

GST-ADVANCE RULINGS

CA. C. B. Thakar, CA. Madhav Kalani

Case: M/s. Atriwal Amusement Park [2020 (7) TMI 477] (Madhya Pradesh AAR)

Applicant has proposed activity of construction of Water Park and for construction of the same various goods and services will be used. All such goods and services are taxable under GST. The applicant had sought ruling on eligibility of ITC on various goods and services.

The credit eligibility decided by the AAR is as under:

Sl. No.	Particulars	Eligibility	Reason
1	Purchase of Water slides	Eligible	Qualify as apparatus, equipment and machinery
2	Steel and civil structure on which Water slides are installed	Eligible	They are part of the plant and machinery
3	Foundation for Wave pool	Eligible	They are part of the plant and machinery
4	Machine room	Ineligible	It is a civil structure, erected for protecting machine. It is neither a foundation nor civil structure for machine.
5	Goods and services used for area development and preparation of land on which water slides are placed, such as site formation services	Ineligible	Such area development expenditure are part of cost of the land and thus are interminably bound with land - such expenses are liable to be capitalized under the head land, therefore, on account of the specific exclusion of land from the meaning of 'plant and machinery'
6	Construction of swimming pools and wave pools	Ineligible	Subject to its capitalization, credit may not be available
7	Facilities like transformers, sewage treatment plant, Electrical Wiring and Fixtures, Surveillance systems, D.G. Sets, Lifts. Air Handling Units	Ineligible	It is to be considered at par with building or civil structure. The provision of these are either statutory for a building or defines the nature of the building.

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Case: M/s. Sundharams Private Ltd. [TS-548-AAR-2020-NT] (Maharashtra AAR)

The Applicant is engaged in providing warehousing, storage and support services to the Original Equipment Manufacturers (OEM) of automobile industry, transport cars using its fleet of car carrier vehicles. Further, the cars are stored in the Applicant's stock yard prior to their transit to respective car dealers, therefore, the Applicant has purchased Paver Blocks intended to ensure efficient and safe parking of automobiles of OEMs, during the contract period. Applicant sought clarity on eligibility to claim ITC.

Maharashtra AAR categorizes Paver Blocks laid on the land as immovable property and therefore, holds same ineligible for ITC as per Section 17(5)(d) of CGST Act, 2017. The main reason for use of paver blocks is to keep the tyres of the vehicles in good condition with no wear and tear, to have longevity, durability and flexibility to re-use. The flexibility to re-use does not mean that blocks will be removed and re-erected frequently. They are meant to be permanently fixed to earth but whenever the need arises the applicant may remove them and re-erect - the applicant would not use the paver blocks as in the subject case with an intention to remove it and use the same as a movable property.

Moreover, it holds that as per Section 17(5), no ITC is available on any goods or services received for construction of immovable property (parking), refers to AAR ruling in Sree Varalakshmi Mahaal LLP. Further, it is stated that since decision in Safari Retreats is pending before SC, same has not attained finality, therefore cannot be relied upon.

Case: Apsara Co-Operative Housing Society Limited [2020-VIL-184-AAR] (Maharashtra AAR)

The applicant raises funds by collecting contributions, (also called as charges in the bye laws of Applicant Society), from members of the society. The applicant has asked whether activities carried out by Applicant-Co-operative housing society for their members qualify as supply under Section 7(1) of the CGST Act, 2017 and liable to GST.

Maharashtra AAR has ruled that the term 'Supply' defined under Section 7 of the CGST Act, 2017 is an inclusive definition and not an exhaustive one and therefore, it has very wide connotations. The activities of applicant can clearly be considered as rendering of "supply" of service being provided to its members - as per the definition of the term "person", in terms of Section 2(84) of the CGST Act, 2017, there are two distinct persons, one the Applicant Society and another, the member thereof. Thus, in the subject case there is a supply made by the applicant and as per the definition of term "consideration" in Section 2(31) of the Act, membership fees collected by the Applicant from its members can be treated as "consideration" paid for supply of services. Further, as per the definition of 'business', the various activities undertaken by the applicant for the benefit of its members will come under the scope of business. Further, the contention as regards to the principle of mutuality to establish claim that the Applicant Society and its members are not distinct entity is not tenable.