

Recipient not eligible for ITC of GST paid on transfer of rights of leasehold land

The AAR, Gujarat, in the case of ***M/s Bayer Vapi Private Limited [Ruling No. GUJ/GAAR/R/2023/29 dated August 24, 2023]*** ruled that the transferee acquiring the rights of the lease for construction of the immovable property is not entitled to take Input Tax Credit (“ITC”) of the Goods and Service Tax (“GST”) paid by them on the services received by the Transferor by way of the lease as per Section 17(5)(d) of the Central Goods and Services Tax Act, 2017 (“the CGST Act”).

Facts:

M/s Bayer Vapi Private Limited (“the Applicant”) is engaged in the manufacturing of chemicals for agriculture and health science applications, entered into a Memorandum of Understanding (“MOU”) with M/s Vapi Enterprises Ltd. (“the Transferor”) for transferring the rights of lease of the leasehold land owned by Gujarat Industrial Development Corporation (“the Owner”). As per the terms of the MOU, Applicant intended to use the aforesaid land to set up/expand its manufacturing facility for the manufacture of chemicals to be used by the Applicant in the course or furtherance of its business of manufacturing.

The Applicant filed an application before the AAR, Gujarat seeking clarification regarding eligibility to claim ITC of the GST paid on services received by way of lease to set up/expand its manufacturing facility.

Issue:

Whether the Applicant is eligible to claim the ITC of the GST paid by them for acquiring the rights of lease from the Transferor as service for the construction of Immovable Property?

Held:

The AAR, Gujarat in ***Ruling No. GUJ/GAAR/R/2023/29*** held as under:

- Observed that, Section 17(5)(d) of the CGST Act states that the registered person is not eligible to take input credit on GST paid on goods and services received for construction of an immovable property (not plant & machinery) on his account including when such Goods/Services are used in course or furtherance of business.
- Further observed that, Gujarat Authority for Advance Ruling in ***M/s GACL NALCO Alkalies & Chemicals Private Limited [Advance Ruling No. GUJ/GAAR/R/53/2021]*** ruled that the legislature has clearly expressed its intent that ITC shall not be available in respect of services pertaining to land received by a taxable person for the construction of an immovable property, including when such services are used in the course or furtherance of business. The above-mentioned point was also substantiated by the Telangana State Authority in the ruling of ***M/s Daicel Chiral Technologies (India) Private Limited [TSAAR order No. 6/2020]***.
- Opined that, the intent of the Applicant, through the annexures to the application and MOU, is clear that the Applicant is acquiring the rights of leasehold land, which is industrial land adjacent to the manufacturing plant from the Transferor to set up a new manufacturing plant/expand its existing manufacturing plant.
- Ruled that, the Applicant is not entitled to take ITC of GST paid by them on the services provided by the Transferor in the form of rights in the leasehold land in terms of Section 17(5)(d) of the CGST Act.

Our Comments:

As per Section 17(5)(d) of the CGST Act, the advance ruling is binding upon those cases in which the rights of the lease have been acquired to set up/expand its manufacturing facility in the course or furtherance of its business or manufacturing and the said intent has been clearly expressed.

In ***M/s Daicel Chiral Technologies (India) Private Limited [TSAAR order No. 6/2020]*** the Telangana Authority for Advance Ruling relying upon Section 17(5)(d) has opined that the

applicant is not eligible to avail the Input Tax Credit of GST paid on payment of Lease Premium Charges (one time charges), annual lease rentals (recurring) and GST paid on maintenance collected by the Lessor towards the supply of land on lease for furtherance/expansion of business.

Relevant Sections:

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

“17(5)(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.”

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