TELANGANA STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Goods and Services Tax)
1st Floor, Commercial Taxes Complex, M.J. Road, Nampally,
Hyderabad-500 001

AAAR.COM/08/2022 **Dated: 28.04.2022**

Order-in-Appeal No. AAAR/03/2022

(Passed under Section 101 (1) of the Telangana Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Telangana Goods and Services Tax Act, 2017 (TGST Act, 2017 or the Act), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the applicant or the appellant has been given an opportunity of being heard.

2. Under Section 103 (1) of the Act, this advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only

(a) On the applicant who had sought it in respect of any matter referred to in sub-Section (2) of Section 97 for advance ruling;

(b) On the concerned officer or the jurisdictional officer in respect of the applicant.

3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

4. Under Section 104 (1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-Section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

* * * * *

Subject: GST – Appeal filed by Shri Satya Dev Bommireddy, Villa 33, Lalitha Bloomfield, Khajaguda, Nanakramguda Rd, Hyderabad 500008 under Section 100 (1) of TGST Act, 2017 against Advance Ruling TSAAR Order No.21/2021 dated 30.09.2021 passed by the Telangana State Authority for Advance Ruling - Order-in-Appeal passed – Regarding**.**

* * * * *

1. The subject appeal has been filed under Section 100 (1) of the Telangana Goods and Services Tax Act, 2017 (hereinafter referred to as "TGST Act, 2017" or "the Act", in short) by Shri Satya Dev Bommireddy, Villa 33, Lalitha Bloomfield, Khajaguda, Nanakramguda Rd, Hyderabad 500008 (hereinafter referred in short as "the appellant"). The appellant is registered under GST having GSTIN number 36ASEPB8739M1ZB, as an individual engaged in the activity/supply of leasing out commercial premises for earning lease rental income. The appeal is filed against the Order No.21/2021 dated 30.09.2021 ("impugned order") passed by the Telangana State Authority for Advance Ruling (Goods and Services Tax) ("Advance Ruling Authority" / "AAR" / "lower Authority").

Brief Facts:

2. Shri Satya Dev Bommireddy, Villa 33, Lalitha Bloomfield, Khajaguda, Nanakramguda Road, Hyderabad 500008, having GSTIN number 36ASEPB8739M1ZB, is an individual engaged in the activity/supply of leasing out commercial premises for earning lease rental income.

3. The Appellant in furtherance of his business, along with his spouse, jointly purchased an under construction commercial immovable property admeasuring 18,833 sq.ft. in 11th Floor in 'Sohini Techpark' in Sy.No. 142, Nanakramguda Village, Serilingampaly Mandal and Municipality, Ranga Reddy District, Hyderabad, along with 19 car parking spaces, from Sohini Developers LLP for a consideration of Rs.13,91,98,750/-. The Appellant, along with his spouse initially entered into an Agreement of Sale dt. 29.11.2018, and discharged consideration from time-to-time. Pursuant to the receipt of the entire consideration, the Vendor executed a sale deed which was registered on 17.08.2019 as Document No.14394/2019 with Joint Sub-Registrar, Ranga Reddy. Thus, there is an indivisible composite purchase contract between the parties for the sale of the under construction commercial unit along with transfer of undivided and unspecified share in land.

4. Since a part of the consideration, i.e. Rs. 6,95,99,375/- towards the purchase of the under- construction commercial immovable property was paid by the Appellant before the issuance of completion certificate by the competent authority, as per Clause 5(b) of Schedule II of the CGST Act, the Vendor levied GST @ 12% on the consideration of a sum of Rs.83,51,925 towards the Appellant's share of the GST and issued a taxable invoice dated 15.07.2019. Tax remitted by the Appellant to his Vendor was reflected as inward supplies in the Appellant's GSTR-2A for the month of July 2019.

5. Upon the receipt of the Occupancy Certificate from the competent authority on 26.07.2019, the Appellant leased out the above said premises to a Lessee vide Lease Deed dt. 19.08.2019. Under the terms of the said Lease

Deed, the Appellant is to receive a monthly rental sum of Rs.5,17,908/-, in addition to GST @ 18% on top of it, which amounts to Rs. 93,223/-. The Appellant has been receiving the said lease rentals since then and has been regularly issuing tax invoices for the same.

6. The Appellant has declared the lease rentals received by him from the month of August 2019 onwards in the GSTR-3B returns for the relevant months. Since the Appellant has paid input GST at the time of purchasing the under-construction commercial immovable property, and since the Appellant is utilizing the same property with improvements towards providing output supply of lease services, the Appellant is claiming input tax credit of the tax paid at the time of purchasing the immovable property in the GSTR-3B returns, since August 2019.

7. The appellant filed an application seeking Advance Ruling with regard to the following :

7.1. The GST paid for the purchase of the under construction of commercial premise should be allowed to be claimed as input tax credit since the Appellant is providing output supply of leasing out the same immovable property which is in the course of furtherance of business.

7.2. The appellant in his application before lower authority raised the interpretation of statute with regard to Clause 5(b) of Schedule II of the CGST Act, and its relevance to Section 17(5)(c) or 17(5)(d) of CGST.

8. On examining the submissions of the appellant, the lower authority framed following questions :

1. Given that the supply of under construction of immovable property is specifically defined as a separate and distinct service under clause 5(b) of Schedule II of CGST Act, can the same be treated to be referring to either the supplies or transactions described in 17(5)(c) or 17(5)(d) of CGST?

2. Given that the supply of lease of immovable property is specifically defined as a separate and distinct service under clause 2(b) of Schedule II of CGST Act, can the same be treated to be referring to either the supplies or transactions described in 17(5)(c) or 17(5)(d) of CGST?

3. Given that the Applicant is in the business of lease of immovable property, does the term *"works contract services when supplied for"* in s.17(5)(c) of CGST Act refer to output supply of lease of immovable property or to the input receipt (purchase of under construction commercial immovable property) of the Applicant?

4. Is supply of "under construction commercial immovable property" under an indivisible contract without explicit purchase of goods and/or services therein, a contract of "*works contract"* within the meaning of s.17(5)(c) of CGST Act?

5. Does the term "Goods or Services or both received" in s.17(5)(d) of CGST Act refer to output supply (lease of immovable property) or to the input receipt (purchase of under construction commercial immovable property) of the taxable person (Applicant)?

6. Does the term *"for construction of an immovable property on his own account"* in s.17(5)(d) of CGST Act refer to output supply (lease of immovable property) or to the input receipt (purchase of under construction commercial immovable property) of the taxable person (Applicant)?

7. If the term "Goods or Services or both received" in s.17(5)(d) of CGST Act refer to input received, then can the meaning of the term "for construction of an immovable property on his own account*"* in s.17(5)(d) of CGST Act include the business of the Applicant herein, i.e. for the lease of immovable property?

8. Can purchase of "under construction commercial immovable property" under an indivisible contract without explicit purchase of goods and/or services therein, be termed as a contract for supply "for construction of an immovable property on his own account*"* within the meaning of s.17(5)(d) of CGST Act, given that the business of the Applicant is lease of immovable property and not construction of immovable property?

9. Regardless of its applicability to the case of the Applicant herein, given the numerous clarifications and notifications by the Dept of Revenue that clearly states that input credit is available for the sale of under construction commercial complexes sold before the issuance of the completion certificate, is not the Authority now precluded from taking a different stand?, since:

   (a) it is against the principle of contemporanea expositio and
   (b) they are bound by such executive constructions as well as rules of executive estoppel.

10. Is not purchase of "under construction commercial immovable property" under an indivisible contract without explicit purchase of goods and/or services therein, a valid and legitimate input required for the business of the Applicant i.e. lease of immovable property?

11. Given that the Applicant's Vendor (Sohini Developers LLP) has taken the input tax credit of the GST paid by the Applicant, what specific law/rule prevents the flow of that tax and excludes the Applicant from doing the same against the GST received for leasing of his immovable property?

12. Is the Applicant eligible and entitled to claim input tax credit of GST paid to his Vendor for the purchase of under construction commercial immovable property, given he used the same to provide the supply of lease of commercial property, and adjust the same against the rental GST to be paid by him for the supply of lease of immovable property?

9. The lower authority, examined the submissions made by the Appellant and Vide the impugned order, the Advance Ruling Authority had given the following advance rulings:

Question Raised	**Advance Ruling Issued**
1. Given that the supply of under construction of immovable property is specifically defined as a separate and distinct service under clause 5(b) of Schedule II of CGST Act, can the same be treated to be referring to either the supplies or transactions described in 17(5)(c) or 17(5)(d) of CGST?	Clause 5(b) of Schedule II and Sec 17(5)(c) are two different and distinct provisions of CGST Act, 2017.
2. Given that the supply of lease of immovable property is specifically defined as a separate and distinct service under clause 2(b) of Schedule II of CGST Act, can the same be treated to be referring to either the supplies or transactions described in 17(5)(c) or 17(5)(d) of CGST?	Clause 2(b) of Schedule II and Sec 17(5)(c) are two different and distinct provisions of CGST Act, 2017.
3. Given that the Applicant is in the business of lease of immovable property, does the term *"works contract services when supplied for"* in s.17(5)(c) of CGST Act refer to output supply of lease of immovable property or to the input receipt (purchase of under construction commercial immovable property) of the Applicant?	Sec 17(5)(c) is enacted with reference to restriction of ITC to works contract services. Works contract is defined under Sec 2(119).
4. Is supply of "under construction commercial immovable property" under an indivisible contract without explicit purchase of goods and/or services therein, a contract of "*works contract"* within the meaning of s.17(5)(c) of CGST Act?	Sec 17(5)(c) of CGST Act, 2017 pertains to all transactions defined under Sec 2(119).
5. Does the term "Goods or Services or both received" in s.17(5)(d) of CGST Act refer to output supply (lease of immovable property) or to the input receipt (purchase of under construction commercial immovable property) of the taxable person (Applicant)?	Sec 17(5)(d) of CGST Act, 2017 refers to inputs on which ITC is not available for any taxable person.
6. Does the term *"for construction of an immovable property on his own account"* in s.17(5)(d) of CGST Act refer to output supply (lease of immovable property) or to the input receipt (purchase of under construction commercial immovable property) of the taxable person (Applicant)?	Sec 17(5)(d) of CGST Act, 2017 refers to inputs on which ITC is not available for any taxable person.
7. If the term "Goods or Services or both received" in s.17(5)(d) of CGST Act refer to input received, then can the meaning of the term "for construction of an immovable property on his own account" in s.17(5)(d) of CGST Act include the business of the Applicant herein, i.e. for the lease of immovable property?	If the applicant utilizes goods or services or both for construction of immovable property on his own account then the Sec 17(5)(d) is applicable with respect to purchase of goods or services or both.

8. Can purchase of "under construction commercial immovable property" under an indivisible contract without explicit purchase of goods and/or services therein, be termed as a contract for supply "for construction of an immovable property on his own account" within the meaning of s.17(5)(d) of CGST Act, given that the business of the Applicant is lease of immovable property and not construction of immovable property?	No. This transaction falls within the scope of Sec 17(5)(c).
9. Regardless of its applicability to the case of the Applicant herein, given the numerous clarifications and notifications by the Dept of Revenue that clearly states that input credit is available for the sale of under construction commercial complexes sold before the issuance of the completion certificate, is not the Authority now precluded from taking a different stand?, since: *(a)* it is against the principle of contemporanea expositio and *(b)* they are bound by such executive constructions as well as rules of executive estoppel.	The applicant has not brought to the notice of the authority any such specific clarifications on Notifications. 9a. No. 9b. No.
10. Is not purchase of "under construction commercial immovable property" under an indivisible contract without explicit purchase of goods and/or services therein, a valid and legitimate input required for the business of the Applicant i.e. lease of immovable property?	As discussed in detail above, the answer to this question is No.
11. Given that the Applicant's Vendor (Sohini Developers LLP) has taken the input tax credit of the GST paid by the Applicant, what specific law/rule prevents the flow of that tax and excludes the Applicant from doing the same against the GST received for leasing of his immovable property?	Sec 17(5)(c) clearly answers this question.
12. Is the Applicant eligible and entitled to claim input tax credit of GST paid to his Vendor for the purchase of under construction commercial immovable property, given he used the same to provide the supply of lease of commercial property, and adjust the same against the rental GST to be paid by him for the supply of lease of immovable property?	As discussed in detail above, the answer to this question is No.

10. The present appeal challenges the ruling and is contested on the following grounds :

1. The Lower Authority, erroneously held that the Appellant is not entitled to claim the input tax credit on the transaction between the Vendor (Sohini Developers) and the Appellant. In terms of Section 16(1) of the CGST Act, 2017 which deals with eligibility and conditions for taking input tax credit, every registered person is entitled to take credit on any supply of goods or services or both which are used or intended to be used in the course of

furtherance of business. Thus, the Appellant being a registered supplier of lease is statutorily entitled to avail the credit of input tax credit charged by his vendor for the purpose of the commercial premises under construction.

2. The TSAAR erroneously interpreted that the provisions of Section 17, sub-section 5 Clause (c) and Clause (d) of the CGST Act, 2017 which deals with apportionment of credit and blocked credit with. The Appellant has received supply of service in terms of "purchase of under construction commercial property" as per Clause 5(b) of Schedule II of CGST Act in mandatory furtherance of his supply under Clause 2(b) of Schedule II of CGST Act. Such supply of service cannot be brought under the exclusions as described under section 17(5)(c) or 17(5)(d) of CGST Act.

3. The AAR erroneously held that the supply of under construction immoveable property comes under the supplies described under section 17(5)(d) of CGST Act, 2017. The Appellant reiterates that 17(5)(d) of CGST Act is not attracted in the instant case since the purchase of an under-construction immovable property cannot be treated as a works contract. The TSAAR failed to appreciate the difference between a works contract and a construction of complex service.

4. The AAR erroneously held that the supply of under construction immoveable property is covered under the definition of works contract services under section 2(119) of the CGST Act and is therefore, covered under the exclusion of Section 17(5)(c) of the said Act. The Appellant submitted that the distinction between construction of a complex service and works contract was brought out by the Hon'ble Supreme Court in Commissioner, Central Excise and Customs, Kerala and Ors Vs. Larsen and Toubro Ltd & others (2016)1 SCC 170. The Hon'ble Apex Court has distinguished works contract to be a separate species of contract which is composite in nature while a construction of commercial and industrial complex service was stated to be a services contract. Since the same distinction between construction services and works contract services persists even under the GST regime under entries 5(b) and 6 of Schedule II of the CGST Act, the findings above in the judgement of the Hon'ble Supreme Court would squarely apply to services which is distinct from the construction the facts of the present case as the said restriction is only in respect of procuring 'works contract complex services procured by the Appellant.

5. The AAR while relying on the case Punjab land development corporation limited v presiding officer labour court, (1990) 3 SCC 682; erroneously held that when clarity of excluding a particular transaction is not clearly mentioned it cannot be inferred by logic. Additionally, TSAAR held that the definition of works contract in section 2(119) of CGST Act covers all the construction activities however, for the purpose of charging section 7, a specific entry is included in Schedule II Clause 5 as a taxation entry for buildings and complexes for sale. Even if there are two separate entries in

Schedule II which describe the eligibility of immoveable property to tax, the statement that the construction given by the Statute cannot be extended to any provision in the act is not tenable and the AAR failed to appreciate that a specific entry will take precedence over a general entry, the same is reiterated by the Apex Court in numerous cases. Since Classification of goods under the laws of Customs, Central Excise and GST is always an area of dispute. The Hon'ble Supreme Court's judgement in the case of Westinghouse Saxby Farmer Ltd Vs., Commissioner of Central Excise Calcutta, AIR 2021 SC 1409 will clear these disputes. In this case the dispute was about the classification of electric relays for use in railway signalling equipment, Chapters 86 and 87 (falling under Section XVII) provide for the classification of locomotives and automobiles and parts thereof respectively. The Apex Court adopted the *sole or principal use test* and agreed with the Assessee to classify the electrical relays as part of locomotives under Heading 8607. This case is a classic example of the principle ***Generalia specialibus non derogant*** which is used when there is a conflict between two statues or provisions of the same statute. A similar analogy is drawn by the Appellant when it was submitted that the Appellant has received supply of service in terms of "purchase of under construction commercial property" as per Clause 5(b) of Schedule II of CGST Act in mandatory furtherance of his supply under Clause 2(b) of Schedule II of CGST Act. Such supply of service cannot be brought under the exclusions as described under section 17(5)(c) or 17(5)(d) of CGST Act.

6. Further it is submitted that if the Appellant cannot or shall not be allowed to take advantage of the input tax credit then the Appellant shall not have been liable to pay the GST on the input transaction, i.e. during the purchase of under construction commercial property; in which case the GST tax paid by the Appellant to its Vendor (Sohini Developers LLP) shall be refunded. Not allowing the input tax credit or refunding the same would not only be a violation of the objects and scheme of the CGST Act, but will also result in escalation of the cost of the Appellants's leasing out and make the Appellant's business uncompetitive when compared with the others in the same business of leasing; in gross violation of the Appellant Art.19(1)(g) and 300-A of Constitution of India.

7. It is further submitted that there is a direct nexus between the two transactions that is supply of service in terms of "purchase of under construction commercial property" and the "leasing of Immovable property". the Appellant being a registered supplier of lease is statutorily entitled to avail of credit of the input tax charged by his Vendor for the purchase of the commercial premises under construction and set off the same against the output tax payable on the lease rentals incomes received from the Lessees of the said commercial premises; since the receipt of rentals and the tax payable thereof are the direct and inexorable consequence of the purchase and use of the under construction commercial premises.

8. Therefore, the Appellant submitted that the GST paid for the purchase of the under construction of commercial premise should be allowed to be claimed as input tax credit since the Appellant is providing output supply of leasing out the same immovable property which is in the course of furtherance of business.

11. Thus the appellant prayed that Advance Ruling may be set aside/modify the impugned Advance Ruling passed by the AAR or pass any such further orders as maybe deemed fit and proper in the facts and circumstances of the case.

Whether the appeal is filed in time:

12. In terms of Section 100 (2) of the Act, an appeal against Advance Ruling passed by the Advance Ruling Authority, has to be filed within thirty (30) days from the date of communication thereof to the applicant. The impugned Order dated 30.09.2021 was received by the appellant on 01.11.2021 as mentioned in their Appeal Form GST ARA-02. They filed the appeal on 30.11.2021, which is within the prescribed time-limit.

Personal Hearing:

13. In terms of Section 101(1) of the Act, the appellant was given personal hearing, in virtual mode on 31.01.2022. Shri Kailash Nath P S S, Advocate, and Authorised Representative appeared for the Appellants. The appellants reiterated their written submissions made along with the application and no additional submissions were made at the time of personal hearing. They requested to set aside the advance ruling in respect of said issue that are being contested and consider their appeal favourably.

Discussions and Findings :

14. We have gone through the application for Advance Ruling filed by the appellants before the Authority for Advance Rulings and TSAAR Order No. 21/2021 dated 30.09.2021. The Authority for Advance Ruling passed its order and denied the Input Tax Credit on services of purchase of under construction commercial property received by the appellant for utilizing the same for payment of GST on supply of output service i.e., lease of immovable property. Further the authority ruled that Clause 2(b), 5(b) of Schedule and Section 17(5) (c) are different and distinct provisions under the Act. We have gone through the written submissions, their contentions and also case laws cited in their support.

15. We have carefully considered the facts on record, the relevant entries under the Schedule II, and relevant provisions under Rules 16 and 17 of the CGST Act, 2017, the impugned order passed by Advance Ruling Authority, the appellant's grounds of appeal and their submissions.

16. We find that the following issues are required to be examined in the subject appeal:

1. Whether the services availed by the appellant fall under Clause 5(b) or Clause 6(a) of Schedule II of the CGST Act, 2017.

2. Whether the provisions of Section 16 (1) or Section 17(5) (c) is applicable with regard to Input Tax Credit.

17. At the outset, Schedule II provides for activities (or Transactions) to be treated as supply of goods or supply of services. Clause 5 of the schedule states as to what is treated as supply of services. The text of clause 5(b) is reproduced as under :

5 (b) : construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation: For the purposes of this clause—

(1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

18. Section 2 (119) defines works contract as :

"works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

Hence, for a contract to be termed as works contract, it should satisfy the following conditions:

(i) It should be a contract for building, construction, fabrication , etc. of any immovable property.

(ii) There should be transfer of property in goods involved in its execution.

In the said case both the conditions are met i.e. there is a contract for construction of building there is a transfer of property in goods.

A contract for construction of complex with transfer of property in goods (explicit or implicit) falling under the ambit of entry 5(b) of Schedule-II of CGST Act, 2017 does not cease to be works contract, as long as said the supply satisfies the conditions laid down in the definition of a works contract under Section (2) sub-section (119) of CGST Act, 2017.

In this context it is important to draw attention to Judgment rendered by Hon'ble Supreme Court of India in Larsen & Toubro Limited and Others Vs. State of Karnataka (MANU/SC/0985/2013), when it was specifically held that "Building contracts are a species of Works Contract".

The basis of arguments made by the AR of the appellant are that services specified in clause (b) of Para 5 & clause (a) of Para 6 of Schedule-II are mutually exclusive.

Works Contracts and a contract for construction of a complex or building are not mutually exclusive. They are neither a subset nor a super set of each other. Hence, the principles of *generalia specialibus non derogant* donot apply here, i.e. the principle is applicable only when either of them is a subset or superset of one another but not when intersecting / overlapping with each other.

Fig -1

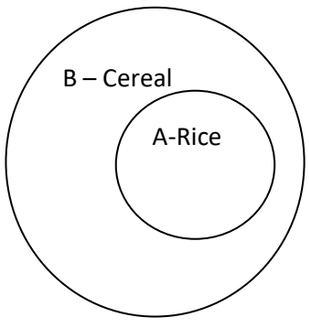
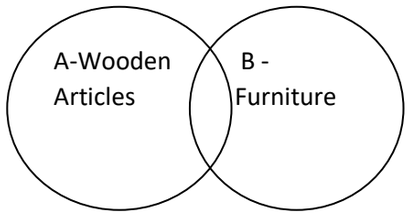


Fig - 2



For instance: In Figure-1, A (Rice) can be termed the specific entry in B (Cereal). As seen in Figure-2, A (Wooden Articles) cannot be treated as a specific entry of B (Furniture), nor vice-versa. When entries are intersecting, one of them cannot be termed as specific entry and the other as a general entry. They are to be treated as two specific entries as rightly pointed out by the AAR while elaborating that:

> *Sub-section 2 of section 7 read with Paragraph 5 of Schedule III creates a deeming fiction to exclude the sale of land from levy of GST subject to clause (b)of paragraph 5 of schedule II.*
>
> *Now Paragraph 5 of Schedule II is a specific entry treating the supply of immovable property involving the construction of a complex or a building or any civil structure intended for sale as service. GST is leviable on this service. There is another specific entry for composite supply in the same schedule at Para 6 which includes works contract as defined under clause (119) of Sec 2 of the CGST Act, 2017.*

19. With regard to 'works contract' the appellant has relied on Hon'ble Apex Court judgement in Commissioner, Central Excise and Customs, Kerala and Ors Vs. Larsen and Toubro Ltd & others (2016)1 SCC 170. The relevant text is extracted as under :

> ***17.*** *We find that the assessees are correct in their submission that a works contract is a separate species of contract distinct from contracts for services simpliciter recognized by the world of commerce and law as such, and has to be taxed separately as such. In Gannon Dunkerley, 1959 SCR 379, this Court recognized works contracts as a separate species of contract as follows:-*
>
> *"To avoid misconception, it must be stated that the above conclusion has reference to works contracts, which are entire and indivisible, as the contracts of the respondents have been held by the learned Judges of*

the Court below to be. The several forms which such kinds of contracts can assume are set out in Hudson on Building Contracts, at p. 165. It is possible that the parties might enter into distinct and separate contracts, one for the transfer of materials for money consideration, and the other for payment of remuneration for services and for work done. In such a case, there are really two agreements, though there is a single instrument embodying them, and the power of the State to separate the agreement to sell, from the agreement to do work and render service and to impose a tax thereon cannot be questioned, and will stand untouched by the present judgment." (at page 427)

20. In this context, attention is drawn to para 19 of the same judgement, the text of which is reproduced as under :

19. *In Larsen & Toubro Ltd. v. State of Karnataka, (2014) 1 SCC 708 = 2014 (34) S.T.R. 481 (S.C.) = 2014(303) E.L.T. 3 (S.C.), this Court stated:-*

"In our opinion, the term "works contract" in Article 366(29-A)(b) is amply wide and cannot be confined to a particular understanding of the term or to a particular form. The term encompasses a wide range and many varieties of contract. Parliament had such wide meaning of "works contract" in its view at the time of the Forty-sixth Amendment. The object of insertion of clause (29-A) in Article 366 was to enlarge the scope of the expression "tax on sale or purchase of goods" and overcome Gannon Dunkerley (1) [State of Madras v. Gannon Dunkerley and Co. (Madras) Ltd., AIR 1958 SC 560 : 1959 SCR 379]. Seen thus, even if in a contract, besides the obligations of supply of goods and materials and performance of labour and services, some additional obligations are imposed, such contract does not cease to be works contract. The additional obligations in the contract would not alter the nature of contract so long as the contract provides for a contract for works and satisfies the primary description of works contract. Once the characteristics or elements of works contract are satisfied in a contract then irrespective of additional obligations, such contract would be covered by the term "works contract". Nothing in Article 366(29-A)(b) limits the term "works contract" to contract for labour and service only. The learned Advocate General for Maharashtra was right in his submission that the term "works contract" cannot be confined to a contract to provide labour and services but is a contract for undertaking or bringing into existence some "works". We are also in agreement with the submission of Mr. K.N. Bhat that the term "works contract" in Article 366(29-A)(b) takes within its fold all genre of works contract and is not restricted to one species of contract to provide for labour and services alone. Parliament had all genre of works contract in view when clause (29-A) was inserted in Article 366." (at para 72)

21. Therefore, on a combined reading, it becomes imperative to assess or classify the service availed by the appellant, i.e., to say whether it qualifies as 'works contract service' or not. As discussed earlier, it is evident from the facts of the case that an agreement of sale for commercial property was entered into when the property was under construction. This clearly implies that certain material/goods were involved in completing the construction service. Subsequently, the property was registered/transferred in the name of appellant.

From the above, it is amply vivid that the services availed by the appellant is nothing but, 'works contract' in as much as the service involved is construction of immovable property with transfer of property in goods. Hence, the supply is covered under Para 6(a) of the Schedule II of the Act.

22. Now, we proceed to examine the provisions of Section 16(1) and 17(5) of the Act, governing the aspect of 'Input Tax Credit' (in short 'ITC'). For ease of understanding, the same are reproduced as under :

> ***Section 16.*** *(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.*
>
> ***Section 17(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.*

23. The appellant has contested that the supply of services availed by him and provided by him are taxable and ITC is allowed in terms of Section 16(1) of the Act. He further contends that the exclusion provided under Section 17(5)(c) is not applicable to his case, when the services fall under two descriptions provided in Para 5(b) and Para 6(a) of Schedule -II.

24. As can be seen from the sections that section 16 provides for availment of ITC subject to certain conditions and procedures to be followed by the assessee. Whereas, such availment is restricted under Section 17 and various kinds of supplies/conditions are covered. In view of the above judgement, it is pertinent to understand the intent of legislation in framing laws and enactments. It is natural to the corollary that every rule has an exception. The Act, has clearly and distinctly spelt the provisions under separate sections as to who is eligible to avail and what conditions such availment is restricted or denied. Therefore, even though a general condition is prescribed under Section 16 of the Act, for availment of ITC, specific exemptions or disallowance cannot be overlooked or ignored merely because one provision allows it. Section 17(5)(c) clearly specifies that ITC is allowed on input of 'works contract' only if the output service is also works contract. In the instant case, the output service provided by the appellant is leasing/renting of immovable property. As such input tax paid on supply of works contract cannot be availed by appellant for payment of tax on supply of renting of immovable property.

25. Further, the AR himself has clearly mentioned that notification and clarifications issued by board pertains to ITC being available to the contractor for the sale of under construction complexes. The present case doesn't pertain to applicability of ITC to the contractor, constructing the commercial complexes, but to the buyer of such constructed complexes. Hence, the applicability of principles of contemporanea expositio and being bound by rules of executive estoppels doesn't arise in this case.

26. From the above, the case laws relied upon, do not come to rescue, in as much as they are against the submissions made by the appellant as discussed above. The contentions of the appellant are not valid in as much as, Para 5(b) of Schedule II and Section 17(5)(c) are two different and distinct provisions of CGST Act, 2017, operating in their assigned spheres as held by AAR and discussions ibid. Further, we find that the discussions of AAR with regard to Para 2(b) of the Schedule II, Section 17(5)(d) are appropriate. As such the appellants are not eligible to take credit of tax paid on inward supply of works contract service.

In the light of the foregoing, we pass the following:

ORDER

1. The order passed by the lower authority is upheld.
2. The appellants are not eligible to take input tax credit of GST paid on supply of works contract service for payment of GST on their output service i.e., Renting of immovable property.

The subject appeal is disposed accordingly.

28.4.

(Neetu Prasad)
Commissioner
State Tax,
Telangana State

28/4/22

(B.V.Siva Naga Kumari)
Chief Commissioner
Central Tax
Hyderabad Zone

To:
Shri Satya Dev Bommireddy,
Villa 33, Lalitha Bloomfield,
Khajaguda, Nanakramguda Road,
Hyderabad 500008,.

Copy to:

1. The Telangana State Authority for Advance Ruling, CT Complex, MJ Road, Nampally, Hyderabad- 500 001.
2. Chief Commissioner of Central Tax & Customs, Hyderabad Zone – for information and for forwarding copies of the order to the concerned / jurisdictional officer of Central tax.
3. Commissioner of State Tax, Telangana State – for information and for forwarding copies of the order to the concerned / jurisdictional officer of State tax.
4. Shri Kailash Nath P.S.S., Advocate, H.No.6-3-663/7/6, Flat No. 201, 202, Saai Priya, Jaffar Ali Bagh, Somajiguda, Hyderabad 500 082.