

No credit available on lift installation charges

The Hon'ble AAAR, Maharashtra in ***Re: M/s Las Palmas Co-operative Housing Society [Order No. MAH/AAAR/RS-SK/24/2020-21 dated July 20, 2020]*** held that the input tax credit (“ITC”) in respect of GST paid on lift installation charges paid to lift contractor shall not be available in terms of Section 16(2)(b) read with Section 17(5)(c) and 17(5)(d) of the Central Goods and Services Tax Act, 2017 (“CGST Act”).

Facts:

M/s Las Palmas Co-operative Housing Society (“**the Appellant**”) is recovering amount, from each of the society members under various heads such as Service Charges, Electricity Charges, Lift Charges, Ground Rent, Sinking Fund, Repair Fund, Water Charges, Parking Charges, etc., and paying 18% GST on it after availing the ITC.

The Appellant is under the process of replacing existing lift of the society for which Contract has been awarded to M/s. Fujitec India Private Limited (“**Fujitec**” or “**lift contractor**”). The Appellant is also recovering separate amount for replacement of lifts from the members (apart from the normal charges as stated above) as “contribution for installation of new lifts” and charging 18% GST on it to the members of the society. The Appellant is recovering such amount of contribution for the installation of the new lifts under the separate tax invoice.

The Hon'ble AAR Maharashtra in *Order bearing No. GST-ARA-31/2019-20/B-13 dated January 22, 2020*, held that the Appellant was not entitled for the ITC of replacement of lift, as lift when erected and installed in a building would be construed as an integral part of the building and hence forms part of immovable property.

Being aggrieved, the Appellant filed an appeal before the Hon'ble AAAR, Maharashtra.

Issue:

Whether the Appellant is eligible for the ITC of lift installation charges paid to Fujitec, if it is booked as capital expenditure in their books without availing the depreciation on 18% GST charged by Fujitec?

Held:

The Hon'ble AAAR, Maharashtra in **Order No. MAH/AAAR/RS-SK/24/2020-21 dated July 20, 2020** held as under:

- The definition of the "Plant and Machinery" categorically excludes building or any other civil structure. The lifts/elevators, erected, installed and commissioned in the buildings, are construed as an integral part of those building as held by the Hon'ble AAR on the basis of the Hon'ble Apex Court judgment in the case of **Triveni Engg. Industries Ltd. v. C.C.E. [2000 (120) ELT 273]**, **Quality Steel Tubes (P) Ltd. v. C.C.E.. U.P. [1995 (75) E.L.T. 17 (SC)]**, **Otis Elevator Company (India) v. Superintendent of Central Excise [2003 (151) E.L.T. 499 (Bom.)]**. Hence, the same would be excluded from the category of "Plant and Machinery", in terms of the provisions related to the 'Plant and Machinery' laid out.
- Further, the Larger Bench of the Hon'ble Supreme Court in the case of **M/s Kone Elevator India Pvt. Ltd. v. State Of Tamil Nadu and Others [2014 (304) E.L.T. 161 (SC)]** has held that in the case of installation of lift after the goods are assembled and installed with skill and labour at the site, it becomes a permanent fixture of the building. Once it has been established that the lift, after its erection, installation and commissioning, would be considered as part of the building, and hence immovable property, the Appellant cannot claim ITC on the input services in terms of the provisions laid out under Section 17(5)(d) of the CGST Act.
- The provision of Section 17 of CGST Act, says that ITC would be available on tax paid on works contract services when such services are an input service for further supply of works contract service. The Appellant does not fulfil the conditions laid

down above. It has to be understood that the exception carved out to provide ITC in the case of tax paid on works contract is for those who in turn provide works contract service. For e.g. when a principal gets a contract of work executed from a sub-contractor and provides the same to the employer. In such a case, the principal becomes eligible for ITC even though the contract results in immovable property. However, the situation is far from it in the present case. Firstly, the society itself is not a works contract service provider. Nor is it in the business of providing works contract services. It has not itself provided any works contract service to the members. If the society is not itself a provider of the service there is no question of any ITC on input service. The works contract service is received by the society for the common benefit of the members.

- The Appellant contended that *Circular No. 109/28/2019-GST dated July 22, 2019* issued by the CBIC does not disallow the ITC in respect of goods, which become immovable property after being installed, and hence they are rightfully eligible to avail ITC in respect of the lift installation charges paid to the lift contractor, even if the lift is considered as immovable property, as held by the Advance Ruling Authority. It was held that the said Circular allows the ITC in respect of GST paid on Capital Goods only, and not on the works contract services. It is not in dispute that the Appellant is availing the works contract services from the lift contractor for the replacement of the lift in the Society, which after being installed, becomes immovable property, and therefore ITC in respect of GST paid on such works contract services would not be admissible to the Appellant.
- Thus, the Appellant will not be eligible to avail the ITC in respect of the GST paid on lift installation charges paid to the lift contractor, in terms of Section 16(2)(b) read with Section 17(5)(c) and 17(5)(d) of the CGST Act.

Our Comments:

It may be noted that the Hon'ble AAAR, Karnataka in **Re: Tarun Realtors Pvt. Ltd. [Order No. KAR/AAAR-14/2019-20 dated February 6, 2020]** has also denied credit on various facilities installed in the commercial mall construing the same as 'civil structure'. Similarly, the Hon'ble AAR, Madhya Pradesh in **Re: Jabalpur Hotels Private Limited [Order No. 10/2020 dated June 8, 2020]** denied ITC on 'lifts' installed in Hotel Building.

Further, it is to be noted that as per *Circular No. 109/28/2019-GST dated July 22, 2019*, ITC is allowed to a Residential Welfare Association (RWA) in respect of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services. Relevant portion of the Circular is reproduced below:

“3. Is the RWA entitled to take input tax credit of GST paid on input and services used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than ₹ 7,500/- per month per member?”

RWAs are entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services.”

Relevant provisions:

Section 16(2)(b) of the CGST Act

“16. Eligibility and conditions for taking input tax credit.

2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(b) he has received the goods or services or both.

Explanation.-For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.”

Section 17(5)(c) and 17(5)(d) of the CGST Act

“17. Apportionment of credit and blocked credits.

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

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(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;

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Explanation.— For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes-

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises.”

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