M/s Embassy Industrial Parks Private Limited, Pathredi, Tehsil Gurugram, Gurgaon, Haryana

Authority for Advance Ruling — Haryana

Advance Ruling No. HAR/HAAR/R/2019-20/01 (In Application No. 01/2019… Dated **18.06.2019**

Q Questions Before the Authority

- Whether input GST credit can be availed by the Applicant on pre-engineered structures which are movable in nature and accounted as 'Plant and machinery' and not capitalized as an immovable property?

F Facts

The Applicant builds and rents out industrial warehouse space at Pathredi, Gurugram, and procures goods and services from contractors to fit out that space. One such procurement is pre-engineered steel structures (PES), which are bolted together on a slab foundation that rests on the ground, recorded in the books as plant and machinery, and said to be dismountable and reusable at another site. The Applicant seeks ITC on the PES under Section 16 of the CGST Act, arguing that the Section 17(5)(d) bar on construction of immovable property does not apply.

H Ruling

ITC on pre-engineered structures (PES) used to erect warehouses, recorded as plant and machinery and not capitalised	**No. The warehouses erected by the Applicant are immovable property, so the Applicant is not eligible for ITC under Section 17(5)(d).**	Stated in para 11.1 as the sole ruling. The reasoning turns on the warehouse as a whole, not on the PES components in isolation. The Authority does not rule on Section 17(5)(c).

The Authority held that the warehouses constructed or erected by the Applicant are immovable property for GST purposes. On that basis it ruled that the Applicant is **not eligible to ITC** in view of Section 17(5)(d). The ruling does not separately rule on the PES as movable goods, and it does not apply Section 17(5)(c) in its operative conclusion.

R Reasoning

The Authority read 'immovable property' through the General Clauses Act, 1897 (s. 3(26)) and the Transfer of Property Act, 1882 (s. 3, 'attached to the earth'), since the GST Act does not define it. It treated the PES foundation as attached to the earth by gravitational pull, relying on the Supreme Court's Triveni Engineering decision that both intention and the fact of fastening must be assessed on the facts. It held that the warehouses, covering large areas and serving business needs that require permanence, are not non-permanent merely because they are bolted. It also rejected the Applicant's reliance on the Tewari Warehousing and Vindhya Telelinks rulings. The Authority does not expressly distinguish the BAHL Paper Mills, Balkrishna and Nipro rulings

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

on which the Applicant relied.

P Provisions Relied On

- Section 16(1) of the CGST Act, 2017
- Section 16(a) of the CGST Act, 2017 (as cited in the order)
- Section 17(5)(c) and (d) of the CGST Act, 2017 (framed in the question; only 17(5)(d) appears in the operative ruling)
- Section 2(52) of the CGST/SGST Act, 2017 (definition of goods)
- Section 3(26) and 3(36) of the General Clauses Act, 1897
- Section 3 of the Transfer of Property Act, 1882
- Triveni Engineering and Industries Ltd (Supreme Court, 2000), as cited by the Authority

! For the Practitioner

This ruling is a Haryana adverse decision on PES-based warehouses. It treats a bolted, slab-founded pre-engineered warehouse as immovable property where the warehouse is rented out for long-term industrial use, which blocks ITC under Section 17(5)(d). Practitioners contesting similar facts should note that the decision rests on the permanence and purpose of the whole warehouse, and not on whether individual PES parts are movable. The ruling does not decide whether PES that are genuinely dismountable, such as plant and machinery used in a manufacturing process, qualify for ITC.

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 -> har_aar_01_2019-20_18.06.2019_eippl.pdf

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