

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICE TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 103/2019

Dated: 30th September, 2019

Present:

1. Sri. Harish Dharnia,
Additional Commissioner of Central Tax Member (Central
Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of Commercial Taxes Member (State Tax)

1.	Name and address of the applicant	M/s TARUN REALTORS PRIVATE LIMITED Mantri House, 41, Vittal Mallya Road, Bengaluru 560001
2.	GSTIN or User ID	29AACCT1512D1ZS
3.	Date of filing of Form GST ARA-01	28.03.2019
4.	Represented by	Sri Badarinath.N.R., Chartered Accountant
5.	Jurisdictional Authority - Centre	Commissioner of Central tax, Bangalore North
6.	Jurisdictional Authority - State	LGSTO-020, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of 1. Rs.5,000-00 under CGST Act vide CIN SBIN19032900069699 dated 11.03.2019 2. Rs.5,000-00 under KGST Act vide CIN SBIN19032900069699 dated 11.03.2019

ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICE TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE KARNATAKA GOODS AND SERVICES TAX ACT, 2017

1. M/s Tarun Realtors Private Limited, (called as the 'Applicant' hereinafter), having GSTIN number 29AACCT1512D1ZS, has filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 and



Section 97 of the KGST Act, 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000-00 each under the CGST Act and the KGST Act.

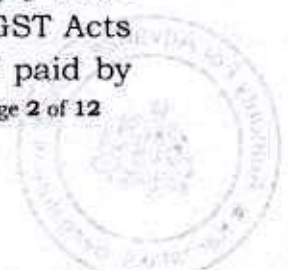
2. The Applicant is a Private Limited Company and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:

Whether taxes paid on procurement of goods and/or services for installation of the following, hereinafter referred to as "Installations", are regarded as blocked credits under Section 17(5) of the CGST Act, 2017?

(a) Chillers, (b) Air Handling Unit (AHU), (c) Lift, Escalators and Travellator, (d) Water Treatment Plant (WTP), (e) Sewage Treatment Plant (STP), (f) High Speed Diesel Yard (HSD), (g) Mechanical Car Park (MLCP), (h) Indoor / Outdoor Surveillance System (CCTV), (i) D.G.Sets, (j) Transformers, (k) Electrical wiring and fixtures (l) Public Health Engineering (PHE), Fire-fighting and water management pump system.

3. The applicant furnishes some facts relevant to the stated activity:

- a. The Applicant is developing a shopping Mall-'Mantri Arena Mall (Schedule Property) which will include a hypermarket, multiplex cinema theatre complex, departmental stores, retail shops and food courts.
- b. The Applicant is entering into various lease agreements with their customers / tenants (Service recipients) and will be leasing all unit(s) at the Mall together with the right to use the staircases, common areas and other common facilities.
- c. To undertake development of the said property, the Applicant was and is required to procure numerous goods and avail numerous services including works contract service from many suppliers. Accordingly, the Applicant placed purchase order on various suppliers for goods and work order on various suppliers for services and the suppliers have accordingly, raised invoices on the Applicant.
- d. Amongst other goods and services, the Applicant has procured goods and / or services for the installation of Chillers, Air Handling Unit (AHU), Lift, Escalator, Travellator, Water Treatment Plant (WTP), Sewage Treatment Plant (STP), High-speed Diesel yard (HSD) Mechanical Car Park and Indoor/Outdoor Surveillance System (CCTV), DG sets, Transformers, Electrical wiring and fixture, Public Health Engineering (PHE), Fire-fighting and water-management pump system. Supply of all the aforesaid goods and services are exigible to tax under the GST Acts and, accordingly, tax has been charged by such suppliers and paid by



the Applicant to such suppliers. A brief description of the nature of these installations is given below:

- i. Chiller – It is air-conditioning equipment that generates chilled water, essential for overall temperature control of the building.
- ii. Air Handling Unit (AHU) – AHU is a device used to regulate and circulate air as part of a heating, ventilating, and air-conditioning (HVAC) system. The basic function of the AHU is take in outside air, re-condition it and supply it as fresh air at controlled temperature to a building.
- iii. Lift, Escalator, Travellator – It is a form of vertical transportation between building floors. levels or decks, commonly used in offices, public buildings and other types of multi-storey building.
- iv. Water Treatment Plant (WTP) – WTP is plant where the supplied water (municipal/ bore well/ brought out water) is treated for prescribed permissible limits for the prescribed purposes within the building.
- v. Sewage treatment plant (STP) – STP is a plant where the waste water (used) is treated, recycled, is made re-usable and then supplied for the prescribed purposes within the building.
- vi. High-speed Diesel Yard –This is required for storage of diesel and pumping the same to Diesel Generators during power outages, thereby restoring all mechanical equipment functionality in the building.
- vii. Mechanical Car Park (MLCP) – A system of car parking solution that enables automatic parking and retrieving cars that typically use a system of pallets and lifts and signalling devices for retrieval of cars.
- viii. Indoor/Outdoor Surveillance System (CCTV) – A CCTV system is a TV system in which signals are not publicly distributed but are monitored, primarily for surveillance and security purposes within the building.
- ix. DG Sets – These generate required power that is required for all electro-mechanical equipment in the building.
- x. Transformers – These equipment bring down the voltage of the power supplied by BESCO, as per stipulated norms.
- xi. Electrical wiring and fixtures – These fixture, through cables & wires, carry power to various electro-mechanical equipment and are related to lighting and associated accessories.
- xii. Public Health Engineering (PHE), Fire-fighting and water-management pump system – This is essential for life safety of the building which includes Fire protection and election, and water supply management for the building.



e. All the said installations are used, directly or indirectly, for making outward supply of services (i.e. lease rentals.)

4. The applicant submits his understanding on the questions before this Authority as under:

(a) all the Installations would qualify as 'Plant or Machinery' under the CGST Act, 2017 and accordingly, taxes paid on procurement of goods or service for construction of such 'Plant or Machinery' would not be regarded as blocked credits under Section 17(5) (d) of the CGST Act, 2017 read with Explanation to Chapter V and Chapter VI of the CGST Act, 2017.

(b) Section 17 (5) (d) of the CGST Act, 2017 provides that no input tax credit would be available in respect of 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.

(c) Explanation for the purpose of Chapter V and Chapter VI of the CGST Act, 2017 states 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 excludes-

- i. land, building or any other civil structures;
- ii. telecommunication towers; and
- iii. pipelines laid outside the factory premises.

(d) On a conjoint reading of the above, it can be deduced that taxes paid on goods or services received for construction of plant or machinery on one's own account is available as input tax credit and is not blocked under Section 17(5) of the CGST Act, 2017.

(e) Although the phrase 'Plant and Machinery' is defined under the GST laws, the phrase 'Plant or Machinery' has not been defined. It is critical to note that Section 17(5) (d) of the CGST Act, 2017 uses the phrase, 'Plant or Machinery', which as indicated supra, has not been defined under the GST laws. Hence, references must be drawn from the dictionary meanings (i.e. legal dictionaries), meanings ascribed to it under other laws, and judicial pronouncements under the allied laws to understand the phrase, In this regard, the Applicants submits as follows:

1. Definition under legal dictionaries:

- a. As per Law Lexicon, "Plant" means the fixtures, machinery, tools, apparatus, appliances etc., necessary to carry on any trade or mechanical business, or any mechanical operation or process.
- b. As per Law Lexicon, "Machinery" means something more than a collection of ordinary tools. It means more than a solid structure built upon the ground, whose parts either do not move at all or if they do move, do not move the one with or upon the other in interdependent action with the object of producing specific and definite result.

2. Definition under Sales Tax laws:

a. In the case of **Rashmi Enterprises vs. State of Gujarat (91 STC 295) (Guj)**, it has been held that the term "machinery" is nowhere defined in the Act. The earliest judicial attempt to define the term "machinery" was made by the Privy Council in *Corporation of Calcutta v. Chairman of the Cossipore and Chitpore Municipality AIR 1922 PC 27*. **The Privy Council, held that machinery must mean something more than a solid structure built upon the ground, whose parts either do not move at all, or if they do move, do not move the one with or upon the other in interdependent action with the object of producing a specific and definite result. Their Lordships were of the view that there was great danger in attempting to give a definition of the word "machinery" which would be applicable in all cases and it may be impossible to succeed in such an attempt.** It was observed that if their Lordships were obliged to run the hazard of the attempt they would be inclined to say that the word "machinery" when used in the ordinary language prima facie, means some mechanical contrivances which by themselves or in combination with one or more other mechanical contrivances by the combined movement and interdependent operation of their respective parts generate power, or evoke, modify, apply or direct natural forces with the object in each case of effecting so definite and specific a result. **Their Lordships further observed that the determination in any given case of what is or is not "machinery" must, to a large extent, depend upon the special facts of that case, and also on consideration as to whether an intelligent person would in the ordinary use of language, describe the items as machinery.**

b. In the case of **Industrial Machinery Manufactures Pvt. Ltd. v. State of Gujarat (16 STC 380)**, the Honorable High Court quoted the test laid down by the Privy council in the above case cited in para



4.1. It was held by applying the test that the humidifiers used by cotton textile mills in order to maintain certain humidity for the purpose of increasing the strength of yarn to avoid wastage of yarn and of improving the quality of yarn which are essential to the modern textile industry were "machinery" falling within the analogous entry 15 of Schedule C to the Bombay Sales Tax Act, 1959. It was observed that every item of machinery which plays some role without which the manufacture of finished goods would not be possible would be machinery used in the manufacture of goods.

c. In the case of **Ambica Wood Works vs. State of Gujarat (Guj) 43 STC 338**, the Honorable High Court relied upon the test laid down by the Privy Council, and held that the screen print block tables of wood sold to various textile mills by the assessee, which were fitted with steam pipes acting as instantaneous driers, could be nothing but "machinery", It was held that:

"Some solid structure with no moving parts cannot be termed as machinery within the meaning of entry 15 of Schedule C to the Bombay Sales Tax Act, 1959. It would be machinery only if such structure, complete in itself, has moving parts in relation with others when they move interdependently by application of force-mechanical or manual-with an avowed object to produce a given product. **In other words, in order to be a machinery, the following four factors must exist, namely: (1) a complete and integrated collection of several objects or articles; (2) these objects or articles should interact in unison upon or with each other; (3) this interaction is prompted by application of force which may be manual or motive power; and (4) the movement should be with a view to do some specific activity or to obtain specific or definite result**".

d. In this case of **Dani vs. State of Karnataka (44 STC 276)**, the Karnataka High Court was concerned with a question whether a tractor-trailer is a "machinery" or "accessory" of a machinery. The High Court summarized the criteria laid down by the Privy Council in the following words.

"(i) The word 'machinery' must mean something more than a collection of ordinary tools. It must mean something more than a solid structure built upon the ground whose parts either do not move at all or, if they do move, do not move the one with or upon the other

in interdependent action with the object of producing a specific and definite result.

(ii) It is not possible to define 'machinery' as applicable to all cases. However, it could be said that, when used in ordinary language, prima facie, means some mechanical contrivances, which by themselves or in combination with one or more other mechanical contrivances, by the combined movement and inter-dependent operation of their respective parts, generate power, or evoke, modify, apply or direct natural forces with the object in each case of effecting so definite and specific a result. The tank and its supporting structure do not satisfy this definition.

(iii) Determination as to what is or what is not "machinery" must, to a large extent, depend on the special facts of each case.

(iv) Illustrations are better guides to ascertain the true meaning of the word 'machinery', when used ordinarily and not as a specific definition.

(v) Whether an intelligent person would, in the ordinary use of language, describe a particular thing as machinery.

e. In the of **India Leaf Spring Mfg. Co. (P) Ltd, v. Commissioner of Income Tax (1989 175 ITR 639 AP)**, the Andhra Pradesh High Court has held that ***"what appears to be essentials that there must be some mechanical contrivances which by themselves or in combination with one or more other mechanical contrivances, by the combined movement and interdependent operation of their respective parts generate power or evoke, modify, apply or direct natural forces."***

f. In the case of **Sirpur Paper Mills Ltd v. CCE, Hyderabad, [1998(97) E.L.T. 3 (S.C.)**, the Hon'ble Supreme Court held as follows:

i. Machineries may be attached to the earth for operational efficiency.

ii. The mere fact that machinery is embedded in earth does not make it an immovable property.

iii. The test is whether the same can be sold in the open market which may require dismantling and reassembly at another site.

Based on the meaning of 'plant' or 'machinery' established through the legal dictionaries and judicial pronouncements



above, we wish to submit that all the installation above qualify as 'plant' or 'machinery'.

g. Having established the above, with specific regard to the eligibility of credits, the Applicant would like to draw attention to certain judicial pronouncements where it has been held that CENVAT Credit of inputs/ input services used for construction is admissible. Although these judgments have been pronounced under the erstwhile CENVAT Credit laws, the analogy can be adopted to understand the eligibility of the same under the GST laws.

a. **M/s. Rattha Holding Co. Pvt. Ltd. Vs Commissioner of Central Services Tax, Chennai (2018 (9) TMI 1722)** – wherein the Hon'ble Chennai Tribunal held that disallowance of credit of input service used for Construction of buildings is unjustified.

b. **Commissioner of Central Excise, Vishakhapatnam-II vs M/s. Sai Samhmita Storages (p) Ltd. (2011 (2) TMI 400)** – wherein the Hon'ble Andhra Pradesh High Court held that the assessee used cement and TMT bar for providing storage facility without which storage and warehousing services could not have been provided and the finding of the original authority as well as the appellate authority are clearly erroneous.

c. **Commissioner of Central Excise, Salem vs. Ashok Agencies (2016 (5) TMI 782)** – wherein the Hon'ble Chennai Tribunal held that Commissioner (Appeals) has not committed any error to grant Cenvat credit to the respondent on those input services which are not disintegrated from providing output service. It is strange that how without bringing out an edifice Revenue shall realize its dues towards rental service.

h. Further, the following judicial pronouncements permit claim of CENVAT credit on goods or services or both used in fabrication of parts, components, accessories of the plant and machinery. It has been consistently held that the parts, components, accessories come into existence before the installation of the machinery and credit of taxes paid on the same cannot be denied even if they become part of the immovable property after installation of the plant and machinery.

a. **Commissioner of Central Excise & Service Tax vs. India Cements Ltd. 2014(310) E.L.T. 636 (Mad).**

b. **Commissioner of Central Excise Jaipur vs. Rajasthan Spinning & Weaving Mills Ltd. 2010(255) ELT 481 (S.C.)**

c. Saraswati Sugar Mill Vs. Commissioner of Central Excise Delhi III
2011 (270) E.L.T. 465(S.C.)

i. Further, these installations are recorded in the books of accounts under separate heads as per Indian Accounting Standards (i.e. independent of building or civil structure) which is sufficient justification that these installations re distinct from the land and building, Hence, the same do not form a part of the exclusion portion of the Explanation to Chapter V and Chapter VI of the CGST Act, 2017 and are accordingly, not excluded from the definition of 'Plant and Machinery'.

4.2 The Applicant submits that, basis the above, although the Installations are fixed to the building/ earth, they qualify as 'Plant' or 'Machinery' under the CGST Act, 2017 and accordingly, the taxes paid on procurement of goods or services for such Installations should not be regarded as blocked credits in terms of Section 17(5) (d) of the CGST Act, 2017 read with Explanation to Chapter V and Chapter VI of the CGST Act, 2017.

5. FINDINGS & DISCUSSION:

We have considered the submissions made by the applicant in their application for advance ruling as well as the additional submissions made by Sri. Badrinath NR, CA, during the personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts. At the outset, we would like to state that the provisions of both the CGST Act and the KGST 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 provisions under the KGST Act.

5.1 The transaction of the applicant is examined and found that the applicant is developing a Shopping Mall and is entering into various lease agreements with customers or tenants.

5.2 The sample copy of the lease agreement entered by the applicant with the tenants shows the following:

- (a) What is leased is the property together with the right to use the stair cases, common areas and other common facilities.
- (b) The applicant is charging rent and the common area maintenance charges from each of the tenant.
- (c) The HVAC charges are also collected separately from each of the tenant.



From the above, it is seen that the property in question is given on rent for enjoyment of the tenant and the additional charges are charged for the maintenance.

5.3 The applicant has installed Chillers, Air Handling Units, Lift, Escalator, Travellator, Water Treatment Plant, Sewage Treatment Plant, HSD Yard, Mechanical Car Park, Surveillance System, DG Sets, Transformers, Electrical Wiring and fixtures and PHE, Firefighting and water management pump system and other facilities of the building. The applicant has procured the goods and services for installation of these and wants to know whether these are regarded as “blocked credits” under Section 17(5) of the CGST Act.

5.4 The relevant provisions of Section 17(5) of the CGST Act, 2017 applicable to the applicant’s question 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:

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

5.5 The applicant has stated that he has procured goods or services or both for the purposes of additions to the said immovable property and has capitalized them in his books of accounts. Therefore, the same are covered under the expression “construction of an immovable property” and hence the input tax credit on the goods or services or both received by a taxable person in respect of such construction is not available.

5.6 The claim of the applicant that the immovable property is a plant and hence the covered under the exception in Section 17(5)(d) is verified and it boils to the issue whether the listed items are covered under the definition of “plant”.

5.7 The applicant claims that the term “plant and machinery” is defined



in Explanation to the Section 17 and not “plant” or “machinery” and hence it can be deduced that taxes paid on goods or services received for the construction of plant or machinery on one’s own account is available as input tax credit and is not blocked under section 17(5) of the CGST Act, 2017. The same is verified and found that the term “plant and machinery” is defined as under:

“Explanation : For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to the 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.”*

5.8 This definition is in the context of “plant and machinery” and includes “apparatus, equipment and machinery” and contextually, the word “plant could include apparatus and equipments fixed to the 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, whereas machinery would be covered separately. The exclusion clause relating to “land, building and any other civil structure” would be applicable to this “plant” and hence input tax credit is not available as it is a civil structure.

5.9 The caselaws relied by the applicant are all related to the definition of machinery and that has no relevance in the present case, as the applicant is claiming input tax credit on the “plant or machinery”. The machinery is goods whereas the applicant himself claims exclusion of “plant” or “machinery” from the genus of immovable property. What is excluded is a species of “plant” or “machinery” which is an immovable property which is not a civil structure. These when incorporated in the construction becomes part and parcel of the building and civil structure which is given on rent and no longer has separate existence.

5.10 The provision of facilities like transformers, sewage treatment plant, Electrical Wiring and Fixtures, Surveillance systems, D.G. Sets, Lifts, Air Handling Units etc. are sine-qua-non for a commercial mall and hence cannot be considered separate from the building or civil structure. The provision of these are either statutory for a building or defines the nature of the building as a commercial mall. Hence the input tax credit on the inward supplies of goods or services involved in the construction of

immovable property which is a civil structure or building is not available to the applicant and hence blocked.

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

RULING

The taxes paid on procurement of goods and/or services for installation of the Installations as listed in the application are regarded as blocked credits under Section 17(5) of the CGST Act, 2017.




30.09.2019

(Harish Dharnia)
Member


(Dr. Ravi Prasad M.P.)
Member

Place: Bengaluru,
Date: 30.09.2019

To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. Commissioner of Central Tax, Bangalore-North
4. The Asst. Commissioner, LGSTO-020, Bengaluru
5. Office Folder