M/s Wework India Management Private Limited

Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG 106/2019, Dated: 30th September, 2019 Dated **30.09.2019**

Q Questions Before the Authority

- Whether input GST credit can be availed by the applicant on the detachable 14mm Engineered Wood with Oak top Wooden Flooring, which is movable in nature and capitalized as "furniture and fixture" and not as "immovable property".
- Whether input GST credit can be availed by the applicant on the detachable sliding and stacking glass partition, which is movable in nature and capitalized as "furniture and fixture" and not as an immovable property.

F Facts

The applicant supplies shared workspace and office space to freelancers, startups, small businesses and large enterprises. It procures goods and services from contractors to fit out the workspaces and rents them out, and it has paid GST on those inputs. Two fit-out components, detachable 14mm engineered wood flooring with oak top and detachable sliding and stacking glass partitions, are recorded in its books as furniture and fixtures, and the applicant seeks ITC eligibility on both.

H Ruling

Detachable 14mm Engineered Wood with Oak top Wooden Flooring (movable, capitalised as furniture and fixture)	****ITC can be availed.****	The order holds the flooring movable and capitalised as "furniture". It is not treated as construction of immovable property, because it is detachable, not sine qua non for the office space, and can be removed and replaced without affecting the space.
Detachable sliding and stacking glass partitions (movable, capitalised as furniture and fixture)	****ITC is not available.****	The partitions are fixed to the building to create the rented office spaces and are a sine qua non for letting them. The order treats fixing them as addition or alteration to immovable property under Section 17(5)(d), despite the chartered accountant certificate showing them as furniture and fixtures.

The authority ruled that ITC is available on the detachable 14mm engineered wood flooring with oak top, which it treated as movable and capitalised as furniture. It ruled that ITC is not available on the detachable sliding and stacking glass partitions, which it held to be fixed to the building and therefore within the restriction in Section 17(5)(d) of the CGST Act.

R Reasoning

The authority accepted that the applicant uses the procured goods in the course of its business of renting office space, so Section 16(1) is satisfied in principle. It then applied the Section 17(5)(c) and (d) bar on goods received

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

for construction of immovable property, read with the Explanation extending "construction" to additions and alterations to the extent of capitalisation. It held that capitalisation in the books as furniture and fixtures does not change the legal character of an asset, citing the accounting classes of fixed assets. For the partitions, it relied on the General Clauses Act definition of immovable property, which includes things attached to the earth or permanently fastened to anything attached to the earth, and held that the partitions are fixed to the building and so are immovable. For the flooring, it found the fixing temporary and detachable, so it was not an addition to immovable property. The order does not expressly discuss the applicant's precedents (Vindhya Telelinks, BAHL Paper Mills, Balkrishna Industries, Nipro India) in its findings, as far as legible.

P Provisions Relied On

- Section 16(1) of the CGST Act, 2017 (and the parallel KGST Act provision)
- Section 17(5)(c) of the CGST Act, 2017
- Section 17(5)(d) of the CGST Act, 2017, with the Explanation defining "construction"
- Section 3(26) of the General Clauses Act, 1897 (definition of immovable property)
- Section 3(36) of the General Clauses Act, 1897 (definition of movable property)
- Section 3 of the Transfer of Property Act, 1882 (cited by the applicant; referred to in the order's findings)

! For the Practitioner

This ruling is useful for co-working and office operators who fit out rented space with detachable flooring, since it supports ITC on movable, detachable fit-outs. It equally shows that partitions fixed to the building to create lettable units are likely to be treated as immovable property and blocked under Section 17(5)(d), whatever the books show. It does not decide ITC on other fit-out items such as glued-down flooring, fixed interiors or HVAC, and it is a ruling on the applicant's own facts that a tax lawyer should check against any similar arrangement.

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 -> kar_aar_106_2019_30.09.2019_wimpl.pdf

Prepared 12-11-2026.

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