

**THE AUTHORITY ON ADVANCE RULINGS  
IN KARNATAKA  
GOODS AND SERVICE TAX  
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD  
GANDHINAGAR, BENGALURU - 560 009**

**Advance Ruling No. KAR ADRG 109/2019  
Dated: 30<sup>th</sup> September, 2019**

Present:

1. Sri. Harish Dharnia,  
Additional Commissioner of Central Tax . . . . Member (Central Tax)
2. Dr. Ravi Prasad M.P.  
Joint Commissioner of Commercial Taxes . . . . Member (State Tax)

1.	Name and address of the applicant	M/s EMBASSY INDUSTRIAL PARK PRIVATE LIMITED Intermediate Ring road, Pebble Beach, Embassy Golf Links Business Park, Ejipura, Bengaluru 560034
2.	GSTIN or User ID	29AACCJ2346P1Z3
3.	Date of filing of Form GST ARA-01	13.02.2019
4.	Represented by	Sri Harish Bindumadhavan, Advocate
5.	Jurisdictional Authority - Centre	Pr Commissioner of Central Tax, Bangalore East
6.	Jurisdictional Authority - State	LGSTO-045A, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of 1. Rs.5,000-00 under CGST Act vide CIN HDFC19022900042387 dated 08.02.2019 2. Rs.5,000-00 under KGST Act vide CIN HDFC19022900042387 dated 08.02.2019

**ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICE TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE KARNATAKA GOODS AND SERVICES TAX ACT, 2017**

1. M/s Embassy Industrial Park Private Limited, (called as the 'Applicant' hereinafter), having GSTIN number 29AACCJ2346P1Z3, has filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 and Section 97 of the KGST Act, 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000-00 each under the CGST Act and the KGST Act.



Embassy Industrial Park



2. The Applicant is a Private Limited Company and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:

“Whether input GST credit can be availed by the applicant on the inputs i.e. Electrical Works, Pumps, Pumping systems and tanks, Lighting system, Physical security system and Fire System”

3. The applicant furnishes some facts relevant to the stated activity:

- a. The applicant states that they are engaged in building and managing industrial warehousing spaces for consumers and industrial centers. The Applicant is proposing to construct a new Industrial warehouse at Baguru Village in Karnataka.
- b. The Applicant procures various goods and services from various contractors for fitting-out of the warehousing spaces and provides the subject space having with all facilities and infrastructure facility on rent to various industrial consumers and manufacturers. The Applicant discharges applicable GST on such procurements.
- c. Section 16(1) of Central Goods and Services Tax Act, 2017 (“CGST Act”) entitles a registered person to take credit of input tax charged on any supply of goods or services or both which are used or intended to be used in the course or furtherance of business.
- d. The applicant states that however, as per Section 17(5) of the CGST Act, a restriction is imposed with respect to input tax credit (hereinafter referred to as “ITC”) on procurement of goods and services or both received by the taxable person for construction of an immovable property. However, the term ‘construction’ is limited to supplies to the extent capitalized to an immovable property.
- e. Of the procurements, there are certain items in the nature of plant and machinery, listed below and the same are explained in detail in the subsequent paras:

A)	Electrical Works
B)	Pumps, pumping systems and tanks
C)	Lighting System
D)	Physical Security system
E)	Fire System





- A. Electrical works:** This includes installation of equipment and devices which controls or uses electrical power. These devices control hardware through which power streams.

Business operations involve efficient ways of investment in infrastructure. This also involves knowing how and where to use electrical works to make better engineering and investment decisions. For any organization electrical works are mission critical. A power failure or a problem to any of the above mentioned systems can mean an expensive disruption to operations. Therefore these systems are absolutely essential for functioning of business.

- Ring main unit – This is used in a power distribution system as a switch gear device in order to regulate voltage. It is totally sealed and gas insulated. It is an assembly of required switching devices, protection devices as well as metering devices.
  - In a distribution system, RMU is widely used as it is a complete package and only needs installation and cable connection. Everything else is within the package. This greatly reduces the commissioning time;
  - Ring main units facilitate:
    - Network flexibility
    - Prompt supply restoration
    - Continuous power supply
    - Safe on load operations
    - Easy network handling
  - They provide cable status indication and also help in identifying faulty sections.
  - They prevent fire hazards in a designated area and also help in performing remote operations and status monitoring.
- Receptacle system (plug socket) – These refer to electrical outlet that allow an electrical equipment to be connected to the primary power supply in a building. It is device in a wall where electric equipment can be plugged into the electricity supply. A receptacle system requires grounding wire without which it cannot function.





Advantages of installing a receptacle system in a business organization are as follows:

- They are important to detect ground faults; and
- These are designed to provide protection from electric shock hazards and injuries that can be caused from power surges, outages and storms and promote safe working environment.

**B. Pumps, pumping systems and Tanks: Pumps and pumping systems are devices that help move fluids by mechanical action. Tanks help store these liquids, typically water.**

- Pumps – These are devices that expend energy in order to raise, transport or compress fluids.

Pumps are required pumping liquids and gases used for various purposes for daily functioning of warehouse. Water and other fluids are required in a business organization for domestic purposes and also to maintain constant pressure. In general, a pump is mounted on a strong baseplate supported by a strong concrete foundation. In addition, to the pumping machine itself, the scope of work provided to the contractors also includes construction and fabrication of the room that encases the pumping system.

- Tanks – The primary function of a tank is to store liquid substance required for daily activities. Domestic water storage is a necessity due to natural occurrences such as droughts. They provide water for drinking, firefighting, gardening, for other legal requirements, for upkeep and maintenance, etc. They also provide emergency storage for fire protection

**C. Lighting systems**

- Street light poles and high mast – This is tall pole with lighting attached to the top pointing towards the ground required for lighting over a large area. It consists light sensitive sensors that activate the flow of electricity in the poles when the light around is too low. Electricity is sent through high-intensity discharge lamps. Street lights and masts are essential to provide security and increasing the quality of life by artificially extending the hours in which activity can take place and improving. They also ensure a standard of lighting sufficient to reveal necessary amenity and visual information at night, including the road line-marking,



property lines, signage, road furniture, road surface imperfections etc.

- LED Internal light fittings – These include light fixtures that use LED feature. LED technology has rapidly developed to be one of the leading and prominent lighting solutions today. These also serve a lot of purposes as stated above for street lights, but for internal usage.
- External lighting works – These are outdoor lighting works features and uses of which are similar to LED and street lights as explained above.

**D. Physical Security system: It is a collection of equipment that provides security and safety in a constructed building. For an organization, it is necessary to provide its people with a safe and hassle free environment so as to gain their trust and improve efficiency adding value to the organization. It is necessary to protect private as well as public property and steps taken towards this are without doubt, in interest of the business**

- Gate and fencing – Gates are used at the entrance and other logical locations, fences are used around the premises in order to prevent unauthorized access. Fencing and gates emphasize alertness, endurance and protects personal property by preventing trespassing and theft. Fences are also particularly useful if animals are known to roam around the area. They can prevent wild animals from gaining access to the property.

Following are other reasons gates and fences are required for an organization:

- Provides protection from theft that can cause to serious threat to business properties;
  - Provides security during disruptions such as mob attacks, vandalism or other invasions; and
  - Promotes peaceful working environment.
- Gear operated rolling shutter – This is a type of door or window shutter consisting of many horizontal slats hinged together which is operated by gear. They are an excellent way to protect the premises from unwanted entry. It is





difficult to remove/bypass roller shutters because they are very closely fitted to the window and cannot be pulled away or broken through without a great deal of effort and noise

Roller shutters are required in areas that are exposed to inclement weather, protect windows from hail damage and can be made to withstand high wind. In case of damaging weather the shutters will easily deflect branches and other debris that can break glass and cause damage to premises. Roller shutters don't rattle during high winds & offer a thick wall of insulation from the elements.

In addition to weather protection, security, privacy & light control, roller shutters provide the additional benefit of reducing the noise coming from outside.

Shutters also give you a huge amount of control over the amount of light that enters the room. We can choose to completely darken the room by lowering the shutters fully or can have them open so that sunlight floods the room. They also give you control over airflow. Let in the fresh air or keep an obnoxious smell out thus providing clean and workable environment.

They also make for safe storage of the goods stored in a warehouse.

- Portable security cabins – These are designed and built to be transportable building rather than permanently located. Portable cabins can be for temporary usage to be taken away later.

Reasons why portable security cabins are required:

- As the name suggests, security cabins are of utmost importance to maintain order, improve safety and provide security in a workplace. They are required to provide safe surrounding for security personnel.
- These cabins are adaptable, transferable, simple to build, destroy and again built and truly convenient
- Portable Security cabins are great degree lightweight and since they are lightweight, they can be taken anyplace.





- Metal doors and Rolling Shutters – Doors are used in a building for access, security and various other reasons.
  - They limit access to authorized personnel and help in protecting private property
  - They separate interior spaces on a logical basis for privacy, safety and security reasons
  - They are needed to secure passage into building from exterior for reasons of climate control and safety.
- Dock levelers - Dock levelers on the other hand are equipments that are used to bridge the gap between truck and dock or warehouse floor. It ensures quick loading and unloading while improving safety and security. They make loading and unloading convenient, safe for workers and efficient.

Dock levelers are used at warehouse entrance, industrial building, loading or unloading zone. They make it possible to receive deliveries from any vehicle without having to worry about a gap between the warehouse and the vehicle. By removing this gap, we save time on unloading, and ensure that there is no damage to goods due to an unsafe loading/unloading environment. They can handle capacities of thousands of pounds and also have sides that prevent run off.

**E. Fire system: This includes a number of equipment working together to detect and warn people through visual and audio appliances when smoke, fire, carbon monoxide or other emergencies are present and prevent disasters from taking place within an organization. The organization is required to take all possible steps to protect the safety of people in work place and this forms a vital part of running business.**

- Pump room and accessories for fire system - A fire pump is a part of a fire sprinkler, internal and external Hydrant system's water supply and can be powered by electric, diesel pump. The pump intake is connected to the independent fire sump. The pump provides water flow at a higher pressure to the sprinkler system during fire emergency. The system is very important to protect human life, property and safety. The system combines preventative monitoring with active fire





suppression mechanism, rapidly extinguish a fire before it spreads.

- Fire alarm system - These are used to alarm people around in case of smoke, fire etc. by using audio and visual appliances. Fire alarm systems are crucial to fire safety. The main advantage of installing fire alarms is the early warning benefit. The fire alarms can be installed just about anywhere in a commercial building and best of all the fire safety measure is highly cost effective for smoke and fire protection. This early warning signal is extremely important to life safety for the following reasons:
  - Providing occupants of building prompt warning if a fire occurs;
  - Increases evacuation time for building occupants before a fire spreads out of control;
  - Emergency medical help can be immediately sent out to those in need; and
  - Fire department personnel can help people exit the building safely.
- Fire rated doors - These are doors with fire resistance rating used as a part of passive fire protection system to reduce the spread of fire and smoke. They are highly important to protect life and property in case of fire emergencies. Fire doors are part of a building's passive fire protection system, an essential requirement for public buildings, offices and factories.

They separate compartments of a structure and enable safe evacuation so as to:

- Keep any fire in the compartment in which it starts;
  - Protect the occupants (and contents) of other compartments; and
  - Provide a safe, protected route to allow the occupants to escape.
- Fire protection systems - These include a combination of various fire-fighting systems such as fire extinguishers, external and internal hydrant systems, sprinkler systems etc. which help in minimizing the fire impact and ensure safety and wellbeing of people in the premises. These





include a complex system that requires to be connected to the ground for cabling, piping etc. and hence difficult to move.

4. The applicant claims that the works contract in the nature of electrical, structural, lighting, physical security and fire-fighting works listed above qualify as eligible credit under section 16 of the CGST Act, 2017. The reasons adduced are as under:

4.1 Section 16 details the criteria of availment of ITC on tax paid on input and input services.

Relevant extract is as under:

*“(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.....”*

4.2 Thus, from a bare reading of the Section, it can be seen that Section 16 of the CGST Act entitles every registered person to take input tax credit of tax charged on supply of goods or services or both which are used or intended to be used in course or furtherance of business.

4.3 The above criteria for availment of credit is broad both in manner as well as intent.

#### **Meaning of “in the course of” or “furtherance of business”**

4.4 While business has been defined under the CGST Act, the terms “in the course” “or furtherance of business” are not defined anywhere under the CGST Act or the CGST Rules made thereunder.

4.5 In the course of generally means something “in the progress of process of”.

4.6 The meaning of “Furtherance” as per Black’s law dictionary: 6th edition 11th reprint 1997, is “act of furthering, helping forward, promotion, advancement or progress”.

4.7 Furtherance of business will, thus mean, act of furthering business, helping forward business, promotion of business, advancement of business or progress of business.

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4.8 As mentioned above, the Applicant is into the business of building and managing industrial warehousing spaces for consumers and industrial centers and all the subject electrical works, pumps, pumping systems and tanks, lighting system, physical security system and fire system helps in giving value add to its Industrial customers and managing the Industrial spaces in more efficient and effective way. In other words, the subject plant and machinery items help the Applicant in carrying out their business in their day to day operations.

4.9 Therefore, basis the above submissions, given that the Applicant procures various inputs which are installed in warehousing spaces rented out by the Applicant, the condition as provided under Section 16 for availment of ITC stands satisfied.

5. The applicant claims that the restriction provided under Section 17(5) (c) & (d) does not apply to procurement of items listed above for the following reasons:

***Credit restriction is only in so far as inputs/ input services "for construction of an immovable property"***

5.1 Section 17(5) (c) & (d) uses the word "for" construction.

5.2 The term "for" is more specific than "in relation to". The word "for" generally means "for the purpose of".

5.3 The word 'for' is defined in the Concise Oxford English Dictionary, 8th Ed. as under:

*1. in the interest or to the benefit of; intended to go to;*

*2. in defense, support or favor of*

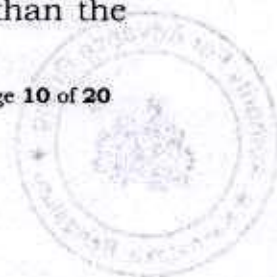
*3. suitable or appropriate to*

*4. in respect of or with reference to*

*5. representing or in place of....*

*6. conducive or conductively to; in order to achieve...."*

5.4 The Hon'ble Supreme Court in the case of ***Mansukhlal Dhanraj Jain & Ors. Etc. v. Eknath Vithal Ogale*** etc. compared the words "for" and "relating to" and concluded that the latter has wider connotations than the former. The relevant extract is reproduced for reference:





*“There is a good deal of difference between the words “relating to the recovery of possession” on the one hand and the terminology “for recovery of possession of any immovable property”. The words “relating to” are of wide import and can take in their sweep any suit in which the grievance is made that the defendant is threatening to illegally recover possession from licensee.”*

5.5 It can be seen from the above decisions that the word ‘for’ has been defined to mean in the interest of, to the benefit of, in defense of, in support or favour of, etc. Based on the above rationale, it can therefore be concluded that in order to be covered by the restrictions provided under Section 17(5) (c) & (d), the goods or services must be used directly for construction of immovable property.

5.6 In other words, with reference to section 17(5) (c) & (d) of CGST Act, read with the explanations provided therein, credit eligibility of goods or services or both is restricted only when the same is “for construction of an immovable property”.

5.7 Also, “immovable property” covered in the above section excludes Plant and Machinery.

5.8 Plant and machinery is defined as any apparatus, equipment and machinery fixed to earth by foundation or structural support (to be precise, immovable plant and machinery) but does not include:-

- i. Land, building or any other civil structures;
- ii. Telecommunication towers; and
- iii. Pipelines laid outside factory premises

***Credit restriction is with respect to construction only when capitalized as immovable property***

5.9 Further, the Applicant submits that for the purposes of clause (d) of section 17(5) of CGST Act, the expression ‘construction’ has been defined to include re-construction, renovation, additions or alterations or repairs, **to the extent of capitalization of the said immovable property.**

5.10 The Applicant in this regard submits that, so far the business activity of the applicant is concerned, the items listed in Appendix I are not capitalised as immovable property but are in fact recorded as ‘plant and machinery’.





5.11 They can be detached and re-used and are not considered to be the permanent civil assets. It is for this very reason that these items are not capitalized as immovable property.

6. The applicant submits that the items in respect of this advance ruling qualify as eligible credit under Section 16 of the CGST Act and the restriction provided under Section 17(5)(d) does not apply for the following reasons:

6.1 Basis the above submissions regarding the admissibility of the credit for various electrical works, pumps, pumping system and tanks, lighting system, physical security system and fire system, the Applicant wishes to reiterate the analysis above as they same shall be applicable the specified items as well.

6.2 The Applicant submits that the as per Section 16 of the CGST Act, he is eligible to avail credit in respect of the specific items as they are used in the course or furtherance of Applicant's business.

6.3 It is pertinent to note that the restriction prescribed in Section 17(5) pertains to as inputs/ input services "for construction of an immovable property".

7. The applicant submits that the goods in question are movable for the following reasons:

7.1 The Applicant submits that **anything embedded to the earth and which cannot be dismantled and moved, strictly are covered under the ambit of "immovable property"**, thus restricting the same from availment of ITC as per Section 17 (5)(c) & (d) of the CGST Act.

7.2 The term immovable property has not been defined under GST Act, therefore reference needs to be taken from General Clauses Act, 1897.

7.3 Section 3(26) of the General Clauses Act, 1897, does not provide an exhaustive definition of the said expression. It reads :

*"immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth."*





7.4 Similarly, Section 3 of the Transfer of Property Act, 1882 does not spell out an exhaustive definition of the expression "immovable property". It simply provides that unless there is something repugnant in the subject or context 'immovable property' under the Transfer of Property Act, 1882 does not include standing timber, growing crops or grass.

7.5 Though the terms "attached to the earth" are not defined in the GST law, reference can be drawn Section 3 of the Transfer of Property Act, 1882 wherein it is defined that anything:

- Rooted to the earth, as in case of trees and shrubs;
- Imbedded in the earth, as in the case of walls and buildings;
- Attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

8. The applicant summarises the entire submissions as under:

Particulars	Category	Property type	Whether movable or immovable	Eligibility criteria
Ring Main unit	Electrical works	Plant and Machinery	Movable	Plant and Machinery - any apparatus, equipment and machinery fixed to earth by foundation or structural support.  These items are immovable in nature and classified as Plant and machinery.  Hence these are specifically excluded from Section 17 (5) (c) & (d)
Receptacle system - plug socket	Electrical works	Plant and Machinery	Movable	
Pumps	Electrical works	Plant and Machinery	Movable	
Street light poles, High mast	Electrical works	Plant and Machinery	Movable	
Pump room and accessories	Fire system	Plant and Machinery	Movable	
Fire Alarm Systems	Fire system	Plant and Machinery	Movable	
Fire Protection Systems	Fire system	Plant and Machinery	Movable	
LED Internal light fittings	Lighting system	Lights & Fixtures	Movable	Section 17(5) covers works contract services and construction services used in the construction of an "immovable property"
External Lighting works	Lighting system	Lights & Fixtures	Movable	
Gate and Fencing	Security system	Furniture and Fittings	Movable	Since these are practically movable, the same is not affected by the restriction





Gear Operated Rolling Shutter	Security system	Furniture and Fittings	Movable	under Section 17 (5) (c) & (d)
Portable security cabin	Security system	Furniture and Fittings	Movable	
Rolling Shutters, Metal doors and dock levelers	Security system	Furniture and Fittings	Movable	
Fire rated doors	Fire system	Furniture and Fittings	Movable	

9. The applicant places reliance on the following judicial precedents in relation to credit admissibility.

9.1 In the Advance Ruling issued by the authority for Advance Ruling, Uttarakhand, in the case of **M/s VINDHYA TELELINKS LTD**, the question was whether the applicant is eligible for input tax credit on goods & services used in erection of infrastructure, which consists of "steel tabular pole, galvanized iron wire, nuts &, bolts, optical fibre cables, plastic pipes, clamps", for telecommunication service providers since the infrastructure provided by the applicant is different from "Telecommunication Tower".

It was held that the infrastructure provided by the applicant is different from "Telecommunication Tower" and it is not an immovable property as it can be easily be moved to another place for use without any damage to the entire infrastructure.

*The infrastructure being a movable property can be classified as 'goods' in terms of section 2(52) of CGST/SGST Act, 2017. The infrastructure provided being different from Telecommunication Tower, the applicant can avail Input Tax Credit on GST paid on the goods & services in terms of section 16(1) of CGST/SGST Act, 2017, consumed while providing the supply in question.*

As mentioned in the facts of the case, the listed items are movable in nature and thus applying the decision of the Advance Ruling Authority, the Applicant would be rightly eligible for Input Tax credit.

In view of the above, on applying three test referred above, the wooden floorings and glass partitions cannot be termed as immovable property for the following reasons:



- They are not immovable property;
- They cannot be said to be attached to earth;
- The setting up itself is not intended to be permanent at a given place.

It can be moved based on business requirements.

9.2 The Applicant further places reliance on the advance ruling issued by the Authority of the advance ruling in the case of **M/s BAHL Paper Mills LTD**, where the question was whether credit will be available on office fixtures & furniture, AC, plant & sanitary fittings on the newly constructed building on its own account, for furtherance of business, and is capitalized in books of accounts. It was held that as per the explanation to Section 17 of the CGST Act, availment of credit was not admissible in respect of land, building or any civil structure; therefore sanitary fittings being the integral part of the land was not an admissible credit. **However, credit of GST is available on office fixtures & furniture, A.C. plant.** The said advance ruling has placed reliance on the CBIC Board Circular No. 943/04/2011-CX dated 29th April 2011 wherein it was clarified that the goods such as furniture and stationery used in an office within the factory are goods used in the factory and are used in relation to the manufacturing business and hence the credit of the same is allowed.

9.3 Further Reliance can be placed on the judgement in the case of **M/s Balkrishna Industries Ltd Vs CCE, Jaipur-I** wherein it has held that the credit on duty paid on air-conditioners installed in the office of factory is admissible. Further, the goods such as furniture and stationery used in the office within the factory are goods used in relation to the manufacturing business and hence credit is to be allowed on the same.

9.4 The Applicant further places reliance on the Advance ruling issued by the Authority of the advance ruling in the case of **Nipro India Corporation Private Limited** where the question was whether the input tax credit of tax paid on cost proposed to be incurred in relation to civil works, mechanical works and electrical works can be admissible under the CGST Act, 2017.

It was held that the goods in question are used or intended to be used in course of furtherance is business and as per section 16 of the GST Act "Every registered person subject to such conditions and restrictions as may be prescribed would be entitled to take credit of input tax charged on supply of goods or services or both to him which are used or intended to be used in course or furtherance of business".





Further it is understood that credit with respect to various plant and machinery is admissible as per Section 16 of the CGST Act.

9.5 From the above, it can be inferred that the credit of input tax charged on the supply of various plant and machinery items are to be allowed as it is admissible under CGST/SGST Act 2017.

10. Thus, the Applicant submits that with reference to the explanation provided in section 17(5)(d) of CGST Act, the goods in question i.e Electrical works, pumps, pumping system and tanks, lighting system, physical security system and Fire System which are in the nature of Plant and machinery which would qualify as eligible input tax credit.

#### 11. FINDINGS & DISCUSSION:

We have considered the submissions made by the applicant in their application for advance ruling as well as the additional submissions made by Sri.Harish Bindumadhavan, Advocate, during the personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts. At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the KGST Act.

11.1 It is evident that the applicant is engaged in the building and managing industrial warehouse spaces for consumers and industrial centres. The applicant is proposing to construct a new Industrial warehouse at Bagus Village in Karnataka and the amenities provided include truck parking, canteens, rest areas, dormitories, business centres etc. ensuring that the park becomes a self-sustaining business environment and contribute towards national development and sustainability, while embodying the various objectives of the Governments as advantages.

11.2 The applicant has stated that he procures various goods and services from various contractors for fitting out of the warehouse spaces and provides the subject space having all facilities and infrastructure facility on rent to various industrial consumers and manufacturers.

11.3 Since the applicant is in the business of providing rental commercial space, it is not disputed that the goods or services or both obtained by the applicant are in the course or furtherance of business.



Subject to the conditions and restrictions as may be prescribed, they are entitled to take input tax credit on the tax charged on any supply of goods or services or both which are used or intended to be used in the course or furtherance of business as per sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017.

11.4 The relevant provisions of Section 17(5)(d) of the CGST Act 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 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.*

*Explanation — For the purposes of clauses (c) and (d), the expression “**construction**” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;*

*Explanation — For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—*

*(i) land, building or any other civil structures;*

*(ii) telecommunication towers; and*

*(iii) pipelines laid outside the factory premises.”*

11.5 It is pertinent to note that section 17(5) overrides section 16(1) and any input tax credit shall not be available in respect of -

*(i) 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; and*

*(ii) 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.*

The term construction includes re-construction, renovation, additions or alternations or repairs to the extent of capitalization to the said immovable property.

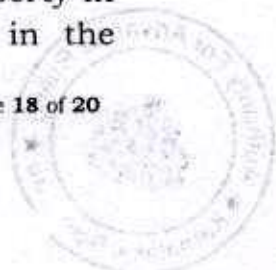
11.6 The term construction includes additions to the immovable property to the extent of capitalization. Nowhere is it said that the capitalized amount needs to be declared as in the books of accounts within the value of immovable property i.e. buildings. The Accounting Standards which enumerate the classes of Fixed Assets being land and buildings, furniture and fixtures, etc. does not classify property as movable and immovable property and an asset classified as fixture could still be immovable property within its meaning. In case of any immovable property, if the asset qualifies to be an immovable property but shown as a discrete element in the books of accounts, it still remains an immovable property. Mere declaration of the same under a different class of Fixed Assets does not change its nature being an immovable property.

11.7 The applicant has admitted that the works of electrical, structural, lighting, physical security and fire-fighting works are in the nature of works contract services and argued that they qualify as eligible credit under section 16 of the CGST Act, 2017. Section 17(5)(c) clearly states that no input tax credit would be available on the tax paid on 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 services.

11.8 The argument of the applicant is that these works contract services are procured are not "for construction" of an immovable property. The applicant on one hand admits that these are works contract services received from the suppliers and on the other hand claims that these are not for construction of immovable property.

Clause (119) of section 2 of the CGST Act, 2017 defines the works contract as under:

"(119) "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”

It is clear from the above and also the nature of supplies made to the applicant that what is received by the applicant is a works contract service as the outcome of the contract is an immovable property.

11.9 In continuation, the argument of the applicant is not on the nature of service received but on the point that the input tax credit must not be disallowed as it is not capitalized as immovable property in the books of accounts of the applicant.

11.10 The Accounting concepts prescribe for accounting of revenue expenses and capital expenses. If the expenses are in the nature of capital expenses and are related to the fixed assets, then they are capitalized. The definition of construction only states that it includes re-construction, renovation, additions, alterations or repairs to the said immovable property and it is only an inclusive definition and hence construction of an immovable property must be seen in that context. Further, merely accounting of an immovable property as a movable property in the books of accounts of the applicant does not divest the exact nature of the item and when what is procured is an immovable property, it remains a immovable property, no matter how the same is accounted.

11.11 Further, the applicant argues what is procured are goods as they can be moved. It is clear that the input is a works contract service as admitted by the applicant himself and is a composite supply involving both goods and services with the outcome being an immovable property and hence this is not applicable.

11.12 The only argument that needs to be examined is whether these are covered under “plant and machinery” as envisaged in Section 17(5) of the CGST Act.

11.13 The Explanation to Section 17 of the CGST Act states as under:  
“Explanation.- For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes -

- (i) Land, building or any other civil structures;
- (ii) Telecommunication towers; and
- (iii) Pipelines laid outside the factory premises.”





11.14 It is clear that the items are fixed to the earth by foundation or structural support and are intended to be used "for" making an outward supply of provision of rental services and hence are covered under the definition subject to the exclusions.

11.15 It is pertinent to note that the items do not have independent existence and are part and parcel of the entire building, a building with infrastructure. It is also seen from the intend of the applicant what is given on rental is the space with all infrastructure and once these immovable properties come into existence, they get merged into the common "building space with modern infrastructure and facilities" and hence are excluded from the definition of "plant and machinery" as applicable to section 17(5) of the CGST Act.

12. In view of the foregoing, we rule as follows

### **RULING**

The question is answered in the "negative" and input GST credit cannot be availed by the applicant on the inputs i.e. Electrical Works, Pumps, Pumping systems and tanks, Lighting system, Physical security system and Fire System as it is blocked under section 17(5) of the CGST Act 2017 and section 17(5) of the Karnataka Goods and Services Tax Act, 2017, for the reasons explained.



Place: Bengaluru,  
Date: 30.09.2019  
To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. Pr. Commissioner of Central Tax, Bangalore-East
4. The Asst. Commissioner, LGSTO-045A, Bengaluru
5. Office Folder

  
(Dr. Ravi Prasad M.P.)  
Member