



HARYANA AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
HARYANA VANIYA BHAWAN, PLOT NO 1-3, SECTOR 5,
PANCHKULA-134151 (HARYANA)



ADVANCE RULING NO.HAR/HAAR/R/2019-20/03
(In Application No.: 03/2019-20, dated 23.04.2019)

Name & Address of the Applicant	: M/s. Synergy Global Steel Pvt. Ltd., Plot No. 30, Industrial Area, Dharuhera, Rewari, Haryana
GSTIN of the Applicant	: 06AAJCS8313G1ZB
Date of Application	: 23.04.2019
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	: Clause (d)- Admissibility of input tax credit of tax paid or deemed to have been paid
Date of Personal Hearing	: 17.07.2019
Present for the Applicant	: Sh. Manoj Makkar (Adv.) & Sh. Arvind Bisla (Adv.)

Memo No.: 1043/AAR
Dated: 28/8/2020

1. **Brief facts:**

1.1 M/s. Synergy Global Steel Pvt. Ltd., Plot No. 30, Industrial Area, Dharuhera, Rewari, State- Haryana having GSTIN Number 06AAJCS8313G1ZB (hereinafter referred as the 'applicant'), have got a building constructed at Plot No. 30, Industrial Area, Dharuhera for the purpose of leasing or renting out the same for running an industry.

1.2 The applicant has stated that the ITC on works contract service or goods or services or both received for construction of immovable property (other than plant and machinery) is blocked by clause (c) and (d) of Section 17 (5) of CGST Act, 2017; that they have not availed any ITC on the same.

1.3 Apart from the construction of building, they have ordered for the following to be installed at the said building:

- i. Supply and installation of Sewage Treatment Plant 20 KLD falling under HSN 842121; order given to M/s Krishna Engineering, Alwar;
- ii. Supply and installation of Fire-fighting system; order given to M/s Cross Fire India, Gurgaon;



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- iii. Supply of Cable for transmission of electricity from feeding point to the building falling under HSN 8544; order given to M/s Debak Enterprises P. Ltd., Delhi;
- iv. Supply of other material such as PCC Poles, structural steel, cable end kit, HDPE pipes, GO switch etc. for laying of Cable and electrical installations for transmission of electricity; order given to M/s Sigma Electro Control Engineers, Gurugram;
- v. Laying of Cable and electrical installations for transmission of electricity; order given to M/s Sigma Electro Control Engineers, Gurugram.

2. **Question on which advance ruling is required:**

- 2.1 Whether ITC of GST paid on the aforesaid goods or services (i.e. supply and installation of Sewage Treatment Plant, supply and installation of Fire-fighting system, supply of Cable for transmission of electricity, supply of other material for lying of Cable and electrical installations and Laying of Cable and electrical installations for transmission of electricity) is admissible to the applicant.

3. **Statement of relevant facts having a bearing on the question raised:**

- 3.1 The applicant states that all the expenditure incurred on the aforesaid goods and services are of capital nature, a doubt came as to whether ITC on such goods and services are admissible or not in terms of Section 17(5) of CGST Act, 2017.

4. **Discussions:**

- 4.1 The present application is to ascertain whether ITC of GST paid on the aforesaid goods or services i.e. supply and installation of Sewage Treatment Plant, supply and installation of Fire-fighting system, supply of Cable for transmission of electricity, supply of other material for laying of Cable and electrical installations and Laying of Cable and electrical installations for transmission of electricity is admissible. To ascertain the admissibility of ITC it is pertinent to have a look at the relevant Section of the GST Act, 2017.



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4.2 Section 17(5) of the GST Act dealing with apportionment of credit and blocked credits reads as under:

(5) 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 the following, namely:—

(b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purpose specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available, where an inward supply of goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

4.3 In the present application the applicant contends that they have got a building constructed for the purpose of **leasing** or renting out the same for running an industry. Input tax credit on leasing is not allowed as per Section 17(5)(b)(i) of the CGST Act, 2017.

4.4 Section 17(5) (c) of the GST Act dealing with Apportionment of credit and blocked credits reads as under:

(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;

Here it is necessary to discuss the definition of the works contract as defined in Section 2(119) of CGST Act, 2017.

“works contract” means a contract for building, **construction**, fabrication, completion, erection, **installation**, **fitting out**, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable



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property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

The meaning of the works contract as cited above clarifies that a contract for installation and fitting out of any immovable property wherein transfer of property is involved, is works contract. In the present case the applicant has ordered the following:-

- i. Supply and installation of Sewage Treatment Plant to M/s Krishna Engineering, Alwar.
- ii. Supply and installation of Fire-fighting system to M/s Cross Fire India, Gurgaon.
- iii. Supply of Cable for transmission of electricity from feeding point to the building to M/s Debak Enterprises P. Ltd., Delhi.
- iv. Supply of other material such as PCC Poles, structural steel, cable end kit, HDPE pipes, GO switch etc for laying of Cable and electrical installations for transmission of electricity to M/s Sigma Electro Control Engineers, Gurugram.
- v. Laying of Cable and electrical installations for transmission of electricity to M/s M/s Sigma Electro Control Engineers, Gurugram.

It is clear from the above that all the above goods or services or both are covered under works contract and therefore, Input tax credit is not allowed as per Section 17(5)(c) of the CGST Act, 2017.

4.5 Section 17(5) (d) of the GST Act dealing with apportionment of credit and blocked credits reads as under:

*(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;



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In the explanation given above for the purposes of clauses (c) and (d) of Section 17(5) of the CGST Act, 2017; it is clear that "construction" includes **additions** to the extent of capitalisation, to the said immovable property. It means the applicant has constructed a building for the purpose of leasing or renting out the same for running an industry and the goods in question have been added to the building already constructed. Therefore, the Input tax credit is not allowed as per Section 17(5)(d) of the CGST Act, 2017 on all the items in question.

4.6 The explanation to Section 17(5) (d) of the GST Act reads as under:-

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

In the explanation given above, it is clear that "**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 with some exclusions as above. In the present case the applicant admits that the Sewage Treatment Plant is attached with the civil structure of the building. Thus, it is clear that it is a part of the civil structure of the building and part of the building so constructed. Therefore the applicant's contention that the Sewage Treatment Plant is covered under the definition of "plant and machinery" is rejected because it is covered under the exclusion (i) of the explanation given above.

4.7 Now, as per the definition of goods some movable property is excluded from the category of goods whereas at the same time, some immovable properties are treated as goods. But the terms movable and immovable property have not been defined under the GST Act. In laymen terms, any goods that can move are movable property and which cannot be moved is immovable property.



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4.8 But the General Clauses Act 1897 and the Transfer of Property Act defines both these terms. Section 3(26) of the General Clauses Act says: "**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**". Whereas, Section 3(36) defines **movable property** as "property of every description, except immovable property". So as per this definition, any property which does not qualify to be immovable property is a movable property.

4.9 As per Transfer of Property Act, immovable property does not include standing timber, growing crops or grass. It further says that "**attached to the earth**" means:

- (a) rooted in the earth, as in the case of trees and shrubs;
- (b) imbedded in the earth, as in the case of walls or buildings; or
- (c) **attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.**

As per the definition of immovable property contained in the General Clauses Act and the Transfer of Property Act, it is clear that things attached to the earth or permanently fastened to anything attached to the earth is immovable property. Anything **imbedded** in the earth or attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached, qualifies to be attached to the earth.

In the present case, the applicant constructed a building for the purpose of leasing or renting out the same for running an industry. The said building is imbedded in the earth as per clause (b) above and the **goods in question** are attached to the walls or building so imbedded in the earth for the permanent beneficial enjoyment of the building.

As far as, the contention of the applicant regarding installation of Sewage Treatment Plant and Fire-fighting system to be covered under plant and machinery is concerned, it is stated by the applicant that the same is installed as per statutory requirement. Thus it is clear that these goods have been installed in the building for the permanent beneficial enjoyment of the building.



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Therefore, Input tax credit is not allowed as per Section 17(5)(d) of the CGST Act.

4.10 As regards, the contention of the applicant regarding Cable and other material such as PCC Poles, structural steel, cable end kit, HDPE pipes, GO switch etc. to be covered under capital goods, it is clear that these goods also have been installed in the building for transmission of power from outside sources upto the premises. Thus, these goods are also for permanent beneficial enjoyment of the building. Therefore, Input tax credit is not allowed as per Section 17(5)(d) of the CGST Act.

4.11 The applicant has contended that the service of electrical installations and laying of Cable have not been used for construction of any immovable property. However, it is clear that these services also have been used in the building for transmission of electricity in the premises. Thus, these services are also for permanent beneficial enjoyment of the building. Therefore, Input tax credit is not allowed as per Section 17(5)(d) of the CGST Act.

4.12 The Supreme Court in Triveni Engineering and Industry Limited (2000) case observed that in order to determine whether an article is permanently fastened to anything attached to the earth, both the intention as well as the factum of fastening has to be ascertained from the facts and circumstances of each case. **The Allahabad High Court in S/S Triveni N L Limited** has observed that *"permanently fastened to anything attached to the earth"* has to be read in the context for the reason that nothing can be fastened to the earth permanently so that it can never be removed. If the article cannot be used without fastening or attaching it to the earth and it is not removed under ordinary circumstances, it may be considered permanently fastened to anything attached to the earth.

5. Ruling:

So, in light of the above discussion and findings, the Ruling of the Authority on the question raised in the application is as under:



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- 5.1 The ITC of GST paid on the Sewage treatment plant; Fire Fighting System; Cable for transmission of electricity from feeding point to the building; other material such as PCC Poles, structural steel, cable end kit, HDPE pipes, GO switch etc. & Laying of Cable and electrical installations for transmission of electricity is not admissible to the applicant in the lines discussed above.

Ordered accordingly.
To be communicated.

19.07.2019
Panchkula.




(Sangeeta Karmakar)
Member CGST


(Madhubala)
Member SGST

Regd. AD/Speed Post

M/s. Synergy Global Steel Pvt. Ltd.,
Plot No. 30, Industrial Area,
Dharuhera, Rewari, Haryana.

Copy to:

1. The Commissioner of Central Goods & Services Tax, Faridabad, GST Bhawan, Block 'C' & 'D', New C.G.O. Complex, NH-IV, Faridabad-121001, Haryana
2. Deputy Excise and Taxation Commissioner, Rewari (ST).

o/c