

THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX
(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/RS-SK/ 24 /2020-21

Date- 20-07-2020

BEFORE THE BENCH OF

(1) Shri Rakesh Kumar Sharma, MEMBER (Central Tax)

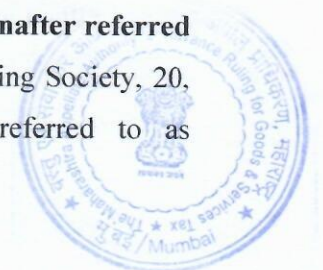
(2) Shri Sanjeev Kumar, MEMBER (State Tax)

Name and Address of the Appellant:	M/s. Las Palmas Co-Op. Housing Society, 20, Little Gibbs Road, Malabar Hill, Mumbai – 400006
GSTIN Number:	27AAABL0207A1ZG
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised:	Admissibility of input tax credit of tax paid or deemed to have been paid
Date of Personal Hearing:	15.07.2020
Present for the Appellant:	Shri Monarch Bhatt, Advocate
Details of appeal:	Appeal No. MAH/GST-AAAR-25/2019-20 dated 13.03.2020 against Advance Ruling No. GST-ARA-31/2019-20/B-13 dated 22.01.2020
Jurisdictional Officer:	Asstt. Commissioner CGST & C.Ex., Division X, Mumbai South

(Proceedings under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.

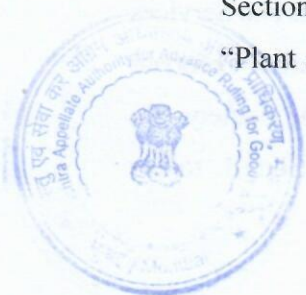
2. The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act”] by M/s. Las Palmas Co-Op. Housing Society, 20, Little Gibbs Road, Malabar Hill, Mumbai - 400006 (herein after referred to as



“the Appellant”) against the Advance Ruling No. **GST-ARA-31/2019-20/B-13**, dated **22.01.2020**, pronounced by the Maharashtra Authority for Advance Ruling (MAAR).

BRIEF FACTS OF THE CASE

- 3.1 M/s. Las Palmas Co-operative Housing Society Limited situated at 20, Little Gibbs Road, Malabar Hill, Mumbai - 400006 is a Co-operative Housing Society registered under the Maharashtra Co-operative Housing Society Act vide Registration BOM/HSG--446 of 1963 dated 06th July, 1963.
- 3.2 The Appellant is recovering amount, from each of the society members under various heads such as Service Charges, Electricity Charges, Lift Charges, Ground Rent, Sinking Fund, Repair Fund, Water Charges, Parking Charges, etc., and paying 18% GST on it after availing the input tax credit under the GST Registration No. 27 AAABL0207AIZG.
- 3.3 The Appellant is under the process of replacing existing lift of the society for which Contract has been awarded to M/s. Fujitec India Private Limited (**hereinafter referred to as “Fujitec” or “lift contractor” interchangeably**). The Appellant is also recovering separate amount for replacement of lifts from the members (apart from the normal charges as stated above) as "contribution for installation of new lifts" and charging 18% GST on it to the members of the society. The Appellant is recovering such amount of contribution for the installation of the new lifts under the separate Tax Invoice.
- 3.4 The Appellant wanted to know about the eligibility of Input Tax Credit on the lift Installation Charges paid to Fujitec. Therefore, the Appellant filed an application dated 25.07.2019 before the Maharashtra Advance Ruling Authority (MAAR), on the following issues:
- whether the Applicant/Appellant is eligible for the input tax credit of lift installation charges paid to Fujitec, if it is booked as Capital expenditure in their books without availing the depreciation on 18% GST charged by Fujitec.**
- 3.5 To support their arguments, the Applicant/ Appellant had relied upon the provisions laid down under section 16(1) of the CGST Act, 2017, pertaining to the eligibility of the ITC. They also relied upon the definition of works contract services provided under Section 2(119) of the CGST Act, 2017. They further relied upon exclusion clause of Section 17 (5)(d) of the CGST Act, 2017 to argue that the lift being in the nature of the “Plant and Machinery” would be outside the purview of the blocked credit provided



nature of the “Plant and Machinery” would be outside the purview of the blocked credit provided under section 17(5) of the CGST Act, 2017. To buttress their argument, they relied upon the definition of the “lift” and “appliance”, as per P Ramanatha Aiyar’s Advanced Law Lexicon, and meaning of the “Plant and Machinery” provided under the explanation to Section 17(5) of the CGST Act, 2017.

- 3.6 The aforesaid application filed by the Appellant has been decided by the Maharashtra Authority of advance ruling vide their **Order bearing No. GST-ARA-31/2019-20/B-13, dated 22.01.2020**, wherein it has been held that the Appellant was not entitled for the input tax credit of replacement of lift, attributing to the fact that the lift, when erected, installed, and commissioned in a building, would be construed as an integral part of the building, and hence the same will be treated as immovable property. The Authority have relied upon the Hon’ble Supreme Court Judgment in the case of **Triveni Engineering Industries Ltd. Vs. C.C.E., 2000 (40) RLT 1(SC)-2000 (120) E.L.T. 273**, to arrive at the aforesaid conclusion. Once, it has been held by the Advance Ruling Authority that the erection, commissioning and installation of the lifts under question is immovable property, they went on to decide that the input tax credit in respect of the charges paid to the lift contractor were not admissible to the Appellant in terms of section 17(5)(d) of the CGST Act, 2017, which is being reproduced herein 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— For the purposes of this Chapter and Chapter VI, 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—

- (i) land, building or any other civil structures;*
- (ii) telecommunication towers; and*
- (iii) pipelines laid outside the factory premises.”*

4. Being aggrieved by the aforesaid advance ruling order, the Appellant have filed the present appeal.



GROUND OF APPEAL

5. The Appellant in their Appeal have, inter alia, mentioned the following grounds of appeal:

5.1 that they are providing the same services as received from the lift contractor without adding or altering those services, to the members of the society. That is, they are receiving the works contract services from the lift contractor, i.e. Fujitech and rendering those services to the members of the society, without adding or altering those services, which remained in the nature of works contract services. They have further emphasized that works contract services, being rendered by the lift contractor was not disputed by the Advance Ruling Authority either in the impugned ruling. Hence, they are eligible to avail the ITC on the input services of works contract received from the lift contractor in terms of Section 17(5)(c) of the CGST Act, 2017, as they are acting as the supplier of the works contract services to the members of the society, from whom they are recovering this lift installation charges along with the GST thereon at the rate of 18%. Section 17(5)(c) of the CGST Act, 2017, is being reproduced herein under:

“Section 17. Apportionment of credit and blocked credits

(1)

(2)

.....

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely: -

(c) 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;

In view of the above provision, the Appellant have submitted that if works contract services have been availed for providing works contract services, credit is available to them.

5.2 Second contention put forth by the Appellant is that Lift is covered under the head “Plant and Machinery”, which has been excluded from the provisions related to the blocked credit, prescribed under section 17(5)(c) and 17(5)(d) of the CGST Act, 2017.



Therefore, they are eligible to take the ITC paid on the input services, received from the Lift contractor.

“Section 17. Apportionment of credit and blocked credits

(1).....

(2).....

(5)Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely: -

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.....

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account including when such goods or services or both are used in the course or furtherance of business;

...

Explanation– For the purposes of this Chapter and Chapter VI, 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—

- (i) land, building or any other civil structures;*
- (ii) telecommunication towers; and*
- (iii) pipelines laid outside the factory premises.”*

5.3 Relying on the above provision, the Appellant, inter alia, have contended that the plant and machinery, used in the above explanation, is wide term and cannot be construed in narrow sense as the primary objective of the GST itself was to remove the cascading effect of the taxes and therefore, overall objective of the GST legislation should be taken into consideration.

- For the purpose of understanding and analyzing the meaning of the Apparatus, equipment, and machinery, mentioned in the above explanation to the section 17(5) of the CGST Act, 2017, the Appellant have relied upon dictionary meanings of these terms, which are provided as under:

“Apparatus” means –

A group of instruments, tools, etc. for a specific use;



Any complex instrument of machines;

“Equipment” means as the clothes, machines tools, or instruments etc., necessary for a particular kind of work or activity.

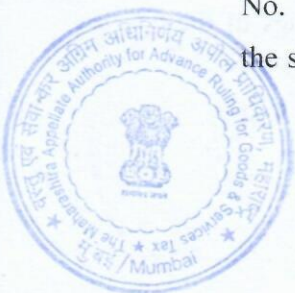
“Machinery” means in generic sense, would include all appliances and instruments, whereby energy or force is transmitted and transformed from one point to another.

RESPONDENT’S /DEPARTMENT’S SUBMISSIONS

6. The submissions made by the Department/Respondent are as under:
 - (i) that the impugned advance ruling is entirely proper and legal as the view of the authorities had been supported by the Apex Court’s ruling in the case of Quality Steel Tubes Pvt. Ltd. Vs. C.C.E., U.P.
 - (ii) that the lifts are part of the immovable property has also been upheld in the following cases, which have been mentioned in the advance ruling:
 - (a) Triveni Engineering Industries Ltd. Vs. C.C.E., 2000 (40) RLT 1(SC)-2000 (120) E.L.T. 273
 - (b) Otis Elevator Company Vs. Superintendent of Central Excise, Mumbai High Court 2003 (151) ELT 499 BOM.
 - (iii) In view of the above submissions, the Respondent have contended that ITC is not available in terms of section 17(5)(d) of the CGST Act, 2017.

PERSONAL HEARING

7. A personal hearing in the matter was held on 15.07.2020 , which was attended by Shri Monarch Bhatt, Advocate on behalf of the Appellant and by Shri Ranjit Kumar Sinha, Asstt. Commissioner as the Jurisdictional officer in the present matter, wherein the Appellant made the oral and additional written submissions.
- 7.1 During the course of the said personal hearing, Shri Monarch Bhatt, Advocate, on behalf of the Appellant contended that the issue pertains to the availment of ITC in respect of the works contract services received from the lift contractor. He further contended that the Appellant is eligible to avail the said ITC, as the lifts are not immovable property, and even if the lift is to be considered as immovable property, they are eligible to claim the ITC in accordance with the provisions of the Circular No. 109/ 28/ 2019-GST, dated 22.07.2019, issued by the CBIC, which provides that the society is eligible to avail the ITC of GST paid by them on certain capital goods

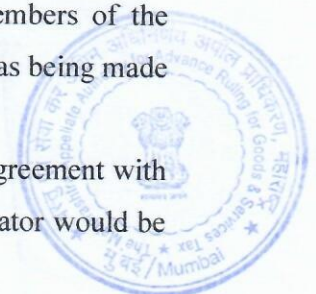


such as generators, water pumps, lawn furniture, etc. He therefore contended that the appellant is eligible to avail the ITC in respect of the lift installation charges paid to the lift contractor. He further contended that they were covered by the exception clause of section 17(5)(c) of the CGST Act, 2017, as they are providing works contract services to the members of the society, without altering the works contract services, being received from the lift contractor.

- 7.2 Shri. Ranjit Kumar Sinha, the jurisdictional officer reiterated the written submissions filed by him and contended that the Advance Ruling issued by the Advance Ruling Authority is correct and legal.

DISCUSSIONS AND FINDINGS

8. We have carefully gone through the appeal memorandum encapsulating the facts of the case and the grounds of the appeal along with the other relevant documents as well as the submissions made by the Advocate of the Appellant at the time of personal hearing held on 15-07-2020. We have also examined the impugned Ruling passed by the Maharashtra Advance Ruling Authority (MAAR), wherein it has been held that the lift would become part of the building, once it had been erected, installed, and commissioned, and hence it would be construed as immovable property. Therefore, ITC in respect of the lift installation charges paid to the lift contractor would not be admissible to the Appellant in terms of section 17(5)(d) of the CGST Act, 2017.
9. On careful consideration of the above, the moot issues, which arise before us are as under:
- (I) Whether the lift will be construed as an immovable property after it has been erected, installed and commissioned in the building. If the answer to this question is yes, whether the same would fall under the category of “Plant and Machinery” as defined in the explanation provided under section 17(5) of the CGST Act 2017.
 - (II) Whether the services provided by the Appellant to the members of the society will fall under the category of works contract service, as being made out by the Appellant.
10. Now, we set out to examine the first issue. Here, we are completely in agreement with the findings of the Advance Ruling Authority to the extent that lift/elevator would be



construed as an integral part of the immovable property, i.e. in this case, the building, in which such lifts or elevators are being installed and commissioned, in view of the Apex Court judgement in the case of **Triveni Engineering Industries Ltd. Vs. C.C.E., 2000 (40) RLT 1(SC)-2000 (120) E.L.T. 273**, which has been relied upon by the Advance Ruling Authority to arrive at the above said conclusion.

11. Now, we will refer to the definition of the “Plant and Machinery” provided under Explanation to Section 17(5) of the CGST Act, 2017, which is being reproduced herein under:

Explanation— For the purposes of this Chapter and Chapter VI, 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—

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises.”

12. The above definition of the “Plant and Machinery” categorically excludes building or any other civil structure. Since, the lifts/elevators, erected, installed and commissioned in the buildings, are construed as an integral part of those building as held by the Advance Ruling Authority on the basis of the Hon’ble Apex court judgment mentioned in the impugned Advance Ruling, hence, the same would be excluded from the category of “Plant and Machinery”, in terms of the provisions related to the ‘Plant and Machinery’ laid out herein above. Further, the Larger Bench of the Supreme Court in the case of Kone Elevators vs State of Tamil Nadu AI (Writ petition (C) NO. 232 OF 2005, dated 6.5.2014) has held that in the case of installation of lift after the goods are assembled and installed with skill and labour at the site, it becomes a permanent fixture of the building. Once it has been established that the lift, after its erection, installation and commissioning, would be considered as part of the building, and hence immovable property, the Appellant cannot claim ITC on the input services in terms of the provisions laid out under section 17(5)(d) of the CGST Act, 2017, which is being reproduced herein under:

“Section 17. Apportionment of credit and blocked credits

(1).....

(2).....

.....



(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely: -

.....

.....

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account including when such goods or services or both are used in the course or furtherance of business;

13. Now, we will proceed to discuss the issue no. (II), wherein the Appellant is claiming that they are providing works contract services to the members of the society after receiving the same from the lift contractor, without altering any components of the said services, and therefore, in terms of section 17(5)(c) of the CGST Act, 2017, they are rightfully eligible for the ITC in respect of the input services, provided by the lift contractor, which are in the nature of the 'works contract services'. It is their contention that they are eligible to avail the ITC on the input services of works contract received from the lift contractor in terms of Section 17(5)(c) of the CGST Act, 2017, as they are acting as the supplier of the works contract services to the members of the society, from whom they are recovering this lift installation charges along with the GST thereon at the rate of 18%. Section 17(5)(c) of the CGST Act, 2017, is being reproduced herein under:

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(c) 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;



In view of the above provision, the Appellant have submitted that if works contract services have been availed for providing works contract services, credit is available to them.

14. The aforesaid provision says that ITC would be available on tax paid on works contract services when such services are an input service for further supply of works contract service. The appellant does not fulfill the conditions laid down above. It has to be understood that the exception carved out to provide ITC in the case of tax paid on works contract is for those who in turn provide works contract service. For eg when a principal gets a contract of work executed from a sub-contractor and provides the same to the employer. In such a case, the principal becomes eligible for ITC even though the contract results in immovable property. However, the situation is far from it in the present case. Firstly, the society itself is not a works contract service provider. Nor is it in the business of providing works contract services. It has not itself provided any works contract service to the members. If the society is not itself a provider of the service there is no question of any ITC on input service. The works contract service is received by the society for the common benefit of the members. Therefore, we do not agree with the contention of the appellant that they are covered by the exception provided in Section 17 (5) (c) of the CGST Act.

15. As regards, the Circular No.109/28/2019-GST, dated 22.07.2019 ,issued by the CBIC as referred to by the Appellant to contend that the Circular does not disallow the ITC in respect of goods, which become immovable property after being installed, and hence they are rightfully eligible to avail ITC in respect of the lift installation charges paid to the lift contractor, even if the lift is considered as immovable property, as held by the Maharashtra Advance Ruling Authority. In this regard, we are of the view that the said Circular allows the ITC in respect of GST paid on Capital Goods only, and not on the works contract services. It is not in dispute that the Appellant is availing the works contact services from the lift contractor for the replacement of the lift in the Society, which after being installed, becomes immovable property, and therefore ITC in respect of GST paid on such works contract services would not be admissible to the Appellant.

16. In view of the above discussions and findings, we pass the following order:



ORDER

17. We do not find any reason to interfere with the ruling passed by the Maharashtra Advance Ruling Authority vide their Order No. GST-ARA-31/2019-20/B-13, dated 22.01.2020. Accordingly, it is held that the Appellant will not be eligible to avail the ITC in respect of the GST paid on lift installation charges paid to the lift contractor, in terms of section 16(2)(b) read with section 17(5)(c) and 17(5)(d) of the CGST Act, 2017. Consequently, the Appeal filed by the Appellant is not maintainable and liable to be rejected and we order accordingly.

Sanjeev Kumar
(SANJEEV KUMAR)
MEMBER 20/07



Rakesh Kumar Sharma
(RAKESH KUMAR SHARMA)
MEMBER 20/07/2020

Copy to the:

1. Appellant ie. M/s. Las Palmas Co-Op. Housing society, 20, Little Gibbs Road, Malabar Hill, Mumbai-400006.
2. AAR, Maharashtra
3. Pr. Chief Commissioner, CGST and C. Ex., Mumbai
4. Commissioner of State Tax, Maharashtra
5. Jurisdictional Officer
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