

AUTHORITY FOR ADVANCE RULING, TAMILNADU
ROOM NO.206, 2ND FLOOR, PAPJM BUILDING, NO.1, GREAMS ROAD,
CHENNAI - 600 006.

RULING UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND UNDER
SECTION 98(4) OF THE TNGST ACT, 2017.

Members present:

Smt. D. Jayapriya, I.R.S., Additional Commissioner/ Member(CGST), Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600 034.	Smt. A Valli, M.Sc., Joint Commissioner/Member(SGST), Office of the Commissioner of Commercial Taxes, Chennai-600 006.
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Advance Ruling No. 07/ARA/2024 Dated: 30.04.2024

1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-Section (1) of Section 100 of CGST Act 2017/ TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed, is communicated.

2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-

(a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling.

(b) on the concerned officer or the jurisdictional officer in respect of the applicant.

3. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.

5. The provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act (herein referred to as an Act) are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

GSTIN Number, if any / User id	33AEQPM3966D2ZA
Legal Name of Applicant	M/s. Arthanarisamy Senthil Maharaj
Trade Name of Applicant(Optional)	M/s. A. Senthil Maharaj
Registered Address / Address provided while obtaining user id	No. 114, Race Course Road, Coimbatore Central, Coimbatore – 641 018. Tamil Nadu.
Details of Application	Form GST ARA – 01 Application Sl. No. 90/2023/ARA, dated 14.06.2023
Concerned Officer	State: Trichy Road Assessment Circle Centre: Coimbatore Commissionerate
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for	
A Category	Service Provision
B Description (in brief)	Provision of service under the category of Renting of Immovable Property, falling under SAC: 997212.
Issue/s on which advance ruling Required	1) Admissibility of input tax credit of tax paid or deemed to have been paid
Question(s) on which advance ruling is required	1) Whether Input Tax Credit is admissible on the “ROTARY PARKING SYSTEM” falling under HSN Code: 8428

M/s. A. Senthil Maharaj, No. 114, Race Course Road, Coimbatore Central, Coimbatore – 641 018 (hereinafter called as ‘the Applicant’) are registered under the GST Acts with GSTIN: 33AEQPM3966D2ZA. The Applicant is the provider of taxable service falling under the category of Renting of Immovable Property falling under Service Accounting Code (SAC): 997212 attracting GST @ 18%.

2. They have preferred this application seeking Advance Ruling on the following question:

1) Whether Input Tax Credit is admissible on the “**ROTARY PARKING SYSTEM**” falling under **HSN Code: 8428**

3. The Applicant submitted a copy of challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017.

4. Statement of facts in brief:

4.1 The applicant is supplying services of Renting of Immovable Property and to enhance the quality of output service provided they are desirous of installing a sophisticated multi-layer car parking system. The applicant submits that the parking facility is highly essential to retain the existing tenants as well as to have full occupancy.

4.2 The applicant submits that the multi-layer car parking system with highest space efficiency to accommodate parking of 18 cars is an independent installation and certainly not part of the building. That though the parking system is fixed to the base bed, it is detachable and this factual position illustrates the position that the parking system is only a movable property and not an immovable property. That the applicant would like to emphatically point out that the installation of parking system is intended solely for the purpose of furtherance of the business, for which GST registration has been obtained.

4.3 The applicant further submitted that the parking system is classifiable under the category HSN code 8428 and as per the quotation No. PARK/260/23 dated 09.05.2023 received from Parklayer Private Limited, Coimbatore, the estimated cost of the Rotary parking SM18XL is Rs. 64,80,000/- and corresponding GST liability is Rs. 11,66,400/-. That the estimated figures are approximate and applicable only for a particular period, which may get modified, based on the date of issue of the purchase order.

4.4 The applicant submitted that they are inclined to avail the GST paid on the parking system as Input tax Credit (ITC) and reproducing the provisions of Section 16 of the CGST Act, 2017 they stated that the requisite conditions as per the aforesaid legal provisions are fulfilled in the instant case and also that the impugned goods and/or services are intended to be used for furtherance of business (output service). The applicant also stated that the condition of Section 16 of the CGST Act, 2017 would be adhered to religiously.

4.5 Further referring to Section 17(5) of the CGST Act, 2017 they stated that as could be seen from the stipulations of Section 17(5)(c) and 17(5)(d) of the CGST Act, 2017, the credits are blocked only in respect of the activities relating to construction of an immovable property and not for installation of parking system. The applicant submitted that the specific exclusion of plant and machinery from the category of blocked credits is illustrative of the fact that the procurement of the parking system and installation of the same cannot fall within the ambit of blocked credits, by any stretch of imagination. The applicant also submitted that as per the explanation to sub-section 6 of Section 17 of the CGST Act, 2017 / TNGST Act, 2017, 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.

4.6 Further the applicant stated that the parking system is a separately identifiable and distinct product altogether falling under HSN code: 8428 and the identity of the goods remains as such with the same characteristics, prior to installation and even after the product is embedded to earth by bolts, nuts and screws on the bed created for that purpose. That such installation is necessitated only for the purpose of protection from falling down on account of the vibration generated by the machinery and certain unavoidable external natural forces such as rain and wind. That the system can be easily dismantled by removal of the bolts, nuts and screws with simple screw driver technology for installation elsewhere to have the same characteristics and discharge of similar functions. The applicant submitted that in view of the above factual position, the parking system cannot get excluded from the scope of plant and machinery and to attract disqualification under the provisions of Section 17(5)(c) and 17(5)(d) of the CGST/TNGST Act, 2017. The applicant further submitted that the parking system is an independent and separate facility intended for the purpose of enhancement of the qualitative output service of the service provider to ultimately result in increased revenue earnings for the service provider on account of the comfort level provided to the tenants and resultant increase in the payment of GST for the output service.

4.7 The applicant submitted that it would be pertinent to note in this context that the AAR of MP in the case of M/s Jabalpur Hotels Pvt Ltd. (Order No. 10/2020 dated 08.06.2020) ruled that ITC is not admissible on the installation of lift, in terms of Section 17(5)(d) of the CGST Act 2017 due to the reason that lift becomes an integral part of the building upon piece by piece installation. The findings were that a lift comprises of components like car, motor, ropes, rails etc and each of them has its own identity prior to installation and they are assembled to create the working mechanism to synchronize with the building and each door has to open on the level of each floor. A lift does not have an identity when removed from the building. The applicant further submitted that they would like to state that the parking system cannot be equated with Lift, for the purposes of determining the entitlement of ITC, in view of the distinct factors as illustrated below;

	LIFT	PARKING SYSTEM
(i)	Once installed, the lift becomes an integral and inseparable part of the building, in which it is installed.	Parking system is installed as a separate facility and kept outside the building and not as an integral part.
(ii)	Cannot be separated from the building in the normal course and relocated elsewhere, without causing damage to both the building and the equipment.	Can be dismantled and installed in a location elsewhere with simple screw driver technology and without losing the identity and essential characteristics.

(iii)	Installation of lift is mandatory as per the statutory provisions, under certain specified conditions.	Installation of parking system is intended for enhancement of the service standards and not mandatory.
(iv)	Lift, being an integral and inseparable part of the building, does not contribute for furtherance of business of the taxpayer.	Parking system, being a distinctly different facility, contributes for furtherance of business to fetch enhanced income and resultant GST.
(v)	After dismantling, the identity and essential characteristics of Lift (as well as the space in the building) would be completely lost.	Even after dismantling, the essential characteristics and identity of the parking system will remain intact and would become functional with the same vigour in the relocated area.

4.8 The Applicant further submitted that they would like to state that the fundamental question that may arise in the instant context is whether the parking system can be regarded as the Immovable property. They submitted that by no stretch of imagination, the parking system can be considered as an immovable property, as is evident from the above illustrations. That though there is no definition in the GST Act, 2017 for the expression "immovable property", Section 3(26) of General Clauses Act, 1897 defines the said expression as "land and benefits arising out of land and things attached to earth permanently fastened."

4.9 The applicant submitted that as per Section 3 of the Transfer of Property Act 1882, the phrase "attached to earth" means-

- (a) rooted in the earth, as in the case of trees and shrubs,
- (b) imbedded in the earth, as in the case of walls or buildings; or
- (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

The applicant submitted that the qualifying statements in the aforesaid definition viz "as in the case of trees and shrubs", "as in the case of walls or buildings" and "imbedded for the permanent beneficial enjoyment of that to which it is attached" would make it amply clear that the parking system is not attached to earth and therefore, the same cannot be construed to have attained the status of immovable property as "land and benefits arising out of land and things attached to earth permanently fastened", in terms of Section 3(26) of General Clauses Act, 1897.

4.10 The applicant submitted they would like to draw the kind attention of the Authority for Advance Ruling to the guidelines contained in Para (v) in Point No. 4 of the CBEC Circular No. 58/1/2002-CX, dated 15/1/2002, wherein it has been clarified that "if items assembled or erected at site and attached by foundation earth cannot be dismantled without substantial damage to its components and thus cannot be reassembled, then the items would not be considered as moveable

and will, therefore not be excisable goods". That though the aforesaid CBIC Circular has been issued in the context of considering a particular item as excisable goods, the inference contained in the said Circular hinges on the vital factor of determination as to whether a particular Item/thing can be considered as movable property or immovable property. The applicant submitted that a holistic reading of the said legal provisions and the CBIC Circular would throw the guiding light on the subject matter and illustrate the factual position that parking system would continue to have the same state as movable goods at all stages.

Based on the above arguments the applicant was of the opinion that they are entitled to avail the ITC on the parking system.

5.1 The applicant is under the administrative control of State Tax Authority. The concerned authorities of the Centre and State were addressed to report if there are any pending proceedings against the applicant on the issues raised by the applicant in the ARA application and for comments on the issues raised.

5.2 The State jurisdiction Officer viz. the Assistant Commissioner (ST), Trichy Road Assessment Circle stated the following;

- "The applicant is proposing to install a sophisticated multi-layer car parking system to accommodate parking of 18 cars.
- The applicant's claim that the car parking system is only a movable property is not correct.
- The structure to be built will be property of immovable on completion of the construction and the structure is to be treated as capital asset to the applicant so long as the existence in business and the use of the structure for parking of car would yield revenue on which GST stands attracted.
- The applicant is not found eligible to take ITC credit on the purchases of materials involved for the construction of parking system, as envisaged under Section 17(5)(d)"

5.3 The concerned Central authority vide letter GEXCOM/TECH/GST/2697/2023-TECH dated 03-08-2023, submitted that the question raised in the application are not pending or has not been decided in any proceedings in the case of the applicant as per the Centre's record" and also offered the following comments;

- The applicant has informed that he is providing "renting of Immovable Property Service" and is renting out commercial property and as a part of facilities made available in the commercial property, parking facility is highly essential for furtherance of business of renting. Hence, the applicant is planning to install a sophisticated multi-layer car parking system. Further, as per the applicant, the "The Rotary Car Parking System "is a movable property and there should not be any restrictions of taking ITC on the taxes paid on supply of such "Rotary Car Parking System".

- However, on perusing the Quotation of M/s Parklayer Private Limited vide Quote Number PARK/260/23 dated 09.05.2023 furnished by the applicant, it is found that the Customer Scope of Work involves completing the civil foundation works as per the foundation drawings and the civil foundation work will be inspected by the installation engineers from Park layer. Further, Shri A. Senthil Maharaj is required to provide erection support by way of obtaining required approvals permissions and taking care of local union charges, approvals and other local body issues before the installation and commissioning of the Rotary parking. The facts available on record, clearly indicates that “Rotary Car Parking system” requires construction of foundation before installation and commissioning. Further, the car parking system cannot be functional unless it becomes permanent fixture to land or building where it is intended to be set up. Thus the supply & installation of car parking system is a permanent fixture attached to building or the land on which it is erected. Hence, Rotary Car Parking System is not a movable property as contested by the applicant, but is an immovable property.
- Further, the applicant has informed that the said system can be easily dismantled and installed elsewhere with a simple screw driver technology. However, it is submitted that the entire car parking system cannot be moved ‘as it is’ and it necessarily has to be dismantled for moving the same, which is an important aspect of immovable property.
- As per the explanation “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property, “Rotary Car Parking System” falls under the ambit of additions or alterations to the said immovable property i.e. in this case commercial building. In view of the above, it is submitted that the installation and commissioning of the “Rotary Car Parking System” is goods or services or both received by a taxable person for construction of 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 and hence ITC is not admissible as per section 17(5)(d) of the CGST Act, 2017.

6. The Applicant, was given an opportunity to be heard in person on 9.1.2024. Shri Arthanarisamy, proprietor and Shri K. Rajendran, Authorised Representative (AR) appeared for the personal hearing. The AR reiterated the submissions made at the time of filing the application. In addition to the same, he furnished a detailed additional submission at the time of personal hearing. The AR stressed on the following points, viz.,

- (i) The work of bringing up the parking facility at the applicant’s premises cannot be termed as works contract service, and that the same amounts only a composite supply.
- (ii) That the parking facility is installed at the premises of the applicant and not in the building.

(iii) That they have brought out a comparative study between a lift and a parking facility in their submission so that the difference could be appreciated in relation to the ITC eligibility.

The members enquired as to whether any contract or agreement exists between the suppliers of goods/service and the applicant, to which the AR replied that no such contract exists and the initiation of work started with a purchase order from the applicant side and a quotation from the supplier, and he undertook to furnish the relevant documents within a weeks' time.

7.1. The applicant submitted additional written submissions dated 09.01.2024 during the personal hearing. The applicant reiterated the facts and submissions made in their application filed for advance ruling and made the following additional submissions in support of their contention.

7.2. As regards the specific query of the Authority with regard to the purchase order and contract for the impugned supply, the Applicant stated that the purchase order was placed over phone, based on which the sales personnel of the supplier (M/s. Park Layer Private Limited, Coimbatore) visited the premises of the buyer (the Applicant in the instant case), surveyed the space available in the premises, ascertained the specific requirements of the buyer, have had detailed negotiations with the buyer in person and issued the impugned quotation No. PARK/260/23 dated 09.05.2023.

7.3. There was no written purchase order and contract in the instant case for the impugned supply. The initial quotation No. PARK/260/23 dated 09.05.2023 and the 3 Tax invoices issued by the supplier thereafter are the only documents available for the impugned supply, in the instant case. The letter dated 11.01.2024 issued by M/s. Park Layer Private Limited, Coimbatore (copy enclosed) would be illustrative of this factual position.

7.4. The applicant submitted that the important features, among others, in respect of the supply, installation, testing and commissioning of Rotary Parking-SM18XL system, as per the quotation No. PARK/260/23 dated 09.05.2023 of M/s. Park Layer Private Limited, Coimbatore, are as follows:

- The machines can easily be relocated to any other place depending on the customer requirement.
- The machines are completely pre-fabricated to ensure faster and reliable installation process.

7.5. The applicant submitted that with regard to customer scope of works, as per the said quotation dated 09.05.2023, among others, are as follows:

Work No. 2:	To complete the civil foundation works as per the foundation drawings provided by Park Layer. Installation engineers from Park Layer would inspect the site on completion of the civil foundation works. Any violations from the furnished drawings would be intimated and corrections to be made accordingly.
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Work No. 3:	Erection support to be rendered by the customer. Required approvals, permissions, local union charges, approvals and other local body issues in the scope of customer.
Work No. 4:	To provide lighting, ventilation, fire extinguishers and fire alarm systems, if necessary, as per the safety rules.
Work No. 7:	To provide the material and assistance at site required for placing or fixing of equipment's, electrical panels, Hydraulic power packs, Operator Boxes to floor/walls/columns etc. Such requirement shall be intimated to you prior to installation in time.

7.6. The applicant, citing the eligibility criteria and the conditions stipulated for taking Input Tax Credit (ITC) on the goods and/or services as per the provisions of Section 16 of the CGST/TNGST Act, 2017, stated that they would have the entitlement to avail the Input Tax Credit (ITC), in terms of the said section subject to fulfillment of the essential conditions prescribed therein

7.7. The applicant stated that the next vital question that may arise in this context is whether ITC on the GST paid on the Parking system would fall within the ambit of blocked credits, in terms of Section 17(5) of the CGST/TNGST Act, 2017. The applicant submitted that sub-sections 17(5)(c) and 17(5)(d), which block availment of ITC in respect of certain specified cases, mainly deal with Works Contract Service and therefore, it would be essential to make a study whether the activity of supply and installation of the parking system is covered under the category of "works contract service", as defined under Section 2(119) of the CGST/TNGST Act, 2017 Act, which reads as follows:

"works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract; As can be seen from the words underlined above, a works contract under the GST Act is in relation to 'immovable property'.

7.8. The applicant submitted that without prejudice to the arguments already advanced and to be advanced, they submit that the activities of building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning are in respect of any immovable property, whereas car parking system is only a movable property and cannot be construed to be an immovable property, due to the following reasons.

7.9. The applicant submitted that the activity performed by the supplier in relation to supply and installation of car parking system will not fall under the category of works contract service as the activity of the Applicant comprises of various functions, as shown below:

- Based on the specific requirements of the customers (the Applicant in the instant case), car parking system is designed and manufactured in the factory premises of the supplier.
- After completion of the manufacturing process, the supplier would dismantle the system, transport the entire system either as a single lot or in multiple lots as per convenience, to the premises of their customers and reinstall the system in the premises of the customers.

7.10. The applicant further submitted that the entire activity of the supplier relating to supply of the car parking system and installation thereof are duly classified under the GST Tariff and Service Accounting Code (SAC), as follows:

Activity	Classification
Supply of goods, namely other lifting, handling, loading or unloading machinery (For example, Lifts, escalators, conveyors, teleferics).	HSN code: 8428
Other installation services not elsewhere classified	SAC: 995468

7.11. The applicant submitted that the Supplier generally receives the composite order for manufacturing and installation of car parking system and therefore, the same is to be considered as a composite supply, as defined under Section 2(30) of the CGST/TNGST Act, 2017, which reads as follows:

“composite supply ” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is principal supply; Illustration – Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is composite supply and supply of goods is a principal supply.

7.12. The applicant submitted that in the light of the above definition of composite supply, it may be derived that the manufacturing, erection and commissioning of car parking system in the instant case is a composite supply and supply of car parking system is the principal supply. Therefore, the classification of the said supply would fall only under HSN code 8428 in accordance with the principal supply.

7.13. The applicant further stated that, consequent on the filing of the impugned Application dated 12.06.2023, the Applicant had received Tax Invoices No. PL/77/23-24 dated 19.09.2023, No. PL/135/23-24 dated 12.12.2023, No. PL/137/23-24 dated 15.12.2023 from M/s Park Layer Private Limited, as per which classification of the supply is under HSN code: 84289090.

7.14. The applicant submitted that without prejudice to the aforesaid arguments, the admissibility of ITC cannot be challenged, as the Applicant would have the

indisputable entitlement to ITC, even if the supplies made by the supplier of goods/service fall under the category of works contract service.

7.15. The applicant submitted that in order to have a proper understanding on the important aspect of coverage or otherwise of the impugned goods/services under the category of blocked credits, it would be essential to have a glimpse of the legal stipulations of Section 17(5)(c) and 17(5)(d) of the CGST/TNGST Act, 2017. That the essence of the aforesaid legal provisions is as follows:

Section 17(5)	Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:
Section 17(5)(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;
Section 17(5)(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.

7.16. The applicant submitted that as could be seen from the above stipulations of Section 17(5)(c) and 17(5)(d) of the CGST/TNGST Act, 2017, the credits are blocked only in respect of the activities relating to construction of an immovable property and not for the installation of parking system, which is to be considered as plant and machinery, in strict sense. The applicant submitted that the specific exclusion of plant and machinery in the said Sections of the GST Act is illustrative of the fact that procurement of the parking system and installation of the same cannot fall within the ambit of blocked credits, by any stretch of imagination.

7.17. The applicant further stated that installation of parking system is an essential input/input service to be used in the course of furtherance of business (output service of Renting of Immovable Property falling under SAC: 997212) and therefore, ITC is admissible in terms of Section 17(5)(d) of the Act.

7.18. The applicant submitted that the expression "plant and machinery", as defined in the explanation appearing in Section 17 of the CGST/TNGST Act, 2017, reads as follows:

"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."

7.19. The applicant further stated that the Explanation to Section 17 of the CGST/TNGST Act, 2017 has got the effect of removing the confusion, that may arise, with regard to the understanding the expression plant and machinery, as indicated in the said explanation and the essence of the said explanation with reference to the issue involved in the instant case is discussed as follows:

Apparatus	A machine or device consisting of fixed or movable parts that work together to perform some function.
Equipment	The articles or implements used for efficient functioning in respect of a specific purpose or activity.
Machinery fixed to earth by foundation or structural support	Mechanical contrivances which, by themselves or in combination with other mechanical contrivances, by the combined and inter dependent operation of their respective parts generate power, or evoke, modify, apply, or direct natural forces with the object in each case of effecting a definite and specific result.
Inclusion:	such foundation and structural supports. Inference: ITC is admissible on the construction of this activity (even if it is falling under works contract service) for placing the Apparatus or Equipment or Machinery.
Exclusion (from such foundation and structural supports):	(i) Land, building or any other civil structures; (ii) Telecommunication towers; and (iii) Pipelines laid outside the factory premises. Inference: The above specific exclusions speak volumes of the legislative intent to the effect that ITC cannot be blocked on such foundation and structural supports for placing the Apparatus or Equipment or Machinery.).

7.20. The applicant stated that it is amply clear from the above definition that the parking system is to be construed only as a plant and machinery and not otherwise, even if the installation of the same warrants construction of such foundation and structural supports falling under the works contract service, which are essentially required for placing the Apparatus or Equipment or Machinery for the purpose of stability and achieving optimum level of functioning of the plant and machinery.

7.21. The applicant submitted that as per the scope of works to be executed by the recipient of the goods/services, the civil foundation works are to be completed by the applicant in the instant case, as per the foundation drawings provided by the supplier of goods/services (Park Layer). That it is clear that the parking system is simply installed on the existing civil foundation, as an independent equipment and the disassembly of the system in the factory premises for subsequent assembly at the site is only for the sake of convenience and ease of transportation in lots.

7.22. The applicant further stated that the Parking system is a separately identifiable and distinct product altogether falling under HSN code: 8428 and the identity of the goods remains as such with the same characteristics, prior to

installation and even after the product is embedded to earth by bolts, nuts and screws on the bed created for that purpose. The applicant submitted that such installation is necessitated only for the purpose of protection from falling down on account of the vibration generated by the machinery and certain unavoidable external natural forces such as rain and wind.

7.23. The applicant submitted that the system can be easily dismantled by removal of the bolts, nuts and screws with simple screw driver technology for installation elsewhere to have the same characteristics and discharge of similar function and in view of the above factual position, the parking system cannot get excluded from the scope of plant and machinery and to attract disqualification under the provisions of Section 17(5)(c) and 17(5)(d) of the CGST/TNGST Act, 2017.

7.24. The applicant submitted that the parking system is an independent and separate facility intended for the purpose of enhancement of the qualitative output service of the service provider to ultimately result in increased revenue earnings for the service provider on account of the comfort level provided to the tenants and resultant increase in the payment of GST for the output service.

7.25. The applicant submitted that it has been emphatically stated in the quotation No. PARK/260/23 dated 09.05.2023 of M/s. Park Layer Private Limited that the machines are completely pre-fabricated to ensure faster and reliable installation process. That the quotation states further that the machines can easily be relocated to any other place depending on the customer requirement.

7.26. The applicant submitted that the possibility of relocation of the parking system on a later occasion cannot be ruled out in the case of expansion of the activity of the output service of Renting of Immovable Property, as the changing circumstances may warrant. That such relocation involving dismantling and re-assembly is quite possible without causing any material damage either to the system or to the building, as could be seen from the quotation dated 09.05.2023 of the supplier of goods/services.

7.27. The applicant submitted that at this juncture, there may arise certain counter arguments to the effect that ITC cannot be availed on the parking system, by drawing parallel to the Lift, in respect of which ITC has been disallowed by the various judicial fora. The applicant submitted that the parking system cannot be equated with Lift, for determination of the entitlement of ITC and reproduced the distinct differentiating factors between the seemingly alike parking system and Lift which was submitted by them in their original application mentioned at para 4.6 above.

7.28. The applicant submitted that in respect of the question relating to admissibility of ITC on the parking system, being the input/input service for providing the output service, there are two legally permissible options available for them to result in two possible scenarios, which are listed below:

Provision of output service -	
(i)	<p>To the tenants, exclusively: As a Composite supply of services, comprising of the existing service of Renting of Immovable Property falling under SAC: 997212 and parking lot service falling under SAC: 996743 as a facility thereof, where the former is the principal supply of service and the latter is submerged therein.</p> <p>In this case, receipt of consideration for the latter activity would be by way of enhancement of the amount of rent.</p>
(ii)	<p>To any person, which may or may not include the tenants: As a separate supply of Parking lot service (SAC: 996743), which would be independent of the existing service of Renting of Immovable Property.</p> <p>In this case, consideration for this activity would be received separately.</p>

7.29. The applicant submitted that in both the scenarios, other than the methodologies deployed in respect of each category, there would be absolutely no difference with regard to receipt of consideration or quantum of discharge of GST liability on those output services. The above vital factor would have the influencing effect for arriving at the important conclusion as to whether the supply of parking system and installation thereof is an essential ingredient for providing the output service and whether ITC would be admissible on the said inward supply under both the aforesaid two categories, more especially under the second category.

8. DISCUSSION AND FINDINGS:

8.1. We have carefully considered the submissions made by the applicant in their application, submissions made during the personal hearing and subsequent additional submissions made by the applicant and the comments furnished by the Centre and State Tax jurisdictional officers.

8.2. From the submissions made at the time of filing the application, it is seen that the applicant has sought for advance ruling on the following question:

Whether Input Tax Credit is admissible on the “**ROTARY PARKING SYSTEM**” falling under HSN Code: 8428?

8.3 It is observed from the submissions of the applicant that the applicant is desirous of installing a sophisticated multi-layer car parking system with highest space efficiency to accommodate parking of 18 cars in their own land, within the campus of already existing building, for the purpose of providing car parking facilities to the tenants as well as the customers of those tenants, who make frequent visits to the commercial building in connection with the official and business transactions happening on a regular basis between the tenants and their customers. According to the applicant, the parking facility is highly essential to retain the existing tenants as well as to have full occupancy state and thus the parking facility will have a bearing on the revenue earning potential of the tax payer, which would result in increased contribution to the exchequer corresponding to such earnings. The applicant claims that it is an independent

installation and certainly not a part of the building and though the parking system is being fixed to the base bed, it is detachable. Further, the applicant pointed that the installation of the parking system is intended solely for the purpose of furtherance of the business, for which GST registration has been obtained.

8.4. In view of the above, the applicants have purchased Smart Parking 18XL Part Assembly and their constituent parts, as can be seen from the invoices submitted by the applicant, as detailed below:

Sl. No.	Invoice No./dt.	Description of the goods	Price	CGST	SGST
1	PL/77/23-24 DT.19.9.2023	Smart Parking 18XL Part Assembly, bolt 16 nos, hex nut 32 nos, Gauge plate 4 nos	40000	3600	3600
2	PL/135/23-24	Smart Parking SM18XL Part Assembly- Frame assembly	4523000	407070	407070
3	PL/137/23-24	Smart Parking SM18XL Part Assembly, pallet with assembly	2457000	221130	221130
		Total	7020000	631800	631800

8.5. The applicant is of the opinion that he is eligible to avail the input tax credit under the provisions of the GST Act, as he has fulfilled the conditions enumerated under Section 16 of the Act and also as per the stipulations of Section 17(5)(c) and 17(5)(d) of the GST Act, as the credits are blocked only in respect of the activities relating to construction of an immovable property. They further stated that the parking system is a separately identifiable and distinct product altogether falling under HSN code:8428. The identity of the of the goods remains the same, even if the product is embedded to earth by bolts, nuts and screws on the bed created for that purpose. Such installation is necessitated only for purpose of protection of the equipment from falling down on account of the vibration generated by the machinery and certain unavoidable external natural forces such as rain and wind. The Parking system can be easily dismantled by removal of the bolts, nuts and screws with simple screw driver technology for installation elsewhere to have the same characteristics and discharge of similar functions. Because of the reasons stated, the parking system cannot be construed to have attained the status of immovable property, to fall under the category of works contract service and to attract disqualification of Input tax credit, under the provisions of Section 17(5)(c) and 17(5)(d) of the GST Act 2017. The applicant also contended that even if the activity is to be regarded as works contract service, the rotary parking system comes under the category of plant and machinery as defined in the explanation appears in the Section 17 of the Act. They claimed that the specific exclusion of plant and machinery from the category of blocked credits is illustrative of the fact that procurements of the parking system and installation of the same cannot fall within the ambit of blocked credits, by any stretch of imagination. Further they have differentiated between the Rotary Car parking system with Lifts and stated that blocking of credit is only applicable to lifts and not to rotary parking system.

8.6 It is seen from the invoices furnished by the applicant that the car parking system is not supplied as such as a whole. But, what is supplied is constituent parts of the Car parking system viz Gauge Plate, Bolts, hex nuts, Frame Assembly and pallet with electricals. As observed from the submissions made by the applicant the vendor shall design the car parking structure based on the specific requirement of the applicant on receipt of the purchase orders from the applicant. Thereafter, the vendor have to manufacture, build, test, dismantle, pack and supply the constituent components viz Frame Assembly, pallet with electrical, electrical panels, hydraulic power packs, operator boxes and proceed to erect the same on the foundation built by the applicant. After installation only, it takes the shape of the car parking.

8.7. On further perusal of the Quotation of M/s Park Layer Private Limited, vide Quote Number PARK/260/23, dt.09.05.2023, furnished by the applicant, it is found that the Customer Scope of Work involves completing the civil foundation works as per the foundation drawings provided by Park Layer and on completion of the civil foundation work, it will be inspected by the installation engineers from Park Layer, who are the suppliers of the Rotary Car Parking System. Any violations from the furnished drawings would be intimated and corrections to be made accordingly.

Further, the applicant is required to provide erection support by way of obtaining required approvals, permissions and taking care of local body charges, approvals and other local body issues before installation and commissioning of the Rotary Parking. It is also customer scope of work to provide the material and assistance at site required for placing / fixing of equipments, electrical panel, hydraulic power packs, Operator Boxes to floor/walls/columns etc.”

8.8. Hence, we find that a specific foundation is created and steel structure which is a basic frame work of the parking system, is erected on such foundation. This specific foundation and structure is a pre-requisite for successful installation and effective working of the car parking system.

8.9. Whether Rotary car parking is movable or immovable?

The applicant has contended that the said system can be easily dismantled and installed elsewhere with a simple screw driver technology and cannot be construed as immovable. However, it is observed that the entire car parking system cannot be moved ‘as it is’ and it necessarily has to be dismantled for moving the same. It is pertinent to mention that the Hon’ble Supreme Court of India, in the case of Municipal Corporation of Greater Bombay Vs Indian Oil Corporation, wherein one of the questions considered was whether a petrol tank, resting on earth on its own weight, had been erected permanently without being shifted from place to place, has observed the following test of permanency that *“the chattel whether is movable to another place of use in the same position or liable to be dismantled and re-erected at the later place? If the answer is yes to the*

former it must be a moveable property and thereby it must be held that it is not attached to the earth. If the answer is yes to the latter it is attached to the earth." By applying the above test to the case on hand, as the car parking structure as such cannot be moved in the same position from the place of erection but, can only be moved after dismantling the constituent parts, the rotary car parking system in question shall fall under the category of immovable property.

8.10 Further, the applicant's contention that the parking system is not **attached to earth permanently** and therefore, car parking cannot be construed to have the status of the immovable property, is examined in the light of the relevant provisions of the General Clause Act, 1897 and Transfer of property Act 1882, as the term "immovable property" has not been defined in the GST Act 2017.

In terms of Section 3(26) of the General Clauses Act, 1897, the expression immovable property shall include land, benefits to arise out of land and things attached to the earth or **permanently fastened to anything attached to the earth.**

As per Section 3 of the Transfer of property Act 1882, the phrase "attached to earth" means

(a) rooted in the earth, as in the case of trees and shrubs;

(b) imbedded in the earth, as in the case of walls or buildings; or

(c) **attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.**

In the Tax Revision case 910/2001, in respect of the Commissioner Trade Tax U.P. Lucknow Vs S/S Triveni N.L.Ltd., the question raised was, "as to whether the Trade Tax Tribunal is legally correct to allow dealer's claim of exemption on the ground that the machinery installed is immovable property being attached to earth even though the machinery was installed and attached to earth for better functioning and operational efficiency?". On behalf of State, the argument put forth by the State was that, when most parts of machinery are fixed to their bases with bolts and nuts and can be removed by removing the nuts, the same cannot be said that such machineries are permanently fastened in as much as, the same can be moved away by removing the nuts and hence should be held "movable property". This argument was noticed and rejected by the Hon'ble High Court of Allahabad with the observation that "*The question whether a machinery which is embedded in the earth is movable property or an immovable property, depends upon the facts and circumstances of each case. Primarily, the court will have to take into consideration the intention of the parties when it decided to embed the machinery whether such was intended to be temporary or permanent. A careful perusal of the agreement of sale and the conveyance deed along with the attendant circumstances and taking into consideration the nature of machineries involved clearly shows that the machineries which have been embedded in the earth to*

constitute a fertiliser plant in the instant case, are definitely embedded permanently with a view to utilise the same as a fertiliser plant. The description of the machines as seen in the Schedule attached to the deed of conveyance also shows without any doubt that they were set up permanently in the land in question with a view to operate a fertilizer plant and the same was not embedded to dismantle and remove the same for the purpose of sale as machinery at any point of time. The facts as could be found also show that the purpose for which these machines were embedded was to use the plant as a factory for the manufacture of fertiliser at various stages of its production. Hence, the contention that these machines should be treated as movables cannot be accepted.”

Accordingly, by applying the same principle to the facts and circumstances of the case on hand, we find that the rotary car parking has been decided to be built in the own land of the applicant, with a view to retain the existing tenants as well as to have full occupancy state. Further, it is not the case of the applicant to plan it to dismantle and move the structure to some other place. Hence, the intention of the applicant is to enjoy the benefit of the civil foundation as well as the car parking fastened to the foundation permanently, until the system ceases to exist or function.

8.11 In the light of the aforementioned judicial precedent and on the facts and circumstances of the case, the car parking system falls within the meaning of Section 3(26), as envisaged under General Clauses Act, 1897 i.e. **“permanently fastened to anything attached to the earth”** and as envisaged under Clause (c) of the Section 3 of the Transfer of property Act 1882 which reads **“attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.”** and thus Rotary Car Parking system is not a movable property as contested by the applicant.

9.1 Whether the Rotary Car parking falls under the category of plants and machine?

The query as to whether the credit is blocked by the Section 17(5) of the Act and the claim of the applicant that the specific exclusion of plant and machinery from the category of blocked credits is examined as follows:

The relevant provision of Section 17 of the CGST Act, 2017 is reproduced below:

“(5) Notwithstanding any thing 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;

Xxxxxx

Xxxxxx

Xxxxxx

(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 capitalization, to the said immovable property.'

Further, the expression "plant and machinery" as defined in the explanation under Section 17 is reproduced below:

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.*

We find that the above said explanation clause allows the input tax credit on the plant and machinery along with the input tax credit on the construction of foundation and structural support and excludes that of the land, building or any other civil structure.

9.2 The applicant, by explaining the terms "apparatus", "equipment" and "machinery", has claimed that the car parking system falls under the category of plant and machinery. But, being a parking facility, the car parking system is associated with the provision of space resulting out of the beneficial enjoyment of the ground and the underlying foundation, the car parking system does not fall under the category of apparatus, equipment and machinery. As the primary object of the rotary car parking is provision of space to park vehicles, we do not agree with the applicants' view that Rotary car parking falls under the category of plant and machinery and we are of the view that the rotary car parking system falls under the exclusion clause, viz., any other civil structure. The applicant while claiming that the car parking system falls under inclusion clause of plant and machinery, has not given much emphasis on the exclusion clause. Hence, the issue has to be decided after taking in to consideration the exclusion clause also.

9.3 The term Civil Structure has not been defined under the GST Act 2017. But, in the field of Civil Engineering the term civil structure means the profession of designing and executing structural works that serve the general public, such as dams, bridges, aqueducts, canals, highways, power plants, sewerage systems and other infrastructure. Civil structures are designed and constructed to support and enhance the functioning of a community or society.

The "Structure" in the context of civil Engineering refers to anything that is constructed or built from different inter-related parts with a fixed location on the ground. The civil structure is manmade structure built by utilising any material viz., cement, steel based on requirement and purpose of the structure.

9.4 Further, we find that the Tamil Nadu Combined Development and Building Rules, 2019 defines the terms "**Building**" and "**Structure**" as follows;

"**Structure**" means something constructed or built having a fixed base on or other connection to the ground or other.

"**Building**" means any structure for whatsoever purpose and of whatsoever materials constructed and every part thereof whether used as human habitation or not and includes foundation, plinth, walls, floors, roofs, chimneys, plumbing and building services, fixed platforms, verandah, balcony, cornice or projection, part of a building or anything affixed thereto or any wall enclosing or intended to enclose any land or space and signs and outdoor display structures. Tents, shamianahs, pandals, partaulin shelters and the like erected for temporary and ceremonial occasions shall not be considered as building;

In view of the above discussions we find that civil structure refers to any structure for whatsoever purpose and of whatsoever materials constructed and every part thereof to enhance the functioning of a community or society.

9.5 It is important to notice that the applicant in the additional submissions filed during the personal hearing conducted on 09.01.2024 has stated that "Such installation is necessitated only for the purpose of protection from falling down on account of the vibration generated by the machinery and certain unavoidable external natural forces such as rain and wind."

From the statement of the applicant cited supra, it is amply clear that the car parking system cannot be functional unless it is built with different inter-related constituent parts of the car parking system, attached to the specific foundation created for that purpose. It is pertinent to mention here the definition of "**Foundation**" in terms of the Tamil Nadu Combined Development and Building Rules, 2019, and by which Foundation means "part of the structure, which is in direct contact with ground and transmits loads over it". Hence, it is found that the pre-fabricated car parking system is erected on the foundation to transmit the load over the foundation and ultimately the ground which bears the load of the parking system along with the vehicles parked over it and gives stability to the car parking from falling down.

9.6 It is also noticed that in the stipulations in the "customer scope of works", as per the quotation dated 09.05.2023, importantly that the erection support to be rendered by the customer and required approvals, permissions, local union charges, approvals and other local body issues rests with the scope of customer.

With regard to the above when the applicant was enquired upon whether any approval has been obtained from the competent authority for installation of the car parking system, the applicant has replied that no approval has been obtained from the competent authority for installation of the car parking system in the business premises of the Applicant and there is no statutory requirement for obtaining any approval or licence or permission from any authority for such installation of a car parking system. The Applicant has also stated that in contrast, installation of lift warrants grant of approval from the Local body or Local Planning Authority (LPA) for lift installation as part of the building and Grant of lift licence by the Electrical Engineer of the State Government.

With regard to the above we find that in terms of Rule 39(5) read with Annexure IV, of the Tamil Nadu Combined Development and Building Rules, 2019, in respect of Automated/ mechanically operated parking system, the Executive authority notwithstanding anything containing in the rules subject to such conditions as may be decided by the executive authority may permit lots/ structures taking into account the safety and environmental aspects. Hence, for installation of rotary car parking system it is felt that prior approval of the competent executive authority is essential in view of the safety and environmental aspects. Further, the submission made with regard to distinction between the lift and the rotary car parking system, it is observed that requirement of car parking is also made mandatory in certain High rise buildings, based on the floor area of the building.

9.7 Further more, the Rotary car parking system is an infrastructure with an aim to cater the need of greater urban density and compactness of cities and to aim at better use of scarce land. The Rotary car parking system provides additional space to park the vehicles depending upon number of storeys built/preferred. In addition, for the purpose of parking of vehicles in and for retrieving the vehicles out, it will also perform upward/downward /sidewise movements, as an alternative to reduce the space for construction of ramps meant for ingress and egress of the vehicles. On perusal of invoices, the quotation filed by the applicant and the images of the erected structures of car parking system, furnished by the applicant, it is seen that constituent parts/the components of the Rotary car parking are observed to be analogous to that of building blocks utilised in the construction of multi storeyed conventional car parking. Hence, in view of the above discussions, in our opinion the rotary car parking system is nothing but a civil structure.

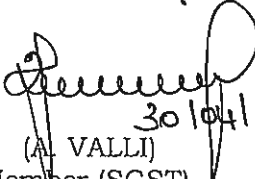
9.8 Further, as per the explanation to the Section 17(5) (c) and Section 17(5) (d), of the Act, the term "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property. Hence, it is our view that, "Rotary Car Parking System" falls under the ambit of additions as envisaged in the said explanation clause, to the immovable property i.e. in this case existing commercial building owned by the applicant and becomes a part of the existing building.

9.9 In view of the above, the impugned supply i.e., the installation and commissioning of the "Rotary Car Parking System", received by the applicant falls under the ambit of Section 17(5)(d) of the Act, that is goods or services or both received by a taxable person for construction of 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 and hence ITC is not admissible as per section 17(5)(d) of the CGST Act, 2017.

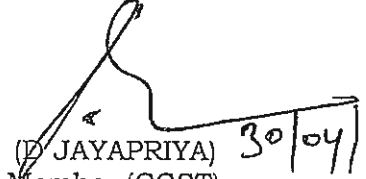
10. Based on the above discussions, we rule as under:

RULING

Input tax Credit is not admissible under section 17(5)(d) of CGST/TNGST Acts 2017 on the Rotary Parking System desired to be installed by the applicant, as discussed.


(A. VALLI)
Member (SGST)
30/04/2024




(D. JAYAPRIYA)
Member (CGST)
30/04/2024

To

M/s. Arthanarisamy Senthil Maharaj,
114, Race Course Road,
Coimbatore-641018

(by RPAD)

Copy submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

1. The Commissioner of GST & Central Excise,
Coimbatore Commissionerate,
6/7, A.T.D. Street, Race Course,
Coimbatore, 641 018.
2. The Assistant Commissioner (ST),
Trichy Road Assessment Circle,
Commercial Taxes Building,
4th Floor, Dr. Balasundaram Road,
Coimbatore-641 018.
3. Master File/ Spare – 2.

