MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri B. V. Borhade, Joint Commissioner of State Tax
(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax

GSTIN Number, if any/ User-id		27ACNPA2862P1Z5
Legal Name of Applicant		Dinesh Kumar Agrawal
Registered Address/Address provided while obtaining user id		501, Acme Regency, 5th Floor, S V Road, Vile Parle (West) Mumbai 400056, Maharashtra
Details of application		GST-ARA, Application No. 36 Dated 07.03.2018
Concerned officer		Sales Tax Officer (C-937) Nodal Division – 6, Mumbai
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Wholesale Business , Service Provision
B	Description (in brief)	Applicant is proposing to undertake certain project related to service contract .
Issue/s on which advance ruling required		(i)classification of goods and /or services or both (ii) applicability of a notification issued under the provisions of the Act (iii) determination of time and value of supply of goods or services or both
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 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 Dinesh Kumar Agrawal, the applicant, seeking an advance ruling in respect of the following questions :

Question No. 1 Whether Standalone Contract of transportation merits classification under Service code 9965 and whether same is exempt under Entry No. 18 of Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017?

Question No. 2 Whether composite supply of transportation and insurance merits classification under Service code 9965 and whether same is exempt under Entry No. 18 of Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017?

Question No. 3 Whether composite supply of 'loading of goods at the premises of the supplier, transportation in own/hired trucks to the project site, unloading and handling of goods at project site and in-transit insurance' merits classification under Service code 9965 and whether same is exempt under Entry No. 18 of Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017?

Question No. 4 Whether supply of services namely 'loading of goods at the premises of the supplier, transportation in own/hired trucks to the project site, unloading and handling of goods at project site and in-transit insurance' under Service Contract (under Split Contract) merits classification under Service code 9965 and whether same is exempt under Entry No. 18 of Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017?

Question No. 5 Whether supply of services namely 'loading of goods at the premises of the supplier, transportation in own/hired trucks to the project site, unloading and handling of goods at project site and in-transit insurance' under EPC Contract merits classification under Service code 9965 and whether same is exempt under Entry No. 18 of Notification No. 12/2017-Central Tax (Rate) dated 28 June 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 provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. **FACTS AND CONTENTION – AS PER THE APPLICANT**

The submissions, as reproduced verbatim, could be seen thus –

STATEMENT OF RELEVANT FACTS HAVING A BEARING ON THE QUESTION(S) ON WHICH ADVANCE RULING IS REQUIRED.

Description of the Applicant

The Applicant, an individual, is proposing to undertake certain project related service contracts. Generally, parties enter into three different kinds of understanding as stated below:

EPC Contract: Generally, composite EPC contracts are entered for supply of (i) basic and detailed engineering of the project and equipment, (ii) procurement of equipment and inspection thereof at the vendors site, (iii) transportation of equipment from vendors site to the project site including transit insurance, (iv) loading, unloading and storage of equipment, (v) assembly and erection of equipment including civil works required for such erection, (vi) test and commissioning of the project. Each line item is classified under appropriate HSN heading and priced separately and billed to the customer as per supply schedule (*itemized billing*). In case an item is not supplied, same is not billed to the customer.

Split Contract: Many a times, parties enter two separate contract, one for the supply of goods and materials (**Supply Contract**) and another for services (**Service Contract**). Under the Supply Contract, each line item is classified under appropriate HSN heading is priced separately and contractor do itemized billing to the customer. Similarly, for each component of the Service Contract, contractor do itemized billing to the customer. Supply Contract and Service Contract have separate consideration but also contains cross-fall breach clause' in the contracts which ensure that the performance of both contracts are treated as a single-point responsibility and non-performance of any portion of any contract is treated as a breach of the other contract also.

Typically, the scope of works under the EPC Contract and also the Service Contract, *inter alia*, includes 'loading of goods at the premises of the supplier, transportation in own/hired trucks to the project site, unloading and handling of goods at project site and in-transit insurance' ("**SOW**").

Standalone Contract: Parties may also have a standalone transportation contract with or without loading and in-transit insurance. In this case, if the contractor is also executing other contracts, then there may be cross-fall breach clause' in the contracts which ensure that the performance of all contracts are treated as a single-point responsibility and non-performance of any portion of any contract is treated as a breach of the remaining contracts also.

The Applicant is not a Goods Transport Agent (GTA) as defined under Entry No. 9(iii) of the Notification No. 11/2017-Central Tax (Rate) dated 28 June 2017 as it does not issue any consignment note to the customer. However, Applicant may

avail GTA services for transportation of the goods and insurance services from the insurance companies for in-transit insurance of goods.

The case was taken up for preliminary hearing on 03/04/2018 with respect admissibility of the present application. Shri. Dinesh Kumar Agarwal an individual and applicant appeared and argued the matter with respect to facts having bearing on the questions on which Advance Ruling is required as above. On hearing the applicant it was specifically informed to Shri. Dinesh Kumar Agarwal that his queries were very general and not having any specific details in respect to his proposed transaction and that there was not proposed draft contract. Shri. Dinesh Kumar Agarwal agreed to submit copies of draft contract at the earliest. When the matter was called for Final hearing Shri. Dinesh Kumar Agarwal submitted draft contract which is the nature of EPC contract. Applicant was also informed to submit written say within a week else the final plant as proposed in the EPC contract should not be treated as immovable property. Accordingly additional written submission given by the applicant on 08/05/2018 is as follow-

Additional Written submissions given by the applicant on 08.05.2018 A Containing applicants interpretation of Law and Facts is as follows.

The Applicant is a prospective contractor undertaking different works for supply of goods and services. Scope of works usually include procurement and supply of goods, transportation of goods from vendor, assembly and erection and commissioning.

The question before the authority is as to whether transportation charges received by the applicant are liable to tax under GST, specially when the applicant is not a goods transport agency (GTA).

A. **Documentation ---**The Applicant has submitted two documents:

(i) Bid document of Power Grid Corporation of India Ltd (PGCIL). This bid document is a standard bid document used by PGCIL for all procurement such as setting up of transmission lines or substations or transformers.

(ii) Proposed EPC contract for Solar Power Plant

B. **Nature and scope of works under PGCIL Bid.**

Bid document comprises of the following section:

(i) Section – INB (Instruction to bidders) - 20 pages (Page 35 to 54)

(ii) Section – GCC (General Terms and Conditions of Contract) – (page 55 to 90)

(iii) Clarification on GST – 2 pages (page 91-92).

Following are the relevant clauses in the bid documents:

1.8 of GCC – Works - 'Works' shall mean and include the furnishing of equipment/materials at site and if required, supervision of unloading, storage, handling at site, erection, testing & commissioning and putting into satisfactory operation as defined in the Contract.

1.11 of GCC – Contract Price - The term 'Contract Price' shall mean the lump sum price quoted by the Contractor in his bid with additions and/or deletions as may be agreed and incorporated in the Letter of Award, for the entire scope of the works.

24.1 of GCC – Change of Quantity - During the execution of the Contract, the Owner reserves the right to increase or decrease the quantities of items under the Contract but without any change in unit price or other terms and conditions. Such variations unless otherwise specified in the accompanying Special Conditions of Contract and /or Technical Specifications, shall not be subjected to any limitations for the individual items but the total variations in all such items under the Contract shall be limited to a percentage of the Contract price as specified in the Special Conditions of Contract.

24.2 The Contract Price shall accordingly be adjusted based on the unit rates available in the Contract for the change in quantities as above. The base unit rates, as identified in the Contract shall however remain constant during the currency of the Contract, except as provided for in Clause 33.0 below. In case the unit rates are not available for the change in quantity, the same shall be subject to mutual agreement.

34.4 of GCC – Payment Schedule - The Contractor shall prepare and submit to the Engineer for approval, a break-up of the Contract Price. This Contract Price break-up shall be interlinked with the agreed detailed PERT network of the Contractor setting forth his starting and completion dates for the various key phases of Works prepared as per condition in Clause 12.0 of this Section GCC of Volume-I. Any payment under the Contract shall be made only after the Contractor's price break-up is approved by the Engineer. The aggregate sum of the Contractor's price break-up shall be equal to the lump-sum Contract Price. A Price Breakup over valuing those items of supply which will be shipped first will not be accepted.

34.7.3 of GCC – Inland transportation & Insurance - Inland transportation (including port handing) and inland insurance shall be paid to the Contractor on pro-rata to the value of the equipment received at site and on production of the invoices by the Contractor. However, wherever equipment wise inland transportation charges have been called for in the "Bid Proposal Sheets" and have been furnished by the Contractor, the payment of inland transportation charges shall be made after receipt of equipment at site based on the charges thus identified by the Contractor in his proposal and incorporated in the Contract. The aggregate of all such pro-rata payments shall however not exceed the total amount quoted by the Bidder in his bid and incorporated in the Contract.

11.1 of INB – Scope of proposal – The scope of the Proposal shall be on the basis of a single Bidder's responsibility, completely covering all the equipment specified under the accompanying Technical Specifications. It will include the following :-

a. detailed design of the equipment;
b. complete manufacture including shop testing;
c. providing Engineering drawing, data, operational manual, etc. for the Owner's approval;
d. packing and transportation from the manufacturer's works to the site;
e. receipt, storage, preservation and conservation of equipment at the site;
f. pre-assembly, if any, erection, testing and commissioning of all the equipment;

g. reliability tests and performance and guarantee tests on completion of commissioning; and
h. furnishing of spares.

12.2 of INB – Bid Price – The Bidder shall also furnish the price break-down in the appropriate schedules of Bid Form to indicate the following:

i. Ex-works price of the equipment/materials (including tools and tackles etc.)
ii. Charges for inland transportation (including port handling) and insurance for delivery of the equipment/materials up to their final destinations.
iii. Lump-sum charges towards unloading, storage, insurance, erection, testing & commissioning.
iv. Price break-up for spares in line with Clause 23.0 of this Section.
v. Sales Tax and any other levies legally payable on the transactions between the Owner and the Bidder.
vi. Any other charges as per the requirement of Special Conditions of Contract/Technical Specifications

C. <u>Nature and scope of works under EPC Contract for supply of Solar Power Plant</u>

The Applicant is a prospective contractor for supply of roof top solar power plant. As part of India's target to achieve 40 Giga Watts (GW) of rooftop photovoltaic (PV) by 2022, the Applicant foresee great demand in the present and future.

A rooftop solar plant typically involves supply of solar panels which are mounted on steel structures fixed on the roof of buildings. The steps involved are as below:

Step 1: Designing and Marking: The process of installing a solar plant begins with designing and marking on the rooftop.

Step 2: Preparing rooftop: Mounting structures can be drilled in roof and building columns. Sometime where the customer doesn't want drilling, heavy concrete blocks are used to hold mounting structures. These concrete blocks can be brought out or can be cast at site. The size of the block depends on the design. Each rectangular block of 400x200x200 weigh around 40 kgs. These heavy blocks prevent bobbling of mounting structures against winds, rains and storms.

Step 3: Module Mounting Structure Installation: In the third step, the execution team mounts the module mounting structures on the civil foundations. The mounting structure is made of galvanized steel which interwove various blocks horizontally and also provide vertical support to the panels.

Step 4: Module Installation: Once the module mounting structures are in place, solar modules (panels) are bolted onto the structures.

Step 5: Cabling: Solar modules are connected in series with DC cables to the inverter, and with AC cables from the inverter to the evacuation point (customer's LT panel).

Step 6: Inverter Connection and Grid Synchronization: Once the installation is ready, the inverter is charged, and begins synchronizing the solar power with the customer's existing electrical grid.

Step 7: Seamless Power Distribution: Lastly, seamless power distribution begins as soon as the electrical connections are in place.

Sample EPC contract comprises of 34 pages which includes Bill of Quantities. Following are the relevant clauses in the sample EPC contract:

1.1 of the Contract – definitions:

"Contract Price" shall mean the amount to be paid by the Developer to the Contractor for the supply of goods and / or services as stipulated in Clause *[please insert]*.

"Bill of Quantities" means the Schedules *[please insert]*.

2.1 of the contract:
The Contractor shall supply the following in relation to the Project:

a. Basic and detailed engineering diagram, designs, etc. of the project and equipment;
b. Procurement of equipment and inspection thereof at the vendor's site;
c. Transportation of equipment from vendors site to the project site including transit insurance;
d. Loading, unloading and storage of the equipment;
e. Assembly and erection of equipment including civil works required for such erection;
f. Test and commissioning of the project
g. Maintenance

10.1 of the contract: Transportation -The Contractor shall at its own risk and expense, be fully responsible for loading, transportation, delivery to the Project Site and unloading of the Equipment. The cost of transit insurance, if any, should be borne by the Contractor.

14.1 of the contract: Contract Price - Payment shall made at the unit rate stated in the Bill of Quantities at net actual quantity of each item delivered at Project Site. Such payment shall constitute full compensation for furnishing all Equipment and labour including testing and all other incidentals necessary to complete the Project. Any quantities which is set out in the Bill of Quantities are estimated quantities and are not to be taken as the actual and correct quantities.

The Bill of Quantities list out name of the equipment, specifications, estimated quantity, price per unit and total price. It also lists out installation cost for each activity and transportation charges payable separately.

Issues for consideration:

D. **Immovable property:**

The supply cannot be characterized as 'works contract' under section 2(119) of the GST Act as the activity does not relates to immovable property. As per Section 2(119) of the Act, "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.

The concept of immovable property is not defined in the GST Acts, even though it is used. The General Clauses Act, 1897 states that '"Immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.' However, the definition in General Clauses Act 1897 is at variance with Scheduled III, Entry 5, which excludes 'land' and 'building' from being taxed. However, this exemption is not extended 'plant and machinery' which was under the current regime at par with 'land' and 'building' and all together constituting 'immovable property'. The specific listing under the Schedules, reflects on a plausible legislative intent to make a distinction between land and building on one hand and plant and machinery on another.

The Central Board of Excise and Customs (CBEC) vide 37B Order 58/1/2002 – CX dated 15 January 2002 has clarified that if the items assembled or erected at site and attached by foundation to earth cannot be dismantled without substantial damage to its components and thus cannot be reassembled, then the items would be considered as immoveable.

In the case of EPC contract for supply of roof top solar power plant, as explained above, solar panels are mounted on steel mounting structures which are mounted on the concrete blocks. Each and every item can be dismantled and disassembled without any damage and relocated to another site.

In case of supply to PGCIL, the supply may result in immovable property or may not result in immovable property depending on the scope of works. Scope of supply in case of sub-station may involve erection of buildings, boundary wall and other civil works or it may be purely supply of transformers and switchgears. Erection and commissioning of transformers does not result in immovable property as transformers can be dismounted without any damage. Similarly, switchgears can be dismantled and disassembled without any damage and relocated to another site. Thus, in case of the first, supply will be characterized as 'works contract' but in later case, it shall be supply of transformers and switchgears.

The Applicant wishes to clarify that it is not seeking any ruling on the nature of supply. It is on the assumption that supply will not be works contract and if such supply is characterized as works contract, this ruling will not be applicable.

E. <u>Composite supply</u>

As per Section 2(30) of the Act, "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

Illustration.— Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.

Applicant understand that where a single price is charged for supply of goods, packing materials, transport and insurance, it would be considered as composite supply and tax will be payable at the rate applicable to principal supply.

However, there is ambiguity on taxability when the Applicant charges separate price for transport and insurance. The customer is at liberty to take delivery of goods and transport the same in his own carriage or in a hired one. And therefore, such arrangement should not fall within the mischief of section 2(30) of the Act.

F. Taxability

If such transporter is considered as GTA, tax would be payable by the customer and if such transporter is not a GTA, no tax would be payable as same is exempt under entry 18 of Notification No. 12/2017-Central Tax (Rate).

The Applicant understand that separate price for the goods and transportation signifies two distinct contract, first part for supply of goods and the second part for transportation of goods. There is no prohibition in entering into multiple contracts in a single form. Although a single form is used, in substance, each part is a separate contract making it a divisible contract. In this regards, the Applicant has placed its reliance on Builders Association of India vs Union of India [1989 SCALE (2) 768]
In as much as supply of goods is concerned, the rate would be depend on the classification of the goods. However, in as much as transportation charges are concerned, the Applicant submits that:

(i) Tax is payable on transportation of goods only if Goods Transport Agency (GTA) is involve in the transportation;
(ii) In the present case, the Applicant don't issue any consignment note and therefore, he cannot be treated as GTA;
(iii) Service by way of transportation of goods by road except by GTA is exempt
(iv) Thus, as the Applicant is not a GTA, no tax should be payable on the transportation charge received from the customer.

In light of the above, the Applicant prays the authority to issue rulings.

Thus having regards to written submission dt. 08/05/2018 and the draft contract the question raised before this is reframed for consideration as below –

"Whether transportation charges received by the applicant are liable to GST, specially when the applicant is not a goods transport agency (GTA)".

04. HEARING

The case was taken up for Preliminary hearing on dt. 03.04.2018 with respect to admission or rejection of present application when Sh. Dinesh Kumar Agrawal himself appeared. It was specifically informed to Sh. Dinesh Kumar Agrawal that his queries were very general and not having specific details in respect as his transactions and there was no proposed or draft contract. Sh. Dinesh Kumar Agrawal agreed to submit copies

of draft contract at the earliest. Jurisdictional Officer, Sh. R. T. Nikam, Sales Tax Officer appeared and stated that they would be making written submission in due course.

The application was admitted and called for final hearing on 24.04.2018, Sh. Dinesh Kumar Agrawal himself appeared As pointed out in the preliminary hearing , Sh. Dinesh Kumar Agrawal submitted copies of draft contract which are in the nature of EPC contract only which he agreed to. It was specifically pointed out to him that as he was not giving any draft contract in respect of split contract or standalone contract, the same cannot be taken up by the authority for any decision or order. It was specifically pointed out to Sh. Dinesh Kumar Agrawal that this authority will be taking up the case for decision only in respect of EPC contracts only, copies of draft / proposed sub-contracts which the applicant has provided. Further it was requested to applicant to give a written up within one week of today, as to why the final plant of proposed in EPC contracts should not be treated as immovable property. Jurisdictional Officer, Sh. R. T. Nikam, Sales Tax Officer appeared and made written submission also which is considered for the fair decision.

05. **OBSERVATIONS**

We have heard Shri. Dinesh Kumar Agarwal on the issue and have carefully gone through the written submission, and the proposed activity represented by draft agreement for "Engineering, procurement and Solar Power Plant" i.e. roof top photovoltaic (PV). In short, applicants submission is that he is not a goods transport agency (GTA) as he is not issuing any consignment note or the like and hence no tax is payable by virtue of Sr. No. 18 of Notification No. 12/2017 Central Tax (Rate) dated 28/06/2017.

Applicant submits that as per clause 10 - which read as follow- The Contractor shall at its own risk and expense, be fully responsible for loading, transportation, delivery to the Project Site and unloading of the Equipment. The cost of transit insurance, if any, should be borne by the contractor.

On the basis of this term of the contract applicant submits that this is a standalone contract for transportation of Equipment for which separate consideration is received. This understanding by the applicant is incorrect as is revealed from unambiguous following terms of the contract –

1. Scope of Supply :

1.1 The contractor shall supply the following in relation to the Project :

1.1.1 Basic and detailed engineering diagram, design etc., of the project and equipment;

1.1.2 Procurement of equipment and inspection thereof at the vendor's site;

1.1.3 Transportation of equipment from vendors site to the project site including transit insurance;

1.1.4 Loading, unloading and storage of the equipment;

1.1.5 Assembly and erection of equipment including civil works required for such erection;

1.1.6 Test and commissioning of the project

1.1.7 Maintenance

12 Transfer of Title:

12.1 *Notwithstanding the manner of issuance of invoices as stipulated in this Agreement, the Developer will obtain the title in goods only upon successful installation and commissioning of the Solar Power Project.*

14 Contract Price and Payment:

14.1 Contract Price

Payment shall be made at the unit rate stated in the Bill of Quantities at net actual quantity of each item delivered at Project Site. Such payment shall constitute full compensation for furnishing all Equipment and labour including testing and all other incidentals necessary to complete the Project. Any quantities which is set out in the Bill of Quantities are estimated and are not to be taken as the actual and correct quantities.

30.10 Entire Agreement

This Agreement, including and together with any related annexures, sets forth the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes and cancels all minutes of meeting, term sheet, memorandum of understanding, letter of intent etc. earlier discussion and negotiations of understandings, agreements, representations, warranties, whether written or oral, express or implied, between them excluding any specific assumptions to price as may be notified from the Contractor to the Developer.

34.7.3 Instructions to Bidders

The Power Grid Corporation of India Ltd., New Delhi, hereinafter called ' POWERGRID' / ' OWNER ' will receive bids in respect of equipment to be furnished and erected in accordance with these instructions.

We find that the aforesaid clauses of the proposed draft agreement, cannot be read in isolation or out of context. It is necessary to read the contract as a whole to ascertain the true / correct nature of transaction.

From the co-joint reading of the clauses of the agreement as mentioned above especially clause No.10 it can be safely concluded that the contract is a single contract. As such this agreement for Engineering Procurement and construction

of Solar Power plant constitute composite supply in the nature of Works Contract. Thus impugned Supplies constitute Works Contract.

The next issue to be decided is whether this composite supplies constitute Works Contract as defined U/s 2(119) of the GST Act. On this issue applicant submits that the contract is for supply of roof top Solar Plant which involves solar panels which are mounted on steel structures fixed on the roof of building. The steps involved in this regard are already mentioned above in the written submission dated 08/05/2018. He lastly submits that every item can be dismantled and disassembled without any damage and relocated to another site and as such supply of Roof Top Solar Power Plant does not constitute immovable property.

However on actual verifications of terms of agreement given in the draft contract submitted to us we find that the details in contract are not in convergence with the applicant's submissions in above para. We find the details in contract agreement as under

Definitions :

'Project means the [ground/rooftop] mounted solar photovoltaic electric generation power plant of ---- MW capacity to be developed by the Developer in the state ---

4. Developers Obligation

4.1.2 Provide possession and right of way to all the contiguous parcel of land forming part of the project site ---

4.1.8 shall have completed the construction of the boundary wall, drains etc. at the Project Site, within ---- days from the Notice to Proceed; and

4.1.9 access to the preliminary designs developed by the other contractors engaged by the Developer.

6. Contractors Responsibilities:-

6.6 The contractor has provided the contract Price relying on the soil data and geotechnical data and other background information provided by the developer.

All the above clauses suggest that the project is the ground mounted Solar Power Plant and not exclusively the Roof Top Mounted Solar Power Plant as claimed by the applicant. Even in a case where it is Roof Top Mounted Solar Power Plant, we find that the intent in operationalising Solar Power Plant, on a Roof Top is to set even it up as an immovable property which involves civil work which would be very clear from plethora of judgments of Hon. Supreme Court' and Hon. High Courts which help in understanding the term immovable property. One such decision is of the ***T.T.G. Industries Ltd. v. CCE,*** **(2004) 4 SCC 751**. In this case Court has observed as below:-

18. The core question that still survives for consideration is whether the processes undertaken by the appellant at Bhilai for the erection of mudguns and drilling machines resulted in the emergence of goods leviable to excise duty or whether it resulted in erection of immovable property and not "goods".

21. *The appellant has placed considerable reliance on the principles enunciated and the test laid down by this Court in Municipal Corpn. of Greater Bombay [1991 Supp (2) SCC 18] to determine what is immovable property. In that case the facts were that the respondent had taken on lease land over which it had put up, apart from other structures and buildings, six oil tanks for storage of petrol and petroleum products. Each tank rested on a foundation of sand having a height of 2 feet 6 inches with four inches thick asphalt layers to retain the sand. The steel plates were spread on the asphalt layer and the tank was put on the steel plates which acted as bottom of the tanks which rested freely on the asphalt layer. There were no bolts and nuts for holding the tanks on to the foundation. The tanks remained in position by their own weight, each tank being about 30 feet in height, 50 feet in diameter, weighing about 40 tons. The tanks were connected with pump house with pipes for pumping petroleum products into the tank and sending them back to the pump house. The question arose in the context of ascertaining the rateable value of the structures under the Bombay Municipal Corporation Act. The High Court held that the tanks are neither structure nor a building nor land under the Act. While allowing the appeal this Court observed: (SCC p. 33, para 32)*

"32. The tanks, though, are resting on earth on their own weight without being fixed with nuts and bolts, they have permanently been erected without being shifted from place to place. Permanency is the test. The chattel whether is movable to another place of use in the same position or liable to be dismantled and re-erected at the latter place? If the answer is yes to the former it must be a movable property and thereby it must be held that it is not attached to the earth. If the answer is yes to the latter it is attached to the earth."

22. *Applying the permanency test laid down in the aforesaid decision, counsel for the appellant contended that having regard to the facts of this case which are not in dispute, it must be held that what emerged as a result of the processes undertaken by the appellant was an immovable property. It cannot be moved from the place where it is erected as it is, and if it becomes necessary to move it, it has first to be dismantled and then re-erected at another place. This factual position was also accepted by the adjudicating authority.*

23. *The technical member, however, held that the aforesaid decision was of no help to the appellant inasmuch as a leading international manufacturing firm had offered such machines for export to different parts of the world. He further observed that though on account of their size and weight, it may be necessary to shift or transport them in parts for assembly and erection at the site in the steel plant, they must nevertheless be deemed as individual machines having specialised functions.* ***We are not impressed by this reasoning, because it ignores the evidence brought on record as to the nature of processes employed in the erection of the machine, the manner in which it is installed and rendered functional, and other relevant facts which may lead one to conclude that what emerged as a result was not merely a machine but something which is in the nature of being immovable, and if required to be moved, cannot be moved without first dismantling it, and then re-erecting it at some other place. Some of the other decisions which we shall hereafter notice clarify the position further.***

24. *In Quality Steel Tubes (P) Ltd. v. CCE [(1995) 2 SCC 372 : (1995) 75 ELT 17] the facts were that a tube mill and welding head were erected and installed by the appellant, a manufacturer of steel pipes and tubes, by purchasing certain items of plant and machinery in market and embedding them to earth and installing them to form a part of the tube mill and purchasing certain components from the market and assembling and installing them on the site to form part of the tube mill which was also covered in the process of welding facility. After noticing several decisions of this Court, the Court observed that the twin tests of exigibility of an article to duty under the Excise Act are that it must be a goods mentioned either in the Schedule or under Item 68 and must be marketable. The word "goods" applied to those which can be brought to market for being bought and sold and therefore, it implied that it applied to such goods as are movable. It noticed the decisions of this Court laying down the marketability tests. Thereafter this Court observed: (SCC p. 376, para 5)*

"The basic test, therefore, of levying duty under the Act is twofold. One, that any article must be goods and second, that it should be marketable or capable of being brought to market. Goods which are attached to the earth and thus become immovable and do not satisfy the test of being goods within the meaning of the Act nor it can be said to be capable of being brought to the market for being bought and sold. Therefore, both the tests, as explained by this Court, were not satisfied in the case of appellant as the tube mill or welding head having been erected and installed in the premises and embedded to earth ceased to be goods within meaning of Section 3 of the Act."

25. *In Mittal Engg. Works (P) Ltd. v. CCE [(1997) 1 SCC 203 : (1996) 88 ELT 622] this Court was concerned with the exigibility to duty of mono vertical crystallisers which are used in sugar factories to exhaust molasses of sugar. The material on record described the functions and manufacturing process. A mono vertical crystalliser is fixed on a solid RCC slab having a load-bearing capacity of about 30 tons per square metre. It is assembled at site in different sections and consists of bottom plates, tanks, coils, drive frames, supports, plates, etc. The aforesaid parts were cleared from the premises of the appellants and the mono vertical crystalliser was assembled and erected at site. The process involved welding and gas-cutting. The mono vertical crystalliser is a tall structure, rather like a tower with a platform at its summit. This Court noticed that marketability was a decisive test for dutiability. It meant that the goods were saleable or suitable for sale, that is to say, they should be capable of being sold to consumers in the market, as it is, without anything more. The Court then referred to the decision in Quality Steel Tubes [(1995) 2 SCC 372 : (1995) 75 ELT 17] and distinguished the judgment in Narne Tulaman [(1989) 1 SCC 172 : 1989 SCC (Tax) 64*

: (1988) 38 ELT 566 : 1988 Supp (3) SCR 1] holding that the contention that the weighbridges were not goods within the meaning of the Act was neither raised nor decided in that case. After considering the material placed on the record it was held that the mono vertical crystalliser has to be assembled, erected and attached to the earth by a foundation at the site of the sugar factory. It is not capable of being sold as it is, without anything more. This Court, therefore, concluded that mono vertical crystallisers are not "goods" within the meaning of the Act and, therefore, not exigible to excise duty. In Triveni Engg. & Industries Ltd. v. CCE [(2000) 7 SCC 29 : (2000) 120 ELT 273] a question arose regarding excisability of turbo alternator. In the facts of that case, it was held that installation or erection of turbo alternator on a concrete base specially constructed on the land cannot be treated as a common base and, therefore, it follows that installation or erection of turbo alternator on the platform constructed on the land would be immovable property, as such it cannot be an excisable goods falling within the meaning of Heading 85.02. In reaching this conclusion this Court considered the earlier judgments of this Court in Municipal Corpn. of Greater Bombay [1991 Supp (2) SCC 18] , Quality Steel Tubes [(1995) 2 SCC 372 : (1995) 75 ELT 17] and Mittal Engg. Works (P) Ltd. [(1997) 1 SCC 203 : (1996) 88 ELT 622] as also the earlier judgment of this Court in Sirpur Paper Mills Ltd. v. CCE [(1998) 1 SCC 400 : (1998) 97 ELT 3] . This Court observed: (SCC pp. 35-36, para 14)

"14. There can be no doubt that if an article is an immovable property, it cannot be termed as 'excisable goods' for purposes of the Act. From a combined reading of the definition of 'immovable property' in Section 3 of the Transfer of Property Act, Section 3(26) of the General Clauses Act, it is evident that in an immovable property there is neither mobility nor marketability as understood in the excise law. Whether an article is permanently fastened to anything attached to the earth requires determination of both the intention as well as the factum of fastening to anything attached to the earth. And this has to be ascertained from the facts and circumstances of each case."

***26.** It was also held that the decision of this Court **in Sirpur Paper Mills Ltd.[(1998) 1 SCC 400** : (1998) 97 ELT 3] must be viewed in the light of the findings recorded by CEGAT therein, **that the whole purpose behind attaching the machine to a concrete base was to prevent wobbling of the machine and to secure maximum operational efficiency and also safety. In view of those findings it was not possible to hold that the machinery assembled and erected by the appellant at its factory site was immovable property as something attached to the earth** like a building or a tree.*

***27.** Keeping in view the principles laid down in the judgments noticed above, and having regard to the facts of this case, **we have no doubt in our mind that the mudguns and the drilling machines erected at site by the appellant on a specially made concrete platform at a level of 25 feet above the ground on a base plate secured to the concrete platform, brought into existence not excisable goods but immovable property which could not be shifted without first dismantling it and then re-erecting it at another site.** We have earlier noticed the processes involved and the manner in which the equipments were assembled and erected. We have also noticed the volume of the machines concerned and their weight. Taking all these facts into consideration and having regard to the nature of structure erected for basing these machines, we are satisfied that the judicial member of CEGAT was right in reaching the conclusion that what ultimately emerged as a result of processes undertaken and erections done cannot be described as "goods" within the meaning of the Excise Act and exigible to excise duty. We find considerable similarity of facts of the case in hand and the facts in Mittal Engg. [(1997) 1 SCC 203 : (1996) 88 ELT 622] and Quality Steel Tubes [(1995) 2 SCC 372 : (1995) 75 ELT 17] and the principles underlying those decisions must apply to the facts of the case in hand. **It cannot be disputed that such drilling machines and mudguns are not equipments which are usually shifted from one place to another, nor is it practicable to shift them frequently.** Counsel for the appellant submitted before us that **once they are erected and assembled they continue to operate from where they are positioned till such time as they are worn out or discarded.** According to him they really become a component of the plant and machinery because without their aid a blast furnace cannot operate. It is not necessary for us to express any opinion as to whether the mudguns and the drilling machines are really a component of the plant and machinery of the steel plant, but we are satisfied that having regard to the manner in which these machines are erected and installed upon concrete structures, they do not answer the description of "goods" within the meaning of the term in the Excise Act.*

Thus, it can be seen that the Hon. Supreme Court while holding the machines as immovable property took into account facts such that the machines could not be shifted without first dismantling it and then re-erecting it at another site. It was also sought to distinguish as to how a concrete base meant just to prevent wobbling of the machine would not place the machine in the category of 'immovable property' as something attached to the earth.

We would also look at the decision of the Hon. Supreme Court in the case of Commissioner of Central Excise, Ahmedabad v. Solid and Correct Engineering Works [(2010) 5 SCC 122]. The facts in this case were thus –

"3. M/s Solid and Correct Engineering Works, M/s Solid Steel Plant Manufacturers and M/s Solmec Earthmovers Equipment are partnership concerns engaged in the manufacture of parts and components for road and civil

construction machinery and equipments like asphalt drum/hot mix plants and asphalt paver machines, etc. M/s Solex Electronics Equipments is, however, a proprietary concern engaged in the manufacture of electronic control panel boards. It is not in dispute that the three partnership concerns mentioned above are registered with the Central Excise Department nor is it disputed that the proprietary concern is a small-scale industrial unit that is availing exemption from payment of duty in terms of the relevant exemption notification.

4. *M/s Solidmec Equipments Ltd. (hereinafter referred to as "Solidmec", for short), the fifth unit with which we are concerned in the present appeals is a marketing company engaged in the manufacture of asphalt drum/hot mix plants at the sites provided by the purchasers of such plants. It is common ground that Solidmec advertises its products and undertakes contracts for supplying, erection, commissioning and after-sale services relating thereto. It is also admitted that all the five concerns referred to above are closely held by Shri Hasmukhbhai, his brothers and the members of their families.*

5. *An inspection of the factories of the respondents by a team of officers from the Central Excise, Preventing Wing, Headquarters, Ahmedabad, led to the issue of a notice dated 30-11-1999 to the four manufacturing units as well as to Solidmec calling upon them to show cause why the amounts mentioned in the said notice be not recovered from them towards Central excise duty. The notice accused the four manufacturing units of having wrongly declared and classified parts and components being manufactured by them as complete plants/systems, even when they were merely parts and components and not machines or plants functional by themselves. The erroneous classification and declaration was, according to the notice, intended to avoid payment of higher rate of duty applicable to parts of such plants and machinery at the material point of time. The notice also pointed out that the units manufacturing parts and components of the plants had availed benefit of exemption wrongly and in breach of the provisions of Rules 9(1) and 173-F and other rules regulating the grant of such benefit.*

6. *Insofar as Solidmec marketing company was concerned, the show-cause notice alleged that Solidmec was engaged in the manufacturing of asphalt batch mix and drum mix/hot mix plants by assembling and installing the parts and components manufactured by the manufacturing units of the group. According to the notice the process of assembly of the parts and components at the site provided by the purchasers of such plants was tantamount to manufacture of such plants as a distinct product with a new name, quality, usage and character emerged out of the said process. Resultantly, the end product, namely, asphalt drum/hot mix plants became exigible to Central excise duty, which duty Solidmec had successfully avoided. The notice also proposed to levy penalties upon all the five concerns under appropriate provisions of the Central Excise Act."*

The Hon. Court has very elaborately dealt with the issue and it would be useful to go through the observations -

*"**22.** Section 3 of the Transfer of Property Act, 1882 does not spell out an exhaustive definition of the expression "immovable property". It simply provides that unless there is something repugnant in the subject or context, "immovable property" under the Transfer of Property Act, 1882 does not include standing timber, growing crops or grass. Section 3(26) of the General Clauses Act, 1897 similarly, does not provide an exhaustive definition of the said expression. It reads:*

> *"3. (26) **'immovable property' shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;**"*

23. *It is not the case of the respondents that plants in question are per se immoveable property. **What is argued is that they become immovable as they are permanently imbedded in earth in as much as they are fixed to a foundation imbedded in earth** no matter only 1= feet deep. That argument needs to be tested on the touch stone of the provisions referred to above.*

24. *Section 3(26) of the General Clauses Act includes within the definition of the term "immovable property" things attached to the earth or permanently fastened to anything attached to the earth. The term "attached to the earth"; has not been defined in the General Clauses Act, 1897. Section 3 of the Transfer of Property Act, however, gives the following meaning to the expression "attached to the earth":*

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

25. *It is evident from the above that the expression "attached to the earth" has three distinct dimensions, viz. (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 imbedded for the permanent beneficial enjoyment of that to which it is attached. Attachment of the plant in question with the help of nuts and bolts to a foundation not more than 1= feet deep intended to provide stability to the working of the plant and prevent vibration/wobble free operation does not qualify for being described as attached to the earth under any one of the three clauses extracted above. That is because attachment of the plant to the foundation is not comparable or synonymous to trees and shrubs rooted in earth. It is also not synonymous to imbedding in earth of the plant as in the case of walls and buildings, for the obvious reason that a building imbedded in the earth is permanent and cannot be detached without demolition. Imbedding of a wall in the earth is also in no way comparable to attachment of a plant to a foundation meant only to provide stability to the plant especially because the attachment is not permanent and what is attached can be easily detached from the foundation. So also the attachment of the plant to the foundation at which it rests does not fall in the third category, for an attachment to fall in that category it **must be for permanent beneficial enjoyment of that to which the plant is attached.***

It is nobody's case that the attachment of the plant to the foundation is meant for permanent beneficial enjoyment of either the foundation or the land in which the same is imbedded.

26. *In English law the general rule is that what is annexed to the freehold becomes part of the realty under the maxim quidcquid plantatur solo, solo cedit. This maxim, however, has no application in India. Even so, the question whether a chattel is imbedded in the earth so as to become immovable property is decided on the same principles as those which determine what constitutes an annexation to the land in English law. The English law has evolved the twin tests of degree or mode of annexation and the object of annexation.*

27. *In Wake V. Halt (1883) 8 App Cas 195 Lord Blackburn speaking for the Court of Appeal observed:*

"The degree and nature of annexation is an important element for consideration; for where a chattel is so annexed that it cannot be removed without great damage to the land, it affords a strong ground for thinking that it was intended to be annexed in perpetuity to the land."

28. *The English law attaches greater importance to the object of annexation which is determined by the circumstances of each case. One of the important considerations is founded on the interest in the land wherein the person who causes the annexation possesses articles that may be removed without structural damage and even articles merely resting on their own weight are fixtures only if they are attached with the intention of permanently improving the premises.*

29. *The Indian law has developed on similar lines and the mode of annexation and object of annexation have been applied as relevant test in this country also. There are cases where machinery installed by monthly tenant was held to be moveable property as in cases where the lease itself contemplated the removal of the machinery by the tenant at the end of the tenancy. The mode of annexation has been similarly given considerable significance by the courts in this country in order to be treated as fixture. Attachment to the earth must be as defined in Section 3 of the Transfer of Property Act. For instance a hut is an immovable property, even if it is sold with the option to pull it down. A mortgage of the super structure of a house though expressed to be exclusive of the land beneath, creates an interest in immovable property, for it is permanently attached to the ground on which it is built.*

30. *The courts in this country have applied the test whether the annexation is with the object of permanent beneficial enjoyment of the land or building. Machinery for metal-shaping and electro-plating which was attached by bolts to special concrete bases and could not be easily removed, was not treated to be a part of structure or the soil beneath it, as the attachment was not for more beneficial enjoyment of either the soil or concrete. Attachment in order to qualify the expression attached to the earth, must be for the beneficial attachment of that to which it is attached. Doors, windows and shutters of a house are attached to the house, which is imbedded in the earth. They are attached to the house which is imbedded in the earth for the beneficial enjoyment of the house. They have no separate existence from the house. Articles attached that do not form part of the house such as window blinds, and sashes, and ornamental articles such as glasses and tapestry fixed by tenant, are not affixtures.*

31. Applying the above tests to the case at hand, we have no difficulty in holding that the manufacture of the plants in question do not constitute annexation hence cannot be termed as immovable property for the following reasons:

(i) The plants in question are not per se immovable property.

(ii) Such plants cannot be said to be "attached to the earth" within the meaning of that expression as defined in Section 3 of the Transfer of Property Act.

(iii) The fixing of the plants to a foundation is meant only to give stability to the plant and keep its operation vibration free.

(iv) The setting up of the plant itself is not intended to be permanent at a given place. The plant can be moved and is indeed moved after the road construction or repair project for which it is set up is completed."

It can be seen that the Hon. Supreme Court has reiterated the same principles as were seen in the earlier decision of ***T.T.G. Industries Ltd. v. CCE*** (cited supra). The Hon. Court observed that the expression "attached to the earth" has three distinct dimensions - *(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 imbedded for the permanent beneficial enjoyment of that to which it is attached.* It has been categorically observed that the attachment of the plant to the foundation at which it rests does not fall in the third category [*attached to what is imbedded for the permanent beneficial enjoyment of that to which it is attached*], for the reason that an attachment to fall in the third category it must be for permanent beneficial enjoyment of that to which the plant is attached. The Hon. Court even went on to distinguish and record with approval earlier decisions on the issue of 'immovable property'. We may have a look at the same, too.

33. *In Sirpur Paper Mills Ltd. [(1998) 1 SCC 400] this Court was dealing with a near similar situation as in the present case. The question there was whether the paper machine assembled at site mainly with the help of components*

bought from the market was dutiable under the Central Excise Act, 1944. The argument advanced on behalf of the assessee was that since the machine was embedded in a concrete base the same was immovable property even when the embedding was meant only to provide a wobble free operation of the machine. Repelling that contention this Court held that just because the machine was attached to earth for a more efficient working and operation the same did not per se become immovable property.

***34.** The Court observed: (Sirpur Paper Mills Ltd. case [(1998) 1 SCC 400] , SCC p. 402, para 5)*

> *"5. Apart from this finding of fact made by the Tribunal, the point advanced on behalf of the appellant, that whatever is embedded in earth must be treated as immovable property is basically not sound. For example, a factory owner or a householder 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 the water pump may even be assembled on site. That too will not make any difference to the principle. The test is whether the paper-making machine can be sold in the market. The Tribunal has found as a fact that it can be sold. In view of that finding, we are unable to uphold the contention of the appellant that the machine must be treated as a part of the immovable property of the Company. Just because a plant and machinery are fixed in the earth for better functioning, it does not automatically become an immovable property."*

***38.** Reliance was placed by Mr Bagaria upon the decision of this Court in Quality Steel Tubes (P) Ltd. v. CCE [(1995) 2 SCC 372 : (1995) 75 ELT 17] and Mittal Engg. Works (P) Ltd. v. CCE [(1997) 1 SCC 203 : (1996) 88 ELT 622] . In Quality Steel Tubes (P) Ltd. case [(1995) 2 SCC 372 : (1995) 75 ELT 17] this Court was examining whether "the tube mill and welding head" erected and installed by the assessee for manufacture of tubes and pipes out of duty-paid raw material was assessable to duty under residuary Tariff Item 68 of the Schedule being excisable goods. Answering the question in negative this Court held that tube mill and welding head erected and installed in the premises and embedded to earth ceased to be goods within the meaning of Section 3 of the Act as the same no longer remained movable goods that could be brought to market for being bought and sold.*

***39.** We do not see any comparison between the erection and installation of a tube mill which involved a comprehensive process of installing slitting line, tube rolling plant, welding plant, testing equipment and galvanising, etc. referred to in the decision of this Court in Quality Steel Tubes case [(1995) 2 SCC 372 : (1995) 75 ELT 17] with the setting up of a hot mix plant as in this case. As observed by this Court in Triveni Engg. & Industries Ltd. case [(2000) 7 SCC 29 : (2000) 120 ELT 273] , the facts and circumstances of each case shall have to be examined for determining not only the factum of fastening/attachment to the earth but also the intention behind the same.*

40.** In Mittal Engg. Works (P) Ltd. case [(1997) 1 SCC 203 : (1996) 88 ELT 622] this Court was examining whether the mono vertical crystallisers erected and attached by a foundation to the earth at the site of the sugar factory could be treated as goods within the meaning of the Central Excise Act, 1944. This Court on facts noted that mono vertical crystallisers are fixed on a solid RCC slab having a load bearing capacity of about 30 tonnes per square metre and are assembled at site with bottom plates, tanks, coils, drive frames, supports, plates, distance places, cutters, cutter supports, tank ribs, distance plate angles, water tanks, coil extension pipes, loose bend angles, coil supports, railing stands, intermediate platforms, drive frame railings and flats, oil trough, worm wheels, shafts, housing, stirrer arms and support channels, pipes, floats, heaters, ladders, platforms, etc.* ***The Court noted that the mono vertical crystallisers have to be assembled, erected and attached to the earth on a foundation at the site of the sugar factory and are incapable of being sold to the consumers in the market as it is without anything more.

***41.** Relying upon the decision of this Court in Quality Steel Tubes (P) Ltd. case[(1995) 2 SCC 372 : (1995) 75 ELT 17] , the erection and installation of mono vertical crystallisers was held not dutiable under the Excise Act. This Court observed that: [Mittal Engg. Works (P) Ltd. case [(1997) 1 SCC 203 : (1996) 88 ELT 622] , SCC p. 208, para 10]*

> ***"10. ... The Tribunal ought to have remembered ... that mono vertical crystallisers had, apart from assembly, to be erected and attached by foundations to the earth and, therefore, were not, in any event, marketable as they were."***

This decision also, in our opinion, does not lend any support to the case of the assessee in these appeals as we are not dealing with the case of a machine like mono vertical crystallisers which is permanently embedded in the structure of a sugar factory as was the position in Mittal Engg. Works (P) Ltd. case [(1997) 1 SCC 203 : (1996) 88 ELT 622]. The plants with which we are dealing are entirely over ground and are not assimilated in any structure. They are simply fixed to the foundation with the help of nuts and bolts in order to provide stability from vibrations during the operation.

42. So also in T.T.G. Industries Ltd. v. CCE [(2004) 4 SCC 751 : (2004) 167 ELT 501] , the machinery was erected at the site by the assessee on a specially made concrete platform at a level of 25 ft height. Considering the weight and volume of the machine and the processes involved in its erection and installation, this Court held that the same was immovable property which could not be shifted without dismantling the same.

43. It is noteworthy that in none of the cases relied upon by the assessee referred to above was there any element of installation of the machine for a given period of time as is the position in the instant case. The machines in question were by their very nature intended to be fixed permanently to the structures which were embedded in the earth. The structures were also custom-made for the fixing of such machines without which the same could not become functional. The machines thus becoming a part and parcel of the structures in which they were fitted were no longer movable goods. It was in those peculiar circumstances that the installation and erection of machines at the sites were held to be by this Court to be immovable property that ceased to remain movable or marketable as they were at the time of their purchase. Once such a machine is fixed, embedded or assimilated in a permanent structure, the movable character of the machine becomes extinct. *The same cannot thereafter be treated as movable so as to be dutiable under the Excise Act. But cases in which there is no assimilation of the machine with the structure permanently, would stand on a different footing.*

*44. In the instant case all that has been said by the assessee is that **the machine is fixed by nuts and bolts to a foundation not because the intention was to permanently attach it to the earth but because a foundation was necessary to provide a wobble free operation to the machine. An attachment of this kind without the necessary intent of making the same permanent cannot, in our opinion, constitute permanent fixing, embedding or attachment in the sense that would make the machine a part and parcel of the earth permanently.** In that view of the matter we see no difficulty in holding that the plants in question were not immovable property so as to be immune from the levy of excise duty. Our answer to Question 1 is accordingly in the affirmative.*

Thus, from the judgments referred above we find clearly that the intent of the person at the time of erecting and operationalizing a structure/ plant is to be seen and if the intent is to establish it as an immovable property at the time of setting it up, then it is to be treated as an immovable property even if later on due some exigency it is required to be dismantled or removed.

In view of detailed deliberations as held herein above, we passed an order as below.

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA-36/2017-18/B- 43 **Mumbai, dt.** 04/06/2018

For reasons as discussed in the body of the order, the question is answered thus –

Question: "Whether transportation charges received by the applicant are liable to GST, especially when the applicant is not a goods transport agency (GTA)"?

Answer: Answered in the affirmative and same is liable to tax as a works contract as per provisions of section 2(119) of the GST Act.

MEMBER ADVANCE RULING AUTHORITY MAHARASHTRA STATE, MUMBAI

PLACE - Mumbai

DATE - 04/06/2018

—sd—

B. V. BORHADE

(MEMBER)

—sd—

PANKAJ KUMAR

(MEMBER)

CERTIFIED TRUE COPY

MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Copy to:-

1. The applicant.
2. The concerned Central / State officer.
3. The Commissioner of State Tax, Maharashtra State, Mumbai.
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai.

Note :-

Appeal against this order would die to The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021