Tewari Warehousing Co Pvt Ltd

Authority for Advance Ruling — West Bengal

40/WBAAR/2018-19 Dated **18.02.2019**

Q Questions Before the Authority

- Whether input tax credit is admissible on the inward supplies used for constructing a warehouse on leasehold land, where the warehouse is built from a pre-fabricated system that the applicant says can be dismantled and reconstructed at another location.

F Facts

The applicant, a warehousing service provider, is constructing a warehouse on land leased from Kolkata Port Trust for thirty years, using a 'Prefabricated Warehousing System' bought from M/s Pennar Engineering Building Systems Ltd. The applicant says the pre-fabricated components are bolted together and fixed by anchor bolts to a low RCC platform embedded in the ground, so the system is movable and section 17(5)(c) and (d) should not apply. The authority noted that the floor and civil work on the platform are integral to the warehouse.

H Ruling

Admissibility of input tax credit on inward supplies for construction of the warehouse on leasehold land using pre-fabricated system	**Not admissible. The warehouse is immovable property.**	Credit is blocked under section 17(5)(d) of the CGST/WBGST Act. The ruling is valid subject to section 103 and until declared void under section 104(1).

The authority held that the warehouse being constructed is **immovable property** , so input tax credit on the inward supplies for its construction is not admissible. The credit is blocked under **section 17(5)(d)** of the CGST/WBGST Act. The pre-fabricated system is treated as building blocks applied to a civil structure attached to the land, not as the property itself.

R Reasoning

The authority noted that 'immovable property' is not defined in the GST Act and borrowed the meaning from the General Clauses Act, 1897 and the Transfer of Property Act, 1882. It applied the intention-and-attachment tests from Triveni Engineering, the Allahabad High Court decision in S/S Triveni N L Ltd, and Solid & Correct Engineering Works and Sirpur Paper Mills. It found that the warehouse was intended as a permanent structure for more than two decades, and that the floor and civil work on the RCC platform form part of the land and cannot be dismantled without substantial damage to the foundation, relying on clause 4(v) of Circular 58/1/2002-CX. It distinguished the Uttarakhand AAR order in Vindhya Telelinks, which concerned movable mobile towers.

P Provisions Relied On

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

Section 97(2)(d) of the CGST/WBGST Act, 2017	Section 2(52) of the CGST Act (definition of goods)
Section 17(5)(c) of the CGST Act	Section 17(5)(d) of the CGST Act
Section 103 of the CGST Act	Section 104(1) of the CGST Act
Section 3(26) of the General Clauses Act, 1897	Section 3 of the Transfer of Property Act, 1882
Circular No. 58/1/2002-CX dated 15/01/2002, clause 4(v)	

! For the Practitioner

The order is useful for businesses building warehouses or similar structures on leased land with prefabricated components, since it shows how the authority will treat an embedded civil platform and floor as decisive for immovability and ITC blocking. It does not decide that prefabricated or modular structures are generally immovable, and it binds only the applicant under section 103. A practitioner should note that the applicant's reliance on Vindhya Telelinks and on the movability of the prefabricated system was rejected on the 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 -> wb 40 2018-19 twcpl.pdf

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