

TAX FLASH NEWS

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Pre-fabricated warehouse structure is immovable property – AAR, West Bengal

Background

Recently the Authority for Advance Ruling, West Bengal has held that a pre-fabricated warehouse cannot be conceived without beneficial enjoyment of the civil structure embedded on earth and thus the same is an immovable property.

Thus, input tax credit attributable to the construction of such warehouse is not admissible.

Facts of the case

Tewari Warehousing Co. Pvt. Ltd.¹ (the applicant) is in the business of providing warehousing services. It proposed to construct a warehouse on a leasehold land using pre-fabricated technology.

The applicant submitted that, the aforementioned structure are fixed by bolts to a low RCC platform embedded to the ground. The rest of the structure, like columns, beams, rafters, wall sheets, roof shed, etc. are all joined with one another by nuts and bolts and can be dismantled and restructured at another location.

In light of the above facts and the restriction imposed in section 17(5)(c) and (d) of the CGST Act, applicant had filed an application to seek ruling of whether it can avail input tax credit (ITC) on the inward supplies used for construction of the aforementioned warehouse.

AAR Ruling

The pre-fabricated system has been used for constructing the warehouse and the same is not a warehouse in itself. The issue under contention is not the beneficial enjoyment of the system, but the property of the warehouse which is being built.

Being a storage facility, a warehouse is associated with the space available, whereas the system refers to the materials and structures used for turning the space into a covered storage facility. As technology advances, the engineering for building a factory, house, and even a bridge uses more and more pre-fabricated structures, which have obvious benefits in terms of time and cost. Such building blocks should not, however, be confused with the property being built, which is directly associated with the beneficial enjoyment of the land.

Further, the applicant had taken the land on a 30 years lease period for the purpose of building a storage facility. The structure that is being built is therefore not intended to be used for temporary purpose.

In light of the above, it was held that the technology used for the construction of the warehouse involves the application of pre-fabricated structures and also civil work for supporting the pre-fabricated structure and developing the floor of the warehouse. The warehouse cannot be conceived without beneficial enjoyment of the civil structure embedded on earth. The warehouse being constructed is, therefore, an immovable property, and the input tax credit is not admissible on the inward supplies.

Our comments

The ruling had in its observation distinguished the mobility test applied in Uttarkhand AAR on Vindhya Telelinks in determining what constitutes an immovable property. It had observed that in a telecom tower, the intent is to enjoy the benefit of the tower and not of the concrete base to which it is attached.

The ruling would grossly impact warehousing service providers as the cost of constructing is an important variable.

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