

Detachable glass partitions not immovable property – AAAR

M/s Wework India Management Private Limited¹

Karnataka Appellate Authority for Advance Ruling reviewed part of the ruling pronounced by the Karnataka Authority for Advance Ruling² (“AAR”) disallowing the availment of Input Tax Credit (“ITC”) on the detachable sliding and stacking glass partitions on the ground that it is fixed to a building. The AAR has held that glass partitions are a part of an immovable property, for which ITC cannot be availed in terms of section 17(5)(d) of the Central Goods and Service Tax Act (“CGST Act”).

Questions for determination

- i. Whether the activity of fixing a detachable sliding and stacking glass partition qualifies as “Construction of Immovable Property”
- ii. Consequently, was the AAR correct in disallowing credit in terms of section 17(5)(d) of the CGST Act?

Discussion

- The Appellant is engaged in the business of supplying shared workspace / office space to freelancers, start-ups, small businesses and large enterprises, and supplies workspace either as a hot desk, dedicated desk or private office. For providing private offices, the Appellant creates the

space by removing or adding a glass wall / partition between various sections.

- The Appellant argued that the detachable sliding and stacking glass partition are not immovable property as they are not embedded permanently in the earth and are only fixed to a foundation with nuts and bolts to provide stability and make it functional. The glass partition can be detached and re-used.
- The glass partitions were classified and booked as ‘Furniture and fixtures’ and not capitalised as immovable property, to which the restriction for availment of ITC apply; hence, ITC should be allowed to the Appellant.
- Reliance was placed on the Advance Ruling in the case of *Nipro India Corporation Private Limited*³ wherein the ITC in relation to civil works, mechanical works and electrical works was held to be admissible on the ground that they are used or intended to be used in course of furtherance of business; and also on the case of *Safari Retreats Pvt. Ltd and Anr. versus Chief Commissioner of Central Goods and Service Tax and Others*⁴ wherein ITC of goods / services used for construction of a shopping mall, meant for letting out, was allowed.

¹ TS-292-AAAR-2020-NT

² 2019 (10) TMI 1018

³ 2018-VIL-206-AAR

⁴ 2019-VIL-223-ORI



Ruling

- Based on reading of section 17(5)(d), the Appellate Authority set out the following as criteria to be fulfilled for the restriction on availment of ITC to apply:
 - The goods or services should be used for construction of immovable property
 - The construction can be in the form of reconstruction, renovation, addition, alterations, or repairs to immovable property
 - The construction should be on **its** own account
 - The goods or services received are capitalised in the books of account
- To determine if the glass partitions were permanently attached to the earth and if there was in fact construction of immovable property, a two-fold test of extent of annexation and object of annexation was applied.
- **Extent of Annexation**

It was held that extent of annexation means annexing the object, by which it ceases to be detachable and would need to be demolished if one were to remove it. The Appellate Authority concluded that the glass partitions were neither permanent nor attached to the earth, as they could be easily removed and moved.
- **Object of Annexation**

The Appellate authority held that where the object of the annexation is “permanent beneficial enjoyment of the immovable property”, then the fixture is no longer movable but becomes a part of the immovable property. The Appellate authority concluded that though the partitions were fastened to the earth with the help of nuts and bolts, they can be dismantled without demolishing the civil structure and hence, the glass partitions are not immovable property.
- The Appellate Authority further held that the above conclusion is also supported by the fact that the

glass partitions are accounted as fixed assets under the head of ‘Furniture and fixtures’ and are not capitalised as immovable property but are rather categorised as moveable assets in the books.

- It is remarked that 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.
- Based on the findings it was pronounced that the Appellant can avail ITC on purchase of the detachable sliding and stacking glass partition, and the restriction under section 17(5)(d) of CGST Act does not apply. The AAR stands reversed to that extent.

Dhruva Comments

The AAAR for a change is thought through, and sets out very concrete criteria for determining if the restriction on availment of ITC with respect to construction of immovable property will apply in terms of section 17(5)(d) of the CGST Act. Until now most AARs have gone on the basis of intent to move, which is not the right determination criterion.

The tests of Extent of Annexation and Object of Annexation, as held in the AAAR, have been the cornerstones for determining whether a property qualifies as ‘immovable’ or ‘movable’ for the purposes of taxation. The Supreme Court in *Commissioner of Central Excise., Ahmedabad versus Solid and Correct Engineering Works [2010 (252) ELT 481 (SC)]* has held that even if the goods are affixed to the ground, it must be done with an intention to do so permanently and mere setting up of the plant to provide stability would itself not lead to a conclusion on immovability.

The test of immovability not only becomes relevant from a credit perspective, but also relevant to determine whether the activity can be a works contract.





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