

ITC admissible on upfront lease premium paid for renting of immovable property - Tamil Nadu AAR

1 September 2022



Summary

The Tamil Nadu Authority for Advance Ruling (AAR) held that credit of tax paid on upfront lease premium for services of renting of immovable property for business purpose is admissible under the Goods and Services tax (GST) Act. The AAR stated that upfront lease premium paid for extended corporate office is in the course of business and has no relation to construction activity of covered space. Therefore, the provisions of blocked credit¹ are not applicable and thus, the credit of tax paid on upfront lease premium by the applicant is available, subject to fulfilment of prescribed conditions².

Facts of the case

- The applicant³ has paid upfront premium for long-term lease of a covered space, intended to be used by the applicant as an extended corporate office.
- The applicant submitted that it is a simple lease contract and does not construe to be a construction activity. Hence, input tax credit (ITC) should be available⁴.
- The applicant has approached the AAR to seek clarity on eligibility to claim ITC of tax paid on upfront lease premium.

for business purpose and the upfront premium paid is not related to construction activity. The upfront premium paid is only for the service of renting of immovable property for business purpose. Hence, the provisions of blocked credit are not applicable in the instant case.

Tamil Nadu AAR observations and ruling⁵

- **Expense is in course of business:** The AAR stated that upfront lease premium paid for extended corporate office is in the course of business. Thus, the credit of tax paid on upfront lease premium by the applicant is available subject to fulfilment of prescribed conditions.
- **Provisions of blocked credit are not applicable:** The AAR stated that credit of tax paid for construction of plant and machinery is available. Further, the lease allotment letter does not talk about lease of construction activity on space leased

¹ Section 17(5) of the CGST Act 2017

² Section 16 of the CGST Act 2017

³ M/s Kamarajar Port Limited

⁴ Section 16 of the CGST Act 2017

⁵ TN/32/ARA/2022, Order dated 29 July 2022

Our comment

Earlier, the Telangana AAR in case of M/S. Daicel Chiral Technologies (India) Private Limited⁶, had held that the one-time lease premium paid is in relation to the construction of immovable property on their own account and therefore, ITC is blocked.

Similarly, the Tamil Nadu AAAR⁷ upheld the ruling of AAR⁸ in case of Inox Air Products Private Limited and held that the intention of law maker is to restrict the ITC on services related to land received for construction. The services received by the applicant are for construction of immovable property and therefore, the tax paid is blocked credit under GST.

However, in the present ruling, due emphasis has been given to the nature of the input service in order to determine the eligibility of ITC. Accordingly, the AAR held that the upfront premium paid is not in relation to the construction activity, rather it is for the services of renting of immovable property. Hence, the ITC is admissible under GST.

This is a welcome and important ruling and shall be helpful for the taxpayers engaged in similar business transactions.

⁶ TSAAR Order No.05/2020 A.R.Com/26/2018 dated 24 June 2020

⁷ A.R. Appeal No. 12/2021/AAAR, Order- in- appeal no. AAAR/22/2021(AR) dated 2 Dec 2021

⁸ TN/25/AAR/2021

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