

TAX INFO

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Latest update on GST Law: Information regarding No ITC of GST on maintenance of township, guesthouse, and hospital based on the Judgement issued by Odisha Appellate Authority for Advance Ruling.

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| Name of Applicant | In re M/s. National Aluminium Company Limited |
| Name of Court | AAAR Odisha |
| Appeal Number | Order No. 02-03/ODISHA-AAAR/Appeal/2018-19 |
| Date of Judgement | 21/01/2018 |

Facts of the Case:

The Appellant-I is stated to be a manufacturer of aluminium metal through its refinery located at Damanjodi & Smelter Plant at Angul (Odisha). It has townships at Angul, Damanjodi and Bhubaneswar for its employees. It also runs hospitals at Damanjodi and Angul for its employees and has guest houses for touring employees and guests.

Ruling given by AAR:

- (i) The inward supplies received by way of management, repair, renovation, alteration or maintenance service or goods received for furnishing the residential colony shall not qualify for input tax credit in terms of section 17(2) of the CGST/OGST Act as residential accommodation is an exempted supply.
- (ii) Input tax credit shall not be available to the Appellant-1 in respect of services and goods procured for maintenance of hospitals and pharmacy outlet as such services, being nil rated, fall under exempt supplies.
- (iii) Plantation and maintenance of such plantation outside the plant area, being for non-business use, will not qualify for input tax credit in terms of Section 17(1) of the CGST/OGST Act, 2017. Similarly, the service availed in relation to plant & garden in the residential colony will not qualify for input tax credit.
- (iv) The Appellant-1 is entitled to input tax credit of the tax paid on inward supply of input and input service for maintenance of the guest house, transit house & training hostel but excluding the food & beverages provided in such establishment
- (v) Services availed in relation to plantation and gardening within the plant area including mining area and the premises of other business establishments will qualify for input tax credit.

Contention of Appellant:

The AAR has wrongly held that the appellant's activities of management, maintenance or repair of the townships are not for or in relation to its core business while denying the credit

of the tax paid on the goods and services used for management, maintenance or repair of the township of its employees, and Horticulture in township.

The services received by the appellant for management, maintenance or repairs of its properties in the course of business are covered within the expression “used or intended to be used in the course or furtherance of business”.

Commissioner, CX & GST, Bhubaneswar (Appellant-II) in his appeal petition, has submitted that the order passed by the AAR is not legal & proper to the extent of:

- (i) Allowing the input tax credit of the services utilized for maintenance of Guest House, Transit House and Trainee Hostel.
- (ii) Allowing the input tax credit for the service utilized for plantation and gardening within the plant area including the mining area and the premises of other establishment like administrative building, guest house, transit house and training hostel.

Observations & Judgement:

The ruling of the AAR that inward supplies received by the Appellant-I by way of management, repair, renovation, alteration or maintenance service or goods received for furnishing the residential colony shall not qualify for input tax credit is found to be correct. Expenditure incurred by the Appellant-I towards construction, reconstruction, renovation, additions or alterations or repairs to the residential colony is not eligible for input tax benefit if the said expenditure has been capitalized. Moreover, provision of housing to its employees by the Appellant-I is nothing but a perquisite

The ruling of the AAR that the Appellant-1 is entitled to input tax credit of the tax paid on inward supply of input and input services for maintenance of guest house, transit house and trainee hotel is found to be not correct. The provision of residential accommodation through transit house and trainee hostel is also a perquisite in favour of the employees and hence tax paid on inward supplies of goods and services for the transit house/trainee hostel cannot be allowed the benefit of input tax credit. The guest house of the Appellant-I is used for temporary accommodation of its employees as well as non-employees.

It is observed that to claim input tax credit, an input service must be integrally connected with the business of manufacturing the final product Cost of an input service forming part of the cost of final product alone cannot be a condition to allow the benefit of input tax credit.

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