

Eligibility of Input Tax Credit on Lifts/Elevators



This is to apprise you about the recent decision of Madhya Pradesh ('MP') Authority for Advance Ruling ('AAR') in the case of **Jabalpur Hotels Private Limited (Order No. 10/2020)**. The AAR was dealing with the question on eligibility of Input Tax Credit ('ITC') on lifts.

It is pertinent to mention that a similar question (ITC on lifts/elevators) was dealt by Maharashtra ('MH') AAR in the case of **Las Palmas Co-operative Housing Society Limited (GST-ARA-31/2019-20/B-13)** and Karnataka ('KA') AAR in the case of **Tarun Realtors Private Limited (Order No. KAR ADRG 103/2019)**.

A. FINDINGS & DECISION

- All three AARs have held that the ITC on lifts/elevators is not available in terms of restrictions under Section 17(5)(c)/(d) of the Central Goods and Services Tax Act, 2017 ('CGST Act'), on the following grounds:
 - That the lift is an immovable property being an integral part of the building
 - That when any person speaks of a building, he also includes the lifts as an integral part of the building
 - That a lift is not something sold out of shelf and it does not have an identity when removed from the building

- MH-AAR relied on the following jurisprudence to conclude that lift is an immovable property being an integral part of the building:
 - *Triveni Engg. Industries Ltd. v. CCE, 2000 (8) TMI 86-SC*
 - *Quality Steel Tubes (P) Ltd. v. CCE, 1994 (12) TMI 75-SC*
 - *Otis Elevator Company (India) vs SCE, 2002 (8) TMI 118-BOMBAY HC*
 - *Otis Elevator Company (India) Ltd., 1981 (7) TMI 70-GOI*

B. GABA & CO. | REMARKS

- *MP-AAR concluded that a lift is an integral part of a 'building' which is specifically excluded from the definition of 'plant & machinery', and thus, ITC on lifts cannot be availed.*
- *In our view, MP-AAR has missed the provisions completely. The following questions were not addressed:*
 - Whether a separate contract for 'construction of a lift' be considered as a contract for 'construction of a building'?*
 - Whether goods and services used for 'construction of a lift' can be considered as being used for 'construction of a building'?*
 - Whether a building without a lift/elevator is a complete structure in itself?*
 - What if the lifts are not capitalised under the head 'land or building'?*
 - What about those lifts which are attached on the outer side of a wall e.g. a Glass lift?*
- *In our view, when one deep dives for solutions to above questions and read it harmoniously, the ultimate answer would be opposite to what the AARs have concluded.*

Disclaimer:

The views expressed in the update are strictly personal, based on our understanding of the underlying law. We are not responsible for any injury, loss or cost arising to any person who refers this update and acts or refrains from any act accordingly. We would suggest that a detailed legal advice must be sought before relying on this update.