

# ITC not available on services received for construction of laboratory: Telangana AAR

28 August 2020



## Summary

The Telangana Authority for Advance Rulings (AAR), in a recent case, has held that the applicant is ineligible to avail input tax credit (ITC) of the Goods and Services Tax (GST) paid on lease premium charges, annual lease rent and land maintenance charges in respect of land acquired on lease for construction of laboratory. In this regard, the AAR observed that the 'building', which is to be constructed by the applicant, falls within the ambit of 'immovable property' and thereby falls under restriction provided under the GST law.

## Facts of the case

- The applicant<sup>1</sup> is engaged in providing chromatography services.
- It acquired land on lease for a period of 33 years. As per the terms of the lease, the applicant is required to pay one-time lease premium along with applicable GST at the beginning of the lease.
- In addition, the applicant is also required to pay annual lease rentals at the end of every year to the lessor for 33 years and maintenance charges for the leased premises along with applicable GST.
- The applicant sought an advance ruling from the Telangana AAR to understand the eligibility of ITC on GST to be paid in respect of above charges.

## Telangana AAR observations and ruling<sup>2</sup>

- **ITC barred in respect of goods or services used for construction of immovable property:** The AAR observed that under the GST law, ITC is barred in respect of goods or services used for construction of immovable property (other than plant or machinery). This restriction also applies when such goods or services are used in the course or furtherance of business<sup>3</sup>. The 'laboratory building' constructed by the applicant unquestionably falls within the ambit of 'immovable property'<sup>4</sup>.
- **Construction of immovable property on own account:** The building after completion of construction would be used by the applicant for its own purpose i.e. to accommodate a laboratory. Thus, the

<sup>1</sup> M/s Daicel Chiral Technologies (India) Private Limited

<sup>2</sup> TSAAR Order No. 05/2020 dated 24 June 2020

<sup>3</sup> Section 17(5)(d) of the CGST Act, 2017

<sup>4</sup> As defined under Sec. 3(26) of the General Clauses Act, 1897

applicant is receiving the services for the purpose of construction of immovable property on its own account. Thus, the services received would squarely fall within the exclusion provided under the GST law.

- **ITC unavailable:** The impugned services referred by the applicant have been received for construction of immovable property on its own account and therefore ITC on these services is barred under the GST law.

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### Our comments

Availability of ITC in respect of certain services used for construction of immovable property has been a matter of extensive litigation even under the erstwhile regime. The GST law was formulated with the intention of ensuring free flow of credits. However, it provides for certain restrictions in availing ITC in respect of goods or services.

Similar ruling was given by the Tamil Nadu AAR<sup>5</sup> wherein ITC was not allowed on goods/ services received for construction of marriage hall on own account even if used in course or furtherance of his business of renting the place. The Maharashtra AAR<sup>6</sup> had also denied ITC on input and input services used for construction of commercial immovable property on own account, which was subsequently let out. Earlier the West Bengal AAR<sup>7</sup> had disallowed ITC of lease rent paid during pre-operative period for leasehold land on which resort was being constructed on own account to be used for furtherance of business when the same was being capitalised and treated as capital expenditure. The above ruling was also upheld by the West Bengal Appellate Authority for Advance Ruling (AAAR).

It is pertinent to note that such services involve huge amount of expenditure for businesses and such kind of restrictions add to the costs rather than ensuring free flow of credits. Thus, the government may consider amending the provisions appropriately to ease the availability of ITC in respect of these services.

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