

Whether GST paid on works contract for carrying out repair of factory building shall be available for ITC to the extent to which, the said expense is not capitalized to the said immovable property, such expenses are genuinely treated as revenue in nature. HELD The GST paid on works contract for carrying out repair of factory building shall be available for ITC to the extent to which the said expense is not capitalized to the said immovable property as per section 16(1) but subject to the provision under Section 17(5).

ADVANCE RULING ORDER No. 08/AAR/2023, Dated 06th June, 2023

AUTHORITY FOR ADVANCE RULING, TAMILNADU

DOOR NO. 32, INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX,

5th FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,

CHENNAI - 600 003.

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98

OF THE GOODS AND SERVICES TAX ACT, 2017.

Members present are:

Shri R.Gopalsamy, I.R.S., Additional Commissioner /Member, Office of the Principal Chief Commissioner of GST & Central Excise, Chennai 600034	Smt. N.Usha, Joint Commissioner (ST)/ Member, Office of the Authority for Advance Ruling, Tamil Nadu, Chennai 600003
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1. Any appeal against this Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Rulings, Chennai under Sub-section (1) of Section 100 of Central Goods and Service Tax Act / Tamil Nadu Goods and Service Tax Act 2017 ("the Act" in short) within 30 days from the date on which the ruling sought to be appealed against is communicated.

2. In terms of Section 103(1) of the Act, this Advance ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-^

(a) on the applicant who had sought it in respect of any matter referred to in subsection (2) of section 97 for advance ruling;

(b) on the concerned officer or the jurisdictional officer in respect of the applicant.~

3. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

4. In terms of Section 104 of the Act, where the Authority finds that advance ruling pronounced by it under sub-section (4) of Section 98 or under sub-section (1) of section 101 has been obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant as if such ruling had never been made.

5. At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under

the Tamil Nadu Goods and Service Tax Act.

GSTIN Number, if any / User id		33AAACJ7230N1ZJ
Legal Name of Applicant		J.K. FENNER (INDIA) LIMITED
Registered Address/Address provided while obtaining user id		No.3, Melakal Road, Kochadai, Madurai - 625 016.
Details of Application		Form GST ARA - 01 Application Sl.No.26/2022/ARA dated 27.04.2022
Concerned Officer		Centre: Madurai Commissionerate State: Madurai Rural (South) Assessment circle
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Factory-Manufacturing
B	Description (in Brief)	
Issue/s on which advance ruling required		Classification of any goods or services or both
Question(s) on which advance ruling is required		Whether the GST paid on works contract for carrying out repair of building shall be available for ITC to the extent to which the said expense is not capitalized to the said immovable property.

M/s J.K. FENNER (INDIA) LIMITED having their Project office at No.3, Melakal Road, Kochadai, Madurai - 625 016 (hereinafter called the 'Applicant') are registered under the GST Act with GSTIN 33AAACJ7230N1ZJ. They have sought Advance Ruling on the following question:-^

Whether GST paid on works contract for carrying out repair of factory building shall be available for ITC to the extent to which, the said expense is not capitalized to the said immovable property, such expenses are genuinely treated as revenue in nature.~

2.0 The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The Applicant is engaged in manufacturing of Transmission Rubber Belts, Oil Seals, Hoses, Geared Motors, Pulleys, FEAD Systems, Belt Tensioners, and Moulded Rubber Products, EV Products for Automotive & Industrial Applications.

2.2 The Applicant has stated that, they have to constantly incur expenditure on repairs and maintenance of factory buildings. Up-keep and maintenance of factory building is crucial for continuity of its seamless production. It is the work undertaken to restore or improve every facility in every part of a factory building, its services and surroundings to currently accepted standards and to sustain utility values of the facility. Repair works in the factory building are in the nature of painting, renovation, debris removal, roof changing etc., Repairs and maintenance expense is the cost incurred to ensure that an asset continues to operate. The Applicant has preferred this application as they have doubt on the issue of Input tax Credit (ITC) under GST.

2.3 The Applicant has stated that the activity is a works contract service for carrying out repair and maintenance work. Section 2(119) of CGST Act, 2017 defines "works contract" which means a contract for factory 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.

2.4 Section 17 of CGST/TNGST Act, 2017, debars certain activities/supplies/work from the eligibility to claim ITC. The relevant portion of sub-section 5 of Section 17 of CGST/TNGST Act, 2017 in this regard is reproduced below:-^

Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

.....

(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 capitalization, to the said immovable property;~

2.5 In view of above facts, input tax credit (ITC) in general is not available for construction, reconstruction, renovation, addition, alteration or repair of an immovable property even when such goods or services or both are used in the course or furtherance of business. However, the limitation in such a scenario is to the extent of capitalization.

2.6 Going by the explanation, the Applicant has contended that, with Section 17(5) seeking to deny ITC of GST on goods and/or services used for repair of immovable property, to the extent of capitalization, there is no bar on ITC availment in respect of factory building repair expenses to the extent of not capitalized. Thus, ITC on Works Contract (factory building repairs) charged to profit and loss account is very much available.

3.0 The Assistant Commissioner (ST), Madurai Rural South Assessment Circle being the State Jurisdictional Officer has submitted remarks vide ref.No.Rc.417/2022/A4, dated: 03.06.2022, inter-alia, as below:

As per section 16(1) of CGST & SGST Act 2017, 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."

The tax payer is engaged in manufacturing of transmission rubber belts, oil seals etc. Claiming of ITC by the Applicant for repair and maintenance of factory building is not related to the course or furtherance of business and also it is not plant and machinery under the category of capital goods; It is under the category of Blocked Credit under Section 17(5) (c) of the TNGST Act 2007. This section reads as works contract service when supplied for construction an immovable Property (other than plant and machinery) except where it is an input service for further supply of works contract service. Hence it is legally ineligible to claim input tax credit and utilizing it for the regular outward supply.

4.1 Personal hearing was conducted on 15.06.2022 through virtual mode as desired by the Applicant. The Authorised representative (AR), Shri V.Sundarajan & Shri S. Kasi Viswanathan, appeared for the virtual hearing and reiterated the submissions already made by them. Shri.V.Sundarajan, emphasized that as per the explanation to Section 17(5) of the CGST Act, input tax credit on works contract service for construction is not eligible to the extent of capitalization only. Shri S.Kasiviswanathan of J.K. Fenner stated that maintenance of the factory has been undertaken which is accounted as revenue expenses and required ruling on the eligibility to input tax credit in respect of such AMCs. The applicant was asked to furnish the following documents:-^

(i) Detailed write up on accounting of the cost of repairs incurred on the factory repairs and subsequent asset value arrival for the factory.

(ii) Accounting standards in respect of repairs and that of the factory.

(iii) P & L /balance sheet for the period before and after repairs.~

4.2 In response to that, the applicant submitted the following documents:-^

- 1) Write -up on Capital Vs Revenue nature of expenses accounting.
- 2) Sample accounting document for Capital nature of Civil expenses-Annexure-1
- 3) Sample accounting document for Revenue nature of Civil expenses-Annexure-2
- 4) P&L for both nature of expenses for 2 months (2022-23) -Annexure-3~

4.3 In the write up, the Applicant has contended that,-^

a) Initial Cost of Recognition as Fixed Asset as per hid AS 16 PPE (Property, Plant & Equipment). This includes PPE besides all Civil Works which are considered as Project Cost.

b) An Asset can be capitalized if probable further economic benefit associated with the asset will flow to entity. The economic benefit can flow either directly / indirectly.

c) Once project is commissioned through which the economic benefit is arrived, subsequent to project, replacement of any spare parts, Maintenance & Repair whether it is periodically or annually, Civil or Mechanical would be considered as "Revenue Expenses". This will not be form part of project cost as it won't be capitalized as per the Accounting Standard Procedures.

d) Since the expenses if it is relating to project, it would be taken for Capitalization and if it is relating to "Repair & Maintenance" it would be treated as "Revenue" since there will not be any future economic benefit arises after the establishment of project. Hence, the question of submitting "P&L" or "Balance Sheet" Before (OE) "After" Capitalization or Charging to "P&L" does not arise.

e) Spare Parts and servicing equipment are usually carried as inventory and recognized in Profit & Loss as consumed. However, major spare parts stand-by equipment and servicing equipment qualify as property, plant and equipment when an entity expects to use them during more than one period.~

4.4 As there was a change in the constitution of Members another hearing was held on 8.12.2022 virtually and the AR was requested to explain whether the civil work undertaken in the factory resulted in addition of area as compared to the existing built up area. He replied that in some instance the civil work resulted in increased built up area. He was also asked to furnish a write up on the civil work undertaken, the resultant additional of constructed area and treatment of cost of such additional area in the books of account.

4.5 For the above query, they have submitted the following documents;

Note on Roof changed by M/s Albert Engineering Associates, Salem.

Work Order PO No. 1791813 dt. 11.7.19, 1626846, dt.16.9.19 & 1793539 dt.5.12.19.-^

> The above are roofing replacement work done by them on our existing Madurai-1 plant area. As mentioned in Purchase order, it consists of various roofing engineering work. This is done for the purpose of replacing very old asbestos roof sheets and for providing more ventilation and lighting inside the plant.

> This work does not result in addition of area as compared to the existing built up area and the question of treatment of costs of such additional area in the books of account does not arise.

> The cost of the referred work is charged to the revenue account (Profit and loss account).

> If civil work results in addition of area, the cost will be added to the Fixed Assets i.e., capitalized in the books of accounts (Balance Sheet) as per accepted accounting principles.~

5.0 We have carefully examined the statement of facts, supporting documents/photographs filed by the Applicant along with application, submissions made at the time of Personal hearing and the comments of the Central/State Jurisdictional Authority.

5.1 The Applicant is engaged in manufacturing of transmission rubber belts, oil seals etc. in their application filed before the Authority, it has been stated that they have to constantly incur expenditure on repair and maintenance of factory buildings which are considered as crucial for continuity and seamless production. Repair works in factory building are in the nature of painting, renovation, debris removal, changing of roof etc., which is the cost incurred to ensure that the asset continues to operate.

5.2 They have also added that the amount spent on routine repairs and maintenance is charged to revenue as per accounting standards and sought ruling on the following question:

'Whether ITC is available on the works contract services used for the repair and maintenance factory building to the extent it is treated as revenue expenditure as per accounting standards.

5.3 In this connection, we observe that, Section 17 of the GST Acts blocks certain credits as ineligible/unavailable to the taxpayer. More specifically Section 17(5)(c) and 17(5)(d) block ITC on works contract services which is reproduced as below;

Section 17(5): Notwithstanding anything contained in subsection (1) of section 16 and subsection (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 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.~

5.4 Though Section 17(5)(d) blocks ITC on goods and services received by a taxable person for construction of immovable property on his own account including when it is used in the course or furtherance of business, as per the explanation, the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

5.5 Further, the explanation under section 17 is reproduced as below;

'Explanation: For the purpose of clauses (c) and (d), the expression construction includes reconstruction, renovation, additions or alterations or repairs to the extent of capitalization, to the said immovable property.

Hence, as per the above Explanation for the word construction provided under section 17, the Applicant has sought ruling, whether ITC is admissible on works contract services received towards factory building repairs to the extent of non-capitalization of such expenses.

5.6 In support of their contention they have furnished copies of purchase orders, work orders, sample document for accounting capital nature of civil expenses and sample document for revenue nature of civil expenses. Perusal of purchase order/work order revealed that the Applicant has procured certain goods and services towards renovation of factory buildings. But, there is no mention about the actual factory building or deteriorated portion of factory building to be renovated or repaired, so as to ascertain whether repair work has been carried out only for the purpose of preserving or maintaining

an already existing factory building, which does not bring a new asset into existence. Moreover, asset category wise expenditure/cost incurred towards repair and maintenance could not be deciphered from the documents produced as to whether the maintenance and repair work has been carried out in the factory building or in the buildings meant for some other non-business utility.

5.7 Further, the Applicant has contended that the said expenses were recorded as revenue expenses in their books of accounts. During the personal hearing also the AR reiterated that these expenditures cannot be capitalized as per accounting standards. In support of their contention they have submitted certain data entries made in the system related to the financial year 2022-23. But, the actual treatment given to the expenditure could be deduced only after finalization of their accounts.

5.8 Therefore, we are of the view that the Applicant is entitled to ITC on the goods and services received towards repair of existing factory buildings (which were already capitalized) to the extent of non-capitalization of expenses in their accounts.

6. In view of the above, we rule as under:

RULING

The GST paid on works contract for carrying out repair of factory building shall be available for ITC to the extent to which the said expense is not capitalized to the said immovable property as per section 16(1) but subject to the provision under Section 17(5).

DATE- 06/06/2023

N Usha

R Gopalsamy

Member (SGST)

Member (CGST)