



ISSUES IN INPUT TAX CREDIT

CA ARPIT HALDIA





**WHETHER ITC IS A
VESTED RIGHT OR
CONCESSION**



Whether Input Tax Credit is a vested Right

Article 300A

No person shall be
deprived of his property
save by the authority of
law.

- Godrej and Boyce Mfg. Co. Pvt. Ltd. and Others versus Commissioner of Sales Tax and Others, (1992) 3 SCC 624: We fail to understand how a valid grievance can be made in respect of such deduction when the very extension of the benefit of setoff is itself a boon or a concession.
- Jayam and Company versus Assistant Commissioner and Another, (2016) 15 SCC 125:- It is a trite law that whenever concession is given by statute or notification, etc. the conditions thereof are to be strictly complied with in order to avail such concession. Thus, it is not the right of the “dealers” to get the benefit of ITC but it is a concession granted by virtue of Section 19.

Whether
Input Tax
Credit is a
vested Right



- [Karnataka Value Added Tax Act, 2013 in State of Karnataka versus M.K. Agro Tech.\(P\) Ltd., \(2017\) 16 SCC 210:-](#) Keeping in view this objective, the legislature has intended to give tax credit to some extent. However, how much tax credit is to be given and under what circumstances, is the domain of the legislature and the courts are not to tinker with the same.
- [Ald Automotive Pvt Ltd vs The Commercial Tax Officer And Ors ... on 12 October, 2018:-](#) The input credit is in nature of benefit/ concession extended to dealer under the statutory scheme. The concession can be received by the beneficiary only as per the scheme of the Statute

Whether
Input Tax
Credit is a
vested Right



- Eicher Motors Ltd. And Anr vs Union Of India And Ors. Etc on 28 January, 1999 (SC) :- Thus the assesseees became entitled to take the credit of the input instantaneously once the input is received in the factory on the basis of the existing Scheme.”
- Collector Of Central Excise, Pune ... vs Dai Ichi Karkaria Ltd. Etc. Etc on 11 August, 1999 (SC):- It is clear from these Rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof.

Whether
Input Tax
Credit is a
vested Right



Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax *charged* on any supply of goods or services or both to him which are *used or intended to be used* in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.


Section 16(1)
of CGST Act-
Eligibility and
condition for
taking input
tax credit.



Input Tax Charged and not payable-?

Used or intended to be used-Whether the date
when put to use is immaterial-?

What are the eligible Document: Rule 36 of CGST Rules, 2017



an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

an invoice issued in accordance with the provisions of clause (f) of subsection (3) of section 31, subject to the payment of tax;

a debit note issued by a supplier in accordance with the provisions of section 34;

a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;

an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

Section 16(2)(b) Goods or Services Must have been received



(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(b) he has *received the goods or services or both*.

Explanation—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services —

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.

Meaning of Receipt of Goods-BGM OF ICAI

Therefore, what exactly does '*received*' mean in this context? Does it refer to actual receipt of goods at factory premises or even constructive receipt of goods would suffice?

Broadly, receipt of goods may be said to be complete when goods have been supplied as per the recipient's instructions and the supplier is discharged from any further liability on such goods. The delivery must be complete in all respects to the utmost satisfaction of the recipient. The point of acceptance in cases of pre-requisite of quality control may have to be clear.



- a) Relevance of e-Way Bill-??
- b) Year End Transactions-??
- c) Paid and To Pay Bilties-??
- d) How to Identify receipt of Services-??

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(c) *subject to the provisions of section 41 or section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply;*

Section
16(2)(c)

Tax to be
paid by the
Supplier

Commissioner Of Income Tax vs M/S.
Cello Plast on 27 July, 2012 (Bom HC)

Expecting the
Taxpayer to
verify whether
Tax has been
paid by
Supplier

Lex not cogit impossibila (law does not compel a man to do that which he cannot possibly perform) and impossibilum nulla obligatio est (law does not expect a party to do the impossible) are well known maxims in law and would squarely apply to the present case. The statute viz. Section 54EC of the Act provides for *exemption from tax to long term capital gain provided the same is invested in bonds of Rural Electrification Corporation Limited or National Highway Authority of India. However, as the bonds were not available, it was impossible for the respondent-assessee to invest in them within six months of the sale of their factory building.*

Case Regarding Availability of Input Tax Credit

Commissioner of Trade & Taxes, Delhi and others Vs. Arise India Limited and others (Delhi HC)

Therefore, there was need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not punish bona fide purchasing dealers. The latter cannot be expected to do the impossible. It is trite that a law that is not capable of honest compliance will fail in achieving its objective. If it seeks to visit disobedience with disproportionate consequences to a bona fide purchasing dealer, it will become vulnerable to invalidation on the touchstone of Article 14 of the Constitution.

In the event that selling dealer fails to deposit the tax collected by him from the purchasing dealer, the remedy for the department would be to proceed against the selling dealer for recovery of such tax. Further, in cases where the department is satisfied that there is collusion of purchasing and selling dealer then proceeding under Section 40A of the DVAT Act can be initiated.

Case Regarding Availability of Input Tax Credit

R.S. Infra-Transmission Ltd. V/s
State of Rajasthan (Raj HC)

It was held that buying dealer cannot be defaulted for non-payment of tax by the selling dealer.

The contention of Mr. R.B. Mathur is that Rule 18 will take care of the situation. However, while considering the matter, we have to look into the matter whether the benefit envisaged under the Rajasthan VAT Act especially under sub-Section (1) shall be allowed only after verification of deposit of the tax payable by the selling dealer in the manner as notified by the Commissioner. We are in complete agreement that it will be impossible for the petitioner to prove that the selling dealer has paid tax or not as while making the payment, the invoice including tax paid or not he has to prove the same and the petitioner has already put a summary on record which clearly establish the amount which has been paid to the selling dealer including the purchase amount as well as tax amount. In that view of the matter, we are of the opinion that Rule 18 if it is accepted, then the respondents will to take undue advantage and cause harassment.

No, it has been clarified vide Press Release dated 18th October 2018 that furnishing of outward details in FORM GSTR-1 by the corresponding supplier(s) and facility to view the same in FORM GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of section 16 of the Act. The apprehension that ITC can be availed only on the basis of reconciliation between FORM GSTR-2A and FORM GSTR-3B conducted before the due date for filing of return in FORM GSTR-3B for the month of September, 2018 is unfounded as the same exercise can be done thereafter also.

**Whether Non
Reflecting of
Invoice in
GSTR-2A
would result
in Loss of
Credit? -
(Prior to Rule
36(4))**

What if my Supplier has Filed GSTR-1 and not Filed GSTR-3B and I have Tax Invoice



ADD A FOOTER

As per the provisions of Section 16(2) of CGST Act, tax charged in respect of such supply should be actually paid to the Government. Therefore, if supplier has not filed GSTR-3B but has only filed GSTR-1, therefore it would mean that Tax in respect of such supply has not been paid to the Government.

Therefore, it would be an hinderance in the availment of Input Tax Credit and might result in denial of Input Tax Credit .

What if I have
Tax Invoice and
my Supplier has
Filed GSTR-3B
and but has not
reflected my
GSTIN in GSTR1

As per the provisions of Section 16(2) of CGST Act, tax charged in respect of such supply should be actually paid to the Government. Therefore, if supplier has filed GSTR-3B but has not filed GSTR-1, it would still mean that Tax in respect of such supply has been paid to the Government.

Therefore, if rest of the conditions of Section 16 of CGST Act, 2017 have been satisfied like Possession of Tax Invoice, receipt of goods and services and submission of Return under section 39, ITC in respect of Such Invoice would be allowed.

Please keep in mind that Conditions regarding mandatory details to be mentioned on the invoice should be satisfied including GSTIN of recipient on Invoice.

What if I have Tax Invoice and my Supplier has neither Filed GSTR-3B and but has not filed GSTR1



As per the provisions of Section 16(2) of CGST Act, tax charged in respect of such supply should be actually paid to the Government. Therefore, if supplier has not filed GSTR-3B, it would mean that Tax in respect of such supply has not been paid to the Government.

Therefore, it would be an hinderance in the availment of Input Tax Credit and might result in denial of Input Tax Credit .

Mismatch in ITC Claimed and Reflected in GSTR-2A due to error of Supplier



Question: If ITC is claimed as per tax charged on invoice and proper GST details mentioned, but still there is a mismatch due to seller's mistake, is there a way to rectify this based on invoice as a proof ? As per original plan, GSTR2 would have solved this, but what now ?



Answer: GSTR-2A is not a document to impact eligibility of ITC. One needs to satisfy conditions as provided under Section 16 and 17 of CGST Act for the purpose of claim of Input Tax Credit as discussed earlier. It is only a facilitation tool for the benefit of the Taxpayers.

Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 10 per cent of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37

Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above

Rule 36(4)

The Rule 20 to Rule of 10

Sec 16(4)

A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier:

Clause 2(62)-Definition of Input Tax

(62) "input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax *charged on any supply of goods or services or both made to him* and includes—

(a) the integrated goods and services tax charged on import of goods;

(b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;

(c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;

(d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or

(e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

What if Tax has been Charged in Excess of the Amount Payable-Whether Complete ITC would be available-?





Whether provision of Time Limit for claiming of ITC is mandatory or directory

**Ald Automotive Pvt Ltd vs The Commercial Tax
Officer And Ors ... on 12 October, 2018**

The condition under which the concession and benefit is given is always to be strictly construed.

In event, it is accepted that there is no time period for claiming Input Tax Credit as contained in Section 19(11), the provision become too flexible and give rise to large number of difficulties including difficulty in verification of claim of Input Credit.

Taxing Statutes contains self-contained scheme of levy, computation and collection of tax. The time under which a return is to be filed for purpose of assessment of the tax cannot be dependent on the will of a dealer. The use of word 'shall' in Section 19(11) does not admit to any other interpretation except that the submission of Input claimed cannot be beyond the time prescribed. Section 19(11), in fact, gives additional time period for claim of Input Credit.

We, thus, are of the view that time period as provided in Section 19(11) is mandatory.

Section 17(5)(a)-Blocked Input Tax Credit regarding Motor Vehicle

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available **in respect of** the following, namely:—

(a) **motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver)**, except when they are used for making the following taxable supplies, namely:—

- (A) further supply of such motor vehicles; or
- (B) transportation of passengers; or
- (C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used—

- (i) for making the following taxable supplies, namely:—
 - (A) further supply of such vessels or aircraft; or
 - (B) transportation of passengers; or
 - (C) imparting training on navigating such vessels; or
 - (D) imparting training on flying such aircraft;
- (ii) for transportation of goods;



Section 17(5)(a)-Blocked Input Tax Credit regarding Motor Vehicle

- (ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):**

Provided that the input tax credit in respect of such services shall be available—

- (i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause**

- (aa) are used for the purposes specified therein;**

- (ii) where received by a taxable person engaged—**

- (I) in the manufacture of such motor vehicles, vessels or aircraft; or**
(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;



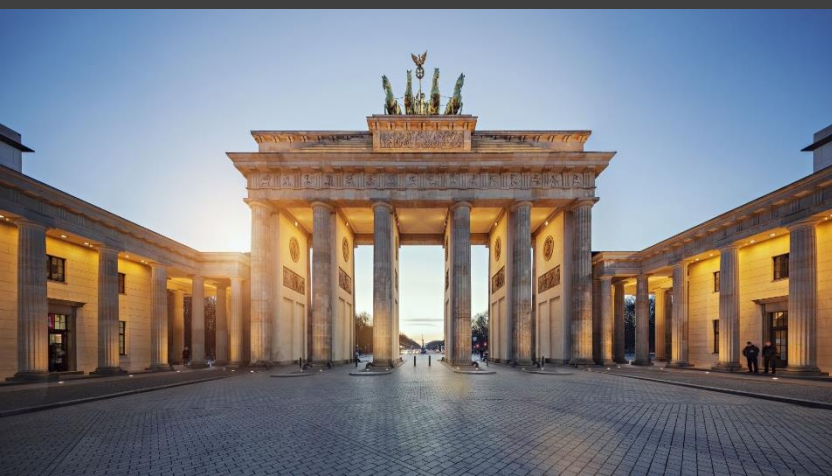
Section 17(5)(h) to -Blocked ITC-Others

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

- h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; (Permanent transfer or disposal of business assets where input tax credit has been availed on such assets) and

**Whether ITC
available/Whether ITC is
required to be reversed on
Discount**





Section 17(5)(c) & (d)-Blocked ITC regarding Immovable Property

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

- (c) Works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;
- (d) Goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

Explanation.—For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises.

Explanation to Section 17(5)(c) & (d)

Explanation to the sub-section (5) has defined the term 'Construction' to encompass all the activities '.... to the extent of capitalization to the said immovable property.' Mere statement that expenditure is not capitalized cannot come to the rescue of Applicant. Be that as it may, the eligibility of ITC does not depend on the treatment given to the expenditure. If the expenditure is revenue in nature but subsequently capitalized in the books of account it would not make Applicant eligible to ITC on such goods.-

Jabalpur Entertainment Complex Private Limited
(2018) 97 taxmann.com 587- AAR Madhya
Pradesh

Immovable Property - Bench Mark Adopted in GST .



a) CBEC Circular Number 58/1/2002-CX, dated 15/1/2002 where in para (e) it has been clarified that

If items assembled or erected at site and attached by foundation to earth cannot be dismantled without substantial damage to its components and thus cannot be reassembled, then the items would not be considered as movable and will, therefore, not be excisable goods.

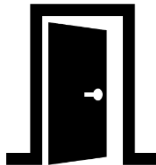
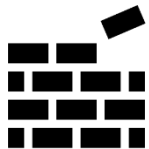
b) Definition of Immovable Property in Clause 3(26) of General Clauses Act, 1887

“Immovable property” shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

c) Definition of “attached to earth” in Section 3 of Transfer of Property Act, 1882

The term “attached to the earth” means

- rooted in the earth, as in the case of trees and shrubs,
- embedded in the earth, as in the case of walls or buildings, and
- attached to what is so embedded for permanent beneficial enjoyment of that to which it is attached.



Immovable Property-Supreme Court Decision

- a) Triveni Engineering & Industries vs Commissioner Of Central Excise- Whether an article is permanently fastened to anything attached to the earth require determination of both the intention as well as the factum of fastening to anything attached to the earth. And this has to be ascertained from the facts and circumstances of each case. In our view, the findings recorded do not justify the conclusion of the Tribunal inasmuch as on removal a turbo alternator gets dismantled into its components steam turbine and alternator. It appears that the Tribunal did not keep in mind the distinction between a turbo alternator and its components. Thus, in our view, the test of permanency fails. **The marketability test requires that the goods as such should be in a position to be taken to the market and sold and from the above findings it follows that to take it to the market the turbo alternator has to be separated into its components -- turbine and the other alternator -- but then it would not remain turbo alternator, therefore, the test is incorrectly applied.**
- b) Municipal Corporation of Greater Bombay & Ors. Vs. Indian Oil Corporation Ltd. (1991 Suppl. (2) SCC 18), one of the questions considered by the Court was whether a petrol tank, resting on earth on its own weight without being fixed with nuts and bolts, had been erected permanently without being shifted from place to place. **It was pointed out that the test was one of permanency; if the chattel was movable to another place of use in the same position or liable to be dismantled and re-erected at the later place, if the answer to the former is in the positive it must be a movable property but if the answer to the latter part is in the positive then it would be treated as permanently attached to the earth.**



Immovable Property-Supreme Court Decision

- c) Quality Steel Tubes (P) Ltd. vs. Collector of Central Excise, U.P. (1995 (2) SCC 372)- While re-stating the test, namely, first the article must be goods and secondly that it should be marketable or capable of being brought to market, it was held that goods which are attached to the earth and thus become immovable did not satisfy the test of being goods within the meaning of the Central Excise Act nor can be said to be capable of being brought to the market for being sold. In that case, it was found that both the tests were not satisfied and, therefore, the tube mill and welding head erected by the appellant were not exigible to excise duty.
- d) Mittal Engineering Works (P) Ltd. vs. Collector of Central Excise, Meerut (1997 (1) SCC 203):- Court pointed out that the mono vertical crystalliser, had to be assembled, erected and attached to the earth by a foundation at the site of the sugar factory and it was not capable of being sold as it is, without anything more. The erection and installation of a plant is not excisable and to so hold would, impermissibly, bring into the net of excise duty all manner of plants and installations.



Immovable Property-Supreme Court Decision

- e) Sirpur Paper Mills Ltd. vs. Collector of Central Excise, Hyderabad (1998 (1) SCC 400)-CEGAT recorded finding that whole purpose behind attaching machine to a concrete base was to prevent wobbling of machine and to secure maximum operational efficiency and also for safety. Supreme Court held that in view of those findings it was not possible to hold that the machinery assembled and erected by the appellant at its factory site was immovable property as something attached to earth like a building or a tree. The test, it was noted, would be whether paper-making machine could be sold in market and as Tribunal had found as a fact that it could be sold, so machine was held to be not a part immovable property of the company. It appears of that the aforementioned two cases -- Mittal Engineering Works (P) Ltd. and Quality Steel Tubes (P) Ltd. (supra), -- were not referred to in Sirpur Paper Mills Ltd.s case.



Immovable Property-Supreme Court Decision

- f) Commnr. Of Central Excise, ... vs Solid & Correct Engg. Works & Ors on 8 April, 2010- Attachment of the plant in question with the help of nuts and bolts to a foundation not more than 1= feet deep intended to provide stability to the working of the plant and prevent vibration/wobble free operation does not qualify for being described as attached to the earth under any one of the three clauses extracted above. That is because attachment of the plant to the foundation is not comparable or synonymous to trees and shrubs rooted in earth. It is also not synonymous to imbedding in earth of the plant as in the case of walls and buildings, for the obvious reason that a building imbedded in the earth is permanent and cannot be detached without demolition. Imbedding of a wall in the earth is also in no way comparable to attachment of a plant to a foundation meant only to provide stability to the plant especially because the attachment is not permanent and what is attached can be easily detached from the foundation. So also the attachment of the plant to the foundation at which it rests does not fall in the third category, for an attachment to fall in that category it must be for permanent beneficial enjoyment of that to which the plant is attached. It is nobody's case that the attachment of the plant to the foundation is meant for permanent beneficial enjoyment of either the foundation or the land in which the same is imbedded.



Immovable Property-Supreme Court Decision

One of the important considerations is founded on the interest in the land wherein the person who causes the annexation possesses articles that may be removed without structural damage and even articles merely resting on their own weight are fixtures only if they are attached with the intention of permanently improving the premises. The Indian law has developed on similar lines and the mode of annexation and object of annexation have been applied as relevant test in this country also. **There are cases where machinery installed by monthly tenant was held to be moveable property as in cases where the lease itself contemplated the removal of the machinery by the tenant at the end of the tenancy. The mode of annexation has been similarly given considerable significance by the courts in this country in order to be treated as fixture. Attachment to the earth must be as defined in Section 3 of the Transfer of Property Act. For instance a hut is an immovable property, even if it is sold with the option to pull it down. A mortgage of the super structure of a house though expressed to be exclusive of the land beneath, creates an interest in immovable property, for it is permanently attached to the ground on which it is built.**

The courts in this country have applied the test whether the annexation is with the object of permanent beneficial enjoyment of the land or building. Machinery for metal-shaping and electro-plating which was attached by bolts to special concrete bases and could not be easily removed, was not treated to be a part of structure or the soil beneath it, as the attachment was not for more beneficial enjoyment of either the soil or concrete. **Attachment in order to qualify the expression attached to the earth, must be for the beneficial attachment of that to which it is attached. Doors, windows and shutters of a house are attached to the house, which is imbedded in the earth. They are attached to the house which is imbedded in the earth for the beneficial enjoyment of the house. They have no separate existence from the house. Articles attached that do not form part of the house such as window blinds, and sashes, and ornamental articles such as glasses and tapestry fixed by tenant, are not affixtures.**



Immovable Property-Supreme Court Decision

It is noteworthy that in none of the cases relied upon by the assessee referred to above was there any element of installation of the machine for a given period of time as is the position in the instant case. **The machines in question were by their very nature intended to be fixed permanently to the structures which were embedded in the earth. The structures were also custom made for the fixing of such machines without which the same could not become functional. The machines thus becoming a part and parcel of the structures in which they were fitted were no longer moveable goods. It was in those peculiar circumstances that the installation and erection of machines at site were held to be by this Court, to be immovable property that ceased to remain moveable or marketable as they were at the time of their purchase.** Once such a machine is fixed, embedded or assimilated in a permanent structure, the movable character of the machine becomes extinct. The same cannot thereafter be treated as moveable so as to be dutiable under the Excise Act. **But cases in which there is no assimilation of the machine with the structure permanently, would stand on a different footing. In the instant case all that has been said by the assessee is that the machine is fixed by nuts and bolts to a foundation not because the intention was to permanently attach it to the earth but because a foundation was necessary to provide a wobble free operation to the machine.** An attachment of this kind without the necessary intent of making the same permanent cannot, in our opinion, constitute permanent fixing, embedding or attachment in the sense that would make the machine a part and parcel of the earth permanently. In that view of the matter we see no difficulty in holding that the plants in question were not immovable property so as to be immune from the levy of excise duty.



Immovable Property-Supreme Court Decision

T.T.G. Industries Ltd. V. CCE, Raipur 2004 (167) ELT 501 (SC), the machinery was erected at the site by the assessee on a specially made concrete platform at a level of 25 ft. height. Considering the weight and volume of the machine and the processes involved in its erection and installation, this Court held that the same was immovable property which could not be shifted without dismantling the same.

Essar Telecom Infrastructure Pvt. Ltd. (supra) on Mobile Towers by Karnataka High Court, which differed with the view of Bombay High Court's judgment in Hutchison Max Telecom P Ltd [(2008) 224 ELT 191 (Bom)]. However mobile towers are standalone entities erected usually on roof-tops after an agreement with the owner of the building for using the space for a limited period of time, subject to periodic renewals. On the other hand, the Tower Package involves the erection of a series of towers on acquired land for use in perpetuity. In contrast to the time-bound nature of the agreements for using building spaces for erecting mobile towers, the Tower Package is not being constructed with the contemplation of such relocation. The judgment of Karnataka High Court in the matter of Essar Telecom Infrastructure P. Ltd. (supra) is, therefore, not applicable in the present context.





Immovable Property-AAR Decision

a) ITC not admissible on constructing a warehouse on a land taken on lease for 30 years using pre-fabricated technology-Tewari Warehousing Co. (P.) Ltd., In re [2019] 102 taxmann.com 295/72 GST 485 (AAR - West Bengal)

b) Input Tax Credit on 'telecommunication tower' is not admissible being immovable property--Vindhya Telelinks Ltd., In re [2018] 97 taxmann.com 564 (AAR- UTTARAKHAND)

Transmission towers are being erected under Tower Package with no intention of removing or shifting them in foreseeable future and thus clearly intended to be fixed permanently to the foundation embedded in the earth. Moveable character of the towers, therefore, becomes extinct and thus held to be immovable. The tower packages thus were held as immovable property on the principle that they are being constructed for their enjoyment in perpetuity with no plan for removal or shifting in the foreseeable future. Therefore, anything which is constructed for enjoyment with perpetuity with no plan for removal in foreseeable future would be immovable property.- Skipper Ltd [2018] 100 taxmann.com 90 (AAR-WEST BENGAL)

c) Input Tax Credit on construction of shed of not allowed-Maruti Ispat and Energy (P.) Ltd., In re [2018] 99 taxmann.com 103 [2019] 72 GST 125 (AAR - Andhra Pradesh)



d) ITC not allowed on Lease rent paid for pre-operative period as cost will be capitalized and become part of immovable property- GGL Hotel and Resort Company Ltd., In re [2019] 101 taxmann.com 138/71 GST 577 (AAR - West Bengal)

**Immovable
Property-AAR
Decision**



Immovable Property-AAR Decision

- e) Eligibility of ITC relating to the goods or services used in Civil Work and External Development work for Setting up of MRO Facility which will be further rented out-The applicant is not eligible to claim credit of the GST charged by vendor for supply of goods and services to it, which are used for carrying out the activities (Civil Work and External Developmental Works) for setting up of MRO facility.-Indag Rubber Ltd., In re [2020] 115 taxmann.com 215 (AAR-RAJASTHAN)
- f) Eligibility of Co-operative Housing Society paying GST on Maintenance Charges collected from its Members, to claim Input Tax Credit on replacement of existing lift/elevator at its own premises-Manufacture, Supply, Installation and Commissioning of Lifts/Elevators is in the nature of Works Contract activity which results in creation of an immovable property. Hence in view of the above discussions and Explanation to section 17 of the CGST Act, applicant was held to be not entitled to ITC of GST paid on replacement of existing Lift/Elevator, in its premises.-Las Palmas Co-operative Housing Society Ltd. [2020] 114 taxmann.com 233 (AAR – MAHARASHTRA)



Immovable Property-AAR Decision

g) Availability of ITC on Lift, Escalators, Water treatment Plant, Sewage Treatment Plant, D. G. Sets, Transformers, Fire fighting and water management pump system etc. procured for construction of Shopping Mall-Tarun Realtors (P.) Ltd [2020] 116 taxmann.com 201 (AAAR-KARNATAKA)

h) Civil Works', 'Mechanical Works' and 'Electrical Works' under Extension Project for manufacture of medical equipment-Nipro India Corpn. (P.) Ltd., In re [2018] 98 taxmann.com 319 (AAR - MAHARASHTRA)



Immovable Property-AAR Decision

- i) Procurement of detachable sliding and stackable glass partitions will be eligible for input tax credit -The intent of fixing the glass partitions is only to provide the clients a certain sense of privacy and for the purpose of demarcation of work space area. There is no permanency in affixing such partitions as the same can be dismantled and re-fixed to signify a change in the dimensions of the work space. The fixing of the partitions to the ground using nuts and bolts only serves to give a false sense of permanency while in reality it is not so. The detachable sliding and stackable glass partitions are movable property and addition /fixing of glass partitions does not amount to construction of immovable property. Therefore, the procurement of detachable sliding and stackable glass partitions will be eligible for input tax credit and will not be hit by the provisions of Section 17(5)(d) of the CGST Act.-M/s Wework India Management Private Limited [TS-292-AAAR-2020-NT]

Section 17-Other Relevant Decisions

- ITC eligible only on supplies of goods or services which are taxable and not exempt- Columbia Asia Hospitals (P.) Ltd., In re [2018] 100 taxmann.com 212 (AAR - KARNATAKA)
- Applicant is entitled to avail ITC on cars (passenger vehicles) which are further supplied to customers on lease rent, subject to condition applicable in such supply of services -Narsingh Transport, In re [2019] 104 taxmann.com 86 (AAR - Madhya Pradesh)

Section 17-Other Relevant Decisions

- No Input Tax Credit on goods distributed Free of Cost by way of CSR Activity-Polycab Wires (P.) Ltd., In re [2019] 104 taxmann.com 36/73 GST 226 (AAR - Kerala)
- No Input Tax Credit (ITC) on packaging material used for exempted supply of seeds-VNR Seeds (P.) Ltd., In re [2018] 95 taxmann.com 89/69 GST 156 (AAR - Chhattisgarh)
- Recovery of insurance premium from employee does not amount to 'supply of service' and thus, ITC not allowed to applicant of the tax charged on premium by the Insurance Company-Posco India Pune Processing Center (P.) Ltd., In re [2019] 102 taxmann.com 21 (AAR - Maharashtra)
- Mining Equipment not included in definition of Motor Vehicle & GST charged on purchase of earth moving machinery will be allowed-Purewal Stone Crusher., In re [2018] 98 taxmann.com 137/70 GST 444 (AAR- Uttarakhand)

Section 17-Other Relevant Decisions

- No ITC on "gifts" since no GST paid on their disposal- Biostadt India Ltd., In re [2019] 103 taxmann.com 127/73 GST 393 (AAR - Maharashtra)
- Supply of food is to be treated as exempt supply for reversal of common credit-Bengal Rowing Club, In re [2019] 103 taxmann.com 451/73 GST 97 (AAR - West Bengal)
- ITC of compensation cess paid on purchase of vehicles used for leasing business allowed subject to reversal as per rule 43-Orix Auto Infrastructure Services Ltd., In re [2019] 104 taxmann.com 9/73 GST 328 (AAR - Kerala)

Section 17-Other Relevant Decisions

- ITC of CGST Paid in Haryana not available to applicant registered in Rajasthan-IMF Cognitive Technology (P.) Ltd., In re [2019] 102 taxmann.com 211/72 GST 243 (AAR - Rajasthan)
- CGST & SGCT paid in one state not available as ITC unless person is registered in that particular state-Storm Communications (P.) Ltd., In re [2019] 101 taxmann.com 479/72 GST 434 (AAR - West Bengal)

The background of the image is a light, neutral color, possibly off-white or light grey. It is decorated with numerous three-dimensional geometric shapes, primarily tetrahedrons and cubes, in various shades of teal, turquoise, and light green. These shapes are scattered across the frame, with a higher concentration on the right side and a few isolated shapes on the left. The lighting creates soft shadows, giving the shapes a sense of depth and volume.

THANK YOU

CA Dr Arpit Haldia

www.gst-online.com