M/s. SUNDHARAMS PRIVATE. LTD

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-36/2019-20/B-41, Mumbai Dated **18.03.2020**

Q Questions Before the Authority

- Whether the applicant is entitled to avail input tax credit under the CGST/SGST Act in respect of taxes paid on its purchase of Paver Blocks laid on the land, where the blocks are not fastened to the earth but laid on a plain surface to park its customers' cars.

F Facts

The applicant provides warehousing, storage and stockyard support services to automobile OEMs and transports cars using car carrier vehicles, collecting GST on storage rentals. It bought tax-paid Paver Blocks and laid them over the parking area of leased land so that OEMs' vehicles could be parked safely during the contract period. The applicant claims the blocks are movable, since they can be lifted and reused elsewhere, and that the cost was not capitalised in its books.

H Ruling

ITC on tax paid on purchase of Paver Blocks laid on land for car parking	**Answered in the negative. ITC not available.**	Blocks laid with interlocking and boundary-wall support are treated as immovable property constructed on own account, so Section 17(5)(d) applies. Not capitalised in books was held not decisive.

The authority answered the question in the negative and held that the applicant cannot avail input tax credit on the Paver Blocks. It held that the laid blocks, with interlocking and support from the boundary walls, are permanently fixed to the earth and so form immovable property. Because the applicant itself constructed that parking facility for use in its business, the bar in Section 17(5)(d) applies even though the goods are used in the course of business.

R Reasoning

The authority applied the permanency test from Municipal Corporation of Greater Bombay v Indian Oil Corporation, asking whether the item could be moved to another place in the same position or would have to be dismantled and re-erected. It found that the blocks are laid through a substantial process of base preparation, compaction, grit application and interlocking, and that the blocks are not shifted in practice, so they are immovable. It held that Section 17(5)(d) bars ITC on goods received for construction of immovable property on own account, and it relied on the Tamil Nadu Advance Ruling in Sree Varalakshmi Mahaal LLP. It declined to rely on the Orissa High Court decision in Safari Retreats because the department's appeal to the Supreme Court is pending and the matter has not attained finality.

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

P Provisions Relied On

- Section 16 of the CGST Act, 2017 (eligibility and conditions for ITC)
- Section 17(5)(c) and 17(5)(d) of the CGST Act, 2017, with the Explanation to Section 17(5)
- Section 18(1) of the CGST Act, 2017
- Sections 97 and 98 of the CGST Act, 2017 and the MGST Act, 2017
- Municipal Corporation of Greater Bombay v Indian Oil Corporation Ltd, 1991 Supp (2) SCC 18
- T.T.G. Industries Ltd v CCE, (2004) 4 SCC
- Bharti Airtel Ltd v Commissioner of Central Excise, 2014 SCC OnLine Bom 907
- Tower Vision India Pvt Ltd v Commissioner of Central Excise (2016) 42 STR 249 (Tri.-LB)
- Safari Retreats Pvt Ltd v Chief Commissioner of CGST, 105 Taxmann 324 (Orissa HC), considered but not relied on

! For the Practitioner

A stockyard or parking operator that lays paver blocks with interlocking and boundary support should expect the same bar on ITC under Section 17(5)(d), and the order's reasoning on permanency will be useful to the department in similar cases. The ruling binds only the applicant, and it does not settle the contrary Orissa High Court view in Safari Retreats, which remains under appeal. It also does not address blocks that are loosely placed with no interlocking or fixing, which the applicant may argue on different facts.

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 -> mah_aar_36_2019-20_b-41_18.03.2020_spl.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