



**BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax**

D. No. 5-56, Block-B, R.K. Spring Valley Apartments, Edupugallu, Vijayawada-521151

Present:

1. Sri. D. Ramesh, Additional Commissioner of State Tax (Member)
2. Sri. M. Sreekanth, Joint Commissioner of Central Tax (Member)

AAR No.37 /AP/GST/2019 dated: 12.12.2019

1	Name and address of the applicant	M/s Vinayaka Constructions, D. No. 1-277, Venu Gopala Swamy Temple, Ubalanka East Godavari-533237 Andhra Pradesh
2	GSTIN	37AADFV5348K1ZP
3	Date of filing of Form GST ARA-01	31.7.2019
4	Date of Personal Hearing	11.11.2019
5	Represented by	Sri Godavari Srinivas, Authorized Representative
6	Jurisdictional Authority – Centre	Superintendent, Ravulapalam Range CGST Division, Rajamahendravaram
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	d) Admissibility of input tax credit of tax paid or deemed to have been paid

PROCEEDINGS

(Under sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub-section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s Vinayaka Constructions,(hereinafter referred to as applicant), registered under the Goods & Services Tax.



2. The provisions of the CGST Act and APGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the APGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or AP GST Act would be mentioned as being under the GST Act.

3. Brief Facts of the case:

M/s Vinayaka Constructions, D.No 1-277, Venu Gopal Swamy Temple, Ubalanka, Ravulapalem, East Godavari District-533237 (hereinafter referred to as the Applicant) is a works contractor executing the works awarded by the Government of Andhra Pradesh, Panchayat Raj Department, Eluru Circle.

The name of works being executed by the applicant is "Reconstruction of the road work "Penugonda to Munamarru" in Penugonda Mandal of Achanta Assembly Constituency, West Godavari District.

The scope of the work is clearing and grubbing, stripping excess soil, earthwork, GSB & WMM, BT Prime coat, Tack Coat & BM, CD works BT tack coat, BM, SDBC, CC pavement Shoulders & Road Furniture by mechanical means and disposal of unserviceable materials and stacking of serviceable material as per schedule-A of the agreement.

The predominant goods and services being utilised in execution of the above works are: Batching plant using for mixing of bitumen and metals to prepare hot mix for use in laying of roads; Road Rollers; Paver finisher Bitumen; Metal Chips, Gravel; Repairs & Maintenance expenses of machinery and vehicles (tippers). The services of Engineers, Sub Contractors, Consultants, Hiring of machinery and vehicles are being used in execution of the above works.

4. Questions raised before the Authority:

1. Whether the applicant is eligible for Input Tax Credit (ITC) in respect of the GST paid on goods and services used as inputs in execution of "Works Contracts" specifically in execution

of Road work contracts to Government Engineering Departments.

2. If not, on which type of goods/ services the ITC is not eligible.



On Verification of basic information of the applicant, it is observed that the applicant falls under Centre jurisdiction, i.e. Superintendent, Ravulapalam Range CGST Division Rajamahendravaram. Accordingly, the application has been forwarded to the jurisdictional officer and also a copy marked to the State tax authorities to offer their remarks as per the Section 98(1) of CGST /APGST Act 2017.

In response, no remarks are received from the jurisdictional officer concerned regarding whether there are any proceedings lying pending or passed relating to the applicant on the issue, for which the Advance Ruling sought by the applicant.

5. Record of Personal Hearing:

Sri Godavari Srinivas, the authorized representative of the applicant failed to attend the Personal Hearing on 23.10.2019 and filed for adjournment. Subsequently he appeared for Personal Hearing on 11.11.2019 and reiterated the submission already made in the application.

6. Applicant's Interpretation of Law and Facts:

The applicant submits that they are eligible to avail the ITC on all the goods and services being utilised in execution of the works, in view of the exclusion clause U/S. 17(5)(c) of the CGST Act, 2017. According to this clause, where the input services/goods are utilised for further supply of works contract service there is no embargo in availing the ITC on the goods and services utilised in execution of works contracts.

In the instant case, as explained supra the applicant being a works contractor in execution of the works awarded by the Government of Andhra Pradesh (AP) the ITC availed by them has to be considered that it is an input service for further supply of works contract service.

Even as per the provisions of Section 17(5)(d) the activity of the applicant is not falling under this ineligible category, because the applicant executing the works for the State of AP but not for itself. As per the clause (d), if the goods and / or services received by taxable person are utilised for construction of an immovable property (other than plant and machinery) on his own account. Apparently in the instant case the constructions of roads by the applicant is not on his own account, but it is exclusively constructing as a development of the property of the State of AP.



7. Discussion and Findings:

We have examined the issues raised in the application i.e. eligibility of ITC for the stated works, as governed under the provisions of respective GST Acts.

We find that the applicant is providing work contract service under Section 2(119) of the CGST Act 2017, for construction of road "Penugonda to Munamarru" in Penugonda Mandal of Achanta Assembly Constituency, West Godavari District and the issue to be clarified is whether they are restricted to claim input Tax Credit in terms of clause (c) or (d) of sub-section 5 of section 17 of CGST ACT, 2017

Section 17 (5) (c) of CGST Act 2017: *Input Tax credit shall not be available in respect of the following namely: "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 services".*

ITC for works contract can be availed by the applicant as he is in the same line of business and entitled to take ITC on the tax invoice raised by his supplies as his output is works contract services.

Now we examine whether the restriction of ITC is applicable as per Section 17 (5)(d).

Section 17 (5)(d) reads as "*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*".

In the instance case, the applicant is the supplier of works contract services and the goods and services received by him for construction of immovable property (other than Plant or machinery) are neither owned nor capitalized in his own account, but passed on to the contractee. Hence even as per the provision of Section 17(5) (d), the applicant does not fall under this ineligible category. Thus the restriction contained under clause c & d of sub section 17(5) is not applicable to the applicant in the given circumstances.

In the given facts and circumstances, we concur with the contention of the applicant that they are entitled to claim ITC paid on all eligible Goods and Services.



RULING

(Under Section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)

The applicant is eligible for Input Tax Credit (ITC) in respect of the GST paid on goods and services used as inputs in execution of "Works Contracts". Input Tax Credit restriction under Section 17(5)(c) and 17(5)(d) will not apply to the applicant as his output is works contracts service.

**Sd/- D. RAMESH
MEMBER**

**Sd/-M. SREEKANTH
MEMBER**

//t.c.f.b.o//


Assistant Commissioner (ST)
Assistant Commissioner (State Tax)
J/o. Chief Commissioner of State Tax,
Andhra Pradesh, Vijayawada.

TO

1. M/s Vinayaka Construction, D.No. 1-277, Venu Gopal Swamy Temple, Ubalanka, Ravulapalem, East Godavari District, Andhra Pradesh-533237. (By Registered Post)

Copy to

1. The Assistant Commissioner of State Tax, Ambajipet Circle, Kakinada Division (By Registered Post)
2. The Superintendent of Central Tax, Ravulapalem Range, CGST Division Rajamahendravaram (By Registered Post)

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Government of Andhra Pradesh, Eedupugallu, Vijayawada.
2. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central Tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035. (A.P) (By Registered Post)

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.

