



#GSTCASE-142-ELIGIBILITY OF ITC RELATING TO THE GOODS OR SERVICES USED IN CIVIL WORK AND EXTERNAL DEVELOPMENT WORK FOR SETTING UP OF MRO FACILITY WHICH WILL BE FURTHER RENTED OUT

Posted on June 27, 2020





Case : Indag Rubber Ltd., In re 115 taxmann.com 215 (AAR- RAJASTHAN)

1. Query:

Whether applicant is eligible to claim credit of GST charged by vendor at the time of supply of goods and services to it, which are used for carrying out the following activities for setting up of MRO facility which will be rented out:

- a) Civil Work
- b) External Developmental Works

2. Subject:

ITC Eligibility used for construction of for immovable property which will be lease out.

3. Facts:

The applicant has entered into agreement with M/s Elcom Systems Pvt. Ltd for providing on lease a Maintenance Repair and Overhaul facility (MRO). That, the applicant further engaged M/S Akanksha Contracts Pvt. Ltd. for supplying various goods and services for setting up the MRO facility on its land.

4. Contention of the Assessee:

Applicant has contended that he is eligible to claim input tax credit in respect of goods and services supplied by M/S Akanksha Contracts Pvt. for carrying out the activities of Civil Work and External Development Works for setting up of MRO facility which will be further leased to M/S Elcom Systems Pvt. Ltd. by the applicant.

Intent behind GST is that wherever, the supplier is engaged in providing taxable supply, it should be given credit of the inputs and input services used by it for providing the said supply. The intent behind incorporating Section 17(5)(d) is to restrict the credit where the immovable property is being supplied after the completion certificate, as supply of immovable property does not attract levy of GST. However, for all other cases, such as renting of immovable property, as supply of service is being undertaken, credit of inputs and input services is available.

Relied Upon- M/S Safari Retreats Private Limited and Another vs. Chief Commissioner of Central Goods & Service Tax & Others, 2019 (5) TMI 1278, Orissa High Court, Tara Exports v. Union of India, 2018 (9) TMI 1474, Madras High Court, Eicher Motors Ltd. v. Union of India, (1999) 2 SCC 361, Collector of Central Excise, Pune v. Dai Ichi Karkaria Ltd., (1999) 7 SCC 448, Punjab Authority of Advance Ruling in the matter of In Re: K.P.H. Dream Cricket



Private Limited, 2018 (18) G.S.T.L. 278 (A.A.R. - GST), Oxford University Press vs. Commissioner of Income Tax, (2001) 3 SCC 359, K.P. Varghese v. Income-Tax Officer, Ernakulam and another, Vol. 131 (1981) ITR 597

5. Observation by AAR

The nature of work undertaken in the activity of MRO is for supply of goods and services leading to creation of immovable property.

AAR negated the contention of the application of Section 17(5)(d) only deals with unavailability of credit of inputs/ input services in case where the output is not taxable by holding that this is only one of the dimension of the law. They further held that this is an implicit interpretation which is not the intentional outcome of the said section. **The purposive dimension of the said section is blocking of credit for construction of immovable property. The activity of the applicant has two phases viz. construction of immovable property and leasing of the same for MRO purposes.** The question raised by applicant regarding ITC was held to be restricted with first phase of construction itself. Therefore, contention of the applicant that output supply which will take place post construction is taxable or not was held to be immaterial in determining eligibility of ITC. The provisions of Section 17(5)(d) of GST Act, 2017 were therefore held to be clear that if goods or services are used for construction of an immovable property, ITC shall not be available irrespective of the use of said property.

6. Decision:

The applicant is not eligible to claim credit of the GST charged by vendor for supply of goods and services to it, which are used for carrying out the activities (Civil Work and External Developmental Works) for setting up of MRO facility.

7. Comment:

The issue is now getting more or less settled from the point of view of AAR/AAAR that once a property is held to be Immovable Property and even if it is used for making further supply, no credit is allowable to the applicant. The decision of M/S Safari Retreats Private Limited by Hon'ble Orrisa High Court has been oft quoted by all applicants in similar matters but have been negated either by holding that the decision is not of Jurisdictional High Court or is pending before Hon'ble Apex Court. Therefore, its only the decision of the Hon'ble Apex Court in the matter of M/S Safari Retreats Private Limited which will set the tone for the future of Section 17(5)(c) and 17(5)(d) of CGST Act, 2017 in cases of eligibility of Input Tax Credit relating to the immovable property used for further supply.