



## **Case Study Series – GST Advance Ruling**

### **Crux of the case:**

*Can the ITC in respect of goods or services used for construction of immovable property be availed if the assessee generates output tax liability from that immovable property?*

Authority	Maharashtra Authority for Advance Ruling
Legal Name of Applicant	M/s Ashish Arvind Hansoti
Details of Application	GST-ARA, Application NO.88 Dated:04.01.2020

### **Facts of the case:**

- Mr. Ashish Hansoti, a proprietor is involved in the construction of commercial properties. He wishes to earn income by way of subsequently giving those properties on rent.
- Applicant acquires various goods and services during the course of the said construction and wishes to avail ITC on such goods and services.

### **Applicant's view:**

- The rent charged by the applicant for letting out the property after its construction will be taxable under GST.
- Even though the ITC in respect of goods or services used for construction of immovable property is blocked under Section 17(5)(d) of the CGST Act, the applicant is of the view that he is eligible to avail ITC because of the following,
  - a. The applicant provides an output taxable service by way of renting out the immovable property after its construction and such rent is taxable under GST.
  - b. The applicant is of the view that generating output tax liability for the country should enable him to avail the ITC in respect of the inward supply used for generating such output supply.

### **Department's view:**

- The occupation of the taxpayer is covered within the ambit of works contract which has been defined in Section 2(119) of the CGST Act 2017.

- Section 17(5)(d) of the CGST Act 2017 also states that ITC shall not be available in respect of works contract services when used for the construction of an immovable property (excluding plant and machinery).
- However, such ITC can be availed in cases where it is an input service for further supply of works contract service.
- It is evident that the taxpayer is not engaged in any further supply of works contract services, hence the ITC cannot be availed.

### **Discussions and Findings:**

- Section 17(5)(d) of the CGST Act, 2017 clearly states that ITC in respect of goods or services relating to construction of immovable property (other than plant or machinery) cannot be availed.
- Such ITC cannot be availed even when acquired on his own account including when such goods or services or both are used in the course of furtherance of business.
- It is clear that the assessee is not constructing any plant and machinery but is engaged in the construction of immovable property.
- Consequently, no ITC is available on goods or services used by him for such construction and the same cannot be availed by him.

### **Order:**

#### **Whether the applicant is eligible to claim Input Tax Credit of GST paid on input and input services used for construction of commercial immovable property, subsequently used for renting?**

- **Answered in negative**

### **Key takeaways:**

- ITC cannot be availed in respect of goods or services used for construction of immovable property.

It has to be noted that, even though the taxpayer generates output tax liability, if ITC is blocked as per provisions contained in section 17(5), ITC cannot be availed.