

# ITC not allowed if input and input services used for repair of immovable property have been capitalised: Rajasthan AAR

Issued on 29 May 2019

## Summary

The Rajasthan Authority for Advance Ruling (AAR) has, in a recent case<sup>1</sup>, reiterated that Input Tax credit (ITC) is not allowed in case of building materials<sup>2</sup> and service of labour supply used by a hotelier for repair and maintenance of a building, and electrical and sanitary fittings to the extent of capitalisation of such inputs. However, the AAR held that ITC shall be allowed on inputs used for repair and maintenance of furniture and fixtures if the same has not been rendered immobile.

## Facts of the case

- The Applicant is a five-star deluxe heritage hotel operating under the brand name Taj. The Applicant provides multiple services in the form of short-term accommodations, restaurants, *mandap* keeper, spa and other club facilities, renting of space or lawn, etc. on which GST is leviable.
- During the year, the Applicant incurred an expenditure on construction, renovation, repairs and maintenance of the hotel's immovable and movable property. It intended to claim ITC on inputs used for such repair and renovation.

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<sup>1</sup> Rajasthan AAR No. RAJ/AAR/2019-20/05 dated 30th April 2019

<sup>2</sup> Such as cement, concrete, bricks, etc.

- The Applicant approached the AAR on the following issues:

Purpose	Question
Building repair	Whether ITC is available on GST paid on building materials <sup>3</sup> and on labour supply meant for the repair of the building?
Repair of electric installation	Whether ITC is available on GST paid on electrical fittings <sup>4</sup> and on labour supply for carrying out the repair of electrical installation?
Repair of sanitary fittings	Whether ITC is available on GST paid on sanitary fittings <sup>5</sup> and on labour supply for carrying out the repair of sanitary fittings?
Repair of furniture and fixtures	Whether ITC is available on GST paid on input <sup>6</sup> and on labour supply for carrying out repair of existing furniture and fixtures?
Common question for aforementioned work	Will ITC be available if the above works are carried out in a composite manner as works contract, where material and labour is supplied by a contractor as a composite supply?
Purchase of new furniture	Whether ITC is available on GST paid on the purchase of new, ready-to-use furniture?

- Before the AAR, the Applicant argued that the repair and maintenance forms a substantial portion of the operating expenses and are incurred for the furtherance of the business of the applicant.

### **AAR's observations and ruling**

- The AAR stated that the nature of work undertaken by the Applicant is predominantly for immovable property involving a transfer of goods and services. Therefore, the activity is a works contract for carrying out repair and maintenance work.

<sup>3</sup> Such as cement, concrete, bricks, cement or marble or stone slabs or tiles, paint, polish and any other building materials

<sup>4</sup> Cables, switches, NCB, and other electrical consumables

<sup>5</sup> Such as tiles, commode, bath tub, wash basin, PVC pipes and other bath room sanitary fittings and consumables

<sup>6</sup> Such as wood, board, mica, tapestry, paint, polish and other consumables

- Further, the AAR observed that the ITC, in general, is not available for construction, reconstruction, renovation, addition, alteration or repair of an immovable property even when such goods or services, or both, are used in course or furtherance of business<sup>7</sup>. However, the limitation in such a scenario is to the extent of capitalisation.
- Thus, the AAR held as follows:

Issue	Held by the AAR
<b>Repair and maintenance of building, electric installation, and sanitary fittings</b>	<ul style="list-style-type: none"> <li>• The AAR held that the activity of repair and maintenance of the building, electric installation and sanitary fitting encompasses supply of goods and services for construction activity, and hence, the same is of immovable nature.</li> <li>• Thus, the AAR held that ITC of GST paid on such goods will not be available to the extent of capitalisation of the said goods.</li> </ul>
<b>Repair of furniture and fixtures</b>	<ul style="list-style-type: none"> <li>• The AAR noted that furniture and fixtures are not immovable property. However, the same become immovable when used as a floor or fixed for a structure.</li> <li>• Thus, the AAR held that in a scenario where the furniture and fixtures are fixed or immobilised or considered as a part of construction activity of immovable nature, then the ITC will not be available to the extent of capitalisation of such goods and services.</li> <li>• However, in cases where the furniture and fixtures are not immobilised, ITC shall be available on inputs used for repair of such furniture and fixtures.</li> </ul>
<b>Common question for aforementioned work</b>	<ul style="list-style-type: none"> <li>• The AAR held that even in a situation where the aforesaid activities are undertaken as works contract, ITC shall not be available for works contract service to the extent of capitalisation of supply of goods and services.</li> </ul>

<sup>7</sup> Section 17(5)(d) of the CGST Act

	<ul style="list-style-type: none"> <li>• However, it clarified that ITC shall still be available for GST paid on composite supply of goods and services in relation to furniture and fixtures.</li> </ul>
<b>Purchase of new furniture</b>	<ul style="list-style-type: none"> <li>• The AAR held that ITC is available on GST paid on the purchase of new, ready-to-use furniture such as chairs, etc.<sup>8</sup></li> </ul>

## Our comments

Under the GST regime, ITC on inputs used for repair of immovable property is blocked. In this regard, the ruling provides clarity for eligibility of ITC on input and input services used in relation to immovable vis-a-vis a movable property. It is pertinent to mention here that the issue relating to blocked credits has been challenged on the grounds of arbitrariness before various high court(s).

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<sup>8</sup> in accordance with provisions of Section 16 of CGST/SGST Act, 2017

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