

AAAR: ITC unavailable on supply of Air Conditioning & Cooling and Ventilation System, upholds AAR

Jun 05, 2024

In the matter of Wago Pvt Ltd [TS-335-AAAR(GUJ)-2024-GST]

Conclusion

Gujarat AAAR rules that ITC is not eligible on supply of air conditioning and cooling system and ventilation system since it ceases to be a plant and machinery and is blocked credit u/s 17(5)(c) of the CGST Act, 2017 as the same is works contract services for construction of an immovable property thus, upholds [AAR](#); AAAR discerns that immovable property is not defined under GST however, it is defined under the General Clauses Act, 1897, to include land, benefits arising out of land and things attached to the earth, or permanently fastened to anything attached to the earth, and not agreed to be severed before supply or under a contract of supply; On a conjoint reading of provisions and restrictions relating to ITC availment and blocked credits i.e. Section 16 and 17 of the CGST Act, AAAR reckons that the restriction imposed is that ITC is not eligible for works contract services when supplied for construction of any immovable property except when it is an input service for further supply of works contract service and the only exception being when the works contract service is supplied for construction of plant and machinery; Observing that the work order includes amongst other things even the maintenance and warranty of the air conditioning and cooling system and the ventilation system, AAAR thus renders the averment raised that the air conditioning and cooling system and ventilation system, cannot be treated as one system and that the vendor is supplying various machines and not one standalone system and that the Air conditioning system is nothing but a group of inter-related and inter-dependent machines performing a desired task, that they do not lose their identity, as untenable; Drawing inference from CBEC's Order No. 58/1/2002 dated January 15, 2002, AAAR opines that, supply of air conditioning & Cooling system & Ventilation system falls under the category of works contract service supplied for construction of an immovable property and also relies on Apex Court's judgment in Globus Stores P. Limited, where it was held that air-conditioning plant is an immovable property; AAAR holds that as the installation of the air conditioning and cooling system and ventilation system via a works contract service, makes it an immovable property, it ceases to be a plant and machinery:AAAR GUJ

Decision Summary

The ruling was delivered by Shri. Samir Vakil (Member-State Tax) and Smt. B V Siva Naga Kumari (Member-Central Tax).

Mr. Chitresh Gupta and Mr. R Sharma appeared on behalf of the Appellant.

Case Law Information

Appellant/Applicant/Complainant Name

- Wago Private Limited

Counsel of Appellant/Applicant/Petitioner

- Chitresh Gupta
- R Sharma

Authority Level & Location

- Appellate Authority for Advance Ruling Gujarat

Appeal Number

- Guj/GAAR/IV33 12021

Date of Pronouncement

- 2024-05-29

Ruling in favour of

- Respondent

Judges

- Samir Vakil (Member- State Tax).
- B.V. Siva Naga Kumari (Member- Central Tax)