M/s. Unity Traders, Plot No. 264, Bye Pass Road, Katangi Crossing, Jabalpur (Madhya Pradesh)

Authority for Advance Ruling — Madhya Pradesh

Order No. 06/2020, dated 10.02.2020 (Case No. 26/2019). The reference '… Dated **10.02.2020**

Q Questions Before the Authority

- Whether ITC of GST paid on goods purchased for the construction and maintenance of a warehouse (such as vitrified tiles, marble, granite, ACP sheet, steel plates, TMT bars, bricks, cement, paint and other construction material) can be claimed in full.
- Whether ITC of GST paid on works contract services received from registered and unregistered contractors for the construction and maintenance of a building can be claimed in full.
- Whether ITC of GST paid during FY 2017-18 on goods purchased and works contract services received for the construction and maintenance of a warehouse can be claimed in full.

F Facts

The applicant is a partnership firm providing clearing and forwarding agent services. It earns C&F commission, warehouse rent and reimbursements such as freight, and it built a warehouse that it lets out on rent, on which it pays GST. The question is whether the GST paid on materials and works contracts used to build and maintain that warehouse can be taken as ITC.

H Ruling

ITC on goods (tiles, marble, granite, ACP sheet, steel, TMT bars, bricks, cement, paint and other construction material) for construction and maintenance of warehouse	**No ITC admissible**	Bar under Section 17(5) of the CGST Act, 2017, applies because the warehouse is immovable property built on the applicant's own account and let out.
ITC on works contract services from registered and unregistered contractors for construction and maintenance of building	**No ITC admissible**	Same Section 17(5) bar; the ruling refers to building construction and maintenance generally.
ITC on goods and works contract services during FY 2017-18 for construction and maintenance of warehouse	**No ITC admissible**	The applicant argued the law was unclear in FY 2017-18. The Authority did not accept this for the year.

The Authority held that **no ITC is admissible** on the goods and works contract services used to construct and maintain the warehouse, because it is let out on rent and falls within the bar in Section 17(5)(d) of the CGST Act. The same answer was given for FY 2017-18. The ruling is valid subject to Section 103(2) until declared void under Section 104(1).

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

R Reasoning

The Authority read Section 16(1) as subject to the restrictions in Section 17(5), so the general entitlement to ITC does not override the exclusion. It found the warehouse to be immovable property constructed by the applicant on its own account, which brings Section 17(5)(d) into play, and it relied on the Explanation defining 'construction' and 'plant and machinery'. It rejected the applicant's arguments that the tax chain was unbroken, that GST on rentals makes the denial unjust, and that the bar causes double taxation or fails Article 19(1)(g). It held that the bar applies to all taxpayers and that no provision allows ITC where the supply chain is unbroken.

P Provisions Relied On

- Section 16(1) of the CGST Act, 2017
- Section 17(5)(d) of the CGST Act, 2017
- Explanation to Section 17(5) (meaning of 'construction' and 'plant and machinery')
- Section 97(2) of the CGST/SGST Act, 2017 (application)
- Section 98 of the CGST/SGST Act, 2017 (advance ruling)
- Section 103(2) and Section 104(1) of the GST Act (validity of ruling)
- Section 3(26) of the General Clauses Act, 1882 (definition of immovable property, as cited by the applicant)
- Section 3 of the Transfer of Property Act, 1882 (definition of immovable property, as cited)

! For the Practitioner

A practitioner advising a client who builds a warehouse or building for letting out can use this order to show that the department's view is that Section 17(5)(d) bars ITC on construction inputs and works contracts even where rental income is taxed. It is an Authority for Advance Ruling, so it binds only the applicant and the state, not other taxpayers. It does not decide whether the bar applies to buildings constructed for the taxpayer's own business use or for sale, and it does not resolve the constitutional challenge the applicant raised.

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 -> mp_aar_06_2020_10.02.2020_ut.pdf

Prepared 18-11-2026.

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