

**GIB/GJ/RB CONSTRUCTION/16-5-2018/AAAR-32**

**Appellate Advance Ruling Category :** Work Contract

**State :** Gujarat

**Order No.:** GIB/GJ/RB CONSTRUCTION/16-5-2018/AAAR-32

**Name of Entry :**

M/s. R.B. Construction Company

**Date :** 16-05-2018

**Breif Issue :**

**Facts & Issue of the Ruling**

The appellant M/s. R.B. Construction Company is engaged in execution of works contract. The appellant was registered under the erstwhile Gujarat Value Added Tax Act and was holding a permission to pay tax on a lump-sum basis. The appellant was exempt from holding registration under Service Tax regime.

The appellant had raised queries before the Advance Ruling Authority. The same ruling can be found on the following link - [GIB/GJ/RB CONSTRUCTION/AAR-59](#) . Aggrieved by the aforesaid advance ruling, the appellant has filed the present appeal.

The appellant has submitted that their claim of transition credit must be allowed. It is submitted that only part ownership of the structure is transferred to the customer of the appellant and that the project is still in semi-finished stage. It is submitted that the entire quantity of pipe was supplied to RMC in pre-GST era. The running bills which the appellant had issued would be attuned in a way that 90% of the amount is realized, on laying the pipe and then the further balance 10% would be realized after testing and commissioning. It is submitted that the running bills to be issued post GST would cover two elements i.e. one towards the transfer of balance 10% ownership of pipes and another towards the labor charges. It is submitted that there is no iota of doubt about the fact that only part ownership in works was transferred before 1st July 2017. The appellant submitted that in its case, as the balance 10% ownership was nowhere transferred before the advent of Goods and Services Tax Act, it is entitled to claim part of the transition credit represented by duties and taxes of excise and VAT paid by it on the pipes. It is submitted that this has been absolutely missed out by the Ld. Advance Ruling Authority and hence, the order of advance ruling authority is bad in law. It is submitted that the project i.e. contract of the appellant is still in work-in-process stage and that only a part ownership of the pipes is transferred as per theory of accretion. When after the applicability of Goods and Services Tax Act, the balance ownership of 10% is passed, in view of the provisions ingrained in Section 140(6), the claim of input credit under transition provisions must be declared as held admissible. The appellant submitted that it is in possession of duty paid documents and for the purchases made within 12 months immediately preceding 1st July, 2017. Thus, the appellant is entitled to claim of proportionate tax credit to the extent ownership of the asset created under the contract was not transferred before 1st

July, 2017.

**Decision of Advance Ruling Authority :**

**Decision**

Appellate authority for Advance Ruling confirmed the ruling given by the advance ruling authority to the extent it is appealed before Appellate Authority, and ruled as follows-

**M/s. R.B. Construction Co. is not entitled**, under sub-sections (3) and (6) of Section 140 of the CGST Act, 2017 and the GGST Act, 2017 **to avail input tax credit** and also, the part of the supply made by the appellant wherein time of supply of service is on and after the appointed date (01.07.2017) i.e. after implementation of the CGST Act, 2017 and the GGST Act, 2017, **the appellant is required to discharge Goods and Services Tax liability.**

The work of the appellant falls within the definition of „works contract? as given under Section 2(119) of the CGST Act, 2017 and the GGST Act, 2017 as the construction of pipeline network becomes immovable property. Therefore, even if the contract of the appellant was on work-in-process stage on the appointed day, the same would not be covered within the terms “semi-finished or finished goods” as the term “goods” covers movable property and not immovable property.