

GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD	
ADVANCE RULING(APPEAL) NO. GUJ/GAAAR/APPEAL/2024/02 (IN APPLICATION NO. Advance Ruling/SGST&CGST/2021/AR/21)	

Date : 29.05.2024

Name and address of the appellant	:	M/s. Wago Private Limited, Block No. 94, NH 8, Village Vadsala-Varnama, Vadodara, Gujarat 391 242
GSTIN of the appellant	:	24AAACW0947R1ZV
Jurisdiction Office	:	Office of the Assistant Commissioner of State Tax, Unit-44, Division-5, Range-11, Vadodara.
Advance Ruling No. and Date	:	Guj/GAAR/R/33/2021 dated 30.7.2021
Date of appeal	:	06.09.2021
Date of Personal Hearing	:	20.2.2024
Present for the appellant	:	Shri Chitresh Gupta and Shri R Sharma.

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017' and 'GGST Act, 2017') are *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. The present appeal has been filed under section 100 of the CGST Act, 2017 and the GGST Act, 2017 by M/s. Wago Private Limited, Block No. 94, NH 8, Village Vadsala-Varnama, Vadodara, Gujarat 391 242 [for short 'appellant'] against Advance Ruling No. Guj/GAAR/R/33/2021 dated 30.7.2021, passed by the Gujarat Authority for Advance Ruling [GAAR].

3. Before the GAAR, the appellant had raised the following question viz

"The applicant wishes to know the admissibility of input tax credit (ITC) of GST paid on the procurement of plant and machines [mentioned in para 3- above] including the services of installation and commissioning the same in terms of the provisions of section 16 and 17 of the CGST Act, 2017."



Very briefly put, the facts are that the appellant was establishing a new factory in Vadodara, Gujarat. Primarily, the appellant wanted to know whether they were eligible for ITC in respect of [a] Air conditioning and cooling system and [b] Ventilation system -Plant and Admin.

4. By the impugned ruling dated 30.7.2021, the GAAR held that the appellant was not eligible for ITC on Air conditioning and cooling system and Ventilation system since they are blocked credit falling under section 17(5) of the CGST Act, 2017.

5. The GAAR arrived at the above ruling on the basis of the below mentioned findings *viz*:

- that the appellant had awarded a single work order dated 1.9.2020 to M/s. Skai Air Control P Ltd to supply, install and commission HVAC [heating, ventilation and air conditioning system] works for proposed factory building, assembly building, admin. building, staff facility and associated works;
- that the total contract value is inclusive of cost of materials, labour, machineries; that GST is payable extra at actual cost; that the contract value is for the entire scope of supply;
- that the invoices do not describe the nature of supply; that the description used is either of goods or labour charges; that the invoices raised are for part and components of the HVAC system and for labour work of such system;
- that they have divided the air conditioning and cooling system into four sub categories viz air conditioning and cooling system, process water system, exhaust system and VRF work;
- that the process water system is attached to the moulding machine;
- that there is no specification of moulding machine to be fitted with any further system/ sub system to function as a moulding machine;
- that all the parts of Air conditioning and cooling system get assembled at the site and fitted on the wall and roof and the floor of the building;
- that the different parts of 'Air conditioning and cooling system' consequent to being fitted in the building, loose their identity as machines or parts of machines and become a system, namely Air conditioning and cooling system.
- that AC System comes into existence by assembly and connection of various components and parts; that though each component is dutiable to GST; that though Air conditioning unit is dutiable as per HSN, an Air conditioning plant/system is not dutiable;
- that even in terms of 37B order No. 58/1/2002-Cx dated 15-1-2002, issued for the purpose of uniformity in classification of goods erected and installed at site, the air conditioning system has been held to be in the nature of systems and not machines as a whole; that they come into existence by assembly and connection of various components and parts; that though each component is dutiable, the air conditioning system as a whole cannot be considered to be excisable goods;
- that on the question of whether an air conditioning plant is a movable property or not, the Hon'ble SC in the case of Municipal Corporation of Greater Bombay v/s Indian Oil Corporation Ltd. [199 Suppl. SCC 18], laid down the test of permanency; that the air conditioning system cannot be taken as such to the market for sale and cannot be shifted from one place to another as such and further can be shifted only after dismantling; that the Air Conditioning system once installed and commissioned in the building is transferred to the building owner and this involves transfer of property;
- that the supply and erection of Central Air conditioning system merits classification under works contract service;
- that such supply of centralised air conditioning plant is covered under section 17(5)(c) of the CGST Act;
- that ventilation system is a combination of various components and parts & results into an immovable property;



- that 'Ventilation system' once installed and commissioned in the building is transferred to the building owner and this involves the element of transfer of property; that 'Ventilation system merits to be classified as work contract supply as the system per se is an immovable property

6. The appellant feeling aggrieved by the impugned ruling is before the Gujarat Appellate Authority for Advance Ruling [GAAAR], raising the following averments viz

- that awarding of a single work order does not lead to change in the nature of supply; that there is no legal bar that a single party cannot be issued a work order for providing multiple goods and/or services;
- factory shall be air-conditioned by chilled water system which shall comprise of chilled water pump to circulate chilled water;
- Administration & canteen building shall be air conditioned by VRV/VRF type air-conditioning system;
- that when the System description has clearly specified requirements separately for factory area, canteen building and server room, it cannot be construed as one system merely on account of issue of single work order issued to a single vendor;
- that AAR has held that invoices do not describe the nature of supply; that it is because the vendor is supplying various machines and not one standalone system thus invoices do not contain the description of any system;
- that machine which are grouped under process water system are used in plant as a part of production process in injection moulding machine; that the process water system is used to bring down the temperature so that the moulded part can be cooled & taken out;
- the term "system" is not defined in GST Act;
- that the Air conditioning system is nothing but a group of inter-related and inter-dependent machines performing a desired task; that the HVAC system is also a machine;
- that different machines may become part of air conditioning and cooling system; that each machine has a role to play like the chiller provides cool air, pumping system provides cool water, exhaust system ensures that there is sufficient ventilation etc.; that they become part of an Air conditioning system and the individual machines do not lose their identity;
- that in terms of CBEC Circular No. 58/1/2002-Cx dated 15-1-2002, it can be inferred that plants are actually a system or a network of machines; that the air conditioning and cooling system and ventilation system is a network of machines, put together for the operational efficiency; that HVAC system may not be considered as a single unit; that the circular deals with the excisability of Air Conditioning Plant/system; that the intention of the circular was to determine whether it is excisable goods or otherwise;
- that even if all the machines are part and parcel of HVAC System, the HVAC system is also a machine entrusted to provide cooling for all production processes and area and hence ITC cannot be disallowed under section 17(5)(c) of CGST Act;
- that in any case the classification under Customs Tariff arises in case of outward supply; that the appellant is seeking a ruling regarding the eligibility of Input Tax Credit on the parts or sub-system of such air conditioning and cooling system;
- that the facts of the case in Municipal Corporation of Greater Bombay & Ors. v/s Indian Oil Corporation Ltd. [199 Suppl. SCC 18] neither relate to installation of Air Conditioning and Cooling System and Ventilation System nor eligibility of ITC;
- that since all the parts/machines can be dismantled and taken elsewhere without any substantial damage, the machines/ assets forming part of HVAC system are movable;
- that under section 17(5)(c), *ibid*, Plant & Machinery are specifically excluded;
- that the 'Ventilation system' merits to be classified as work contract supply as the system per se is an immovable property;
- that Ventilation System are integral part of HVAC contract awarded to M/s Skai Air Control; that the grounds of appeal pertaining to HVAC is also applicable to the Ventilation System.



7. Personal hearing in the matter was held on 20.2.2024 wherein Shri Chitresh Gupta and Shri R Sharma, appeared on behalf of the appellant and reiterated their submissions. They also submitted a brief note, explaining what a cooling system in injection moulding is in addition to the cooling method of injection mould, and cooling system design and water cooling system.

Discussions and Findings:

8. We have gone through the facts of the case as mentioned in the Appeal papers, the Ruling of the GAAR, documents on record and oral as well as all the written submissions made by the appellant.

9. We find that the appellant had sought ruling from GAAR on the questions mentioned in para 3 *supra* which was decided vide the impugned order dated 30.7.2021.

10. The provisions of ITC and blocked credit provided under sections 16 & 17 of the CGST Act, 2017, states as under: [relevant extracts only]

Section 16. Eligibility and conditions for taking input tax credit.-

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

“Section 17: Apportionment of credit and blocked credits

(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

.....
.....

(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;



(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business .

Explanation."For the purposes of clauses (c) and (d), the expression 'construction' includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

Explanation.- For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes-

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises.

11. 'Immovable property' is not defined under GST. However, its defined under section 3(26) of 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. Likewise, section 3(36) of General Clauses Act, 1897, defines "movable property" to mean property of every description, except immovable property. Further, section 3 of the Transfer of Property Act, 1882 stipulates that unless there is something repugnant in the subject or context, "immovable property" does not include standing timber, growing crops or grass. Section 3, further, defines the term "attached to the earth" to mean (a) rooted in the earth, as in the case of trees and shrubs (b) embedded to earth, as in the case of walls or buildings and (c) attached to what is so embedded for permanent beneficial enjoyment of that to which it is attached. Thus, on a conjoint reading, "immovable property", essentially means something which is attached to the earth, or permanently fastened to anything attached to the earth, or forming part of the land and not agreed to be severed before supply or under a contract of supply.

12. We now move on to examine the contention of the appellant as to whether they are eligible for ITC on air conditioning and cooling system and ventilation system, for which this appeal is preferred.

13 **Air Conditioning & Cooling system and Ventilation system**

13.1 The appellant's contention is mentioned in para *supra* and is not being repeated for brevity. However, his primary contention still being that when the System description has clearly specified requirements separately for factory area,



canteen building and server room, it cannot be construed as one system merely on account of issue of single work order issued to a single vendor; that the invoices do not describe the nature of supply because the vendor is supplying various machines and not one standalone system thus invoices do not contain the description of any system; that the Air conditioning system is nothing but a group of inter-related and inter-dependent machines performing a desired task; that the HVAC system is also a machine; that though the machines become part of an Air conditioning system, the individual machines do not lose their identity; that the HVAC system is also a machine entrusted to provide cooling for all production processes and area and hence ITC cannot be disallowed under section 17(5)(c) of CGST Act. Similar grounds have been taken even for the ventilation system installed in Plant and Administration.

13.2 A conjoint reading of sections 16(1) and 17(5)(c), *ibid*, shows that ITC can be availed by a registered person subject to conditions and restrictions prescribed on **any supply of goods or services or both**, which are used or intended to be used in the course of furtherance of his business. The restrictions imposed [as far as the present context is concerned] 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. The only exception being when the works contract service is supplied for construction of plant and machinery. The section further goes on to define plant and machinery.

13.3 Now, as per www.electricalworkbook.com in a central air-conditioning system, all the components of the system are grouped together in one central room and conditioned air is distributed from the central room to the required places through extensive duct work. The whole system can be divided into three parts.

- i) Plant room, which includes compressor, condenser and motor
- ii) Air handling unit (AHU room)
- iii) Air distribution system (Ducting)

13.4 The plant room is located away from the room to be air conditioned. Other components are grouped together in a AHU and conditioned air is circulated through air distribution system i.e. ducting with the help of fan or blower to the room to be air-conditioned. The air, which is to be conditioned, is directly allowed to flow over the evaporator coil. Low pressure and temperature refrigerant passing through evaporator coil absorbs heat from the air. Thus, the air gets cooled.



13.5 From the details mentioned in para 10 of the impugned ruling dated 30.7.2021, we find that the work order awarded to M/s. Skai Air Control P Ltd., to supply, install and commission HVAC works for proposed factory, assembly, administration, staff facility & associated works. The work order includes amongst other things even the maintenance and warranty of the air conditioning and cooling system and the ventilation system. Thus 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, is not a legally tenable argument. It is evident, from the photographs reproduced in the impugned ruling dated 30.7.2021 at para 5.1, the Air Conditioning and cooling system and ventilation system becomes a part of the building once it is installed and thereby an immovable property.

13.6 It is in this context that we would like to refer to CBEC's [now CBIC] Order No. 58/1/2002-CX dated 15.01.2002, wherein under Para 5(iii), with regards to Refrigeration/ Air-Conditioning Plants, it is mentioned as follows:

"5(iii) Refrigeration/Air conditioning plants. These are basically systems comprising of compressors, ducting, pipings, insulators and sometimes cooling towers etc. They are in the nature of systems and are not machines as a whole. They come into existence only by assembly and connection of various components and parts. Though each component is dutiable, the refrigeration/air conditioning system as a whole cannot be considered to be excisable goods. Air conditioning units, however, would continue to remain dutiable as per the Central Excise Tariff."

Taking inference from the above Board's circular we find that the supply of Air Conditioning & Cooling system & Ventilation system falls under the category of works contract service supplied for construction of an immovable property. We would also like to rely on the judgement of the Hon'ble Supreme Court in the case of Globus Stores P. Limited [2011 (267) ELT 435 (SC)] wherein it was held that air-conditioning plant is an immovable property.

*3. In the present appeals also, we are concerned with the air-conditioning plant which is the same good as that of Viridi Brothers (supra). The learned counsel appearing for the appellant, however, has drawn our attention to the decision of this court in Commissioner of Central Excise, Ahmedabad v. Solid & Correct Engineering Works - 2010 (252) E.L.T. 481. In the said decision, this court had considered the case of setting up of Asphalt Drum/Hot Mix plant. Apart from the fact that the aforesaid good is different from the good in question, even the circular which is referred to and relied upon by this Court in the case of Viridi Brothers (Supra) was not considered in the said decision as the subject matter was totally different. **Besides, the air-conditioning plant was an immovable article whereas Asphalt drum/Hot mix plant is a movable article.** Therefore, in our considered opinion*



the facts of both the cases are different and, therefore, distinguishable. For what is required to be decided in the present case stands already decided by this court in Viridi Brothers (supra), which applies to the case in hand with full force.

[emphasis supplied]

13.7 As the installation of the air conditioning and cooling system and ventilation system via a works contract service as pointed out above, makes it an immovable property, it ceases to be a plant and machinery.

14. We agree with the findings and the ruling of the GAAR vide the impugned order dated 30.7.2021. The Appellant, we find has not produced anything compelling us to interfere with the findings of the GAAR.

15. In view of the foregoing, we confirm the order of the GAAR and reject the appeal filed by the appellant further holding that the appellant is not eligible to avail ITC on supply of air conditioning and cooling system and ventilation system since it ceases to be a plant and machinery and is blocked under Section 17(5)(c) of CGST Act, 2017 as the same is works contract services for construction of an immovable property.


(Samir Vakil)
Member (SGST)


(B V Siva Naga Kumari)
Member (CGST)

Place : Ahmedabad

Date : 29.05.2024

