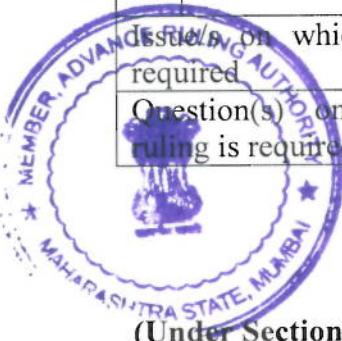


MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Ms. P. Vinitha Sekhar, Additional Commissioner of Central Tax, (Member)
(2) Mr. A. A. Chahure, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	27AAAPH3460P1ZJ
Legal Name of Applicant	M/s. ASHISH ARVIND HANSOTI
Registered Address/Address provided while obtaining user id	Building 49, 50, Hi Life, First Floor, P.M Road, Santacruz (West), Mumbai 400054
Details of application	GST-ARA, Application No. 88 Dated 04.01.2020
Concerned officer	MUM-VAT-D-928, Nodal -6, Mumbai
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Works Contract and lease of immovable property.
B Description (in brief)	Mr. Ashish Hansoti, Proprietor ('Applicant') is engaged in construction of commercial property with intent to sell it during construction or post completion of construction or License the premises to a suitable long term Licensee. Currently, the applicant has completed one of his property located a Plot A195, Khairane Road, Khairane MIDC, TTC Industrial Area, Navi Mumbai (hereinafter called as 'Rented Property' or 'Said Property'). Applicant is availing supply of various goods and services pre & post construction of said Property and wants to avail Input Tax Credit. Therefore, applicant has applied for advance ruling under Section 97(2)(d) of the CGST Act, to understand the admissibility of the input tax paid for said property.
Issues on which advance ruling required	(iv) Admissibility of input tax credit of tax paid or deemed to have been paid
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.



PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)



The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act” respectively] by **M/s. ASHISH ARVIND HANSOTI.**, the applicant, seeking an advance ruling in respect of the following questions.

Whether applicant is eligible to claim input tax credit of GST paid on input & input services used for construction of commercial immovable property, subsequently used for renting.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression ‘GST Act’ would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions made by the applicant is as under:-

2.1 Applicant has completed construction of one property located at Plot A 195, Khairane Road, Khairane MIDC, TTC Industrial Area, Navi Mumbai (hereinafter called as 'Said Property) and has availed ITC on receipt of supply of various goods and services for pre & post construction of said Property, which are as under:-



Sr. No	Nature of Supply	Pre OR Post Construction
1	Architecture Services	Pre
2	Consultancy Services	Both
3	Brokerage	Post
4	Certificate Services	Pre
5	Steel	Both
6	Cement	Both
7	Furniture & Fixture	Post
8	Equipment	Both
9	Labour charges	Both
10	Works Contract	Pre

2.2 Applicant is involved in construction of immovable property for letting out to various tenants on which GST will be charged under the head 'renting of immovable property'. For the purposes of such construction, huge quantities of materials and other inputs were purchased by applicant and certain input services were also availed against which applicant has paid GST and now wants to avail credit of such GST paid by him, for discharging the output tax liability.

2.3 Even though Section 17(5)(d) of the CGST Act does not allow ITC in respect of goods and services used for construction of the immovable property on own account, the Section 17(5)(d) shall not be read in a manner so as to disallow credit where immovable property is used for rendering output taxable service, i.e. renting of immovable property service, as in their case. There is no break in tax chain and because the applicant will be paying output tax in respect of such construction, provisions of Section 17(5)(d) won't be attracted and credit shall be allowed to the applicant.

2.4 When immovable property is sold after receiving the Completion Certificate (CC), the same is not chargeable to tax. Therefore, it is justified to deny the credit in such case as the sale of immovable property after CC is exempted. But in the case of applicant, said Property will be generating the output revenue and denial of credit will be against the basic principle of GST.

2.5 Applicant is generating the output tax liability by letting out the said property within the purview of GST law, therefore entitled to avail the credit of various input taxes as per the Section 16(1) of the CGST Act.



2.6 Applicant is relying on the decision of the Hon'ble Orissa High Court in the matter of Safari Retreats Private Limited Vs. Chief Commissioner of Central Goods & Service Tax, to contend that it is eligible to avail credit of tax paid on input goods and services received in the construction of immovable property which is further rented out.

2.7 Applicant made additional submissions on 03.03.2020 which is as under:-

2.7.1 The construction of immovable property, in the subject case, was completed in July 2019.

2.7.2 The said premises is rented with effective from November 01, 2019 and the period of lease is 5 years commencing from November 01, 2019 to October 31, 2024.

2.7.2 As per GST Laws, the subject activity qualifies as renting of immovable property. All the expenses except input GST related to property are forming part of the applicant's

assets. For income tax purpose the applicant is treating this as House Property Income therefore depreciation is not claimed on the said property.

03. CONTENTION – AS PER THE JURISDICTIONAL OFFICER:

The submissions made by the jurisdictional officer is as under:-

- 3.1 Applicant is engaged in renting of immovable property services and would like to know the admissibility of the input tax of various goods and services pre and post construction paid for construction of one of his properties, which assesee has completed.
- 3.2 In present case as the activity of construction is already completed and Occupancy Certificate is obtained by the applicant in August 2019, issue raised by applicant, being related to ITC from construction activity, is not relevant. Further as per the credit ledger of the applicant from online portal, total available ITC at end of Aug 2019 is Rs. NIL. Since the construction activity of the applicant has already been completed, as per Section 95 (a) of CGST/MGST Act, the application is required to be rejected.
- 3.3 However, if the application is admitted the following submissions are made:-
 - 3.3.1 As per registration certificate and Annexure ‘A’ submitted, applicant is engaged in the construction of commercial property with intent to sell the same as “under construction” or as “post completion of construction” or “License the premises to suitable long term licensee”.
The activity of the applicant tax payer falls under works contract as defined in subsection 119 of Section 2 of the CGST Act 2017. As per section 17(5) (d) the applicant is not eligible for input tax credit against purchase of goods or services or both received, 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.
 - 3.3.3 In the case of GGL HOTEL AND RESORT COMPANY LIMITED, the Advance Ruling Authority in West Bengal has ruled (Order upheld by the Appellate Authority vide order dated 06.02.2019) that Input Tax Credit is not available to Applicant for lease rent paid during pre-operative period for the leasehold land on which the resort is being constructed on his own account to be used for furtherance of business, when the same is being capitalized and treated as capital expenditure.

3.3.4 In the case of Sree Varalakshmi Mahaal LLP, the Advance Ruling Authority in Tamil Nadu, while deciding application u/s 97(2)(d) raised on the question "Whether the Input Tax Credit available on spent for construction of building materials can be claimed and utilized to nullify the cascading effect of taxation?" has ruled that, No Input Tax Credit is available against any goods or services received by the applicant for construction of Marriage Hall on his own account even if used in the course, or furtherance of his business of renting the place.

3.3.5 Further, the department has filed an appeal against the judgement of the Hon'ble Orissa High Court, in case of Safari Retreats Private Limited Vs Chief Commissioner of Central Goods & Service Tax, which is pending. Also, the facts and figures mentioned in above judgement are different from the subject case.

3.3.6 Hence, applicant is not eligible for input tax credit of goods and services used in construction of the commercial immovable property subsequently used for renting.

04. HEARING

4.1 Preliminary hearing in the matter was held on 06.02.2020. Shri Mohit Manglani, C.A., and Authorized Representative, appeared and requested for admission of the application. Shri Mohit Manglani also sought adjournment to submit relevant documents. Jurisdictional Officer Shri Madan Shelke, Assistant Commissioner of State Tax (D-928) Nodal – 6, Mumbai also appeared and made written submissions.

4.2 The case was called for hearing on 03.03.2020. Shri Mohit Manglani, Authorized Representative appeared along with Shri Ashish Hansoti and made oral as well as written submissions. Jurisdictional Officer Shri Madan Shelke, Assistant Commissioner of Sales tax (D-928) Nodal – 6, Mumbai also appeared. We heard both the sides.

05. DISCUSSIONS AND FINDINGS:

5.1 We have gone through the facts of the case, documents on record and written submissions made by both, the applicant as well as the jurisdictional authority.

5.2 From a perusal of submissions made by the applicant, we observe that the applicant has raised the subject question in relation to an activity, i.e. construction of a building on his own account.

5.3 Eligibility of cenvat credit is governed by the provisions of Chapter V of the CGST Act consisting of Sections 16 to 21. While Section 16 mentions the eligibility and conditions for taking input tax credit, Section 17 speaks about apportionment of credit and blocked credit. Section 17 (5) states that 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 certain cases. Thus in the subject case it is imperative to find out whether the applicant is barred from taking under Section 17 (5) of the said Act.

5.4 We now reproduce the provisions of Section 17 (5) (d) of the CGST Act, which is as under:

“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 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.”

5.5 Section (17) (5) (d) bars a taxable person, in the subject case the applicant, from taking input tax credit for construction of immovable property (as in the subject case) which is on his own account, even when such goods or services or both are used in the course or furtherance of business (in the subject case, renting of the said property). Further, it is also seen from the submissions that the immovable property in the subject case is neither a plant or machinery. Thus we find that, 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 immovable property for which he has received various goods or services or both and is using the said property for giving the same on rent to his customers. Therefore, as per Section 17(5)(d), no ITC is available on any goods or services received by him for such construction and the same cannot be claimed by him. Thus, the provisions of Section (17) (5)(d) squarely applies in the subject case and thus the applicant cannot avail input tax credit.

5.6 We find that, in the case of Sree Varalakshmi Mahaal LLP, (as cited by the jurisdictional officer), the Advance Ruling Authority in Tamil Nadu, while deciding application u/s

97(2)(d) raised on the question "Whether the Input Tax Credit available on spent for construction of building materials can be claimed and utilized to nullify the cascading effect of taxation?" has ruled that, No Input Tax Credit is available against any goods or services received by the applicant for construction of Marriage Hall on his own account even if used in the course, or furtherance of his business of renting the place. The decision made in the Sree Varalakshmi Mahaal LLP case is squarely applicable in the subject case also.

5.7. Further, the decision by the Advance Ruling Authority in West Bengal in the case of GGL HOTEL AND RESORT COMPANY LIMITED has also been cited by the jurisdictional officer but we find that the facts of that case are not at all similar to the facts of the present case. In the cited case, the party wanted to avail credit of lease paid, during pre-operative period, for the leasehold land on which the resort was being constructed to be used for furtherance of business, when the same is capitalized and treated as capital expenditure.

5.8. The applicant has placed reliance on the judgment rendered by the Hon'ble High Court Orissa in the case of M/s. Safari Retreats Pvt. Ltd., and another V/s Chief Commissioner of Central Goods & Service Tax & others. In the said case it is seen that the party had constructed malls which were given further on lease. While holding that Section 17 (5) (d) was not ultra vires, the Hon'ble Court ruled that the party was eligible for credit.

5.9. However, we find that the department has filed an appeal against the said judgement of the Hon'ble Orissa High Court, in case of Safari Retreats Private Limited Vs Chief Commissioner of Central Goods & Service Tax, which is presently pending. The Hon'ble Supreme Court, in the case of Union of India V/s West Coast Paper Mills Ltd., as reported in [2004 (164) ELT375 (SC)], has held that once a special leave to appeal is granted and appeal is admitted, correctness or otherwise of judgement of Tribunal becomes wide open and in such appeal, Court is entitled to go into both questions of fact and as well as law and correctness of judgement is in jeopardy. Appeal is considered to be a continuation of suit and a decree becomes executable only when the same is disposed by the final Court of Appeal.

5.10. Hence in view of the above, we are of the opinion that since the case of M/s. Safari Retreats Pvt. Ltd. is pending with the Hon'ble Supreme Court, has not attained finality. We also find that the Hon'ble High Court has given the relief to the party invoking its writ jurisdiction

while categorically holding that they are not inclined to hold Section 17(5)(d) to be ultra vires. Therefore, we are not relying upon the judgement of the Hon'ble High Court.

06. In view of the above discussions, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 88/2019-20/B-

30

Mumbai, dt.

12/03/2020

For reasons as discussed in the body of the order, the questions are answered thus –

Question : Whether applicant is eligible to claim input tax credit of GST paid on input & input services used for construction of commercial immovable property, subsequently used for renting?

Answer : Answered in the negative.



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A.A.CHAHURE
(MEMBER)

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P.VINITHA SEKHAR
(MEMBER)

Copy to:-

1. The applicant.
2. The concerned Central / State officer.
3. The Commissioner of State Tax, Maharashtra State, Mumbai.
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai.
5. Joint Commissioner of State Tax, Mahavikas for Website.

CERTIFIED TRUE COPY


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai – 400021.