

**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 106/2019
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 WEWORK INDIA MANAGEMENT PRIVATE LIMITED 1 st Floor, Embassy Point, Infantry Road, Bengaluru 560001
2.	GSTIN or User ID	29AADCH8710J2ZB
3.	Date of filing of Form GST ARA-01	11.12.2018
4.	Represented by	Sri Harish Bindumadhavan, Advocate
5.	Jurisdictional Authority - Centre	Commissioner of Central tax, Bangalore North
6.	Jurisdictional Authority - State	LGSTO-020
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 SBIN18102900408085 dated 25.10.2018 2. Rs.5,000-00 under KGST Act vide CIN SBIN18102900408085 dated 25.10.2018

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 Wework India Management Private Limited, (called as the 'Applicant' hereinafter), having GSTIN number 29AADCH8710J2ZB, 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



Wework India Management

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:

- a) Whether input GST credit can be availed by the applicant on the detachable 14mm Engineered Wood with Oak top Wooden Flooring which is movable in nature and capitalized as "furniture and fixture", and is not capitalized as "immovable property"?
- b) Whether input GST credit can be availed by the applicant on the detachable sliding and stacking glass partition which is movable in nature and capitalized as "furniture and fixture", and is not capitalizes as an immovable property?

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

- a. The applicant states that he is in the business of supplying shared workspace/office space to the freelancers, startups, small businesses and large enterprises. Towards this end, the Applicant procures goods and services from various contractors for fitting-out of the workspaces and provides the said workspace on rent, to various companies and individuals as sharing work-spaces. The applicant states that he has paid GST on the inputs procured.
- b. The applicant states that however, as per Section 17(5) of the CGST Act, a restriction is imposed with respect to input tax credit (hereinafter referred to as "ITC") on procurement of goods and services or both received by the taxable person for construction of an immovable property. However, the term 'construction' is limited to supplies to the extent capitalized to an immovable property.
- c. Of the procurements, two of the major components which are in the nature of furniture and fixtures, that are used in WeWork buildings are-
 - Detachable 14mm Engineered wood with Oak top wooden flooring; and
 - Detachable sliding and stacking glass partitions.

It is with respect to ITC eligibility for these two items that the Applicant seeks to obtain this ruling.



4. The applicant states that detachable 14 mm Engineered Wood with Oak top Wooden Flooring qualify as eligible credit under section 16 of the CGST Act for the following reasons:

4.1 Section 16 details the criteria of availment of ITC on tax paid on input and input services. Section 16 of the CGST Act, 2017 reads as under:

*“(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
.....”*

From the bare reading of the section, it can be seen that Section 16 of the CGST Act entitles every registered person to take input tax credit of tax charged on supply of goods or services or both which are used or intended to be used in course or furtherance of business. The applicant is into the business of constructing physical shared spaces and office services for entrepreneurs, technology start-up companies, freelancers, small businesses and large enterprises. Therefore, on the basis of above submissions, given that the Applicant procures Detachable 14mm Engineered wood with Oak top wooden flooring which are installed in office spaces rented out by the Applicant, the condition as provided under Section 16 for availment of ITC stands satisfied.

4.2 The applicant argues that restriction provided under section 17(5)(d) does not apply to 14 mm engineered wood with Oak top wooden flooring for the following reasons:

4.2.1 Relevant portions of Section 17(5) of the CGST Act reads as under:

“(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:—

(a)

(b)

(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;*

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.”*

Hence credit restriction is only in so far as inputs / input services “for construction of an immovable property”.

4.2.2 The applicant states that Section 17(5)(d) used the word “for” construction and this term is more specific than “in relation to” and the word “for” generally means “for the purposes of”.

4.2.3 The word ‘for’ is defined in the Concise Oxford English Dictionary, 8th Ed. as under:

- “1. in the interest or to the benefit of; intended to go to;*
- 2. in defence, support or favour of*
- 3. suitable or appropriate to*
- 4. in respect of or with reference to*
- 5. representing or in place of....*
- 6. conducive or conductively to; in order to achieve....”*

4.2.4 The Hon’ble Supreme Court in the case of **Mansukhlal Dhanraj Jain & Ors. Etc. v. Eknath Vithal Ogale etc.** compared the words “for” and “relating to” and concluded that the latter has wider connotations than the former. The relevant extract is reproduced for reference:

"There is a good deal of difference between the words "relating to the recovery of possession" on the one hand and the terminology "for recovery of possession of any immovable property". The words "relating to" are of wide import and can take in their sweep any suit in which the grievance is made that the defendant is threatening to illegally recover possession from licensee".

4.2.5 The applicant argues that from the above decisions that the word 'for' has been defined to mean in the interest of, to the benefit of, in defence of, in support or favour of, etc. Based on the above rationale, it can therefore be concluded that in order to be covered by the restrictions provided under Section 17(5)(d), the goods or services must be used directly for construction of immovable property.

4.2.6 The applicant states that in other words, with reference to section 17(5)(d) of CGST Act, read with the explanations provided therein, credit eligibility of goods or services or both is restricted only when the same is "for construction of an immovable property".

4.2.7 The Detachable 14mm Engineered wood with Oak top wooden flooring are not inextricably linked to the construction itself. They are only an addition added above the flooring already present in the fully constructed building. Credit restriction is with respect to construction only when capitalized as immovable property.

4.2.8 Further, the applicant submits that for the purposes of clause (d) of section 17(5) of CGST Act, the expression 'construction' has been defined to include re-construction, renovation, additions or alterations or repairs, to the extent of capitalization of the said immovable property.

4.2.9 The Applicant in this regard submits that, so far as the business activity of the applicant is concerned, such fixtures of floorings and partitions are not capitalised as immovable property but are in fact recorded as 'furniture and fixtures'. They can be detached and re-used and are not considered to be the permanent civil assets. It is for this very reason that the said wooden flooring cannot be capitalized as immovable property.

4.3 Thus, the Detachable 14mm Engineered wood with Oak top wooden flooring is not covered under the definition of 'construction' and consequently is not restricted under Section 17(5).

Nework India Management



5. Regarding the second item in question, i.e. Detachable sliding and stacking glass partitions, the applicant states that they qualify as eligible credit under section 16 of the CGST Act and the restriction provided under section 17(5)(d) does not apply for the following reasons:

5.1 The applicant states that the bases for the above submissions regarding the admissibility of the credit for 14mm Engineered wood with Oak top, the Applicant reiterates the analysis above as they same shall be applicable in the case of fittings of detachable sliding and stacking glass partitions as well.

5.2 The Applicant submits that the as per Section 16 of the CGST Act, he is eligible to avail credit on the Detachable sliding and stacking glass partitions as the same are being fitted in the building for the co-working space being let out to its members and thus qualifies to be used in the course or furtherance of Applicant's business.

5.3 The applicant submits that it is pertinent to note that the restriction prescribed in Section 17(5) pertains to as inputs/ input services "for construction of an immovable property". In the instant case, Detachable sliding and stacking glass partitions are being capitalised in the books of accounts as furniture and fixtures rather part of construction of immovable property.

5.4 On this regard the Applicant submits a chartered accountant certificate, certifying the Detachable sliding and stacking glass partitions fittings as furniture and fixture.

6. The applicant argues that the goods in question are movable and in this regard he argues as under:

6.1 The Applicant submits that **anything embedded to the earth and which cannot be dismantled and moved, strictly are covered under the ambit of "immovable property"**, thus restricting the same from availment of ITC as per Section 17 (5)(c) & (d) of the CGST Act.

6.2 The term immovable property has not been defined under GST Act, therefore reference needs to be taken from General Clauses Act, 1897.

6.3 Section 3(26) of the General Clauses Act, 1897, does not provide an exhaustive definition of the said expression. It reads :

“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.”

6.4 Similarly, Section 3 of the Transfer of Property Act, 1882 does not spell out an exhaustive definition of the expression “immovable property”. It simply provides that unless there is something repugnant in the subject or context ‘immovable property’ under the Transfer of Property Act, 1882 does not include standing timber, growing crops or grass.

6.5 Though the terms “attached to the earth” are not defined in the GST law, reference can be drawn Section 3 of the Transfer of Property Act, 1882 wherein it is defined that anything:

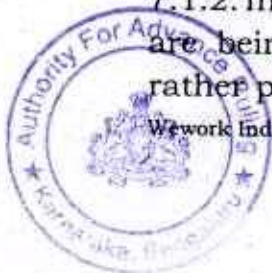
- Rooted to the earth, as in case of trees and shrubs;
- Imbedded in the earth, as in the case of walls and buildings;
- Attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

7. The Applicant, in view of the above, emphasises that the Detachable 14mm Engineered wood with Oak top Wooden flooring and detachable sliding and stacking glass partitions would not fall under the ambit of “Anything attached to the earth” as the Detachable Oak wood flooring are fixed using the streaped foam and detachable sliding and stacking glass partitions are fixed with the help of nuts and bolts to a foundation intended to provide stability to the working of the same. They are neither rooted to the earth not embedded in the earth nor attached for the permanent beneficial enjoyment as the same can be detached and re-used.

7.1 Detachable 14mm Engineered wood with Oak top wooden flooring procured by the Applicant are movable in nature.

7.1.1. The Applicant in support of the arguments taken above, further submits that the wood used for the flooring fall under the ambit of movable property as the same can be dismantled and re-used again and would clearly qualify for the availment of input tax credit.

7.1.2. In the instant case, detachable 14mm Engineered wood with Oak top are being capitalised in the books of accounts as furniture and fixtures rather part of construction of immovable property.



7.1.3. On this regard the Applicant submits a chartered accountant certificate, certifying the detachable 14mm Engineered wood with Oak top flooring as furniture and fixture.

7.1.4. The wood used for the flooring has 3 layers of normal wood and the top most layer of oak wood. The same has a shelf life of approximately 8 to 10 years.

7.1.5. In general, wooden flooring is of two types-

- **Glued down wooden flooring**

Where the wood used for flooring is glued down, the same cannot be re-used after dismantled. Even if dismantled, it would result in 70 to 80% of wastage.

- **Detachables 14mm Engineered wood with Oak top Wooden flooring**

This type of wooden flooring is called as an inter-locking wooden flooring system. Different manufacturers have different names for their products, and some call interlocking hardwood flooring by other names. Interlocking hardwood flooring is also called locking hardwood flooring or click-together hardwood flooring, as it does make a clicking sound when it is put together. The wood used for flooring is attached by using a foam called polished streap foam. At ground level, a cementious bare panel is erected using pedestals. Thereafter, foam is used to lay the wood. The wooden flooring in this case, can be easily detached and reused.

7.1.6 From the above, the applicant argues that it is understood that there are two types of fittings of the wooden flooring; one being glued down where the same cannot be dismantled and re-used; the other being inter-locked by using a polished streap foam where the wood can be removed without damaging the area where it is fixed and re-used.

7.1.7 Thus, the Detachable 14mm Engineered wood with Oak top Wooden flooring consequently are not restricted under Section 17(5).

7.2 Detachable sliding and stacking glass partitions procured by the Applicant are movable in nature.

7.2.1 The Applicant in this regard further submits that the said detachable sliding and stacking glass partitions are also movable in nature as the same can be dismantled and re-used.

7.2.2 In this regard, the Applicant submits that in the process of fitting the detachable glass partitions, an aluminium store front is fixed to the structure with the help of nuts and bolts, and to the same, the glass is attached.

7.2.3 Thus, basis the above submissions it is evident that detachable sliding and stacking glass partitions would qualify as a "movable property" as the same can be dismantled and re-used and would clearly qualify for input tax credit.

8. Judicial Precedents in relation to credit admissibility

8.1 In the Advance Ruling issued by the authority for Advance Ruling, Uttarakhand, in the case of **M/s VINDHYA TELELINKS LTD**, the question was whether the applicant is eligible for input tax credit on goods & services used in erection of infrastructure, which consists of "steel tabular pole, galvanized iron wire, nuts &, bolts, optical fibre cables, plastic pipes, clamps", for telecommunication service providers since the infrastructure provided by the applicant is different from "Telecommunication Tower".

It was held that the infrastructure provided by the applicant is different from "Telecommunication Tower" and it is not an immovable property as it can be easily be moved to another place for use without any damage to the entire infrastructure. The infrastructure being a movable property can be classified as 'goods' in terms of section 2(52) of CGST/SGST Act, 2017. The infrastructure provided being different from Telecommunication Tower, the applicant can avail Input Tax Credit on GST paid on the goods & services in terms of section 16(1) of CGST/SGST Act, 2017, consumed while providing the supply in question.

As mentioned in the facts of the case, Detachable 14mm Engineered wood with Oak top wooden flooring and detachable sliding and stacking glass partitions are movable in nature and thus applying the decision of the Advance Ruling Authority, the Applicant would be rightly eligible for Input Tax credit.



In view of the above, on applying three test referred above, the wooden floorings and glass partitions cannot be termed as immovable property for the following reasons:

- They are not immovable property;
- They cannot be said to be attached to earth;
- The setting up itself is not intended to be permanent at a given place. It can be moved based on business requirements.

8.2 The Applicant further places reliance on the advance ruling issued by the Authority of the advance ruling in the case of **M/s BAHL Paper Mills LTD**, where the question was whether credit will be available on office fixtures & furniture, AC, plant & sanitary fittings on the newly constructed building on its own account, for furtherance of business, and is capitalized in books of accounts.

It was held that as per the explanation to Section 17 of the CGST Act, availment of credit was not admissible in respect of land, building or any civil structure; therefore sanitary fittings being the integral part of the land was not an admissible credit.

However, credit of GST is available on office fixtures & furniture, A.C. plant. The said advance ruling has placed reliance on the CBIC Board Circular No. 943/04/2011-CX dated 29th April 2011 wherein it was clarified that the goods such as furniture and stationery used in an office within the factory are goods used in the factory and are used in relation to the manufacturing business and hence the credit of the same is allowed.

8.3 Further Reliance can be placed on the judgement in the case of **M/s Balkrishna Industries Ltd Vs CCE, Jaipur-I** wherein it has held that the credit on duty paid on air-conditioners installed in the office of factory is admissible. Further, the goods such as furniture and stationery used in the office within the factory are goods used in relation to the manufacturing business and hence credit is to be allowed on the same.

8.4 The Applicant further places reliance on the Advance ruling issued by the Authority of the advance ruling in the case of **Nipro India Corporation Private Limited** where the question was whether the input tax credit of tax paid on cost proposed to be incurred in relation to civil works, mechanical works and electrical works can be admissible under the CGST Act, 2017.

It was held that the goods in question are used or intended to be used in course of furtherance is business and as per section 16 of the GST Act "Every registered person subject to such conditions and restrictions as may be prescribed would be entitled to take credit of input tax charged on supply of goods or services or both to him which are used or intended to be used in course or furtherance of business".

Further it is understood that credit with respect to various plant and machinery is admissible as per Section 16 of the CGST Act.

8.5 From the above, it can be inferred that the credit of input tax charged on the supply in the nature of detachable 14mm Engineered wood with Oak top wooden flooring and detachable sliding and stacking glass partitions are to be allowed as it is admissible under CGST/SGST Act 2017.

8.6 Thus, the Applicant submits that with reference to the explanation provided in section 17(5)(d) of CGST Act, the goods in question i.e detachable 14mm Engineered wood with Oak top wooden floorings and detachable sliding and stacking glass partitions which are in the nature of furniture and fixture are movable fit-outs which would qualify as eligible input tax credit.

9. FINDINGS & DISCUSSION:

We have considered the submissions made by the applicant in their application for advance ruling as well as the contentions made by Sri.Harish Bindumadhavan, Advocate, 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.

9.1 There is no doubt that the applicant is involved in the provision of shared workspaces and office spaces to the tenants and procures goods and services from various contractors for fitting out the work spaces and provides the said work spaces on rent as shared work spaces.

9.2 The applicant has referred to section 16(1) of the CGST Act which reads as under:



“(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

.....”

It is also accepted that the applicant is using the goods and services so procured in the course or furtherance of his business of renting the office spaces and the input tax credit is that tax charged on the inward supplies of such goods and services and being a registered person, subject to such conditions and restrictions as may be prescribed, he is eligible to the credit of such input tax credit.

9.3 The relevant provisions of Section 17(5)(d) of the CGST Act 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:—

a)

b)

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;*

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.”

9.4 It is pertinent to note that section 17(5) overrides section 16(1) and any *input tax credit shall not be available in respect of -*

(i) 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; and

(ii) 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.

The term construction includes re-construction, renovation, additions or alternations or repairs to the extent of capitalization to the said immovable property.

9.5 The term construction includes additions to the immovable property to the extent of capitalization. The certificate of the Chartered Accountant also shows that the additions are capitalized in the books of accounts under the Fixed Assets Head “Furnitures and Fixtures”. Nowhere is it said that the capitalized amount needs to be declared as in the books of accounts within the value of immovable property i.e. buildings. The Accounting Standards which enumerate the classes of Fixed Assets being land and buildings, furniture and fixtures, etc. does not classify property as movable and immovable property and an asset classified as fixture could still be immovable property within its meaning. In case of any immovable property, if the asset qualifies to be an immovable property but shown as a discrete element in the books of accounts, it still remains an immovable property. Mere declaration of the same under a different class of Fixed Assets does not change its nature being an immovable property.

9.6 On the issue whether the fixing of detachable wooden flooring and sliding and stacking of glass partitions amounts to addition to an immovable property or not, the following points are noted:

9.6.1 The term immovable property is not defined under the GST Act. Section 3(26) of the General Clauses Act, 1897 defines “immovable property” as under:



“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.”

The term “movable property” is defined in section 3(36) of the General Clauses Act, 1897 as under:

“(36) “movable property” shall mean property of every description, except immovable property:

Hence, a movable property is one which is not an immovable property. The definition of “immovable property” is an inclusive definition and includes any things attached to the earth or permanently fastened to anything attached to the earth. It is pertinent to note that the office space which is provided is an immovable property and there is no dispute in this regard and these partitions are those which are attached to the building which separates the spaces given on rent. The character of the office space is of certain degree of permanence so that the office space of one tenant can be separated from the office space of another tenant and this needs certain degree of permanence so that the same can be demarcated clearly in advance.

It is also clear from the submissions of the applicant, that these are fixed to the building to create the office spaces and hence is sine qua non for the letting out of the office space. There cannot be office space unless these are fixed and hence it can be said to be permanently fastened to the building. Hence the fixing of sliding and stacking glass partitions amounts to addition or alteration to an immovable property and hence are used for the construction of an immovable property and hence input tax credit shall not be available on

- (i) the works contract services when supplied for construction of immovable property; and
- (ii) the goods or services or both received by a taxable person for construction of an immovable property on his own account even when it is used in the course or furtherance of business.

Coming to the next issue of fixing of 14mm Engineered wood with Oak top wooden flooring, the applicant states that the wood used for flooring is attached by using a foam called polished streap foam and at ground level, a cementious bare panel is erected using pedestals and thereafter, foam is used to lay the wood. The wooden flooring in this case can be easily detached and reused. This only adds to the value to the building and is

not sine qua non for the office space, unlike the partitions. It is also pertinent to note that the wooden flooring which is detachable can be removed and replaced without affecting the office space. Further, there is no permanence involved in this fastening nor any damage is done to the property, either to the building or to the wooden flooring at the time of detachment of this flooring and hence it cannot be covered under addition or alterations to the immovable property in strict sense and hence would not be covered under "construction of immovable property".

Hence input tax credit relating to detachable 14mm Engineered wood with Oak top Wooden flooring is not restricted under section 17(5) of the CGST Act.

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

R U L I N G

1. The input tax credit of GST can be availed by the applicant on the detachable 14 mm Engineered wood with Oak top wooden flooring which is movable in nature and capitalized as "furniture" and
2. The input tax credit of GST is not available on the detachable sliding and stacking glass partitions.




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