electrical fittings, such as Cables, Switches, NCB, and other electrical consumables and sanitary fittings, such as tiles, commode, bath tub, wash basin, PVC pipes and other bath room sanitary fittings etc. This activity of installing electrical fittings and sanitary fittings encompasses supply of goods for a construction activity is of immovable nature. The provisions of ITC for the said supply of goods is covered under Section 17(5)(d) read with *explanation* mentioned therein. ITC on GST paid on such goods as mentioned above will not be available to the extent of capitalisation of the said goods.

Further, the applicant is engaging manpower supply for the construction purpose which is a supply of service. The supply of manpower service is also covered under Section 17(5)(d) read with *explanation* mentioned therein. ITC on GST paid on such supply of service as mentioned above will not be available to the extent of capitalisation of the said service.

The aforementioned supply of goods and services supplied for construction work of an immovable nature can be done in composite manner also i.e. works contract. The works contract service for supply of above mentioned goods and service is covered under Section 17(5)(c) read with *explanation* mentioned therein. Therefore,



ITC on GST paid on above said works contract service will not be available to the extent of capitalisation of the said goods as mentioned in Explanation of Section 17(5) of the CGST/RGST Act, 2017.

- j. The applicant is paying GST on wood, board, mica, tapestry, paint, polish and other consumables meant for repair of existing furniture & fixtures and buying of new furniture & fixtures such as Sofa, Table, Chairs, Door, Cabinets, etc. This activity of supply of said goods and services of manpower for repair in relation to furniture & fixtures is a composite supply of goods and services. Therefore, ITC on GST paid on supply of goods and services as mentioned above will be available in accordance with provisions of Section 16 of CGST/RGST Act, 2017.

The furniture and fixtures are not immovable property in most cases but can be when used as a floor or fixed for a structure. In the scenario where, the furniture and fixtures are fixed or immobilized or considered as a part of construction activity of immovable nature then the input tax credit will not be available to the extent of capitalization of such goods and services as per provisions mentioned in Section 17 of CGST/RGST Act, 2017.

The applicant can avail ITC of GST paid on purchase of new ready to use furniture such as chairs, etc as per provisions mentioned in Section 16 of the CGST/RGST Act, 2017.

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

### **RULING**

#### **Q1 Building Repair Work**

- Q1.1 Whether GST paid on building materials, such as cement, concrete, bricks, cement or marble or stone slabs or tiles, paint,



polish and any other building materials meant for repair of building shall be available for ITC?

Answer- ITC will not be available to the extent of capitalization of building materials.

Q1.2 Whether GST paid on labour supply for carrying out repair of building shall be available for ITC, where material and supervision is provided by the applicant?

Answer- ITC will not be available to the extent of capitalization of GST on labour supply.

Q1.3 Will it make any difference if aforementioned works are carried out in a composite manner as a works contract, where material as well as labour is supplied by a contractor as a composite supply under works contract?

Being routine repairs, the amount spent on the above mentioned all scenarios are charged to revenue as per accounting standards.

Answer- ITC will not be available to the extent of capitalization of building materials and service of labour supply.

## Q2 Repair Work relating to Electric Installation / Sanitary Fittings

Q2.1 Whether GST paid on electrical fittings, such as Cables, Switches, NCB, and other electrical consumables meant for repair of existing electrical fittings shall be available for ITC?

Answer- ITC will not be available to the extent of capitalization of electrical fittings.



Q2.2 Whether GST paid on sanitary fittings, such as tiles, commode, bath tub, wash basin, PVC pipes and other bath room sanitary fittings and consumables meant for repair of existing sanitary fittings shall be available for ITC?

Answer- ITC will not be available to the extent of capitalization of sanitary fittings.

Q2.3 Whether GST paid on labour supply for carrying out repair of electrical installation and/ or sanitary fittings shall be available for ITC, where material and supervision is provided by the applicant?

Answer- ITC will not be available to the extent of capitalization of service of labour supply.

Q2.4 Will it make any difference if aforementioned works are carried out in a composite manner as a works contract, where material as well as labour is supplied by a contractor as a composite supply under works contract?

Being routine repairs, the amount spent on the above mentioned all scenarios are charged to revenue as per accounting standards.

Answer- ITC will not be available for works contract service to the extent of capitalization of supply of goods and services.

### Q3 Furniture & Fixture repairing work

Q3.1 Whether GST paid on wood, board, mica, tapestry, paint, polish and other consumables meant for repair of existing furniture & fixtures shall be available for ITC?

Answer- ITC for GST paid on supply of above mentioned goods will be available in accordance with Section 16 of CGST/RGST Act, 2017.

Q3.2 Whether GST paid on labour supply for carrying out repair of furniture & fixtures shall be available for ITC, where material and supervision is provided by the applicant?

Answer- ITC will be available for service of labour supply in accordance with Section 16 of CGST/RGST Act, 2017.


Q3.3 Will it make any difference if aforementioned works are carried out in a composite manner as a works contract for carrying out repair and maintenance job on movable furniture & fixtures such as, Sofa, Table, Chairs, Door, Cabinets, etc. where material as well as labour is supplied by a contractor as a composite supply under works contract?

Being routine repairs, the amount spent on the above mentioned all scenarios are charged to revenue as per accounting standards.


Answer- ITC will be available for GST paid on composite supply of goods (furniture & fixtures) and services (manpower supply) in accordance with Section 16 of CGST/RGST Act, 2017.

Q3.4 whether input tax credit can be availed by the applicant of GST paid on purchase of new ready to use furniture such as chairs, etc, in terms of section 17 of the RGST Act, 2017?

Answer- ITC will be available for GST paid on purchase of new ready to use furnitures in accordance with Section 16 of CGST/RGST Act, 2017.

  
J.P.MEENA 30/4/19  
Member  
(Central Tax)



  
HEMANT JAIN 30/4/19  
Member  
(State Tax)

SPEED POST

M/s Rambagh palace Hotels Pvt. Ltd.,  
Bhawani Singh Road, Jaipur,  
Rajasthan 302005



o/c

F.No. AAR/Rambagh/2018-19/23-26

Dated: 30-04-2019

Copy to:-

1. Commissioner, SGST & Commercial Taxes, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
2. Commissioner, CGST and Central Excise Jaipur Commissionerate, NCRB, Statue Circle, Jaipur, Rajasthan 302005.
3. Assistant Commissioner, CGST Division-H, CGST Jaipur Commissionerate, Sector-10, Vidyadhar Nagar, Jaipur, Rajasthan.