M/s VDM Hospitality Private Limited, FF-15, Block-C, Omaxe, Guragon Mall, Sohna Road, Gurgaon, Haryana (GSTIN 06AAFCV5809A1ZL)

Authority for Advance Ruling — Haryana

Advance Ruling No. HAR/HAAR/R/2019-20/02 (In Application No. 02/2019… Dated **21.06.2019**

Q Questions Before the Authority

- Whether the temporary structure (hall, pandal, shamiana or any other place) built with iron/steel pillars tightened with nuts and bolts, specially created for functions, would be treated as movable or immovable property under the GST law.
- Whether credit of tax paid on the iron/steel pillars tightened with nuts and bolts, used for creating such a temporary structure especially for functions, is admissible under section 16 of the CGST Act, 2017.

F Facts

The applicant organises weddings and banquet functions on a large scale at its own premises in Ambience Golf Drive, Gurugram. For these functions it builds a temporary hall or pandal on the premises, using a frame of iron and steel pillars, sheets, pipes and angles bolted together, covered with sheets and canvas and finished with plywood and decoration. The pillars are fixed to concrete foundations by nuts and bolts, which the applicant says is only to ensure stability and vibration-free operation, and the structure is dismantled after use.

H Ruling

Whether the temporary hall/pandal/shamiana built on iron/steel pillars fixed with nuts and bolts is movable or immovable property under GST law	**Immovable property**	Ruling 6.1. The authority found that the structure is fixed to the foundation with a strong and permanent degree of annexation, with the company's own premises, large civil works and the non-temporary nature of use weighing against the applicant's claim that the fixing was merely for stability.
Whether credit of tax paid on the pillars and fittings used to create such a structure is admissible under section 16 of the CGST Act	**Not admissible. The applicant is not entitled to input tax credit**	Ruling 6.2. The bar applies under section 17(5)(d), which excludes goods or services received for construction of an immovable property (other than plant or machinery) on own account, even when used in the course or furtherance of business.

The authority held that the structure created by the applicant is **immovable property** for the purposes of GST law. It further held that the applicant is **not entitled to the credit of input tax** in view of section 17(5)(d) of the CGST/HGST Act, 2017.

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

R Reasoning

The authority accepted that the GST Act does not define movable or immovable property, so it looked to section 3(26) and 3(36) of the General Clauses Act, 1897 and section 3 of the Transfer of Property Act, 1882 for the meaning of things attached to the earth. It drew on the Supreme Court line of cases (Triveni Engineering, Sirpur Paper Mills and Solid and Correct Engineering) and the CBEC circular dated 15.01.2002, and held that bolting to a foundation for wobble-free operation alone does not decide the question. It held that intention and the fact of fastening must both be examined on the facts, and that the company's own premises, large civil work and pillars of large dimensions showed a permanent attachment. Since the structure was immovable property, the bar in section 17(5)(d) applied and the credit was denied.

P Provisions Relied On

- Section 2(52) of the CGST/HGST Act, 2017 (definition of goods), as quoted in the order
- Section 16 of the CGST/HGST Act, 2017 (eligibility of input tax credit), as quoted in the order
- Section 17(5)(d) of the CGST/HGST Act, 2017 (blocked credit for construction of immovable property other than plant or mac…
- Section 3(26) and section 3(36) of the General Clauses Act, 1897 (definitions of immovable and movable property)
- Section 3 of the Transfer of Property Act, 1882 (meaning of attached to the earth)
- CBEC Circular No. 58/1/2002-CX dated 15.01.2002, as quoted in the order

! For the Practitioner

A practitioner advising event or banquet businesses that erect bolted temporary structures can rely on this ruling to see how the authority treats fixing to a foundation, and that input tax credit on such structures is blocked under section 17(5)(d). The ruling turns heavily on the facts of this applicant, including ownership of the site, the scale of civil work and the permanence of use, so it does not settle the position for a structure that is genuinely portable or built on rented premises. It is an advance ruling binding only on the applicant and the jurisdictional officers, and it does not decide the treatment of plant and machinery under the exception in section 17(5)(d).

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_02_2019-20_21.06.2019_vdmhpl.pdf

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