M/s NMDC Limited (appellant, shown in the order as M/s P.K. Mahapatra, Assistant General Manager (Finance), NMDC Limited, Dantewada (South Bastar), Chhattisgarh)

Appellate Authority for Advance Ruling — Chandigarh

No. STC/AAAR/02/2019/77, Raipur, dated 03/09/2019 (the opening page o… Dated **03.09.2019**

Q Questions Before the Authority

- Whether input tax credit can be availed for civil and railway allied works in connection with the laying of a private railway siding?
- Whether input tax credit can be availed on signaling and telecommunication system, mechanical and structural works in relation to the railway siding?
- Whether input tax credit can be availed on execution of P-Way, civil, overhead electrification, general electrical and signaling and telecommunication works for the proposed block station yard in relation to the private railway siding?

F Facts

NMDC Limited is building a 3 MTPA greenfield integrated steel plant at Nagarnar, Chhattisgarh, and is laying a private railway siding about 2 km from the Kothavalsa-Kirandul line to move raw materials and dispatch finished products. The siding work is split into three packages (civil and railway allied works; S&T, mechanical and structural works for the siding and loco shed; and P-Way, civil, OHE, electrical and S&T works for a block station yard), executed by contractors engaged through IRCON. The appellant sought credit on the GST paid on these packages, and the appellate authority noted that most of the work lies outside the plant premises.

H Ruling

Input tax credit on civil and railway allied works for laying the private railway siding (Package I)	****No. Credit not available. AAR order dated 24.04.2019 upheld.****	The order gives one overall disposition for all three packages rather than separate answers to each question. Read as covering this item.
Input tax credit on signaling and telecommunication, mechanical and structural works for the railway siding (Package II)	****No. Credit not available. AAR order dated 24.04.2019 upheld.****	Same overall disposition. The order treats the siding and allied signaling and telecom works as civil structures outside the factory with no nexus to outward supply.
Input tax credit on P-Way, civil, OHE, general electrical and S&T works for the block station yard (Package IV)	****No. Credit not available. AAR order dated 24.04.2019 upheld.****	Same overall disposition. The order notes that the OHE and civil contracts were awarded to other contractors, which it treats as supporting its view of the works.

The appellate authority dismissed the appeal and upheld the Advance Ruling Authority's order dated 24.04.2019, which denied input tax credit on the inward supplies for the siding. It held that the siding is an immovable civil

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structure with foundations, so the works are works contracts on immovable property that fall within the blocking clauses of section 17(5)(c) and (d). It also held that the siding and allied works have no nexus with outward supply, so they are not 'plant and machinery' under the explanation to section 17.

R Reasoning

The authority held that the railway siding, with its foundations and structures laid on land outside the factory, is immovable property that will not be dismantled, so the works are works contracts for construction of immovable property under section 17(5)(c) and (d). It found that the 'plant and machinery' exception in the explanation to section 17 requires apparatus or machinery fixed to earth that is used for making outward supply, and that the siding and allied signaling and telecom works had no such nexus with outward supply. It distinguished the Supreme Court's Jayaswal Neco decision and the other cited cases as decided under Cenvat/Rule 57Q or on facts within the factory or involving telecom towers. It also relied on the Companies Act 2013 Schedule II to conclude that railway sidings are not classed as plant and machinery.

P Provisions Relied On

- Section 16(1) of the CGST Act, 2017 (entitlement to input tax credit)
- Section 17(5)(c) and (d) of the CGST Act, 2017 (blocked credits on works contracts and goods or services for construction of…
- Explanation to section 17 of the CGST Act, 2017 (definition of 'plant and machinery' and its exclusions)
- Section 2(119) of the CGST Act, 2017 (works contract)
- Section 2(83) of the CGST Act, 2017 (outward supply)
- Section 2(19) and 2(59) of the CGST Act, 2017 (capital goods and input)
- Section 100(1) and 101(1) of the CGST Act, 2017 and the corresponding Chhattisgarh GST Act provisions (appeal and ruling)
- Section 3(26) and 3(36) of the General Clauses Act, 1897 and section 3 of the Transfer of Property Act, 1882 (meaning of im…
- CBIC Sectoral FAQ on railway sidings (mining sector)
- CBIC Circular No. 58/1/2002-CX dated 15.01.2002 (as cited in the AAR order)
- Schedule II of the Companies Act, 2013 (useful lives of assets)
- Supreme Court decisions in T.T.G. Industries (2004) and Duncans Industries (1999), relied on for immovability; Triveni Engin…

! For the Practitioner

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This is a useful adverse ruling for a practitioner advising on credit for railway sidings or similar infrastructure laid outside a factory, because it treats such works as civil structures and denies credit under section 17(5). It does not decide whether track, signaling or rail infrastructure inside the plant premises, used for moving raw materials and molten metal, is plant and machinery, which the appellant argued at length and which the order does not resolve. Those arguments rely on Jayaswal Neco and similar cases, which remain open to be tested in a different factual setting, and the outcome may be challenged in a higher forum.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> cg_aaar_02_2019-20_03.09.2019_nmdc.pdf

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Pune (HQ)
RTC Silver, B4-708, Sai Satyam Park, Wagholi, Pune, Maharashtra 412207

Mumbai
104, Rajshila Building, 597 J.S.S. Road, Marine Lines, Mumbai 400002

Delhi
3rd Floor, B-6/154-155, Sector 5, Rohini, Delhi 110085

Gurugram
Pioneer Urban Square, B109, Golf Course Ext Road, Sector 62, Gurugram…

Ahmedabad
Phoenix Tower, 1107, near Commerce Six Road, Drive In Road, Navrangp…

Talk to us: +91 94594 56700 | sales@patronaccounting.com | patronaccounting.com