

Credit eligibility under GST w.r.t Pre-fabricated Buildings/Structures

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Input tax credit (ITC) is at the heart of GST which intends to avoid cascading effect of taxes thereby ensuring that businesses pay tax only on value addition at each stage of the supply chain. However, ITC is a statutory right and not a constitutional right as was held in the case of M/s. M. Trade Links Vs Union of India¹. This would mean that for being eligible to ITC of any GST paid, the provisions in the statute have to be adhered to.

In this article we are examining the eligibility of credit related to GST paid on prefabricated buildings / Pre-engineered building (**PEB**). In today's era where everyone wants things to reach them at a fast pace, PEB's have become popular as they enable structures being built in no time as compared to the brick and cement building.

What is Prefabricated building?

PEB is a structure whose components or modules are manufactured in a factory and then transported to the construction site for quick assembly. This is a trending alternative to traditionally constructed buildings. PEBs are trending because they offer a faster, more affordable alternative to traditional construction. PEBs can be used as office premises, guest house, supermarket, manufacturing units, etc. Additionally, it enables the flexibility of being dismantled and re-assembled at some other location.

What's the dispute?

The moment, it is a building that comes into existence, it's a natural tendency of the department officers to deny any GST paid on it, by treating it to be an immovable property that is constructed to remain at one place for a long period of time. One such ruling was given by the Authority of Advance Ruling (**AAR**), Gujarat in the case of M/s. HMSU Rollers (India) Private Limited² which is summarised below:

Facts of the case:

M/s. HMSU Rollers (India) Pvt Ltd (**Applicant**), for their project expansion, received works contract services for installation of PEB structure, for which invoice is issued under SAC 995411 (Installation, assembly and erection services of pre-fabricated buildings). A 10-ton crane is installed in PEB and the load of the crane is borne by PEB.

AAR's discussion and conclusion:

AAR noted that Applicant received works contract services for installation and erection of a PEB, which constitutes an **immovable property**.

Under Section 17(5)(c) and (d) of the CGST Act, ITC is specifically blocked in respect of works contract services and goods or services used for the construction of immovable property (other than plant and machinery) on one's own account.

¹ 2024 (87) G.S.T.L. 4 (Ker.) - HC

² TS-385-AAR (Guj)-2025-GST

The term “plant and machinery” as defined in the law expressly excludes land, building or **any other civil structures**.

Thus, AAR ruled that the PEB in question is a civil structure, and even if it facilitates the operation of an overhead crane, it cannot by any stretch be considered “plant and machinery” within the meaning of the Act.

Consequently, any inputs, input services, or capital goods like rails and electrification which are used in its construction and become embedded in the structure also become part of the immovable property, and the ITC thereon stands blocked by virtue of Section 17(5)(c) and (d).

Writers’ comments:

The ruling has considered the PEB to be an immovable property which itself is prone to challenge for the following reasons:

- a. Classification for the PEB is under HSN 9406 under the Customs Tariff (as is applicable for GST classification) which also includes completed buildings. In Note-4 of chapter 94, it is specified that *for the purpose of heading 94.06, the expression “Prefabricated buildings” means **buildings which are finished in the factory** or put up as elements, presented together, to be assembled on site, such as housing or worksite accommodation, offices, schools, shops, sheds, garages or similar buildings.*
- b. In the case of M/s. Bharti Airtel Ltd.⁸, the Hon’ble Supreme Court itself has noted that PEB structures are movable. Thus, the moment PEBs are movable, the restriction u/s 17(5)(c) and (d) should not be applicable.
- c. Even assuming PEB is immovable, one can consider it to be a support structure for the crane which is itself a plant and equipment and thereby credit should be eligible since the term P&M as defined under GST includes support structures.

However, the following points need to be taken care of by the trade and industry while claiming the credit on PEB:

- a. If the HSN mentioned in the invoice is 9406, it would represent that what is purchased is goods and installation/its commissioning is merely an incidental service. Though in the view of the writers, 9954 HSN mentioned in the invoice itself should not lead to a conclusion that the structure is immovable.
- b. The Supreme Court in the case of Bharti Airtel *supra* noted various aspects/tests that need to be present for any structure to be regarded as movable. One of such tests is the intention of erecting the structure. Whether it is intended to be permanent/not. In this regard, businesses should have some material to indicate that it is not a permanent structure.
- c. Getting a Chartered Engineers certification which also indicates the movability of the structure.
- d. One could also consider reversing credit w.r.t. PEB under protest and applying for refund or availing credit and not utilising it, in order to avoid any interest demands on the ITC claimed.

Hence, any business can ensure that certain aspects are taken care of, while finalising the contracts/agreements/work orders and invoices for procurement of PEB to ensure that any dispute from department in this regard can be defended effectively. GST being a new law, it would

take time for this issue to settle. Due to this if businesses take a conservative view and do not avail credit on their purchases of PEB within the time limit provided in the law, any subsequent favourable decisions on this aspect would be of no avail for them for the past PEB installations. Hence, businesses need to take a reasoned decision in this regard since the amounts involved in these transactions are not small.

The views expressed are strictly personal and cannot be regarded as an opinion. For any queries or feedback please write to shilpijain@hnaindia.com or divya.v@hnaindia.com