

# DESAI SAKSENA & ASSOCIATES

07<sup>th</sup> June, 2024

## **Friday Tax Alert**

### **From:**

**Tax Team of Desai Saksena and Associates  
Chartered Accountants**

CA Varsha Nanwani (Senior Manager - Taxation)  
Vikas Jogle (Manager - International Taxation)  
CA Neelu Dusseja (Senior Manager – Indirect Taxation)  
CA Neha Patel (Manager - Taxation)  
CA Ajay Sachani (Manager - Taxation)  
Digvijay Hirwani (Assistant Manager - Taxation)  
Alok Sharma (Deputy Manager - Indirect Taxation)

### **Contacts:**

**If you have any questions or would like to have additional information on the topics covered in this alert, please email one of the following DSA professionals:**

- ✓ CA Varsha Nanwani (Senior Manager – Taxation)  
[varsha@dsaca.co.in](mailto:varsha@dsaca.co.in)
- ✓ Vikas Jogle (Assistant Manager – International Taxation)  
[vikas@dsaca.co.in](mailto:vikas@dsaca.co.in)
- ✓ CA Neelu Dusseja (Senior Manager – Indirect Taxation)  
[neelu@dsaca.co.in](mailto:neelu@dsaca.co.in)
- ✓ CA Neha Patel (Manager - Taxation)  
[neha@dsaca.co.in](mailto:neha@dsaca.co.in)
- ✓ CA Ajay Sachani (Manager – Indirect Taxation)  
[ajay@dsaca.co.in](mailto:ajay@dsaca.co.in)
- ✓ Digvijay Hirwani (Assistant Manager - Taxation)  
[digvijay@dsaca.co.in](mailto:digvijay@dsaca.co.in)
- ✓ Alok Sharma (Deputy Manager – Indirect Taxation)  
[sharma.alok12@gmail.com](mailto:sharma.alok12@gmail.com)

# DESAI SAKSENA & ASSOCIATES

## **GST Input Tax Credit on Construction of Immovable Property and Works Contract.**

### **Section 17(5)- Blocked Credit:**

ITC of tax paid on almost every input, input services or capital goods used for supply of taxable goods and/or services is allowed under GST except a small list of items provided u/s 17(5)- Blocked credit. The various goods and/or services for which credit is blocked out of which we are going to explain the two most important services that we encounter on a timely basis.

Section 17 (5)(c)- Works contract service when supplied for construction of immovable property  
Section 17 (5) (d)- Goods & services received for construction of immovable property (not Plant & Machinery) on his own account including when such goods/services are used in business

### **Section 17(5)(c):**

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

### **Explanation of the above Provision:**

One major input service, ITC on which is blocked is an input service relating to construction activity like construction of office buildings, factory buildings, etc. Works contract has been defined in the CGST Act.

### **Definition of works contract**

*"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;*

Essentially a work contract is a composite supply involving both goods and services. Under the erstwhile laws, the definition of a works contract included work in relation to both movable and immovable properties. However, under GST law, the ambit of works contract has been confined only to immovable property

Under GST Law, a composite supply of works contract is treated as supply in terms of para 6(a) of Schedule II to the CGST Act.

ITC on works contract services for the construction of an immovable property is blocked Except when

- ✓ It is an input service for further supply of works contract service (Sub-Contracting)  
[ITC on works contracts service can be availed only by that taxpayer who is in the same line of business, i.e. only a works contractor can avail ITC on works contract service received by him.]
- ✓ Immovable property is plant and Machinery  
[Plant and machinery affixed permanently to the earth constitutes an immovable property. However, ITC on works contract services used for construction of such Plant and machinery is allowed as an exception.]

# DESAI SAKSENA & ASSOCIATES

## **Meaning of Construction:**

*“construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;*

### Meaning of the term ‘Capitalized’

As per section 17(5)(c) and (d) of the CGST Act one of the pre-conditions for denial of ITC on the activity of repair, renovation, alteration, re-construction, etc. is that such expense should have been capitalized in the books of accounts. If the expense is part of the revenue account for such activities, then ITC on the same cannot be denied under section 17(5)(c) and (d) of the CGST Act.

Thus, if re-construction, renovation, addition or alterations, or repairs are not capitalized, it would not tantamount to construction under GST law. Consequently, ITC on works contract service availed for such construction (which is not capitalized) whether for any immovable property or for any plant and machinery, would be allowed to all the recipients irrespective of their line of business.

## **Meaning of Immovable property:**

Immovable property has not been defined under the GST law. Therefore, we must look for the definition of immovable property in other laws. Section 3(26) of the General Clauses Act, 1897, defines the term immovable property to include land *benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth*".

the term "attached to the earth" is defined in section 3 of the Transfer of Property Act, 1882 to mean:

- i. rooted in the earth, as in the case of trees and shrubs;
- ii. embedded in the earth, as in the case of walls or buildings;
- iii. attached to what is so embedded for permanent beneficial enjoyment of that to which it is attached.

## **Meaning of plant and Machinery**

*“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.

Thus, ITC on works contract services availed for construction of the eligible plant and Machinery is allowed to the recipient irrespective of the line of business of such recipient and irrespective of whether the expense is capitalized or not by the recipient.

For instance, ITC on works contract services for the construction of Machinery fixed to earth by a foundation would be allowed. However, ITC on works contract services for the construction of telecommunication tower(s), would be blocked.

# DESAI SAKSENA & ASSOCIATES

## Section 17(5)(d) reads as under

*(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 of the above Provision:

### Self-construction of immovable property [Clause (d) of section 17(5)]:

Now we know that ITC on Works contract services availed by a taxpayer, other than a works contractor, for construction of immovable property (other than plant and machinery), is not available. But what happens if a taxpayer procures goods and services and constructs an immovable property, for being used in the course or furtherance of business, without availing services of a works contractor? Will ITC be allowed in such a case?

The answer is No. ITC is not allowed on goods and/or services received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account even though such goods and/or services are used in the course or furtherance of business. Thus, ITC on goods and/or services used in the construction of an immovable property is blocked only in those cases where the taxable person constructs the immovable property for his own use even if the immovable property being constructed is used in the course or furtherance of his business.

ITC on goods and/or services used in the construction of immovable property is available only in the following three situations:

1. For the construction of eligible plant and machinery.
2. When the value of goods and/or services is not capitalized.
3. When the construction is not on its own account.

A summary of the eligibility of ITC as per the provisions of section 17(5)(c) and (d) is given in the following Table:

<b>Type of property</b>	<b>Construction of</b>	<b>Treatment in books</b>	<b>ITC eligibility</b>
Immovable	Other than plant and Machinery	Capitalized	Not eligible
Movable	P&M or otherwise	Capital or Revenue	Eligible
Movable or Immovable	Plant and machinery	Capital or Revenue	Eligible
Movable or Immovable	P&M or otherwise	Revenue	Eligible