

# Movable and Immovable Property

Respected Members,

The following is the Article on taxability of Movable and Immovable property in pre GST Regime & Post GST Regime. In this article Hon'ble High Court categorically explain the meaning of movable and immovable property, also explain by the Hon'ble respective High Courts on this issue taxability of movable and immovable property remains burning issue in pre GST regime and post GST regime.

## 1) Introduction

For Indian legislation, it is necessary to determine which property is movable and which is immovable. It is important because both of these properties are guided by different laws such as limitation period, registration, transfer of property. All mankind is divided into three classes: those that are **immovable**, those that are **movable**, and those that move. **Movable and immovable**, the basic division of things subject to ownership. **Immovable property**, in the sense used, commonly refers to real estate (such as your house, factory, manufacturing plant, etc.) while **movable property** refers to **movable assets** (such as your computer, jewellery, vehicles, etc.)

## 2) Goods

**The constitution of India** defines 'Goods' in **Article 366(12)** to include all materials, commodities and articles. Therefore on a plain reading of the aforesaid definition, it would go to show that only movables which can be traded or marketed are items which would fall within the definition of term 'Goods'.

## 3) Movable Property

The property which can be transferred from one place to another is movable property.

**Section 12(36)** of the **General Clause Act, 1847** defines "movable property" as

"Movable property shall mean property of every description except immovable property".

As per **Transfer of Property Act 1882**, movable Property are those properties which are not immovable.

**Section 22 of the Indian Penal Code 1860**, defines movable property as,

'The words "movable property" are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth'.

In the case of **State of A.P vs. National Thermal Power Corporation Ltd. AIR 2002 SC 1895** held that the definition of "Goods" in **Article 366(12)** of the

**Constitution of India** was very wide and included all kinds of movable properties. It was held that the term “movable property” when considered with reference to “goods” as defined for the purpose of sales tax cannot be taken in a narrow sense.

#### 4) Immovable Property

**Section 2(26)** of the **General Clause Act, 1847** defines immovable property as

“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”.

The meaning of “attached to the earth” is found in **Section 3** of the **Transfer of Property Act, 1882** where it is defined to mean (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 (c) attached to what is imbedded for the permanent beneficial enjoyment of that to which it is attached.

In the case of **Quality Steel Tubes Ltd. Vs. Collector 1995 (75) ELT 17 (SC)** where in the supreme court was called upon to decide whether a tube mill and welding head which were erected and installed by the appellant to form part of a tube mill were excisable. It was held that the goods which are attached to the earth & thus become immovable do not called as goods as per the meaning under the act.

However the supreme court in **Sirpur Paper Mills Ltd. Vs. CCE 1998 (97) ELT 3 (SC)**, held that assembly of a paper making machine and its erection at site mainly from bought out components and by fabricating the rest of the parts at site, amounts to manufacture. This decision caused a considerable amount of re-thinking as to what constitutes immovable property.

The Bombay high court in **Shapoorji Pallonji & Co. Vs. UOI 2005 (192) ELT 92 (Bom)**, held that trusses, columns and purlins made by cutting/drilling/welding steel channels, angles, plates, and erecting them on concrete columns with nuts and bolts whereby they became part of structure embedded to earth being immovable property would not excisable.

## 5) **Taxability of services of immovable property**

### **Before GST**

Service tax was applicable on taxable services provided in relation to an immovable property.

### **After GST**

GST is now applicable in place of service tax.

The type of GST to be charged will depend if the supply is intra-state or inter-state. This will be ascertained by determining the place of supply of the service.

## 6) Conclusion

As I conclude my topic that immovable property cannot count as goods. In as much all the aforesaid definitions of the expression “goods” say that it includes all kinds of movable property. In **Commissioner of Central Excise vs. Correct Egg. Works 2010 (252) ELT 481 (SC)** the Apex court while deciding whether setting up of an Asphalt Drum Mix Plant were immovable property or whether the assessee was engaged in making of components of such plant. Some of the components of such plants were embedded in the earth on a foundation of 1.5 dig deep. It was held that the plants were not per se immovable and they become immovable when embedded in the earth. The attachment of the plant with nuts and bolts intended to provide stability and prevent vibration is not covered as attached to earth. The attachment can be easily detachable from the foundation and is not permanent. The plant moved after road construction or repair project is completed. The plants are not immovable property. Apex court also states that the machines which are permanently fixed to the structures which are embedded in the earth, the machine thus becoming a part of the structure and were no longer be movable goods. It was in those peculiar circumstances that the installation and erection of machines at site were held to be by this Court, to be immovable property that ceased to remain moveable as they were at the time of their purchase. Once such a machine is fixed, embedded in a permanent structure, the movable character of the machine becomes extinct.

Please give your respective feedback.

**Warm Regards**

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