

### ITC on ducts and manholes used in OFC networks

#### [Circular No. 219/1/2024-GST dated 26.06.2024]

#### I. Issue Involved

Eligibility of Input tax credit (ITC) on ducts and manholes used in network of optical fiber cables (OFCs) under section 17(5) of the CGST Act.

Few tax authorities have taken a stand that ITC on these goods is blocked in section 17(5) being in nature of immovable property, this circular clarifies that ITC is available.

#### II. Legal background relating to the issue: and clarification given by the Circular:

1. Section 17(5) of the CGST Act provides that ITC of following shall not be available:

- a. 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; or
- b. 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.
- c. Explanation in section 17 of CGST Act provides that 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 land, building or any other civil structures; telecommunication towers; and pipelines laid outside the factory premises.



### III. Clarification given:

1. Ducts and manholes are basic components for the OFC network used in providing telecommunication services. The OFC network is generally laid with the use of PVC ducts/sheaths in which OFCs are housed and service/connectivity manholes, which serve as nodes of the network, and are necessary for not only laying of optical fiber cable but also for their upkeep and maintenance.
2. In view of the Explanation in section 17, ducts and manholes are covered under the definition of “plant and machinery” as they are used as part of the OFC network for making outward supply of transmission of telecommunication signals from one point to another.
3. Moreover, ducts and manholes used in network of optical fiber cables (OFCs) have not been specifically excluded from definition of Plant and Machinery.
4. ITC on ducts and manholes used in OFC network is eligible under the GST law.

### IV. Will the legal principle enshrined in this circular be applicable to other such transaction?

Clarification discusses sub-clause (c) and (d) of section 17(5) which disallows credit of construction of immovable property and straight away goes on to discuss the definition of Plant and Machinery.

In other words, circular agrees with the line of interpretation whereby if the construction expenses result into creation of an immovable property which is a Plant and Machinery, ITC will be allowed. It argues that ducts and manholes “*are basic components for the optical fiber cable (OFC) network used in providing telecommunication services*”. In our view the circular uses the ‘Doctrine of necessity’ to justify that ducts and manholes are a necessity for laying of OFC network and also for its maintenance, without which telecom services cannot be provided and therefore ducts and manholes qualify to be ‘Plant and Machinery’ as defined in GST law.

This legal principle can be used in almost all such disputes to say that if something is critical for supply of a particular service or goods, even if it is immovable in nature, ITC thereof shall be



available if it qualifies the definition of Plant and Machinery. Most common example that we can think of is a Lift, without which the operations of a manufacturing plant or its administrative office can come to a halt, reading this circular we can safely say that ITC of lifts can be availed.

Hope, all such issues are clarified by the council before they convert themselves into litigation.

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