


GUJARAT AUTHORITY FOR ADVANCE RULING, GOODS AND SERVICES TAX, D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/37/2021

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2021/AR/02)

Date: 30-07-2021

Name and address of the applicant	:	M/s. The Varachha Co Op Bank Ltd, 1 to 10, Affil Tower, L. H. Road, Surat-395006
GSTIN of the applicant	:	24AABAT4356N1Z6
Date of application	:	5-2-21
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	<i>(d) Admissibility of Input Tax Credit of Tax Paid or Deemed to have been paid</i>
Date of Personal Hearing	:	30-6-21
Present for the applicant	:	Shri Hardik Shah, CA

B R I E F F A C T S

The applicant M/s. Varachha Co-operative Bank Ltd. submitted that they are constructing New Administrative Building and incurring cost of various services as follows :

- (i) Central Air Conditioning Plant (Classified & Grouped under “Plant & Machinery”)
- (ii) New Locker Cabinet (Classified & Grouped under “Locker Cabinets”)
- (iii) Lift (Classified & Grouped under “Plant & Machinery”)
- (iv) Electrical fittings, such as Cables, Switches, NCB and other Electrical Consumables Materials (Classified & Grouped under separate block namely “Electrical fittings”)
- (v) Roof Solar (Classified & Grouped under “Plant & Machinery”)
- (vi) Generator (Classified & Grouped under “Plant & Machinery”)
- (vii) Fire Safety Extinguishers (Classified & Grouped under “Plant & Machinery”)
- (viii) Architect Service Fees (Charged to Profit & Loss Account)
- (ix) Interior Designing Fees (Charged to Profit & Loss Account)

2. The applicant has submitted as follows: Section 17 (5) of CGST Act, 2017 deals with “Blocked Credit” in GST. Sub-Section (c) & (d) of Section 17 (5) deal with blocked credit relating to “Works Contract Services” and “Goods & Service” received for construction of Immovable Property respectively. For understanding the Blocked credit for construction of Immovable Property in GST a Conjoint reading of Section 17 (5) (c) & 17 (5) (d) is required. The meaning of “Works Contract” and basics of Section 17 (5) (c) & (d) are reproduced as follows.

Definition of Works Contract

As per Section 2(119) of GST Act, “Work Contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

The expression “Work Contract” is limited to contract to do with immovable property. A contract will amount to a “Works Contract” only where the resultant product is immovable property.

3. The applicant has submitted that from the above definition it can be seen that the term “Works Contract” has been restricted to contract for building construction, fabrication etc. of any Immovable Property only. Also Para 6(a) of Schedule II to the CGST Act, 2017 states that Works Contract as defined in Section 2(119) of the CGST Act, 2017 shall be treated as a Supply of Services.

3.1 As per Section 17 (5) (c) of the CGST Act, 2017, Input Tax Credit shall not be available in respect of the 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;

3.2 As per Section 17 (5) (d) of the CGST Act, 2017, Input Tax Credit shall not be available for any 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.

4. The applicant has submitted that to understand the scope of Immovable Property is very important. Immovable property is well understood to be land and building but it also includes everything that is attached to or forming part of the land and right-in-land. Credit is blocked on all inward supplies leading to the establishment of such immovable property.

Explanation to 17 (5) (c) & (d)

Explanation.—For the purposes of clauses (c) and (d), the expression — “Construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

“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. The applicant has submitted that now moot question arises whether the service supplied to them will be for /of immovable property or not. As discussed herein above, the contractors will provide various Services. Construction is defined to include reconstruction, renovation additional alteration or repairs only to the extent of capitalisation of Immovable Property excluding Plant and Machinery.

5.1 The applicant has submitted on availability of ITC on the goods and services as mentioned as follows:

Sr. No.	Nature of Cost/Expenses	Head under which Exp. Will be booked	Capitalized or Not	Remark
1.	Central Air Conditioning Plant	Plant & Machinery	Yes	Being Plant not covered under Immovable Property & hence ITC available
2.	New Locker Cabinet	Locker Cabinets	Yes	Being Furniture not

				covered under Immovable Property & hence ITC available
3.	Lift	Plant & Machinery	Yes	Being Plant not covered under Immovable Property & hence ITC available
4.	Electrical Fittings, such as Cables, Switches, NCB and other Electrical Consumables material	Electrical fittings	Yes	Being Electrical Fittings not covered under Immovable Property & hence ITC available
5.	Roof Solar	Plant & Machinery	Yes	Being Plant not covered under Immovable Property & hence ITC available
6.	Generator	Plant & Machinery	Yes	Being Plant not covered under Immovable Property & hence ITC available
7.	Fire safety Extinguishers	Plant & Machinery	Yes	Being Plant not covered under Immovable Property & hence ITC available
8.	Architect Service Fees	Profit & Loss Account	No	Not being capitalized and charged to P & L A/c. No restriction on ITC
9.	Interior Designing Fees	Profit & Loss Account	No	Not being capitalized and charged to P & L A/c. No restriction on ITC

6. The applicant has submitted additional submission as follows:

(i) Central Air Condition System:

The said Supply will be booked under the head of “Plant & Machinery” in the Books of Accounts. In the instant case, the Applicant had entered into a contract for “Supply & Erection” of “Central Air Conditioning System. Any Supply, to get covered under “Work Contract Services” as defined under Section 2(119) of CGST Act, 2017, shall first pass the test of Permanency. Any Supply, to get covered under “Work Contract Services”, shall first pass the test of “Permanency”. To see, whether the Machinery or Equipment after installation is permanently fastened or embedded to the earth, so that the activity would be treated as “Works Contract” under GST.

Immovable property has not been defined in the GST Act. Definition of Immovable Property is given in Clause 3 (26) of General Clauses Act, 1897 which says that “land and benefits arising out of land and things attached to earth

permanently fastened.” As per Section 3 of the Transfer of Property Act 1882, the phrase “attached to earth” means-

- (a) rooted in the earth, as in the case of trees and shrubs;
- (b) imbedded in the earth, as in the case of walls or buildings; or
- (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

As the Supply received by the Applicant does not involve assimilation with the property and the work carried out by the Supplier is only making the plant for a ‘wobble free operation’. And thus, activity undertaken by the Supplier cannot be considered as an “Immovable Property” by applying permanency test.

The transaction would not be classifiable to cover under the definition of “Works Contract” due to failure to pass permanency test of Immovable Property. This view is confirmed by AAAR of Maharashtra Bench in the case of M/s. Nikhil Comforts reported in 2020 (41) GSTL 417 (App. AAR - GST - Mah.) and AAR of Uttrakhand Bench in the case of M/s. BAHIL Paper Mills Ltd. reported in 2018 (14) GSTL 306 (AAR - GST).

(ii) Locker Cabinet:

The said Supply will be booked under the head of “Furniture & Fixtures” in the Books of Accounts. Locker Cabinets will be ultimately used for provision of Supply of Taxable Service. The said Supply is “Supply of Goods” which is movable and there is no element of “Works Contract” resulting into “Immovable Property” at all. Further, even though, said “Supply” will be capitalized, it will be classified under “Furniture & Fixture”. The “Supply” is of “Movable Goods” and there is no element of “Works Contract”, the restriction of Section 17 (5) of the CGST Act, 2017 does not apply and hence the ITC is available without any restriction.

(iii) Lift:

The said Supply will be booked under the head of “Plant & Machinery” in the Books of Accounts. The Applicant had entered into a contract for “Supply & Erection” of “Lift”. To see, whether the Machinery or Equipment after installation is permanently fastened or embedded to the earth, so that the activity would be treated as “Works Contract” under GST.

Immovable property has not been defined in the GST Act. Definition of Immovable Property is given in Clause 3 (26) of General Clauses Act, 1897 which says that “land and benefits arising out of land and things attached to earth permanently fastened.” As per Section 3 of the Transfer of Property Act 1882, the phrase “attached to earth” means-

- (a) rooted in the earth, as in the case of trees and shrubs;
- (b) imbedded in the earth, as in the case of walls or buildings; or
- (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

In the present case, the Applicant had sought queries from supplier- Schindler Lift, their Supplier’s response is as follows:

<i>Sr. No.</i>	<i>Query from Applicant</i>	<i>Reply from Supplier</i>
<i>1.</i>	Whether the Lift can be dismantled without	Therefore, although our

	causing substantial damage to it?	contract considered as works contract service for immovable property but for the purpose of availment of tax credit elevator / escalator is not immovable property and thereby, is eligible to claim the tax credit. The said email is attached herewith and marked as “Annexure – V”.
2.	Whether the same lift can be shifted to our other premises having the same requirement?	
3.	Whether the same lift can be reused by any of your clients having requirements of the same specifications and requirements?	
4.	Whether the lift can be reused by us?	

From above, it is very well understood that the Lift will be attached to earth for operational efficiency. The whole purpose behind attaching the machine to a concrete base was to prevent wobbling of the Lift and to secure maximum operational efficiency and also for safety. Further, it is also seen that the Lift will be saleable and observed “if somebody wants to purchase, the whole Lift could be dismantled and sold to him in parts”. Further, it cannot be prudent to say that the Lift assembled and erected at the premises of the Applicant at its Office will be immovable property as something attached to earth like a building or a tree.

If the Applicant want to sell the Lift it will always be removed/ dismantled from its base and sell it. Further, whatever is embedded in earth must be treated as immovable property is basically not sound. For example, a factory owner or a house-holder may purchase a water pump and fix it on a cement base for operational efficiency and also for security. That will not make the water pump an item of immovable property. Some of the components of water pump may even be assembled on site. That too will not make any difference to the principle. The test is whether the Lift can be sold in the market and it is seen from record that it can be sold. Just because a plant and machinery are fixed in the earth for better functioning, it does not automatically become an immovable property.

The Supplier will himself buy several items and will complete the machinery. They will purchase a large number of components and fabricate a few and assemble the Lift at site. If it is sold, it has to be dismantled and reassembled at another site.

Further, “Plant and machinery” means apparatus, equipment, 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.

Thus, the lift is nothing but the “Plant & Machinery” attached to earth which is movable as well as marketable also.

The Applicant has relied upon the judgment of Apex Court in case of M/s. Sirpur Paper Mills reported in 1998 (97) ELT 3 (SC) wherein Apex Court upheld the view that where plant & Machinery are capable of being dismantled and sold without being destroyed and are only embedded to the earth because of operational efficiency, it is not an immovable property.

And thus, activity undertaken by the Supplier cannot be considered as an “Immovable Property” by applying permanency test.

The transaction would not be classifiable to cover under the definition of “Works Contact” due to failure to pass permanency test of immovable property.

(iv) Electrical Fittings (except for Civil Construction)

The said Supply will be booked under the head of “Electric Fittings” in the Books of Accounts. The Applicant will install “Electric Fittings” both exterior and interior. The Appellant is not intended to avail ITC on Electric Fittings used in Civil Construction being blocked by Section 17 (5). However, for rest of the “Electric Fittings”, there is no specific barring provisions.

This view is confirmed by AAR of Maharashtra Bench in the case of M/s. Nipro India Corporation Pvt. Ltd. reported in 2018 (18) GSTL 289 (AAR - GST) wherein the Authority had categorically allowed the ITC on Electrical Fittings (Excluding Civil Work) considering it as “Plant & Machinery”.

(v) Roof Solar Plant:

The said Supply will be booked under the head of “Plant & Machinery” in the Books of Accounts. The Applicant will install “Roof Solar Plant” at the Top of their Building to generate “Electricity” which will be ultimately used for provision of Supply of Service. For this the Applicant will enter into comprehensive SITC Contract (Supply, Installation, Testing & Commissioning) with the vendor.

The solar equipment purchased, can be qualified as “Plant and Machinery” will be used by a Taxable Person for furtherance of business i.e. in its business of supplying Taxable Service. Even though the Generation of Electricity is an Exempt Supply, the Applicant will be using such electricity and solely will be consuming it captively for the purpose of supplying Taxable Service.

From above, it is very well understood that the “*Roof Solar Plant*” will be attached to earth for operational efficiency. The whole purpose behind attaching the “*Roof Solar Plant*” to a concrete base will be to secure maximum operational efficiency and also for safety. Further, it is also seen that the “*Roof Solar Plant*” will be saleable and observed “if somebody wants to purchase, the whole “*Roof Solar Plant*” could be dismantled and sold to him in parts”. Further, it cannot be prudent to say that the “*Roof Solar Plant*” assembled and erected at the premises of the Applicant at its Office will be immovable property as something attached to earth like a building or a tree.

If the Applicant want to sell the “*Roof Solar Plant*” it will always be removed / dismantled from its base and sell it. Further, whatever is embedded in earth must be treated as immovable property is basically not sound. For example, a factory owner or a house-holder may purchase a water pump and fix it on a cement base for operational efficiency and also for security. That will not make the water pump an item of immovable property. Some of the components of water pump may even be assembled on site. That too will not make any difference to the principle. The test is whether the “*Roof Solar Plant*” can be sold in the market and it is on record that as a fact that it can be sold. Just because a plant and machinery are fixed in the earth for better functioning, it does not automatically become an immovable property.

The Supplier will himself buy several items and will complete the machinery. They will purchase a large number of components and fabricate a few and assemble the “*Roof Solar Plant*” at site. If it is sold, it has to be dismantled and reassembled at another site.

Further, “Plant and machinery” means apparatus, equipment, 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.

Thus, the “*Roof Solar Plant*” is nothing but the “Plant & Machinery” attached to earth which is movable as well as marketable also.

The Applicant would like to reply upon the judgment of Apex Court in case of M/s. Sirpur Paper Mills reported in 1998 (97) ELT 3 (SC) wherein Apex Court upheld the view that where plant & Machinery are capable of being dismantled and sold without being destroyed and are only embedded to the earth because of operational efficiency, it is not an immovable property.

And thus, activity undertaken by the Supplier cannot be considered as an “Immovable Property” by applying permanency test.

The transaction would not be classifiable to cover under the definition of “Works Contract” due to failure to pass permanency test of immovable property.

Hence, once it is proved that the supply is not classified as “Works Contract” resulting in an “Immovable Property”, the ITC is available.

(vi) Generator

The said Supply will be booked under the head of “Plant & Machinery” in the Books of Accounts. The Applicant will install “Generator” at their Building to generate “Electricity” in case of power failure which will be ultimately used for provision of Supply of Service. For this the Applicant will enter into Contract for Supply with the vendor.

The said “Supply” will be capitalized, it will be classified under “Plant & Machinery”.

Once, it is proved that the “Supply” is of “Movable Goods” and there is no element of “Works Contract”, the restriction of Section 17 (5) of the CGST Act, 2017 does not apply and hence the ITC is available without any restriction.

This view is confirmed by AAR of Maharashtra Bench in the case of M/s. Nipro India Corporation Pvt. Ltd. reported in 2018 (18) GSTL 289 (AAR - GST) wherein the Authority had categorically allowed the ITC on DG Set considering it as “Plant & Machinery”.

(vii) Fire Safety Extinguishers

The said Supply will be booked under the head of “Plant & Machinery” under the Books of Accounts. The Applicant will install “Fire Safety Extinguishers” at their Building to prevent any mishap. For this the Applicant will enter into Contract for Supply with Supplier and “Installation of Fire Safety Extinguishers”.

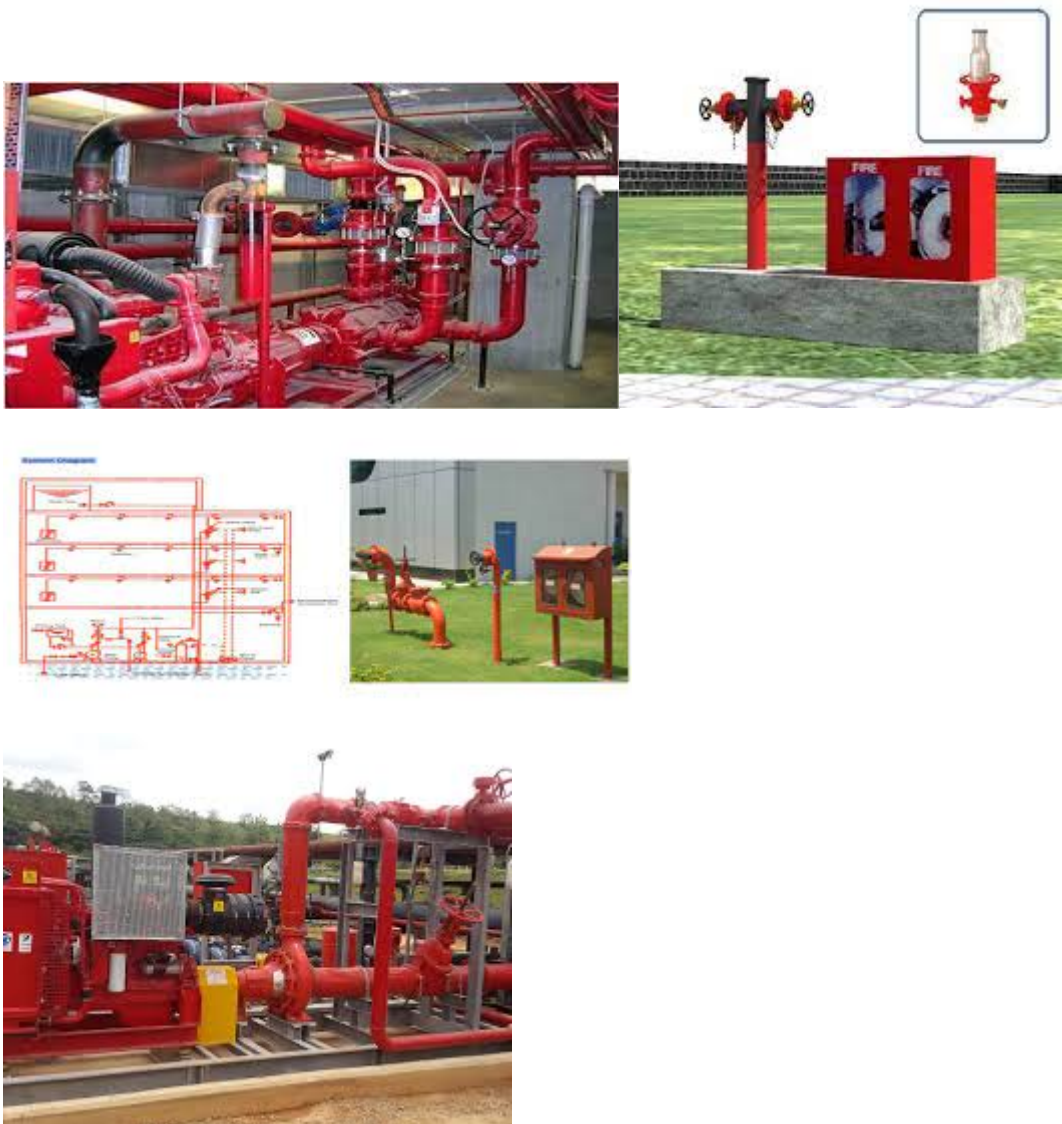
Any Supply, to get covered under “Work Contract Services”, shall first pass the test of “Permanency”. To see, whether the Machinery or Equipment after installation is permanently fastened or embedded to the earth, so that the activity would be treated as “Works Contract” under GST.

Immovable property has not been defined in the GST Act. Definition of Immovable Property is given in Clause 3 (26) of General Clauses Act, 1897 which says that “land and benefits arising out of land and things attached to earth permanently fastened.” As per Section 3 of the Transfer of Property Act 1882, the phrase “attached to earth” means-

- (a) rooted in the earth, as in the case of trees and shrubs;
- (b) imbedded in the earth, as in the case of walls or buildings; or
- (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

Further, “Plant and machinery” means apparatus, equipment, 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.

The Applicant submitted the proposed “Fire Safety Extinguishers” photos to conceptualize it.



The “Fire Safety Extinguishers” is nothing but the “Plant & Machinery” attached to earth which is movable as well as marketable.

The Applicant would like to reply upon the judgment of Apex Court in case of M/s. Sirpur Paper Mills reported in 1998 (97) ELT 3 (SC) wherein Apex Court upheld the view that where plant & Machinery are capable of being dismantled

and sold without being destroyed and are only embedded to the earth because of operational efficiency, it is not an immovable property.

And thus, activity undertaken by the Supplier cannot be considered as an “Immovable Property” by applying permanency test.

The transaction would not be classifiable to cover under the definition of “Works Contract” due to failure to pass permanency test of immovable property.

Hence, once it is proved that the supply is not classified as “Works Contract” resulting in an “Immovable Property”, the ITC is available

(viii) Architect Service Fees:

The said Supply will be booked under the head of “Profit & Loss Account” in the Books of Accounts. The Consultants who perform the structural design of Building will be ultimately used for provision of Supply of Service.

As mentioned in the Application, the said expenses will be booked as Revenue Expenditure in the “Profit & Loss Account”. As per the Explanation to Section 17 (5), for the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

In the instant case, the said expenses is not being capitalized and charged to “Profit & Loss Account” and hence the ITC is admissible.

(ix) Interior Designing Fees:

The said Supply will be booked under the head of “Profit & Loss Account” in the Books of Accounts. *The Applicant has appointed the “Interior Designer” who perform the “Interior Design Development” of Building which will be ultimately used for provision of Supply of Service.*

As mentioned in the Application, the said expenses will be booked as Revenue Expenditure in the “Profit & Loss Account”. As per the Explanation to Section 17 (5), for the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

In the instant case, the said expenses is not being capitalized and charged to “Profit & Loss Account” and hence the ITC is admissible

Revenue’s Submission:

7. The revenue vide letter F. No. TECH/ISSUE/32/2020-TECH-O/o COMMR-CGST-SURAT dated 22.04.2021 submitted as follows:

7.1 The relevant provision under Section 17 (5) of CGST Act, 2017 reads as follows:

(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:—

(a).....

(b).....

(c) work 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;

(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 clauses (c) and (d), the expression — construction includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

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—

- 1. land, building or any other civil structures;*
- 2. telecommunication towers; and*
- 3. pipelines laid outside the factory premises*

7.2 It is pertinent to note that section 17(5) overrides section 16(1) and any input tax credit shall not be available in respect of –

(i) 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; and

(ii) 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.

8. The term construction includes additions to the immovable property to the extent of capitalization. Nowhere is it said that the capitalized amount needs to be declared as in the books of accounts within the value of immovable property i.e. buildings. The Accounting Standards which enumerate the classes of Fixed Assets being land and buildings, furniture and fixtures, etc. does not classify property as movable and immovable property and an asset classified as fixture could still be immovable property within its meaning. In case of any immovable property, if the asset qualifies to be an immovable property but shown as a discrete element in the books of accounts, it still remains an immovable property. Mere declaration of the same under a different class of Fixed Assets does not change its nature being an immovable property.

9. The applicant has submitted that the cost/expenses towards Central Air Conditioning Plant, New Locker Cabinet, Lift, Electrical Fittings, such as Cables, Switches, NCB and other Electrical Consumables Materials, Roof Solar, Generator, Fire Safety Extinguishers, Architect Service Fees & Interior Designing Fees are for construction of “New Administrative Building” which is in the nature of works contract services and Section 17(5)(c) clearly states that no input tax credit would be available on the tax paid on 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 services.

Clause (119) of section 2 of the CGST Act, 2017 defines the works contract as under:

“(119) “works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract”

10. The Accounting concepts prescribe for accounting of revenue expenses and capital expenses. If the expenses are in the nature of capital expenses and are related to the fixed assets, then they are capitalized. The definition of construction only states that it includes reconstruction, renovation, additions, alterations or repairs to the said immovable property and it is only an inclusive definition and hence construction of an immovable property must be seen in that context. Further, merely accounting of an immovable property as a movable property in the books of accounts of the applicant does not divest the exact nature of the item and when what is procured is an immovable property, it remains a immovable property, no matter how the same is accounted.

11. It is pertinent to note that the items do not have independent existence and are part and parcel of the entire building, a building with infrastructure and hence are excluded from the definition of “plant and machinery” as applicable to section 17(5) of the CGST Act.

12. In view of the foregoing, it appears that the applicant is not eligible for input GST credit on the cost/expenses related to Central Air Conditioning Plant, New Locker Cabinet, Lift, Electrical Fittings, such as Cables, Switches, NCB and other Electrical Consumables Materials, Roof Solar, Generator, Fire Safety Extinguishers, Architect Service Fees & Interior Designing Fees for construction of “New Administrative Building” which is in the nature of works contract services and it is blocked under section 17(5) of the CGST Act 2017.

Question on which Advance Ruling sought

13. Whether the Applicant, having undertaken the Construction of their New Administrative Office, will be eligible for the ITC of following:

- (i) Central Air Conditioning Plant (Classified & Grouped under “Plant & Machinery”)
- (ii) New Locker Cabinet (Classified & Grouped under “Locker Cabinets”)
- (iii) Lift (Classified & Grouped under “Plant & Machinery”)
- (iv) Electrical Fittings, such as Cables, Switches, NCB and other Electrical Consumables Materials (Classified & Grouped under Separate Block namely "Electrical Fittings")
- (v) Roof Solar (Classified & Grouped under “Plant & Machinery”)
- (vi) Generator (Classified & Grouped under “Plant & Machinery”)
- (vii) Fire Safety Extinguishers (Classified & Grouped under “Plant & Machinery”)
- (viii) Architect Service Fees (Charged to Profit & Loss Account)
- (ix) Interior Designing Fees (Charged to Profit & Loss Account).

Personal Hearing

14. Shri Hardik Shah , C.A. appeared for hearing (Video conferencing) on 30-6-21 and reiterated the contents of the application.

Findings

15. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and GGST Act, 2017 are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the GGST Act.

16. We have carefully considered both the applicant's and revenue's submissions. Revenue submits that all the said items mentioned by applicant are part and parcel of the building and do not have independent existence, hence excluded from Plant and machinery and ineligible for ITC. Further Revenue submits that subject activities are in nature of works contract and thereby ITC is blocked vide Section 17(5) CGST Act.

17. We find that the applicant had received the subject 9 supplies in relation to its new administrative building. We detail our findings as follows:

18. Central Air Conditioning Plant

(i) We find that the applicant entered into a contract for Supply, installation, erection and commissioning of Central Air Conditioning plant in the Administrative building. We note that this Plant is basically a system comprising of compressors, ducting, pipings, insulators etc. They are in the nature of systems and are not machines as a whole. They come into existence only by assembly and connection of various components and parts. Though each component is dutiable to GST, the air conditioning plant as such is not a good under HSN (customs Tariff Heading). We note that Air conditioning **unit**, however, is dutiable as per HSN but not Air conditioning **plant**. We find no merit to assume the central air conditioning system as a machine.

(ii) We find it apt to refer to CBEC Order No. 58/1/2002-Cx dated 15-1-2002 issued for the purpose of uniformity in connection with classification of goods erected and installed at site, as plethora of judgments appear to have created some confusion with the assessing officers, the matter was been examined by the Board (CEC) in consultation with the **Solicitor General of India** and the matter was clarified vide said Order and the relevant extract is reproduced as follows and we hold that its rationale and concept are relevant under GST scheme of law also.

“5 (iii) Refrigeration/ Air Conditioning Plant :These are basically systems comprising of compressors, ducting, pipings, insulators and sometimes cooling towers etc. They are in the nature of systems and are not machines as a whole. They come into existence only by assembly and connection of various components and parts. Though each component is dutiable, the refrigeration/air conditioning system as a whole cannot be considered to be excisable goods. Air conditioning units, however, would continue to remain dutiable as per the Central Excise Tariff”

(iii) Now we have the issue before us whether the air conditioning plant is a movable or immovable property. We find it apt to refer to case law: ***Municipal Corporation of Greater Bombay & ors. V. Indian Oil Corporation Ltd. [199 Suppl. SCC 18]*** , wherein one of the questions Hon'ble Supreme Court considered was whether a petrol tank, resting on earth on its own weight without being fixed with nuts and bolts, had been erected permanently without being shifted from place to place. It was pointed out that the test was one of permanency; if the chattel was movable to another place of use in the same position or liable to be dismantled and re-erected at the later place, if the answer to the former is in the positive it must be a movable property but if the answer to the **later part is in the positive**

then it would be treated as permanently attached to the earth. We note the applicants submission that only after the system is dismantled and individual parts of the air conditioning system are removed they can be transported. AC system/plant as a whole cannot be transported from one place to another. We find the test of permanency laid down by the Apex Court has been answered in subject case. The centralised Air condition plant comprises various parts viz. Inner and outer units, compressors, ducting, Copper pipe, flexible water pipe etc. and all these parts get assembled at the site and fitted to the building. All the different parts of centralised Air condition plant after fitted in the building loose their identity as “machine” and become a whole “Centralised Air conditioning plant”. We find that the Central Air Conditioning plant fitted in the building cannot be taken as such to the market for sale and cannot be shifted from one place to another as such to erect at another site. It can be shifted only after dismantling the plant which cannot be called ‘Centralised Air conditioning plant’ after it is dismantled as such the most of the ancillary item like copper pipes, flexible water pipe etc may become obsolete and cannot be shifted at other site. The Central Air Conditioning Plant once installed and commissioned in the building is transferred to the building owner and this involves transfer of property. We thus find no merit to treat an entire Central Air conditioning system a movable property. We find that our view is in compliance to Judicial Discipline as laid down vide the following case laws:

1. *Commissioner of C. Ex., Indore Vs. Viridi Brothrs* 2007 (207) ELT 321 (S.C.) [Para 2,6,7]
2. *Commissioner of C. Ex., Indore Vs. Globus Stores (P) Ltd.* 2011 (267) ELT (435) (S.C.) [Para 3]
3. *Voltas Ltd. Vs. Commissioner of Centralised, Mumbai –VII* 2011 (270) ELT 541 (Tri- Mumbai) [Para 5,8]

- (iv) Further, we note that the supply and erection of subject immovable property-Central Air conditioning system merit its classification under works contract service. We agree with the Revenue’s submission in this regard of terming the subject supply as works contract.
- (v) **When H’ble Supreme Court [2011 (267) ELT (435) (S.C.)]has termed Air conditional Plant as an immovable property, we find no reason to dwell on this issue further. We refer to Article 141 of our Constitution, “141. Law declared by Supreme Court to be binding on all courts: The law declared by the Supreme Court shall be binding on all courts within the territory of India”.**
- (vi) We find supply of centralised air conditioning plant covered at Section 17(5)(c) CGST Act. We note that section 17(5) CGST Act is a Non obstante sub section, overriding the provisions of section 16(1) and Section 18(1) CGST Act.
- (vii) We find the applicant referred to case law of M/s. Nikhil Comforts and M/s. BAHF Paper Mills Ltd by AAAR and AAR respectively. As per Section 103(1) CGST Act, the said Rulings are not binding on this Authority but binding on their applicants and their concerned officers. We rest on the foundation laid down by the Supreme Court with respect to test of permanency and with respect to terming air conditioning system an immovable property. We are bound by the law of the land, as per Article 141 of our Constitution.

19. **Lift**

- i. The applicant has entered into contract for supply and commissioning of Lift in the said Administrative building.

We note that a lift comprises of several parts and components- lift car, motors, ropes, rails, etc. and each of them has its own identity prior to installation and they are assembled/installed to create the working mechanism called lift. The installation of these components/parts with skill is rendition of service and without installation in the building, there is no lift. Lifts are assembled and manufactured to suit the requirement in said administrative building and are not something sold out of shelf and, in fact, the value of supply and installation of this lift is subject to taxation as supply of service. Parts of the lift are assembled at the site in accordance with its design and requirement of the building. It has to synchronize with the building and each door has to open on the level of each floor. The lift does not have an identity when dismantled and removed as parts and components from the said Administrative Building. Therefore, we find that lift has passed the test of permanency as laid down by the H'ble Supreme Court, as cited in aforementioned paras and find lift an immovable property. We noted the applicant's submission that if somebody wants to purchase the lift, the whole Lift is to be dismantled and sold to him in parts. Thus, we hold that subject supply merits classification under works contract service and is covered at Section 17(5) (c) CGST Act. We find no merit to deem lift as plant and machinery. Lift is in fact a part of the administrative building after being erected and installed.

- ii. Post assembly and erection of lifts, it becomes a part of immovable property and administrative building is not covered under plant and machinery. We cite case laws as follows:

- 1981 (8) E.L.T. 720 (G.O.I.), Government order in respect of Otis Elevator Company Ltd it was held that Lifts, elevators and escalators erected and installed become a part of immovable property.

- In the case of *Otis Elevator Company (India)* H'ble Mumbai High Court- 2003 (151) E.L.T. 499 (Bom.), observed that :

*"9. Having heard the rival contentions and having examined all the citations referred to hereinabove, we are clearly of the opinion that the same shall apply to the facts of this case in full force and item in question being immovable property cannot be subjected to excise under the tariff heading claimed by the Revenue. The case sought to be made out by the petitioner is also covered by the decision of the Government of India in reference, Otis Elevator Company (India) Ltd., 1981 (3) E.L.T. 720 (GOI), wherein it was clearly held that if an article does not come into existence until it is fully erected or installed, adjusted, tested and commissioned in a building, and on complete erection and installation of such article when **it becomes part of immovable property**,....."*

- 2001 (138) E.L.T. 635(Tri. - Chennai) in case of Kone Elevators india ltd it was held that Lift '*coming into existence only after it is installed along with the building and becomes functional, it is immovable property and not goods*'

- iii. We hold with full force that lift is an immovable property after being erected and is attached to the building itself. We further refer to Government Circular 58/1/2002-Cx dated 15-1-2002 vide F. No. 154/26/99-CX.4. The relevant extracts are reproduced below and we hold that its rationale and concept are relevant under GST scheme of law also:

5 (iv) “**Lifts and escalators.** (a) Though lifts and escalators are specifically mentioned in sub heading 8428.10, those which are installed in buildings and permanently fitted into the civil structure, cannot be considered to be excisable goods. Such lifts and escalators have also been held to be non-excisable by the Govt. of India in the case of Otis Elevators India Co. Ltd. reported in [1981 \(8\) E.L.T. 720](#) (GOI). Further, this aspect was also a subject matter of C&AG’s Audit Para No. 7.1(b)/98-99 [DAP No. 186] which has since been settled by the C&AG accepting the Board’s view that such lifts and escalators are not excisable goods. Also refer CCE v. Kone Elevators India Ltd. reported in [2001 \(138\) E.L.T. 635](#) (Tri.-Chen.) = 2001 (45) RLT 676 (CEGAT-Chen)” This supports our view that lift is an immovable property.

- iv. We note that The applicant referred to case of **M/s. Sirpur Paper Mills** reported in 1998 (97) ELT 3 (SC). The facts of said case are different from the present case as in Sirpur case, the issue was with respect to Paper making machine and not subject supply of Centralised Air Condition Plant, Lift, Fire Safety Extinguisher and Solar Roof Plant of this application. Our matter revolves around lift being an immovable property, installed with its various pieces and components, fitted with customised specification into the building and if removed have to be dismantled piece by piece to be transported and moved out of the administrative building. . We find that this is not a covered issue under M/s Sirpur case.

20. Electrical Fittings, such as Cables, Switches, NCB and other Electrical Consumables Materials.

- (i) We hold that Electrical fittings, such as Cables, Switches, NCB and other Electrical Consumables Materials- let it be wiring and switches are so integrated to form a network. The installation of electrical fittings are covered vide the definition of works contract, where these fittings are fitted/installed and usually concealed/ piped into the wall of the administrative building and transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract. These electrical fitting cannot be shifted intact from one place to another without dismantling/ cutting the wire and switch board/ removing the swtiches, therefore, as per the test of permanency defined by the Hon’ble Supreme court in aforementioned case electrical fittings as a part of the electrical connections integrated into the electrical system/ network of the building, is immovable property. We cannot envisage a building without light and and therefore by reason of this supply being essential and integral to the administrative block, we may confer this immovable property a subset within the immovable administrative building, treating the building a whole set.
- (ii) We note the case law cited by the applicant -M/s. Nipro India Corporation Pvt. Ltd. reported in 2018 (18) GSTL 289 (AAR - GST). We find that vide referred Ruling, the Authority denied input credit on structural work, mechanical and electrical related civil work, plumbing, gardening water supply system, dismantling work, internal fire hydrant system, sprinkler works, extinguishers, fire documentation, relocation work. We do not find this case law of much help to the applicant. Therefore, We find no merit to dwell on. Even otherwise, We do not find this Ruling binding on us but for M/s Nipro and their jurisdictional officer.

21. Roof Solar Plant

- (i) The Applicant entered into a comprehensive SITC Contract (Supply, Installation, Testing & Commissioning) with the vendor for installation of Roof Solar Plant. The said Plant will be attached on the concrete base with the nuts and bolts. It is a system specifically to fit the dimensions and orientation of the needs of the applicant.

- (ii) We cite Hon'ble Supreme Court Judgment in the case of ***M/s. T.T.G. Industries Ltd. v. Collector of Central Excise***, [decided] on 7 May, 2004 (167) E.L.T. 501 (S.C.) in Appeal (civil) 10911 of 1996, wherein The Apex Court ruled that mudguns and the drilling machines erected at site by the appellant on a specially made concrete platform is immovable property which could not be shifted without first dismantling it and then re-erecting it at another site. We apply this ratio decidendi in our subject matter also.
- (iii) We shall also refer to the ***Supreme Court decision in the case of Duncans Industries Ltd. v. State of U.P. & Ors on 3 December, 1999*** held: "*The question whether a machinery which is embedded in the earth is movable property or an immovable property, depends upon the facts and circumstances of each case. Primarily, the court will have to take into consideration the intention of the parties when it decided to embed the machinery whether such embedment was intended to be temporary or permanent. A careful perusal of the agreement of sale and the conveyance deed along with the attendant circumstances and taking into consideration the nature of machineries involved clearly shows that the machineries which have been embedded in the earth to constitute a fertiliser plant in the instant case, are definitely embedded permanently with a view to utilize the same as a fertiliser plant. The description of the machines as seen in the Schedule attached to the deed of conveyance also shows without any doubt that they were set up permanently in the land in question with a view to operate a fertilizer plant and the same was not embedded to dismantle and remove the same for the purpose of sale as machinery at any point of time. The facts as could be found also show that the purpose for which these machines were embedded was to use the plant as a factory for the manufacture of fertiliser at various stages of its production. Hence, the contention that these machines should be treated as movables cannot be accepted.*"
- (iv) We hold that the Roof Solar plant attached to the roof on concrete base cannot be sold as such. It means for sale/shifting to another place the whole Solar Plant is required to be dismantled and then only be sold/shifted and re-erected at the site. Thus in terms of the order of Hon'ble Supreme Court of India delivered in the case of *M/s. Municipal Corporation of Greater Bombay & ors. V. Indian Oil Corporation Ltd.* [199 Suppl. SCC 18] it is an immovable property as per the test of permanency.
- (v) This supply is 'Composite Supply' which for the purpose of valuation follows the path laid down at explanation inserted to sr no 234 (schedule I) in entry at column (3) to Notification 1/2017- CT (R) dated 28-6-17 wherein the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service."
- (vi) We refer to Sr no 6(a) to Schedule II of CGST Act, wherein the following composite supply shall be treated as a supply of services namely, (a) works contract as defined in clause (119) of section 2 [CGST Act].

We note that for the purpose of valuation and tax rate, the said explanation to said sr no 234 has been inserted w.e.f 1-1-19. But plain reading of the said Schedule II sr no 6 (a) and the nature of supply at hand, we find this is a composite supply under works contract. The applicant submitted that if resold, the entire system needs to be dismantled and had to be reassembled at another site. Further the said system/ plant has different goods which when assembled and installed become a roof solar plant. The specific valuation and tax determination does not change the scope of supply under Works contract . We hold that Roof Solar plant is a composite supply of works contract and covered at Section 17(5)(c) CGST Act.

22. Fire Safety Extinguisher

The applicant contract for supply and installation of Fire Safety Extinguishers at Administrative building, has been depicted by the applicant as reflected at para 6(vii). We note that the installation of said system requires attachment of metal framing on the earth and to build the concrete structure, including cementing the floor to install the metal framing. The different parts of the fire safety extinguisher attached/ embedded on the metal framing with nut bolts is attached on the concrete structure. The Fire Safety Extinguisher structure contains various types of metal pipes, different types of motors and equipments etc. and all these parts/equipments are assembled at site for the complete set of 'Fire Safety Extinguisher' to come into existence. After assembly and installation at/in the Administrative building, the Fire Safety Extinguisher is commissioned and handed over to the owner of the building by the contractor. The said Fire Safety Extinguisher cannot be shifted as a whole as such to another place. For this it should be first dismantled piece by piece. We had already discussed 'immovable property' concept vide the Hon'ble Supreme Court laid down principle of test of permanency. We hold that the system assembled, erected and attached to the earth by a foundation is immovable property and supply is covered within the definition of works contract supply.

23. Generator:

We find the generator a movable item and its expense capitalised by the applicant and hold it supply of capital goods.

24. Locker Cabinet: We find the locker cabinet a movable goods.

25. Architect Service Fees and Interior Designer Fees

- (i) Both of these are supply of services for construction of the said new administrative building. Both these services, as per applicant are Revenue Expenditure. The applicant referred to the Explanation to Section 17 (5), reproduced as follows:

'for the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property'.

- (ii) We find no merit to extend the explanation to subject administrative building, as the said administrative building is a **new construction** and not falling under re-construction/ renovation/additions/alterations/repairs. Further the explanation defines an inclusive definition of Construction, defining construction to include, inter alia, re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property. This definition is not exhaustive and does not bar within the definition of Construction, new construction. Whether the supply of architect service or interior decorator service supplied for the new administrative building is revenue or capital expenditure, it does not matter as long as the construction is new and thereby subject supplies are covered at Section 17 (5) (d) CGST Act, reproduced as follows:

Section 17 (5) (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*

26. We pass the Ruling :

R U L I N G

1. Input Tax Credit is **admissible** on New Locker Cabinet and Generator.
2. Input Tax Credit is **blocked** under Section 17(5)(c) CGST Act for: Central Air Conditioning Plant; Lift; Electrical Fittings; Fire Safety Extinguishers, Roof Solar Plant.
3. Input Tax Credit is **blocked** under Section 17 (5) (d) CGST Act for : Architect Service and Interior Decorator fees.

(SANJAY SAXENA)
Member(S)

(ARUN RICHARD)
Member(C)