

AUTHORITY FOR ADVANCE RULING - MADHYA PRADESH
Goods and Service Tax()
O/o THE COMMISSIONER, COMMERCIAL TAX,
MOTI BUNGALOW,
MAHATMA GANDHI MARG, INDORE (M.P.) - 452007
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PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017

Members Present

1. Rajiv Agrawal
Additional Commissioner,
Office of the Commissioner, CGST and Central Excise, Indore
2. Manoj Kumar Choubey
Joint Commissioner,
Office of the Commissioner of Commercial Tax, Indore Division-1

GSTIN Number. If any/User-id	23AABCJ6495J1ZA
Name and address of the applicant	M/s.JABALPUR ENTERTAINMENT COMPLEXES P.LTD., Khasra No.36/4, South Avenue Mall, Lower Ground Floor, Narmada Road, Jabalpur (M.P.)- 482008
Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	b) Applicability of a notification issued under the provisions of this Act. d) Admissibility of input tax credit of tax paid or deemed to have been paid
Date of Personal hearing	29-06-18
Present on behalf of applicant	Shree Nikhilesh Mishra , DGM and Shree Vishal Shreevastav Tax, Consultant
Case Number	12/2018
Order dated	27/08/2018
Order Number	12/2018

PROCEEDINGS

**(Under section 98 of the Central Goods and Services Tax Act,2017 and Madhya Pradesh
Goods and Services Tax Act, 2017)**

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and MP Goods & Services Tax Act, 2017 (hereinafter also referred to CGST Act and MPSGT Act respectively) by M/S. JABALPUR ENTERTAINMENT COMPLEXES P.LTD.,(hereinafter also referred to as applicant), registered under the Goods & Services Tax.
2. The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for



the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

3. BRIEF FACTS OF THE CASE:

3.1 M/s. Jabalpur Entertainment Complexes Private Limited, Jabalpur [hereinafter referred to as the Applicant] is engaged in operation of a mall and multiplex. The applicant is having a single GST registration with GSTIN **23AABCJ6495J1ZA**. The Applicant is having following four operations in the company:

- i. Multiplex (Cinemas) – Operating a 3 Movie screens multiplex and Snack Bar under Movie Magic banner;
- ii. Mall – Applicant owns and operates the South Avenue Mall and has given space to several brands under rent/revenue sharing basis. The Applicant is also charging Common Area Maintenance charges from tenants;
- iii. Food Court – Operates a food court in the Mall, which is an air-conditioned area with self serve (dine-in) and take away arrangements;
- iv. SAM Retail – Operates a franchise apparel retail store within the Mall.

3.2 The Applicant is charging GST on outward supply of Goods & Services as under:

- i. Sale of Movie tickets - @28% (on tickets exceeding Rs.100/-) or @18% (on tickets below Rs.100/-);
- ii. Renting of Shops - @18%
- iii. Common Area Maintenance Charges - @18%
- iv. Sale of Food & Drinks - @5% (Without claiming ITC on food items and beverages purchased)

3.3 Further, the Applicant is claiming ITC of GST paid on following inward supplies of goods & services:

- i. Movie Distributor Share Bill – Movie Distributor is raising a bill against revenue share of sale of movie tickets of every movie;
- ii. Projector Rental Bills – The Applicant has taken a projector on rent for screening of movies;
- iii. Advertising Bill – Relating to advertisements of movies published in local Newspapers;
- iv. Security Agency & Housekeeping Bill – Security and Housekeeping services are used for office area, public area and common area of Multiplex.

It has been informed by the Applicant that it is claiming full ITC on civil items purchased for maintenance and renovation of the building. And the Applicant is



also engaging registered and unregistered contractors for Works Contract Service for the purpose of maintenance and renovation of building.

3.4 The Applicant have put forth their own interpretation of law and view points in respect of the questions posed before the Authority for Advance Ruling in the extant application. The view points of the Applicant are reproduced as under:

i. As per Notification 46/2017-Central Tax (Rate) dtd.14.11.2017, the rate of GST will be @5% for the assessee covered under the below clause:

'Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of Seven Thousand Five Hundred Rupees and above per unit per day or equivalent'

The Applicant is not providing residential or lodging accommodation services therefore rate of GST on food & drinks served by the Applicant is covered under the clause mentioned above. Therefore the Applicant is charging GST @5% on supply of food, drinks and & snacks from Food Court and Snack bar of Multiplex.

ii. As per Section 16(1) of the CGST Act, "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 of furtherance of business and the said amount shall be credited to the electronic credit ledger of such person".

The inward supply of services of distributor share, Project Rental, Advertising, Security Agency and Housekeeping are used in the course of furtherance of his business hence full credit of the same is available.

iii. As per Section 17(5) of CGST Act, Input Tax Credit shall not be available in respect of 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 of furtherance of business.*

Explanation: *For the purpose of clause (c) and (d), the expression “construction” includes re-construction renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;”*

The inward supply of goods and services as mentioned in the questions 2 and 3, is for the purpose of maintenance & renovation of building and it is not capitalized in teh books of accounts. These expenses are revenue in nature and hence full ITC can be claimed.

4 QUESTIONS RAISED BEFORE THE AUTHORITY:

The following questions have been posed before the Authority, with reference to the activity undertaken by the Applicant:

- 4.1 Whether GST @5% can be charged on food, soft drinks, and snacks sold in the Snack Bar & Food Court in terms of Notification no.46/2017;
- 4.2 Whether ITC of GST paid on Movie Distributor revenue share bill, Projector Rental Bill, Advertising Bill, Security Agency Bill, and House Keeping Bill can be claimed in full;
- 4.3 Whether ITC on GST paid on goods purchased for the purpose of maintenance such as Vitrified Tiles, Marble, Granite ACP Sheets, Steel Plates, TMT TOR, Bricks, Cement, Paint, Chemicals, Sanitary items like wash basin, urinal pots, and toilet accessories can be claimed in full;
- 4.4 Whether ITC of GST paid on Works Contract service received from registered & unregistered Contractor for maintenance contract of building can be claimed in full?

5 DEAPRTMENT’S VIEW POINT:

The Joint Commissioner, CGST & Central Excise, Hqrs., Jabalpur (M.P.), vide his letter F.No.GST/PartyIssues/Hqrs./JBP/2017-18/3775 dtd.06.07.2018 furnished the opinion of the department on various questions placed by the Applicant before the AAR. The same are summarised as under:

- 5.1 *Whether GST @5% can be charged on food, soft drinks & snacks sold in the Snack Bar and food court in terms of Notification no.46/2017?*

It has been opined by the CGST department that in terms of relevant entry in the notification no.46/2017, the supply of food, drinks & snacks etc. Served by the Applicant



at their own Mall, without providing lodging and accommodation services, shall attract GST @5% and no Input Tax Credit shall be available to the Applicant.

5.2 Whether ITC of GST paid on Movie Distributor Revenue Share Bill, Projector Rental Bill, Advertisement Bill, Security Agency Bill and Housekeeping Bill can be claimed in full?

It has been opined that in view of the facts and circumstances about the output services being provided by the Applicant through their four Divisions, Viz. Multiplex Division, Renting Division, Maintenance Division and Food Court, it appears that ITC on aforementioned Input Services would be admissible to the Applicant because the said input supply of services appear attributable towards their outward supply of services for furtherance of their business as provided under section 16 of the CGST Act 2017. However, in case of exempted supply of services, full ITC may not be available to the Applicant and in such a case the Applicant needs to reverse the ITC availed on exempted supply of services in terms of Section 17(1) of the Act *ibid*.

5.3 Whether ITC of GST paid on goods purchased for the purpose of maintenance such as vitrified tiles, Marble, Granite, ACP Sheets, Steel Plates, TMT Tor, Bricks, Cement, paints, chemicals, sanitary items etc. Can be claimed in full?

The Jurisdictional CGST Commissionerate has opined that the Applicant does not appear to be entitled to avail ITC on aforesaid items because it has been specifically mentioned in the conditions for non-admissibility of ITC in clause (c) and Clause (d) of Sub-section (5) of Section 17 of the Act *ibid*; which 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 service 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 and machinery) on his own account including when such goods or services or both are used in the course of furtherance of business.

Explanation:- for the purpose of clause (c) and (d), the expression "construction" includes re-construction, renovation, addition or alteration or repairs to the extent of capitalization to the said immovable property



Thus, it is clear from clause (d) above, that no ITC shall be admissible to the Applicant in respect of goods or services or both received by a taxable person for construction/maintenance of an immovable property. In the instant case, the applicant has declared that they had used the aforementioned civil items in the repair and maintenance of Mall building, which is an immovable property and permanently attached to earth. Therefore it appears that the applicant is not entitled to avail ITC on aforementioned civil items and ITC so availed needs to be reversed by the Applicant.

5.4 Whether ITC of GST [paid on work-contract service received from the registered and unregistered contractors for maintenance contract of building can be claimed in full?

It has been opined by the jurisdictional CGST authority that no ITC would be available to the Applicant in this respect, because clause (c) of Section 17(5) specifically prohibits availment of ITC credit when works contract service is provided for construction of immovable property. In the instant case the Applicant has availed ITC on works contract service for construction/repair/maintenance of Mall building which is an immovable property and permanently attached to earth. Further the applicant is not availing such ITC for providing output works contract service, therefore it appears that the applicant is not entitled to avail ITC and any ITC so availed needs to be reversed by the Applicant.

6 RECORD OF PERSONAL HEARING:

Shri Shree Nikhilesh Mishra, DGM and Shree Vishal Shreevastav, Tax Consultant, appeared on behalf of the applicant and reiterated the submissions already made in the application. Subsequent to PH, the Applicant also submitted additional write-up on 09.07.2018 giving further details in furtherance of their extant application. The same are briefed as under:

- A. Process description of Restaurant services: The Applicant submitted that they mainly selling popcorn, cold drinks, sandwiches, tea & coffee etc. in the Snack Bar for which they have the facility of electric fryers, grillers, warmers, dispensing machine etc. These items are served in disposable plates/glasses etc.
- B. For movie show exhibition they have an agreement with V N Exhibitors who charge their revenue on revenue sharing of net ticket sales which start from 52.5% for the first week, and subsequently 45%, 37.5% and 30% for 2nd, 3rd and 4th week onwards respectively.
- C. As regards civil maintenance work of Mall it was submitted that owing to high footfall the building requires continuous maintenance and repair for which they engage services of petty contractors and also purchase various items like vitrified tiles, marbles etc. as already detailed in the Application.



The work contractor raises bills for the work carried out and on such bills they intend to avail ITC.

7 DISCUSSIONS AND FINDINGS:

- 7.1 We have carefully considered the submissions made by the applicant in the application, the pleadings on behalf of the Applicant made during the course of personal hearing and the Department's view provided by the Joint Commissioner, CGST & Central Excise, Jabalpur.
- 7.2 We find that the extent application seeks Ruling on four question categorically. We would deal with these questions one by one to arrive at conclusion.
- 7.3 The first question reads, "*Whether GST @5% can be charged on food, soft drinks, and snacks sold in the Snack Bar & Food Court in terms of Notification no.46/2017- Central Tax (Rate)?*". On a careful consideration of the legal position under the GST law, we find that the Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 further amended by Notification No.46/2017-Central Tax (Rate) vide entry at Serial Number 7 and corresponding notifications issued under MPGST ACT,2017, squarely covers the services provided by the Applicant at item no.(i) which reads: '*Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred Rupees and above per unit per day or equivalent.*' and in respect of such services classifiable under SAC 9963, the rate of CGST and MPGST has been fixed @2.5% each subject to condition that no input tax charged on goods and services used in supplying the service has not been taken. As we gather from the submissions of the Applicant, they are not providing any accommodation facility for lodging and boarding and they are also not availing ITC of tax paid on goods & services used/utilized for providing services from the said Snack Bar. Further, on a different point of argument, we would also like to consider whether the impugned service would fall under the category of Outdoor Catering. The term 'Outdoor Catering' was defined under Section 65(76)(a) of the erstwhile Finance Act 1994 as "*Outdoor caterer means a caterer engaged in providing service in connection with catering at place other than his own but including a place provided by way of tenancy or otherwise by the person receiving such service*". On considering the common parlance meaning of 'Outdoor Catering' and its above definition for Service Tax, we come to the conclusion that the supply of food, soft drinks and snacks sold in the Food Court or Snack Bar of the Applicant cannot by any stretch of imagination, be treated as a part of outdoor catering. In view of the facts and circumstances, we are of the

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view that the services provided by the Applicant in Snack Bar would be classifiable under SAC 9963 and chargeable to GST @5% (CGST @2.5% + SGST @2.5%), provided they fulfill the conditions laid down under Notification 46/2017-Central Tax (Rate) and corresponding notifications issued under MPGST ACT, 2017 .

7.4 Now coming to the second question posed by the Applicant, which reads, 'Whether ITC of GST paid on Movie Distributor revenue share bill, Projector Rental Bill, Advertising Bill, Security Agency Bill, and House Keeping Bill can be claimed in full?'. We find it amply clear from the Application that the Applicant are running a business of operating a Mall with Multiplex and the services mentioned in this particular question definitely classify as input services for providing the declared services by the Applicant. Thus we are convinced that the said input services are attributable towards providing declared output services by the Applicant for furtherance of their business in terms of Section 16 of the GST Act, 2017. Accordingly, ITC on such services shall be admissible to the Applicant subject to condition that in case any part of such input services are utilized for providing exempted outward supplies, the apportioned ITC to the extent utilized in providing exempted supplies shall be subject to reversal in terms of Section 17(1) of the GST Act, 2017. To illustrate, Security Services and Housekeeping in particular shall be utilized for Snacks Bar and Food Court also and hence ITC on such services would be available partially in terms of provisions of Section 17(1) of the GST Act, 2017.

7.5 Now moving on to the third question posed before the Authority, we observe that the question is; 'Whether ITC on GST paid on goods purchased for the purpose of maintenance such as Vitrified Tiles, Marble, Granite ACP Sheets, Steel Plates, TMT TOR, Bricks, Cement, Paint, Chemicals, Sanitary items like wash basin, urinal pots, and toilet accessories can be claimed in full?'.
The Applicant has been purchasing the materials under question for the purpose of utilising the same in maintenance/renovation of the Mall building. Broadly speaking, the extant law i.e. the GST Act 2017 prohibits such ITC in terms of clause (d) of Section 17(5) which 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)

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account including when such goods or services or both are used in the course of furtherance of business.

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Explanation:- for the purpose of clause (c) and (d), the expression "construction" includes re-construction, renovation, addition or alteration or repairs to the extent of capitalization to the said immovable property

Thus we find that the materials in question are squarely covered by the clause (d) as detailed above since the same is being admittedly used for repair/renovation/maintenance etc. of the Mall building which is no doubt an immovable property. Explanation to the sub-section (5) has defined the term 'Construction' to encompass all the activities '.... to the extent of capitalization to the said immovable property.' Going by the said definition it has been argued that ITC of materials used for maintenance can be claimed in full if the cost of maintenance is not capitalized. We find that capitalization of expenditure depends on the nature of expenditure and the period of benefit from such expenditure. However, the Application falls pretty short in elucidating the nature of expenditure i.e. capital or revenue. Thus we are constrained to reach any definitive conclusion on this argument. Mere statement that expenditure is not capitalized cannot come to the rescue of Applicant. Be that as it may, the eligibility of ITC does not depend on the treatment given to the expenditure. If the expenditure is revenue in nature but subsequently capitalized in the books of account it would not make Applicant eligible to ITC on such goods. Thus in view of the specific provisions of law, we are of the opinion that ITC on such goods used for maintenance/repair/renovation of Mall building, an immovable property, shall not be available to the Applicant.

7.6 Now coming to the fourth and ultimate question, the Applicant have desired a ruling on, *Whether ITC of GST paid on Works Contract service received from registered & unregistered Contractor for maintenance contract of building can be claimed in full?* We find that as far as availability of ITC on Works Contract Services is concerned the law is very categorical and unambiguous. ITC on works contract services are allowable only in case when such works contract service is used as an input service for providing further output service of Works Contract. Clause (c) of Sub-Section (5) of Section 17 of the GST Act 2017, specifically deals with availability of ITC on Works Contract Service, which 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 service 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,

Thus we do not find anything for us to discuss and deliberate on this issue. It is admittedly clear that Works Contract Service which the Applicant intends to engage is



for the civil work etc. for repair/renovation/maintenance of Mall building. Such service is fully consumed at the end of Applicant and it is not an input service for further provision of output service as Works Contract. That being the case, we have no hitch in concluding that ITC in respect of Works Contract Service utilised by the Applicant for repair/renovation/maintenance of Mall building shall not be available to them.

7.7 Having regard to the discussions & findings detailed in foregoing paras, we now give our ruling.

RULING

8 The Advance Ruling on questions posed before the authority are answered as under:

8.1 In respect of Question 1, we hold that the items supplied in Snack Bar and Food Court shall be chargeable to GST in terms of Notification No.11/2017-Central Tax (Rate) as amended by Notification No.46/2017-Central Tax (Rate) and corresponding notification under MPGST ACT,2017 at prevailing rate of 5%(2.5% SGCT and 2.5% CGST), **subject to conditions laid down** at Serial Number 7 of the parent Notification classifiable under SAC 9963;

8.2 In respect of Question No.2, it is held that the Applicant shall be entitled to ITC of tax paid on Movie Distributor Revenue Sharing Bill, Projector Rental Bill and Advertising Bill in full; further in respect of Security Agency Bill and Housekeeping Bill, the ITC shall be restricted to the apportioned part which is utilised in providing taxable output services. Any ITC attributable to exempted output services shall be subject to reversal in terms of Section 17(1) of the GST Act 2017;

8.3 In respect of Question No.3, we hold that the ITC of GST paid on goods purchased for the purpose of maintenance of Mall such as Vitrified Tiles, Marble, Granite, ACP Sheets, Steel Plates, TMT Tor (Saria), Bricks, Cement, Paint, Chemicals, Sanitary Items like wash basin, urinal pots and toilet accessories shall not be admissible to the Applicant in terms of clause (c) of Section 17(5) of the GST Act 2017;

8.4 In respect of Question No.4, we hold that the ITC of GST paid on Works Contract Service received by the Applicant for maintenance contract of building shall not be available to them in terms of clause (d) of Section 17(5) of the GST Act 2017.

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RAJIV AGRAWAL
(MEMBER)

No. 12/2018/A.A.R./R-28/39
Copy to:-

1. Applicant
2. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore

-sd-
MANOJ KUMAR CHOUBEY
(MEMBER)

INDORE dt. 27/08/2018

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4. The Commissioner, CGST & Central Excise, Jabalpur
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

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