



HARYANA AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
HARYANA VANIJYA BHAWAN, PLOT NO 1-3, SECTOR 5,
PANCHKULA-134151 (HARYANA)



ADVANCE RULING NO.HAR/HAAR/R/2019-20/10
(In Application No.: 10/2019-20, dated 18.07.2019)

Name & Address of the Applicant	:	M/s Dhingra Trucking Pvt. Ltd., 1/43, Shivaji Nagar, Gurgaon, Haryana.
GSTIN of the Applicant	:	06AAECD3007B1ZG
Date of Application	:	18.07.2019
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	:	Clause(d)- admissibility of input tax credit of tax paid or deemed to have been paid.
Date of Personal Hearing	:	10.10.2019
Present for the Applicant	:	Sh. Rajesh Kumar Soota (Advocate), Dr. Monika Goel and Sh. K.V. Mittal (GM Finance).

Memo No.: 1050/APR
Dated: 28/8/2020

1. Brief facts about the applicant:

- 1.1 The company M/s Dhingra Trucking Pvt. Ltd. (hereinafter referred as the applicant) is registered under the CGST/ HGST Act, 2017 with GSTIN 06AAECD3007B1ZG. The Applicant is a private limited company incorporated under the Companies Act, 2013 and has constructed covered logistics facility space (warehouse) in Haryana measuring 50,000/- sq. feet at Dharuhera and would be constructing additional 3,50,000 sq. feet.
- 1.2 The Applicant has entered into an Agreement with a Company engaged in the business of manufacturing, sales and marketing of two wheelers of various models and is desirous of leasing the said warehouse (logistics facility space) for storage of the lessee's two wheelers. Under the proposed arrangement, in order to provide the leasing of logistics facility space services, the Applicant has undertaken as under :
- a) That the premises is capable of being used as Logistics Facility space/ commercial use under all applicable Laws and that all necessary approval(s) have been obtained from all regulatory/ governmental authorities.
- b) That full electricity backup would be provided for the premises at all times for which the Applicant shall install a generator with required load capacity. The Applicant shall also be responsible for the upkeep



and maintenance of the generator (including the fuel) so that no hindrance is caused to Lessee for the use of the premises.

- c) That the premises inclusive of service lift and other electrical equipment shall be maintained by the Applicant at its own cost, in good condition including cleaning and housekeeping. That for the purpose of maintenance and use, the Applicant shall deploy sufficient number of manpower at the premises all times so that no hindrance is caused to Lessee while using the premises.
- d) That the Applicant shall provide to the Lessee the loading and unloading ramps for the vehicles as per standards of Lessee.

For storage of two-wheelers in the warehouse, multileveled storage facility is being created with fabricated sheets fixed on nuts and bolts. This multi-level storage facility serves the purpose of covered logistics facility space to store the additional vehicles.

2. Applicant's interpretation of law:

2.1 The CGST Act, 2017 was implemented with the object of avoiding the cascading effect of various indirect taxes. It is based on the VAT concept of allowing credit of tax paid on inputs, input services and capital goods which can be utilized for payment of output tax. The business of applicant consists of construction of covered logistics facility space (warehouse) and leasing the said warehouse for storage of the lessee's two wheelers and collection of rent from them.

2.2 In view of Section 7 of the CGST/HGST Act, 2017 read with paragraph- 2(b) of Schedule II of the aforesaid Act, the activity of the applicant of leasing out the warehouse amounts to "Supply" within the meaning of the Act and the Applicant comes within the definition of 'supplier' as appearing in Section 2(105) of the CGST Act/HGST Act, 2017 and accordingly, the Applicant is liable to pay CGST and HGST (or IGST) on the lease rentals received by it.

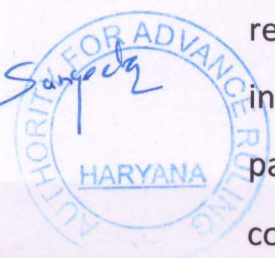
2.3 Section 22(1) of the CGST Act/HGST Act *inter alia* provides that every supplier shall be liable to be registered under the CGST Act/HGST Act in the



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state from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees. The Applicant is duly registered. Once the CGST Act and is a "Taxable Person" within the definition contained in Section 2(107) of the CGST Act/HGST Act.

- 2.4 Section 9 of the CGST Act is the charging section which *inter alia* provides that subject to the provisions of sub-section (2) of Section 9, there shall be levied a tax called Central Goods and Services Tax on all intra state supplies, except on supply of alcoholic liquor for human consumption, on the value determined under Section 15 of the CGST Act and at such rates, not exceeding twenty percent, as may be notified by the Government on recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.
- 2.5 In view of the aforesaid discussion, the Applicant being a taxable person is liable to pay CGST and HGST (or IGST) in respect of rent realized from the lessee.
- 2.6 In order to avoid the cascading effect of various input taxes, Section 16 of the CGST/HGST Act provides that every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49 of the CGST Act as well as Section 49 of the HGST Act, be entitled to take credit of the input tax charged on any supply of goods or services or both made 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. Therefore, in view of Section 16 of the CGST/HGST Act, the Applicant being a registered taxable person, is statutorily entitled to avail the benefit of input tax credit on the supply of goods/capital goods and various services which are consumed or utilized for the construction and leasing out of the aforesaid warehouse and set off the same against the CGST/HGST payable on the rentals received from the lessee of the said warehouse as there is no break in the supply chain of Applicant No.1 and the receipt of rentals and the tax payable thereon are the direct and inexorable consequence of the construction of the covered logistics facility space and the payment of GST



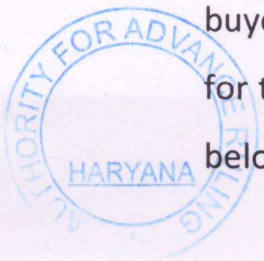
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on the input goods/capital goods and services which have been consumed and utilized for the construction of the covered logistics facility space.

- 2.7 However, the benefit of input tax credit has been denied to the Applicant by applying Section 17(5)(d) of the CGST/HGST Act. The said Section 17(5)(d) of Act *inter alia* provides that notwithstanding anything contained in sub-section (1) of Section 16 of both the aforesaid Acts and sub-section (1) of Section 18 of both the aforesaid Acts, input tax credit shall not be available in respect of goods and 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.

Section 17(5)(d), contemplates a situation where inputs are consumed in the construction of an immovable property which is meant and intended to be sold post-issuance of completion certificate. The sale of immovable property post issuance of completion certificate does not attract any levy of GST. Consequently in such a situation, there is a break in the tax chain and, therefore, there is full justification for denial of input tax credit, as on the completion of the transaction, no GST would at all be payable and, therefore, no set off of input tax credit would be required or warranted or justified. But the position is totally different in the instant case as here the immovable property is constructed for the purpose of leasing out the same and, in this event, the tax chain is not broken. The construction of the warehouse will result in fresh stream of GST revenue to the Exchequer on the rentals generated by the warehouse. The denial of input tax credit in such situation would be completely arbitrary, unjust and oppressive and would be directly opposed to the basic rationale of GST itself, which is to prevent the cascading effect of multi-stage taxation and the inevitable increase in cost which would be borne by the end customer.

Schedule II Paragraph 5(b) *inter alia* provides that sale of a building to a buyer before issuance of a completion certificate etc, is a supply of service for the purpose of imposing CGST and HGST. The same is being reproduced below:



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5. Supply of services

The following shall be treated as supply of services, namely:—

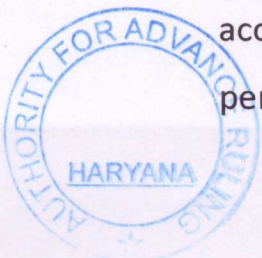
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(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate,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

Here the legislature used the phrase “intended for sale” whereby the intention of the builder was made the decisive factor by the legislature. Precisely, the same approach is expected to be adopted in the present case. Otherwise, it would be highly arbitrary and discriminatory application of the provision. Two categories of builders are mentioned in GST Act, one in paragraph 5(b) of Schedule II and the other in Section 17(5)(d) of the CGST Act/HGST Act. But the case of the Applicant is completely different from the two categories mentioned hereinbefore. The warehouse which the Applicant is constructing is neither “intended for sale” nor on his “own account” but it is “intended for letting out.” Therefore, by no stretch of imagination, it can be concluded that the warehouse which is constructed by the Applicant is “intended for sale” or “on his own account” and as such when the said warehouse is constructed for the purpose of letting out then such construction of the warehouse will not come within the mischief of Section 17(5)(d) of the CGST as well as HGST Act.

On the aforesaid position of law, if the case of the Applicant is brought under section 17(5)(d) then several words have to be read into Section 17(5)(d) of the CGST/HGST, which is not permissible in law.

Legislature has also imposed another condition in Section 17(5)(d) of both the aforesaid Acts which reads as ‘when such goods or services or both are used in the course of or furtherance of business’. This condition is applicable only when the immovable property is constructed ‘on his own account’ as appearing in that sections, which means that the taxable person on whose account the said immovable property is constructed. The



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said condition cannot be applied to any other cases far less when the construction of the immovable property is intended for letting out.

The applicant has also relied upon the decision of Hon. Orissa High Court in the matter of *Safari Retreats Private Limited vs. Chief Commissioner of Central Goods and Services Tax and others* where on similar facts, the Hon. High Court, while making a distinction between immovable property retained for self-use and immovable property let out, has allowed Input Tax Credit of the GST paid on the construction of the immovable property that is let out. The Hon. Orissa High Court has held as under:

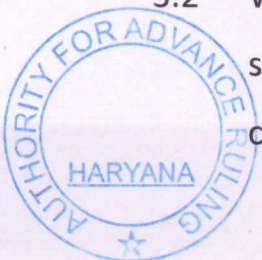
“While considering the provisions of Section 17(5)(d), the narrow construction of interpretation put forward by the Department is frustrating the very objective of the Act, in as much as the petitioner in that case has to pay huge amount without any basis.” Further the Court held that the provision of Section 17(5)(d) is to be read down and the narrow restriction as imposed, is not required to be accepted.

The applicant has also quoted the decision of the Hon. Andhra Pradesh High Court in *Commissioner of Central Excise, Visakhapatnam-II vs Sai Samhita Storages (P) Ltd – 2011*, where it has been categorically held that, cenvat credit is available in respect of cement and TMT bars used for construction of a warehouse, holding that, without the use of these items, the assessee could not provide storage and warehousing services and hence, are entitled to credit of Central Excise duty paid on these items .

3. Question on which Advance Ruling is sought:

3.1 Whether Input Tax Credit of GST in respect of inputs/ capital goods used or intended to be used for creation of covered logistics facility space (warehouse) to be rented out for storage purposes be eligible for Input Tax Credit under the provisions of section 16 and 17 of the CGST Act, 2017?

3.2 Whether Input Tax Credit of GST in respect of inputs in form of goods and services be eligible if the goods and services are consumed and used in construction of covered logistic facility space when the said Input Tax Credit



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would be utilized in order to discharge and pay CGST and HGST/ IGST on rent received from tenants of the warehouse.

4. Discussion:

4.1 The applicant M/s Dhingra Trucking Pvt. Ltd. is a registered taxable person, engaged in the construction of logistic facility. The applicant has entered into an agreement with an auto manufacturer company wherein it has agreed to leasing of logistic space for commercial use. It has also agreed to provide electricity backup, loading and unloading ramps, and services such as service lift and electric equipment alongwith their maintenance. The applicant has approached the Authority of Advance Ruling for seeking a Ruling on the issue whether the applicant is entitled to claim credit of input tax paid on the inward supply of capital goods as well as the other goods and services.

4.2 As per the submission of the applicant, it is entitled to the credit of tax paid on inputs received in the form of capital goods as well as other goods and services. The applicant has relied upon the submissions contained in the written statement which has already been reproduced above. Before discussing the issue at length, it is worthwhile to mention here that the provisions of CGST Act, 2017 are almost identical to the provisions contained under the HGST Act, 2017 and unless a specific reference is made, a reference to any provision of CGST Act in this order shall also mean a reference to the HGST Act. Before proceeding further, let us discuss some important provisions of the CGST Act.

4.3 Input tax defined under Section 2(62) "input tax" in relation to a registered person, means the central tax, state tax, integrated tax or union territory tax charged on any supply of goods or services or both made to him and includes-

(a) the integrated goods and services tax charged on import of goods;

(b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;



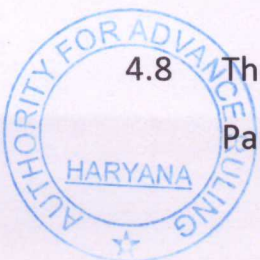
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- (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
 - (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
 - (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act, but does not include the tax paid under the composition levy;
- 4.4 As per Section 2(63) "input tax credit" means the credit of input tax;
- 4.5 Section 16(1) of the CGST Act reads every registered person shall, subject to such conditions and restriction 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.
- 4.6 Section 17(5)(d) of the CGST Act reads 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.
- 4.7 Schedule II Appended to the CGST Act describes Activities or transactions to be treated as supply of goods or supply of services. Para 5 of this schedule reads:

The following shall be treated as supply of services, namely:-

- (a)
- (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.

4.8 There is no doubt regarding the applicant being a supplier of service under Para 5(b) of Schedule II.



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4.9 Section 16 entitles a registered person to claim credit of input tax charged on any supply of goods or services to him whereas Section 17 is an overriding provision to Section 16. Section 17(5)(d) clearly spells out that the Input tax credit shall not be available in respect of goods and 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. Further, as per the explanation to Section 17(5)(d), plant and machinery excludes land, building or any other civil structures. The applicant has further contended that the bar of credit of input tax under section 17(5)(d) is applicable only when the immovable property is constructed "on his own account" and this term 'on his own account' means the taxable person on whose account the said immovable property is constructed. The applicant content that the bar provided under section 17(5)(d) is not applicable in this case since the construction of immovable property is for letting out. As such his claim of input tax credit is not barred by the provision contained in Section 17(5). The dictionary meaning of the term 'on his own account' means 'for one's own purpose or for oneself' or "unaided". In this case, the applicant is engaged in the business of providing logistic services including the warehouses. The warehouses are constructed for the applicant's own business purpose i.e. letting out. So the contention of the applicant that the bar provided under Section 17(5)(d) is not applicable to it, is rejected.

4.10 The Authority for Advance Ruling has gone through the ruling of Hon'ble High Court of Odisha in the case titled M/s Safari Retreats Private Limited Vs Chief Commissioner of Central Goods & Service Tax, where the petitioner paying GST on rental income was held to be entitled to input tax credit. It is important to mention here that while allowing the benefit of input tax credit to the petitioner, the Hon'ble High Court had specifically mentioned that "we are not inclined to hold it to be ultra vires". Since, the provision contained under section 17(5)(d) of the CGST Act has not been



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struck down by the Hon'ble High Court, the applicant cannot be allowed the claim of input tax credit.

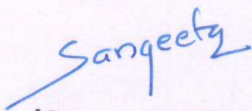
5. Ruling:

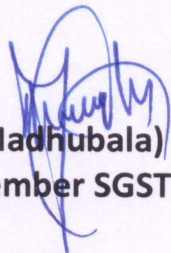
- 5.1 The applicant is not eligible to input tax credit in respect of inputs/ capital goods used or intended to be used for creation of covered logistics facility space (warehouse) to be rented out for storage purposes.
- 5.2 Since no credit of input tax in respect of input goods or services consumed and used in the construction of covered logistic facility space is available, there arises no possibility of utilization of the same.

Ordered accordingly.
To be communicated.

14.10.2019
Panchkula.




(Sangeeta Karmakar)
Member CGST


(Madhubala)
Member SGST

Regd. AD/Speed Post

**M/s Dhingra Trucking Pvt. Ltd., 1/43,
Shivaji Nagar, Gurgaon, Haryana.**

Copy to:

1. The Principal Commissioner of Central Goods & Service Tax, GST Bhawan, Plot No. 36-37, Sector-32, Gurugram, Haryana.
2. Deputy Excise and Taxation Commissioner (ST), Gurugram (South).

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