M/s. Synergy Global Steel Pvt. Ltd., Plot No. 30, Industrial Area, Dharuhera, Rewari, Haryana (GSTIN 06AAJCS8313G1ZB)

Authority for Advance Ruling — Haryana

ADVANCE RULING NO.HAR/HAAR/R/2019-20/03 (In Application No.: 03/2… Dated **19.07.2019**

Q Questions Before the Authority

- Whether ITC of GST paid on supply and installation of a Sewage Treatment Plant, supply and installation of a Fire-fighting system, supply of cable for transmission of electricity, supply of other material for laying cable and electrical installations, and laying of cable and electrical installations for transmission of electricity is admissible to the applicant.

F Facts

The applicant built a building on its plot in Dharuhera for leasing or renting out to industrial users. In connection with that building it placed separate orders for a 20 KLD Sewage Treatment Plant (HSN 842121), a fire-fighting system, cable for feeding electricity to the building (HSN 8544), other materials such as PCC poles and structural steel, and the laying of cable and electrical installations. The applicant said all of this expenditure was capital in nature and that it had not availed ITC on the building construction itself.

H Ruling

Supply and installation of Sewage Treatment Plant (20 KLD, HSN 842121), fire-fighting system, supply of cable for transmission of electricity (HSN 8544), supply of other material for cable and electrical installations, and laying of cable and electrical installations	****Not admissible** (ITC not allowed)**	Ruling is given in the lines discussed in the order: Section 17(5)(c) works contract and Section 17(5)(d) construction of immovable property. The applicant's plant-and-machinery argument was rejected for the STP and fire-fighting system.

The Authority ruled that **ITC of GST paid on all five categories of goods and services is not admissible** to the applicant. The Sewage Treatment Plant and fire-fighting system are blocked under Section 17(5)(d) because they are used for construction of an immovable property on the applicant's own account and are not plant and machinery. The cable, other materials and electrical installation services are likewise blocked under Section 17(5)(d) as being for the permanent beneficial enjoyment of the building.

R Reasoning

The Authority read Section 17(5)(c) and (d) together with the explanation that 'construction' includes additions to capitalised immovable property, and held the building and the items attached to it fall within that bar. It rejected the plant-and-machinery claim because the explanation to Section 17(5)(d) excludes land, buildings and other

civil structures, and the STP was admitted to be attached to the civil structure. Relying on Section 3(26) of the General Clauses Act 1897 and the Transfer of Property Act definition of 'attached to the earth', it found the goods were permanently attached for the beneficial enjoyment of the building. It also noted the Supreme Court in Triveni Engineering and Industries Ltd (2000) and an Allahabad High Court decision on 'permanently fastened' as relevant, and it mentioned Section 17(5)(b)(i) on leasing.

P Provisions Relied On

- Section 17(5)(b)(i) of the CGST Act, 2017 (leasing, renting; referred to in the order)
- Section 17(5)(c) of the CGST Act, 2017 (works contract for construction of immovable property)
- Section 17(5)(d) of the CGST Act, 2017 and its Explanation (construction; plant and machinery)
- Section 2(119) of the CGST Act, 2017 (definition of works contract)
- Section 16 and Section 18(1) of the CGST Act, 2017 (referred to in the non-obstante clause of Section 17(5))
- Section 3(26) and Section 3(36) of the General Clauses Act, 1897 (immovable and movable property)
- Transfer of Property Act (definition of 'attached to the earth')
- Section 97(2)(d) of the CGST/HGST Act, 2017 (clause under which the question was raised)
- Supreme Court judgment in Triveni Engineering and Industries Ltd (2000) and Allahabad High Court judgment in S/S Triveni…

! For the Practitioner

This ruling is useful for developers or lessors who build premises to lease and then fit them out with utilities such as STP, fire-fighting, electrical feeder cable and installation, since it shows how the Authority treats these items under Section 17(5)(c) and (d). It also shows that the plant-and-machinery exclusion for civil structures will be applied strictly. The order does not decide whether equipment in a factory the applicant itself operates would be plant and machinery, or whether ITC would be available where the building is used for taxable outward supplies. As an advance ruling it is specific to the applicant and the facts stated.

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_03_2019-20_19.07.2019_sgspl.pdf

Prepared 05-11-2026.

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