



Dimensions – 49th Edition

Rulings under the GST regime:

1. M/s Indag Rubber Limited - Rajasthan¹

Issue for Consideration	Whether Input Tax Credit (ITC) can be claimed on supply of goods and services which are used for carrying out civil and external developmental works for setting up of Maintenance Repair and Overhaul (MRO) facility which will be further rented out?
Discussion & Ruling	<p>Discussion:</p> <ul style="list-style-type: none"> • The Applicant would construct an MRO facility which would be rented and GST would be paid on such rental income. The Applicant has procured goods / services in order to undertake civil work (earth work, brick work, steel work, etc.) and external developmental works (site levelling and area grading) for construction of the MRO facility. • The Applicant approached the Authority and contended that the ITC should be eligible in respect of the goods / services procured for civil and external developmental works on the basis of the following grounds: <ul style="list-style-type: none"> - The conditions specified in section 16(2) of the CGST Act will be fulfilled before the availment of the ITC; - As per section 17(5)(d) of CGST Act, ITC is not available in case where the output is not taxable. Sale of building is neither a supply of service nor a supply of goods as per Schedule III of the CGST Act; - As per CBIC Press release dated December 08, 2018, ITC will be eligible for construction materials and capital goods used for construction of flats, houses, etc. where completion certificate has not been issued. Accordingly, section 17(5)(d) restricts the ITC where immovable property is supplied after completion certificate.

¹ Order no. RAJ/AAR/2019-20/23 dated October 21, 2019



	<ul style="list-style-type: none">- Since renting of an immovable property is a supply of service, the input tax credit on the goods and services used for the construction of MRO facility can be availed.- Reliance was placed on the judgment of <i>M/s Safari Retreats Private Limited and Another v. Chief commissioner of CGST and others</i>², wherein the Hon'ble Orissa High Court had allowed the ITC on the goods / services used for construction of mall which was to be let out. <ul style="list-style-type: none">• The Authority observed as under:<ul style="list-style-type: none">- As per section 17(5)(d), ITC is not available for construction of an immovable property even when such goods or services or both are used in the course or furtherance of business;- Applicant's claim that ITC can be availed even if the output is taxable is an implicit interpretation. The purposive dimension of the section 17(5)(d) is blocking of credit for construction of immovable property;- Applicant's activity is two-phased viz. construction of immovable property and leasing of the same. The question raised by the Applicant is in regard to the first phase. Therefore, the Applicant's contention that renting of MRO facility post construction is taxable or not is immaterial in determining the eligibility of ITC. <p>Ruling:</p> <p>The Applicant is not eligible to claim ITC on the Civil and External Developmental Works used for setting up of MRO facility.</p>
Dhruva Comments / Observations	<ul style="list-style-type: none">• The present ruling has been passed without taking cognisance of <i>Safari Retreats (supra)</i> which has been relied upon by the Applicant and agreed upon by the jurisdictional officer. The judgment of Hon'ble Orissa High Court has been appealed before the Hon'ble Supreme Court and is pending for hearing.• The Authorities have been constantly denying the ITC used for the construction of an immovable property which is further let out. The said dispute continues from the Pre-GST regime.

2. M/s Goa Industrial Development Corporation - Goa³

Issue for Consideration	Whether the compensation paid by Goa Industrial Development Corporation (GIDC / Applicant) shall be classified as an obligation to refrain from an act, or to tolerate an act and hence, shall be chargeable to GST?
Discussion & Ruling	<p>Discussion:</p> <ul style="list-style-type: none">• The Applicant is a Government of Goa undertaking and vide a lease deed had allotted land to various parties for setting up a Special Economic Zone. However, due to obstruction from people the deed did not materialise. Accordingly, the deposit taken from the parties had to be refunded.

² 2019 (5) TMI 1278, Orissa High Court

³ Order no. GOA/GAAR/01 of 2019-20/1875 dated October 17, 2019



	<ul style="list-style-type: none">• Applicant refused to pay compensation on this deposit as original contract never contained such clause.• The parties approached the Supreme Court whereby, it directed the Applicant to compensate parties with interest at the rate of 8.25%.• The Applicant approached the Authority to determine whether such compensation paid would qualify as declared service in terms of clause 5(e) of Schedule II of CGST Act.• The Authority taking into account the various provisions of the GST law, observed that the Applicant has agreed to do an act of vacating the claim by parties of setting up SEZ units for which GIDC had paid consideration. The compensation paid along with original amount would qualify as 'supply of services'. <p>Ruling:</p> <p>The compensation paid would qualify as 'supply of services' under clause 5(e) of Schedule II of CGST Act.</p>
Dhruva Comments / Observations	<p>The ruling has concluded that there is a supply of service even though there is no express agreement between the parties and the amount is determined by the Court. Interestingly, the ruling confirms that there is a supply of service by the Applicant even though the consideration is also paid by the Applicant.</p>

Trade Notice issued by DGFT:

3. Imported goods being classified under the residuary category of 'Others'	
Background	<p>Trade Notice No. 37/2019-2020 dated October 22, 2019 (Notice- I) was issued advising trade and industry not to casually resort to adopting the residuary HSN classification of 'Others', while specific 8-digit HSN codes are available for goods being imported and exported. The Commerce and Industry Minister stated that almost 20% of the value of imports in 2018-19 were imported under the 'Others' category. Such misclassification was referred to as 'avoidable errors' in the Notice - I. The Notice - I also incorporated a brief warning that such mis-declaration will have consequences as provided for in the Foreign Trade (Development and Regulation) Act, 1992, which range from search to confiscation and penalty.</p>
Clarifications	<ul style="list-style-type: none">• Trade Notice No. 46/2019-2020 dated January 17, 2020 (Notice – II) is issued reiterating Notice – I and recording that the mis-declaration of HSN classification as 'Others' continues despite of issuance of Notice – I. Notice – II adds that if the non-compliance continues, a licensing scheme may be introduced for all items imported under the 'Others' category by shifting the goods classified as 'Others', from 'free' to 'restricted' category. The Notice-II further states that if the current HS codes are insufficient to cover the goods they are importing, suggestion on HS codes to cover the goods being imported should be made immediately.• The introduction of the licensing scheme for the goods classified as 'Others', will entail licensing permission / approvals to enable the import of these goods.



**Dhruva
Comments /
Observations**

- The Issuance of Notice – II is indicative of the fact that the tax leakage on account of classification of imported goods under the residuary category of ‘Others’ is significant, which has compelled the Government to seriously review the import policy to plug the loopholes. Hence, the trade and industry can expect substantial changes in the policy applicable in this regard. Also, though the Commerce and Industry Minister had indicated a levy of the special (additional) duty on imports under this category, the Notices do not make any mention of such proposed levy.
- The Importer should use the interim time, until such change in policy is introduced to review the HSN classification of goods classified as ‘Others’, as they will specifically be under the scanner. Changes or errors if any, in HSN classification of goods should be communicated and corrective action should be taken suo-moto to avoid penal implications, especially as the Notices specifically call out to the importers to highlight instances of insufficiency / ambiguity.
- Currently, there is a comprehensive and exhaustive list of restricted goods for Import and export in India and it has not been indicated whether the new licensing scheme would be extension of the existing list (i.e. Chapter wise) or a separate scheme would be introduced for only goods imported under this classification.



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