

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH**Goods and Service Tax****O/o THE COMMISSIONER, COMMERCIAL TAX,****MOTI BUNGALOW,****MAHATMA GANDHI MARG, INDORE (M.P.) - 452007****e-mail :aar@mptax.mp.gov.in Phone : 0731- 2437315 fax, no. : 0731-2536229****PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING**
U/S,98 OF THE GOODS AND SERVICES TAX ACT,2017**Members Present**1. ShriManoj Kumar Choubey
Joint Commissioner

Office of the Commissioner of Commercial Tax, Indore Division-1

2. ShriVirendra Kumar Jain
Joint Commissioner

Office of the Commissioner CGST and Central Excise, Indore

GSTIN Number. If any/User-id	23AAECJ2004N1ZU
Name and address of the applicant	M/S JABALPUR HOTELS PRIVATE LIMITED 497, KATANGI ROADKARMETAJabalpur Madhya Pradesh(482001)
Point on which advance ruling sought	d. Admissibility of input tax credit of tax paid or deemed to have been paid;
Present on behalf of applicant	CA NeerajAgrawal, Accounts Officer
Case Number	27/2019
Order dated	28/04/2020
Order Number	10/2020

PROCEEDINGS**(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)**

1. M/s JABALPUR HOTELS PRIVATE LIMITED(hereinafter referred to as the Applicant) was established with an object to construct Hotel in Jabalpur at Mauza Ghana Khasara No 195/14, 195/2, 194 Nagpur Road, Jabalpur. The Applicant is having a GST registration with GSTIN 23AADCM7397N1ZU.



2. The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

3. BRIEF FACTS OF THE CASE –

- 3.1 The company Jabalpur Hotels Private Limited was incorporated on 13th March 2018. With 5000000 Share Holders Holding 4970000 shares of Rs. 10/- each.
- 3.2 The company was established with an object to construct Hotel in Jabalpur at Mauza Ghana Khasara No 195/14, 195/2, 194 Nagpur Road, Jabalpur.
- 3.3 Company started construction of Hotel and completed a major part of its work.
- 3.4 The Hotel is in construction stage and the promoters of the hotel have some doubt on the issues of Input Tax Credit under GST hence preferred to file Advance Ruling before the Authority.
- 3.5 This application sort advance ruling for input credit on Lift used in hotel.

4. QUESTION RAISED BEFORE THE AUTHORITY -

Input credit on Purchase of Lift would be available to Hotel as it has been used in the course or for the furtherance of business.

5. **DEPARTMENT VIEW POINT** –The concerned office in his view stated that under section 17(5)(d) no input tax credit is eligible on the lift on the instant case.

6. RECORD OF PERSONAL HEARING -

- 6.1 CA Neeraj Agrawal, Accounts Officer appeared for personal hearing on and they reiterated the submission already made in the application and attached additional submission which goes as follows –
- 6.2 Jabalpur Hotel Private Limited is constructing a Hotel at Mauza Ghana Khasara No 195/14, 195/2, 194 Nagpur Road, Jabalpur.
- 6.3 The hotel will be multi storied hotel and will have approx. 100 rooms.
- 6.4 The hotel will be equipped with other facilities such as gym, spa, swimming pool, restaurant, Banquet Hall, Marriage Lawn and Garden etc.
- 6.5 As there will be some rooms of the hotel which have declared tariff of more than Rs. 7500 and hence the restaurant of the hotel will be chargeable to GST @ 18% against 5% and would be eligible for GST credit of items used in the course or for the furtherance of restaurant services.
- 6.6 As the hotel is multi storied, hence to provide facility to guest we would be requiring lift in the hotel premises.
- 6.7 Section 16 Chapter V of CGST Act 2017 lay down the conditions specified for claiming Input Tax Credit. Lift that will be purchased will full fills all the conditions of section 16.
- 6.8 Section 17 Lay downs certain conditions for Apportionments of credit and block credits.



6.9 Section 17(5) blocks credit of works contract and goods or services received by a taxable person for construction of an immovable property (other than plant and machinery)

6.10 As Lift is a machinery and hence in our opinion does not fall in the restriction of section 17(5) of CGST Act 2017.

6.11 The company Jabalpur Hotels Private Limited is constructing Hotel Containing approx. 100 numbers of Rooms.

6.12 Lift is an essential part in a hotel and without which it very difficult to provide best services to our guest.

6.13 Section 17(5) blocks credit of works contract and goods or services received by a taxable person for construction of an immovable property (other than plant and machinery)

6.14 As Lift/escalator is a machine and it falls under HSN 8428 and hence excluded from block credit as specified in section 17(5).

6.15 As a machine and especially, in view of usage and function it can be inferred that it is an absolutely must for providing Renting of Immovable Property Services. I think it conforms to the condition of "in business or furtherance of business" It does not fall under any exclusion clause. So in our view, ITC is allowed.

6.16 QUESTION RAISED BEFORE THE AUTHORITY-

Input credit on Purchase of Lift would be available to Hotel as it has been used in the course or for the furtherance of business.

6.17 FURTHER THE ASSESSEE BEGS TO SUBMIT AS UNDER:

1. Object for Incorporation of Company

a. As per Memorandum of Association the company Jabalpur Hotels Private Limited was incorporated with the following object. Copy of Relevant part of Memorandum of Association is enclosed as per Annexure N/I.

i. To carry on the business of hotel, restaurant, cafes, motel, resort, rest house, guest house, coffee house, recreation rooms, bars, conference center, leisure center, beer house, night club, boathouse, taverns, lodging-housekeeping, inn owners, boathouse, shikara, holiday -hut business and game room owners, grounds and place of amusements, recreation and entertainment and to carry on business as hotel manager and operators, refreshment contractors.

ii. To carry on the business as professional caterers, bakers, confectioners, cooks, restaurant keepers, refreshment rooms proprietors, milk and snack bar proprietors, pastry shop owners, café and tavern proprietors, boarding & lodging house proprietors, ice cream merchants, sweetmeat merchants.



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2. Company is constructing Hotel

Company is constructing a 100 room hotel in the name of Royal Orbit at Jabalpur. The hotel will be a multi storied Hotel with various amenities and facilities including Restaurant, swimming pool, spa, Marriage Lawn etc.

3. Meaning of words Plant and Machinery

a. The word plant and machinery is defined in explanation to section 17 as "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

b. **As per Oxford References** "The equipment required to operate a business. Capital allowances are available for plant and machinery although neither is defined in the tax legislation. This defines plant and machinery as 'whatever apparatus is used by a businessman for carrying on his business – not his stock in trade which he buys or makes for resale: but all goods and chattels, fixed or moveable, live or dead, which he keeps for permanent employment in the business'. Subsequent cases have been largely concerned with the distinction between plant actively used in a business, and so qualifying for capital allowances, and expenditure on items that relate to the setting up of the business, which do not so qualify".

c. **Definition under legal dictionaries:**

- i. As per Law Lexicon, "Plant" means the fixtures, machinery, tools, apparatus, appliances etc., necessary to carry on any trade or mechanical business, or any mechanical operation or process.
- ii. As per Law Lexicon, "Machinery" means something more than a collection of ordinary tools. It means more than a solid structure built upon the ground, whose parts either do not move at all or if they do move, do not move the one with or upon the other in interdependent action with the object of producing specific and definite result

4. Eligibility of Credit

a. Company is eligible for input tax credit as per provisions contains in section 16 of CGST Act 2019.

b. However certain credits of the company related to construction activity are blocked as per section 17(5)(d) of CGST Act 2017 which specifies "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.

c. Excluding the above referred credit under section 17(5)(d) company is eligible for all other credit of inputs, input services and capital goods used in the course or furtherance of business.

d. Lift in a hotel is also used in the course or furtherance of business, as it approximately impossible to run a multi storied hotel without a lift in the present scenario.



e. Section 17(5)(d) of CGST Act 2017 also blocks credit of only construction of immovable property other than plant or machinery, hence it is the clear intent of the law makers that they do not wish to block credits of plant or machinery.

f. The good, "Lift" falls under HSN 8428 1011/8428 1019, ITC is admissible. Not hit by Section 17(5) of CGST Act, 2017.

g. Further the lift so purchased is being capitalized in the books of the company and depreciation as per the provisions of income Tax Act, 1961 is charged on the cost of lift less eligible credit of GST. Hence no depreciation is being applied on the GST portion credit of which is eligible in accordance with the provisions of section 16 of CGST Act 2017 without controverting the provisions of section 16(3) of CGST Act 2017.

h. Having established the above, with specific regard to the eligibility of credits, the Applicant would like to draw attention to certain judicial pronouncements where it has been held that CENVAT Credit of services used for construction is admissible input. Although these judgments have been pronounced under the erstwhile CENVAT Credit laws, the analogy can be adopted to understand the eligibility of the same under the GST laws.

i) M/s. Rattha Holding Co. Pvt. Ltd. Vs Commissioner of Central Services Tax, Chennai (2018 (9) TMI 1722) - wherein the Hon'ble Chennai Tribunal held that disallowance of credit of input service used for Construction of buildings is unjustified.

ii) Commissioner of Central Excise, Vishakhapatnam-II vs M/s. SaiSamhmita Storages (p) Ltd. (2011 (2) TMI 400) - wherein the Hon'ble Andhra Pradesh High Court held that the assessee used cement and TMT bar for providing storage facility without which storage and warehousing services could not have been provided and the finding of the original authority as well as the appellate authority are clearly erroneous.

iii) Commissioner of Central Excise, Salem vs. Ashok Agencies (2016 (5) TMI 782) - wherein the Hon'ble Chennai Tribunal held that Commissioner (Appeals) has not committed any error to grant Cenvat credit to the respondent on those input services which are not disintegrated from providing output service. It is strange that how without bringing out an edifice Revenue shall realize its dues towards rental service.

i. Further, the following judicial pronouncements permit claim of CENVAT credit on goods or services or both used in fabrication of parts, components, accessories of the plant and machinery. It has been consistently held that the parts, components, accessories come into existence before the installation of the machinery and credit of taxes paid on the same cannot be denied even if they become part of the immovable property after installation of the plant and machinery.

i) Commissioner of Central Excise & Service Tax vs. India Cements Ltd. 2014(310) E.L.T. 636 (Mad).

ii) Commissioner of Central Excise Jaipur vs. Rajasthan Spinning & Weaving Mills Ltd. 2010(255) ELT 481 (S.C.)

iii) Saraswati Sugar Mill Vs. Commissioner of Central Excise Delhi III 2011 (270) E.L.T. 465(S.C.)

j. Further, these installations are recorded in the books of accounts under separate heads as per Indian Accounting Standards (i.e. independent of building or civil structure) which is sufficient justification that these installations are distinct from the land and building. Hence, the same do not form a part of the exclusion portion of the Explanation to Chapter V and Chapter VI of the CGST Act, 2017 and are accordingly, not excluded from the definition of 'Plant and Machinery'.



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The Applicant submits that, basis the above, although the Installations are fixed to the building/ earth, they qualify as 'Plant' or 'Machinery' under the CGST Act, 2017 and accordingly, the taxes paid on procurement of LIFT should not be regarded as blocked credits in terms of Section 17(5) (d) of the CGST Act, 2017 read with Explanation to Chapter V and Chapter VI of the CGST Act, 2017

7. DISCUSSIONS AND FINDINGS –

7.1 We have carefully considered the submissions made by the applicant in the application, the pleadings on behalf of the Applicant made during the course of personal hearing and the Department's view provided by the jurisdictional officer.

7.2 We find that the extant application seeks Ruling specifically on solitary question, "*Whether input credit on purchase of lift would be available to hotel as it has been used in the course for furtherance of business*". Since the question is squarely covered under Section 97(2)(d) of the CGST Act 2017, we admit the application and take up the matter for pronouncing ruling.

7.3 The applicant is a Private Limited Company which has started construction of a Hotel in Jabalpur, as already discussed in the foregoing paras. It has been mentioned that the proposed hotel would have more than 100 rooms along with other facilities like gym, spa, swimming pool, banquet, restaurant etc. The applicant has mentioned that the hotel is a multi-storeyed building and, thus, the provision of lift is essential for running the business. It has been mentioned that the room tariff of some of the rooms is proposed to be more than Rs.7500/- and therefore the restaurant would be paying GST @18% and availing input tax credit on goods and services used in course or for furtherance of business.

7.4 The applicant have sought ruling on availability of input tax credit of tax paid on Lift purchased and installed by the applicant in the hotel building, particularly with reference to blocked credit as defined under the provisions of Section 17(5) of the GST Act. The application, interalia, mentions that the said Lift is being capitalized in the books of the company and depreciation as per the provisions of income Tax Act,1961 is charged on the cost of lift less eligible credit of GST. Hence no depreciation is being applied on the GST portion credit of which is eligible in accordance with the provisions of section 16 of CGST Act 2017 without controverting the provisions of section 16(3) of CGST Act 2017. It is therefore pleaded that the lift in question be termed as 'Plant & machinery' and hence out of purview of blocked credit in terms of Section 17(5)(d) in as much as 'Plant & Machinery' has been excluded from the definition of immovable property.

7.5 Now, we observe that Section 17(5)(d) reads as under:



SECTION 17(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) -----

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

7.6 Thus, the intent of the legislature is clear to the extent that it intends to restrict input tax credit on any goods or services which are used or intended to be used in construction of an immovable property, even when such goods or services or both are used in the course of furtherance of business. We don't see any ambiguity in the words of the statute to this extent. We feel that the applicant is also on the same page with us that any goods or services used in construction of an immovable property shall not qualify for availment of input tax credit in terms of this sub-section 17(5).

7.7 To avoid the event of blocking of credit in terms of Section 17(5)(d), the applicant have argued that the impugned item 'Lift' merits classification as 'Plant and Machinery' and since 'Plant and Machinery' is excluded from the term 'immovable property', for the purpose of Section 17(5)(d), the applicant shall be entitled to input tax credit of tax paid on such Lifts. It appears that in pursuit of input tax credit on lifts, the applicant has travelled beyond the designated route. Let us put it in perspective. The applicant essentially seeks to avail input tax credit on lifts which are purchased and installed in the building which would be used as a Hotel for providing taxable service. Thus, the lifts are sought to be considered as 'input' for hotel building. That being the case, the input tax credit is blocked unambiguously in terms of Section 17(5)(d), even when 'such goods or services or both are used in the course or furtherance of business'. To be more precise, hotel building being an immovable property, any input or input service going into its construction shall not be available for availment of input tax credit.

Further, a lift comprises of components or parts (goods) like 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 immense 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 a particular building and are not something sold out of shelf and, in fact, the value of goods and the cost of the components used in the manufacturing and installation of a lift are subject to taxation while the element of labour and service involved cannot be treated as goods. Parts of the lift are assembled at the site in accordance with its design and requirement of the building which may include the floor levels and the lift has to open on different floors or otherwise

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depending upon the requirement. It has to synchronize with the building and each door has to open on the level of each floor.

The lift therefore becomes part of the building and is not a separate thing per se. A lift does not have an identity when removed from the Building. Therefore, the lift cannot be said to be separate from a Building. Also, it has to be borne in mind that a lift is not an item that is purchased and sold. It is a customized mechanism for transportation, designed to suit a specific building. Upon piece by piece installation, it becomes an integral part of the building.

7.8 Now, considering the alternate argument adduced by applicant to treat such lift as plant and machinery, we find that this scenario would merit consideration when the lift is being manufactured by someone and inputs or input services going into manufacture of the lift are in question. In the instant case, the applicant has procured the customized lift and gotten it installed piece by piece in the building resulting in the mechanized transportation system called lift.

The explanation below Section 17(6), relating to the expression "plant and machinery" has included foundation and structural support in the term "plant and machinery". It has also been stated that such foundation and structural support are used for fixing apparatus, equipment and machinery. Therefore, in the definition, foundation and structures are duly included. Further the definition has excluded land building and any other civil structure from the definition of the "plant and machinery". Prima facie, there seems to be contradiction in the inclusion of "such foundation and structural supports" and exclusion of "...building or any other civil structures". This apparent contradiction is however negated by the fact that the exclusion of the building or civil structure is for plant and machinery per se, while the inclusion is for foundation and structure is only to the extent that such foundation and structure is used to fasten the apparatus, equipment or machinery to earth. Thus, if the plant and / or machinery is fixed / fastened to the earth by a foundation or civil structure then such foundation or civil structure shall be included in plant and machinery.

To set to rest the disputes regarding the definition of the Plant, in light of the fact that input tax credit of works contract services, goods and services received as input for construction of immovable property on own account has been specifically put under the Blocked Credit list with the rider that it shall not apply to plant and machinery, it was incumbent that there should be clarity regarding classification of buildings and civil structures that were hitherto been classified as 'Plant'.

Accordingly, in the explanation relating to Plant and Machinery, beneath sub-section (6) of Section 17, while providing the meaning of the term plant and machinery, it has been clearly stated that Buildings and Civil Structures shall not be covered under the



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term Plant. However, while so clarifying, it has been accepted and understood that plant and machinery many a times requires support structure and / or foundation for installation and cannot work otherwise. Thus, civil structures and foundation as supporting structure for fastening of plant and machinery to earth has been included as part of plant and machinery.


In the instant case, the lift has become part of the building and thus falls under the exclusion from plant and machinery and accordingly, we do not find any reason to interfere with the clear provisions of statute.

7.9 The judicial citations relied upon by the applicant have been duly perused and considered by us. However, we find that all these cases pertain to pre-GST era and since Section 17(5) of the CGST Act 2017 has put to rest all such issues in unambiguous terms, the legal citations adduced by applicant do not come to his rescue. On the contrary, we find that the identical issue has been decided by the learned Authority for Advance Ruling, Karnataka in the matter of M/s.Tarun Realtors Pvt. Ltd., Bangaluru vide order dtd.30.09.2019. Even though an Advance Ruling does not have any precedential value, there is a lot persuasive value of the *ratio decidendi* in the matter of this AAR. The learned AAR, Karnataka has ruled that Lift, along with, several other such items, shall not be entitled for input tax credit when used in construction of immovable property since they take the character of Building itself. We thus hold that the applicant in the instant case shall not be entitled to avail input tax credit of tax paid on procuring the lift to be installed in the hotel building which in turn is intended to be used for providing taxable service, in terms of Section 17(5)(d) of the CGST Act 2017.

8. Ruling

- 8.1 In respect of solitary Question, we hold that the input tax credit of tax paid on Lifts procured and installed in hotel building shall not be available to the applicant as the same is blocked in terms of Section 17(5)(d) of the CGST Act 2017, become an integral part of the building.
- 8.2 The ruling is valid subject to the provisions under section 103 (2) until and unless declared void under Section 104 (1) of the GST Act.


(Manoj Kumar Choubey)
(Member)

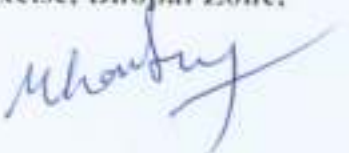

(Virendra Kumar Jain)
(Member)

Copy to:- No. 27/2019(AAR/R-28)/22

INDORE, dated 08/06/2020

1. Applicant
2. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore
4. The Commissioner, CGST & Central Excise, Indore

सत्यप्रतिलिपि





5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

Sharma

सत्यप्रातालाप

