

No ITC on temporary structure created for wedding and other banquet functions

The Hon'ble AAR, Haryana in the matter of *M/S. VDM Hospitality Pvt. Ltd. [Advance Ruling No. HAR/HAAR/R/2019-20/02, decided on June 21, 2020]* held that, temporary structure (i.e., hall or pandal or shamiana or any other place) built up with iron/steel pillars tight up with nuts and bolts specially created for functions would be treated as Immovable property. Merely because the walls and roofs have been replaced with pre-fabricated structure, an immovable property cannot be categorized as movable property. Hence, not entitled to the credit of input tax.

Facts:

VDM Hospitality Pvt. Ltd. ("**the Applicant**") is a company engaged in the business of organizing wedding & other banquet functions on a large scale. The Applicant creates a temporary structure (i.e. a hall or pandal or shamiana), on its own premises, through the following process:

- A hangar/frame is created for the entire structure by using Iron and steel pillars and sheets, pipes, 'ballies', and angles and the same has been tightened up with nuts and bolts.
- This frame is covered with iron sheets, and canvas, for coverage and water-proofing and Plywood is used in the inner portion to make the roof smooth and then the decoration is done. The said frame is also decorated on the outside, through design modifications and sheet material, to resemble the thematic identity of the interior.
- Further, there is no permanent affixation of pillars and pre-fabricated shelters to the earth. The structures were custom made and these are fixed to foundations by nuts and bolts, not with the intention to permanently attach them to the earth or for the beneficial enjoyment thereof, but only since securing these to a foundation is necessary to provide stability and wobble/vibration free operation and to ensure stability of such temporary structure.

Issues:

- Whether the temporary structure built up with iron/steel pillars tight up with nuts and bolts specially created for functions would be treated as movable or immovable property in pursuance to the Central Goods and Services Tax Act, 2017 (“CGST Act”)?
- Whether credit of the tax paid on iron/steel pillars tight up with nuts and bolts used for the creation of temporary structure are admissible under Section 16 of the CGST Act?

Held:

The Hon’ble AAR, Haryana in ***Advance Ruling No. HAR/HAAR/R/2019-20/02, decided on June 21, 2020*** held as under:

- Observed that, as per the definition of goods, some movable property is excluded from the category of goods whereas at the same time, some immovable properties are treated as goods. But the terms movable and immovable property have not been defined under the CGST Act. In laymen terms, any goods that can be moved is a movable property and which cannot be moved is immovable property.
- Further observed that, as per the definition of immovable property contained in the General Clauses Act, 1897 and the Transfer of Property Act, 1882 it is clear that things attached to the earth or permanently fastened to anything attached to the earth is immovable property. Anything imbedded in the earth or attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached, qualifies to be attached to the earth. In the present case, it is an admitted fact that the structure constructed/ erected by the Applicant is fixed to the foundation by nuts and bolts.
- Referred to the judgment of the Hon'ble Supreme Court of India in ***Triveni Engineering and Industry Limited [2000 (7) SCC 29, decided on August 8, 2000]***, wherein it was observed that in order to determine whether an article is permanently fastened to anything attached to the earth, both the intention as well as the factum of fastening has to be ascertained from the facts and circumstances of each case.
- Noted that, since, the premises where the structure has been erected is Applicant's own premises, it suggests that the shamiana/ tent/ pandal has been constructed/ erected for permanent enjoyment. It is not the case of Applicant that it plans to

dismantle and move the structure to some other place. The pictures also depict that the civil work has been undertaken on a very large scale at the premises and this also indicates the permanent nature of the construction/ erected. Further, the concretionary base and the pillars used as platform and support to the structure is also of large dimensions and the platform or the structure cannot be put to beneficial use without the existence of the other.

- Held that, merely because the walls and roofs have been replaced with pre-fabricated structure, it cannot be categorized as movable property. Since, both the degree and nature of annexation/ attachment of the structure to the earth is strong and permanent, the structure in question is an immovable property. Therefore, the Applicant is not entitled to the credit of input tax in view of the provisions of Section 17(5)(d) of the CGST Act.

Relevant Provisions:

Section 3(26) of General Clauses Act, 1897

“(26) "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;”

Relevant portion of Section 3 of Transfer of Property Act, 1882

““immoveable property” does not include standing timber, growing crops or grass”

Section 2(52) of the CGST Act:

“(52) “goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;”

Section 17(5)(d) of the CGST Act:

“Apportionment of credit and blocked credits-

(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;”

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