

2024 (84) G.S.T.L. 292 (A.A.R. - GST - T.N.)

BEFORE THE AUTHORITY FOR ADVANCE RULING UNDER GST, TAMIL NADU

Smt. D. Jayapriya, Member (Central Tax) and Smt. T. Indira, Member (State Tax)

IN RE : SUSWANI FOUNDATIONS (P.) LTD.

Advance Ruling No. 123/AAR/2023, dated 19-12-2023 in Application Sl. No. 81/2023/ARA

Input Tax Credit - Credit and blocked credit apportionment - Restriction on availment of ITC - Construction of industrial building - Applicant assessee is constructing an industrial building which is to be rented out as 'godowns' for commercial purposes - Assessee will be purchasing cement, steel, other building material and will be engaging architects/consultants for construction of said building - *HELD* : Section 17(5)(d) of CGST Act, 2017 provided that no ITC is available in respect of any goods or services received by a taxable person for construction of immovable property on his own account even if inputs and input services are used in course and furtherance of business - In instant case, assessee himself built godown for which he has used various goods such as cement, steel, brick etc. as inputs and services by architects, consultant etc. as input services and furthermore, assessee is proposing to rent out to large companies for storing their stocks for future sale i.e. for furtherance of his business - Therefore, as per Section 17(5)(d) *ibid* no ITC is available on any goods or services by applicant for said construction and same cannot be claimed - Section 17 of Central Goods and Services Tax Act, 2017 - Section 17 of Tamil Nadu Goods and Services Tax Act, 2017. [para 6.4]

Ruling in favour of department

**[Proceeding].** - M/s. Suswani Foundations Private Limited, Nos. 125 - 90 and 90/1, Sydenhams Road, Choolai, Chennai - 600003 (hereinafter referred to as the 'Applicant') are registered under the GST Acts with GSTIN: 33AAVFK6262D1Z6. They have preferred an application seeking Advance Ruling on the following :

"Whether ITC is available on Inputs to the Assessee when the Godowns constructed by him is entirely meant for renting it out for Commercial purposes to registered dealers."

**2.1** The Applicant submitted a copy of challan evidencing payment of application fees of Rs. 5,000/- each under sub-rule (1) of Rule 104 of CGST Rules, 2017 and SGST Rules, 2017.

**2.2** The jurisdictional authorities of the Centre and State were addressed to report if there are any pending proceedings against the Applicant on the issues raised in the ARA application and also for their comments on the issues raised.

**3.1** In their application for Advance Ruling, the Applicant has stated that-

ã They are constructing around 1.62 Lakhs square feet of industrial building to be rented out as 'Godowns' for commercial purpose, at Mevalurkuppam Village, Sriperumbudur Taluk, Kancheepuram District.

ã They will be purchasing Cement, Steel, PEB Sheet, Building Materials like bricks, sand, blue metals etc. and engaging Consultants/Architects for around Rs. 12 Crores for the

construction of Godowns and the approximate GST amount that they may have to pay will be approx. Rs. 2.5 Crores.

ã These Godowns are not for personal use but meant for business purposes; They would be letting them for rent and in turn invoices of rent around Rs. 40 lakhs per month would be raised by the Applicant with GST.

ã They also submitted-

- Copy of Tax Invoices received from M/s. Armour Steels Buildings India Pvt. Ltd.
- Copy of Tax Invoices received from M/s. Suryadev Alloys & Power Private Ltd.

ã They seek Advance Ruling as to whether Input Credit on the goods and services used for construction activity, is available to them.

### **3.2 The Applicant, on interpretation of law, submitted that -**

ã Where the inputs are consumed in the construction of an immovable property which is meant and intended to be for the provision of taxable output services, they should be allowed to avail the Input Tax Credit (ITC).

ã Section 17(5)(d) of the CGST Act is to give benefit to the person who has paid GST and it has to be interpreted in continuity of the transaction, since rent income is arising out of the Godowns which are constructed after paying GST on different items.

ã Article 14 of the Constitution of India reads as under : "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." The said Article is clearly in two parts - 'equality before law' prohibits discrimination. It is a negative concept. The concept of 'equal protection of the laws' requires the State to give special treatment to persons in different situation in order to establish equality amongst all. It is positive in character. Therefore, the necessary corollary to this would be that equals would be treated equally, whilst unequals would have to be treated unequally.

ã Based on the above Article of Constitution of India, as the Applicant is required to pay GST on the rental income arising out of the investment on which he had paid GST, it is required to have the ITC on the GST paid.

ã Section 17(5)(d) is not applicable to them as they are not constructing the godowns for furtherance of business, but the building itself is the source of income for them and without which their business does not exist.

ã The godowns are similar to a raw material input to a manufacturing industry, and as manufacturing operations cannot happen in a factory without raw material, their business cannot happen without the godown.

ã The godown building referred is a direct input for them to earn their income and submits that Section 17(5)(d) of the CGST Act, 2017 is to be read for the purpose of interpretation to enable benefit to them, who has paid GST. Further, it has to be interpreted in the continuity of the transaction since rent income is arising out of the godowns which are constructed after paying GST on different items.

ã GST Act has been introduced with the object of avoiding the cascading effect of various indirect taxes, therefore, the denial of ITC on goods and services used for further supply of services on which GST is payable may not be correct as there is no break in the tax chain.

ã As they are paying GST on rental income which is arising out of investment on which GST has been paid and since there is no break in the chain of business from point of procurement of material and services for construction till renting of immovable property, ITC on immovable property used for renting should be allowed.

**4.1** The Centre jurisdictional Authority *vide* letter dated 7-8-2023, has submitted that -

ã As per section 17(5)(d) of CGST Act, 2017, no ITC is available in respect of any goods or services received by a taxable person for construction of an immovable property on his own account or even if such inputs and input services are used in the course or furtherance of business.

ã The scope of 'immovable property' is well emphasized and understood to be land and building but it also includes everything that is attached to or forming part of the land and rights in such land. The ITC is blocked on all inward supplies leading to the establishment of such immovable property such as services from real estate agent, architect, interior decorators and contractors are also blocked as these are involved in the establishment of the immovable property.

ã In the instant case, the Applicant has himself built the godowns for which he has received various goods such as steel, cement etc. and inputs and services by architects etc. as input services. The Applicant is proposing to rent out the godowns to various customers which is furtherance of his business. As per Section 17(5)(d), no ITC is available on any goods or services received by them for such construction and the same cannot be claimed by them.

ã Further, the sale of immovable property post issuance of completion certificate does not attract any levy of GST. Consequently, in such a situation, there is a break in the tax chain and therefore, there is full justification for denial of input tax credit as on the completion of the transaction, no GST would at all be payable and therefore, no set-off of ITC would be required or warranted.

ã Hence, the ITC paid on the goods/services received for construction of an immovable property on one's own account for furtherance of business is unavailable in terms of section 17(5)(d) of the CGST Act, 2017.

ã As per available records, no pending proceeding or decided on the issue raised in the AR application.

**4.2** The State jurisdictional Officer, did not submit any remarks and hence it is presumed that there are no proceedings pending or decided on the issue raised in the application by the Applicant.

## PERSONAL HEARING

**5.** The Applicant, after consent, was given an opportunity to be heard in person on 1-12-2023. Smt. Anuradha Jayaraman, Chartered Accountant who is the Authorized Representative (AR) of

the Applicant appeared for the hearing. The AR reiterated the submissions made in their application.

## DISCUSSION AND FINDINGS

**6.1** We have carefully considered the submissions made by the Applicant in their application, submissions made during the personal hearing and the comments furnished by the Centre Tax Jurisdictional Officer.

**6.2** In terms of Section 97(2) of the CGST/TNGST Act, questions on which advance ruling is sought under the Act, falls within the scope of section 97(2)(d) of the CGST/TNGST Act, 2017, and therefore the application is admissible.

**6.3** The Applicant is before us seeking Advance Ruling on the issue whether ITC is available on the inputs and input services used by them for construction of godowns which they are proposing to rent out for commercial purposes to registered tenants. Their main defense in the case is that Section 17(5)(d) of the CGST Act, 2017 is not applicable to them as they are not constructing the godowns for furtherance of business, but the building itself is the source of income for them, without which their business does not exist.

**6.4** Section 17(5)(d) reads as follows :

'(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 and 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.'

Section 17(5)(d) provides that no ITC is available in respect of any goods or services received by a taxable person for construction of an immovable property on his own account even if such inputs and input services are used in the course and furtherance of business. In the instant case the applicant has himself built the godown for which he has received various goods such as cement, steel, sand, PEB Sheets, bricks, blue metals etc. as inputs and services by architect, consultancy etc. as input services. The Applicant is proposing to rent out to large companies for storing their stock for future sale *i.e.* for furtherance of his business. Therefore, as per Section 17(5)(d), no ITC is available on any goods or services received by them for such construction and the same cannot be claimed by them.

**6.5** The Applicant has contended that based on Article 14 of Constitution of India, the Applicant is required to pay GST on the rental income arising out of the investment on which he had paid GST, it is required to have the ITC on the GST paid. They argued that the concept of 'equal protection of the laws' under the said Article, requires the State to give special treatment to persons in different situation in order to establish equality amongst all and therefore, the necessary corollary to this would be that equals would be treated equally, whilst unequals would have to be treated unequally. We do not agree with the contentions of the applicant. The Legislative Scheme is amply clear. The input tax paid on the goods/services received for

construction of an immovable property 'on one's own account' is unavailable. The restriction is provided in the Act which is passed by the Legislature. The power to restrict flow of credit exists under section 16(1) of the GST Act, which shows a Legislative intent that Input Tax Credit may not always be allowed partially or fully. As the suitability and requirement of taxpayer varies from person to person, rule/Act, cannot be changed/amended accordingly and it is mandatory for the tax payers to adhere the restrictions prescribed in Act and Rule. Based on the above discussions, we rule as under :

#### **RULING**

No Input Tax Credit is available on Inputs to the Applicant when the Godowns constructed by him is meant for renting it out for commercial purposes to registered dealers.