THE MADHYA PRADESH APPELLATE AUTHORITY FOR ADVANCE RULING
OFFICE OF THE COMMISSIONER, COMMERCIAL TAX, MOTI BUNGLOW, MAHATMA GANDHI MARG, INDORE (M.P.) - 452007

BEFORE THE BENCH OF

(1) Shri V.K. SAXENA, MEMBER
(2) Shri RAGHWENDRA KUMAR SINGH, MEMBER

ORDER NO. MP/AAAR/04/2020 DATE..23..10..2020

Name and address of the appellant	M/s. Jabalpur Hotels Private Limited, 497, Katangi Road, Karmeta, Jabalpur (Madhya Pradesh)-482001
GSTIN or User ID	23AAECJ2004N1ZU
Order of AAR under Appeal before AAAR	10/2020 dated 08.06.2020

PROCEEDINGS

(Under section 101 of the Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)

1. At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017 are mirror image of each other except for certain specific provisions. Therefore, unless a specific mention is made to such dissimilar provisions, a reference to the CGST Act would mean a reference to the similar provisions under the MPGST Act and vice-versa. At places we may refer it as GST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017 [hereinafter also referred to as "the CGST Act and MPGST Act"] by M/s. Jabalpur Hotels Private Limited (hereinafter also referred to as the "appellant") against the order of Authority for Advance Ruling No. 10/2020 dated 08.06.2020

3. BRIEF DISCRIPTION

- The company Jabalpur Hotels Private Limited was incorporated on 13th March 2018. 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.

- Company started construction of Hotel and completed a major part of its work.

- 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.

4. STATEMENT OF FACTS-

- Jabalpur Hotels Private Limited is constructing a Hotel at Mauza Ghana Khasara No 195/14, 195/2, 194 Nagpur Road, Jabalpur.
- The hotel will be multi storied hotel and will have approx. 100 rooms.
- The hotel will be equipped with other facilities such as gym, spa, swimming pool, restaurant, banquet hall, marriage lawn and garden etc.
- As there will be some rooms of the hotel which would have declared tariff of more than Rs. 7500 and hence the restaurant of the hotel will be chargeable to GST @ 18% instead of 5% and would be eligible for GST ITC of items used in the course or for the furtherance of restaurant services.
- As the hotel is multi storied, hence to provide facility to guest we would be requiring lift in the hotel premises.
- Section 16 [Chapter V] of CGST Act 2017 lay down the conditions specified for claiming Input Tax Credit. Lift, that will be purchased, will fulfills all the conditions of section 16.
- An application was filed by the assessee before Authority of Advance Ruling, AAR, on 13.11.2019, wherein the authority ordered negatively~~, as~~ i.e. input credit of lift is not eligible.
- Aggrieved by the order passed by Authority of Advance Ruling, Madhya Pradesh dated 08.06.2020 this appeal is preferred.

5. QUESTIONS RAISED BEFORE AAR

Relevant question which has been decided against appellant by AAR is as under: -

Input Tax 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. RULLING PRONOUNCED BY AAR

The Advance Ruling Authority held 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 CGST Act, 2017, become an integral part of the building.

7. QUESTION RAISED BEFORE THE APPELLATE AUTHOURITY FOR ADVANCE RULING (AAAR)

The following question has been posed before the AAAR with reference to the activity undertaken by the Appellant: -

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.

8. GROUNDS OF APPEAL

- The Authority of Advance Ruling (AAR) in its order considered Lift as part of building which is not in accordance with law. Hence should be changed.
- The AAR was not justified in not allowing input credit of lift which was used for furtherance of business.
- The AAR erred in law and fact in not considering Lift as plant and machinery.
- The learned AAR erred in interpretation section 17(5) of CGST Act 2017 which is bad in law.
- The Learned AAR defeated the entire basic concept of GST, where there is steam-less flow of credit is provided.
- 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, hence the order of AAR is bad in law and need to be deleted.

- As Lift/escalator is a machine and it falls under HSN 8428 and hence excluded from block credit as specified in section 17(5). AAR misinterpreted the same.
- The lift install in the Hotel is a Hydraulic lift and can be installed and un-installed without damaging any part of building. Hence the order of AAR is bad in law.
- The assessee craves leave to raise any other ground/(s) on or before the date of personal hearing to prove that the order is bad in law.

1. <u>INTERPRETATION OF LAW-</u>

1.1. SECTION 17(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—

a. ------

b. ------

c. ------

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 1 — For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;

Explanation 2 — For the purposes of this Chapter and Chapter VI, the expression <u>"plant and machinery"</u>**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.

1.2. The above "explanation 2" can be summed up as under-

Plant and Machinery includes:		**Immovable Property includes:**	
1.	apparatus	1.	land, building
2.	equipment	2.	Civil Structures
3.	machinery	3.	telecommunication towers
4.	foundation or structural support	4.	pipelines laid outside the factory premises

1.3. The interpretation of law depends upon the intent of the Legislature and upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it in one way or the other.

1.4. In the instant case it has being agreed by the AAR that the lift is "Plant and Machinery". However, the AAR concluded that *"exclusion of building and civil structure is for Plant and Machinery per say"*, which is incorrect as the interpretation of the explanation to Section 17(5)(d) comes that-

1.4.1. In a case any machinery is fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both then the definition of "Plant and machinery" shall include such foundation and structural supports.

The explanation specifically excludes the following to be included under Plant and Machinery-

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

(ii) telecommunication towers; and

(iii) Pipelines laid outside the factory premises.

1.4.2. The above explanation intends to say that the plant and machinery includes certain foundations and structures however certain structures and foundations are excluded from Plant and Machinery and these are, land, building or any other civil structures, telecommunication towers and pipelines laid outside the factory premises.

1.4.3. The officer misinterpreted the above explanation and concluded that any plant or machinery attached to land, building or any other civil structures, telecommunication towers and pipelines laid outside the factory premises shall not be considered as plant and machinery. This is an incorrect interpretation of the explanation.

1.5. The officer has agreed that if a plant and machinery is installed on a foundational structural support thus, that structural support is plant and machinery but the lift which is a plant and machinery but since installed in building, the lift per say becomes part of building. Hence, it required to be examine as to whether a lift is an immovable property (i.e., part of a building) or whether it could be regarded as 'plant and machinery'.

2. DISCONSIDERATION OF LIFT AS AN INTEGRAL PART OF BUILDING-

2.1. Immovable property has been defined as under:

2.1.1. CBEC Circular Number 58/1/2002-CX, dated 15/1/2002 where in para (e) it has been clarified that

If 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 not be considered as movable** and will, therefore, not be excisable goods.

2.1.2. Definition of Immovable Property in Clause 3(26) of General Clauses Act, 1887

"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.

2.1.3. Definition of "attached to earth" in Section 3 of Transfer of Property Act, 1882

The term "attached to the earth" means • rooted in the earth, as in the case of trees and shrubs, • embedded in the earth, as in the case of walls or buildings, and • attached to what is so embedded for permanent beneficial enjoyment of that to which it is attached.

2.2. To ascertain whether the item is permanently attached to earth, English and Indian courts have consistently used two-fold tests – (i) the extent of annexation and (ii) the object of annexation. The extent of annexation means annexing the fixture or object **ceases to be detachable**. It would need to be demolished if one were to remove it. In considering whether the article is permanently annexed, the question is not the loss value – the

question is – economically, is the asset what it was even after removal? That is, does it retain its commercial character, or the same gets lost in the process of removal?

2.2.1. The intent or object of annexation test lays down that where a movable property gets annexed with an immovable property, if the intent of annexation is of permanent beneficial enjoyment of the immovable property, then the fixture becomes an immovable property. If the intent of annexation is the beneficial enjoyment of the movable property, then the property still remains movable. This test is a precondition for "permanent beneficial enjoyment". There are two implications of the intent test – first, the annexation must only be such as is required for beneficial enjoyment of the movable property. The second implication is, – if something is permanently attached so as to make it permanent fixture on land or another immovable property, one cannot contend that the intent of so doing is to enjoy the fixture.

2.3. The lift installed in the building for the purpose of furtherance of business cannot be deemed to be a part of the building or an immovable property just because of the fact that it was fastened in the civil structure of the building by way of nuts, bolts and fasteners.

3. The assessee places reliance in the Judgment of Supreme Court where Honourable Supreme Court held machine is not immovable property:

3.1. **Sirpur Paper Mills Ltd. vs. Collector of Central Excise, Hyderabad (1998 (1) SCC 400)-CEGAT** recorded finding that whole purpose behind attaching machine to a concrete base was to prevent wobbling of machine and to secure maximum operational efficiency and also for safety.

Supreme Court held that 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 earth like a building or a tree. The test, it was noted, would be whether paper-making machine could be sold in market and as Tribunal had found as a fact that it could be sold, so machine was held to be not a part immovable property of the company.

3.2. **Commissioner Of Central Excise, ... vs Solid & Correct Engg . Works & Ors on 8 April, 2010** - 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.

3.2.1. 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. 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.

3.2.2. 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.

3.2.3. 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 moveable 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 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 moveable 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. 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.

3.3. **Municipal Corporation of Greater Bombay & Ors. Vs. Indian Oil Corporation Ltd. (1991 Suppl. (2) SCC 18),** one of the questions considered by the Court was whether a petrol tank, resting on earth on its own weight without being fixed with nuts and bolts, had been erected permanently without being shifted from place to place . It was pointed out that the test was one of permanency; if the chattel was movable to another place of use in the same position or liable to be dismantled and re -erected at the later place, if the answer to the former is in the positive it must be a movable property but if the answer to the latter part is in the positive then it would be treated as permanently attached to the earth.

4. Incidences when SC held what is immovable property-

4.1. **T.T.G. Industries Ltd. V. CCE, Raipur 2004 (167) ELT 501 (SC),** 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.

4.2. **Essar Telecom Infrastructure Pvt. Ltd. (supra)on Mobile Towers by Karnataka High Court, which differed with the view of Bombay High Court's judgment in Hutchison Max Telecom P Ltd [(2008) 224 ELT**

191 (Bom)]. However mobile towers are standalone entities erected usually on roof-tops after an agreement with the owner of the building for using the space for a limited period of time, subject to periodic renewals. On the other hand, the Tower Package involves the erection of a series of towers on acquired land for use in perpetuity. In contrast to the time-bound nature of the agreements for using building spaces for erecting mobile towers, the Tower Package is not being constructed with the contemplation of such relocation. The judgment of Karnataka High Court in the matter of Essar Telecom Infrastructure P. Ltd. (supra) is, therefore, not applicable in the present context.

5. Further, the lift so installed in our Hotel is not a customized lift but a pre-designed lift. These lifts require a specified area in a building and can easily be installed by fastening nut and bolts and other fasteners in the building and no specific modification or alteration is required in the building structure. Thereafter these lifts can be disassembled without causing any structural damage to the building and reassembled on need and can be resold in open market.

6. Since the matter consists of certain technical aspects we have hereby obtained a certificate in order to support our claim that the lift can be unassembled without causing any structural damage to the building structure we are hereby enclosing the Certificate from Engineer Shri Design Desk who designed our Hotel building **(as per Annexure-N/1)**.

7. RELEVANCE OF PRE-GST CASE LAWS IN GST-ERA-

7.1. The provisions under the Pre-GST era have been taken forward to the GST Era and since the provisions of Pre GST Era have converged into the GST

era and are applicable in GST Era as well therefore the case laws of Pre-GST referred hereto are also relevant in the GST Era.

7.2. We first need to understand the provisions under the Pre-GST Era-

7.2.1. INPUTS UNDER SERVICE TAX-

As with the case of capital goods, inputs used for providing output services are also eligible for CENVAT credit to the service provider. The same meaning is used for both manufacturers and service providers. The definition of inputs **excludes-**

a. ---

b. any goods used for-

- construction or execution of works contract of a building or a civil structure or a part thereof; or
- laying of foundation or making of structures for support of capital goods,

except for provision of service portion in execution of a works contract or construction services.

7.2.2. INPUT SERVICES UNDER SERVICE TAX-

The definition of input services **excludes-**

A. service portion in the execution of a works contract and construction services including services listed under clause (b) of section 66E of the Finance Act (hereafter referred to as specified services) in so far as they are used for –

- construction or execution of works contract of a building or a civil structure or a part thereof; or

- laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services;

7.2.3. PROVISION OF SECTION 17(5) OF CGST ACT 2017-

As per section 17(5)(c) of the CGST Act, 2017, input tax credit shall not be available in respect of the 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.

As per Section 17(5)(d) of CGST Act 2017, ITC shall not be available for any goods or services used by a taxable person for the construction of immovable property **(other than Plant & Machinery)** on his own account even when used in course or furtherance of business.

Explanation: "Construction" includes re-construction, renovation, additions or alterations or repairs, to the *extent of capitalization*, to the said immovable property. Please note that 'alterations' and 'repairs' are also included in this definition if capitalized.

7.3. IMMOVABLE PROPERTY UNDER EXCISE ACT -

The Excise duty was a duty levied on manufacturing of movable goods, the test of movable and immovable goods is as under-

7.3.1. If 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 item would be considered as moveable and will, therefore not be therefore not be exicisable goods.

7.3.2. If any goods installed at site (example paper making machine) are capable of being sold or shifted as such after removable from the base and without dismantling into its components/ part, the goods would be considered to be movable and thus, excisable

7.3.3. The intention of the party is also a factor to be taken into consideration to ascertain whether the embedment of machinery in the earth was to be temporary or permanent. This, in case of doubt may help determine whether the goods are moveable or immovable.

7.4. <u>CRUX OF PROVISIONS OF GST AND PRE-GST ERA-</u>

Keeping in view the provisions of Pre-GST and GST Era it can be clearly concluded that both pre and post GST provisions reiterate the similar provisions.

7.4.1. The input of goods as well as input services and the service portion of a works contract shall not be available when utilized for construction of immovable property under Service Tax Regime and the section 17(5) of CGST Act 2017 has prescribed that ITC shall not be available in case of works contract services when supplied for construction of an immovable property or when goods or services used by a taxable person for the construction of immovable property.

7.4.2. Further, since the contention and intent of both the provisions was the same therefore, the case laws of pre-GST era still holds relevance in the

Post-GST Era contrary to what has been concluded by the AAR in Para no. 7.9 of order dated 08/06/2020.

7.5. Having established the relevance of Pre-GST Era, the assessee places reliance on the following judicial pronouncements although these judgments have been pronounced under the erstwhile CENVAT Credit laws -

7.5.1. 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.

7.5.2. Commissioner of Central Excise, Vishakhapatnam-II vs M/s. Sai Samhmita 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.

7.6. 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.

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

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

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

8. Contrary Judgement-

Contrary Judgment of AAR, Madhya Pradesh on the same issue has been given in case of **M/s Atriwal Amusement Park (2020) 04 CCH GST 0445 AARMP** (Copy of the same has been enclosed). Where AAR have concluded that water slides are apparatus, equipment or plant and machinery attached to foundation. ITC on both slides and foundation qualify for credit.

9. Conclusion

a. The company will use the lift in the course or furtherance of business, for providing taxable services of Hotel.

b. The lift installed is not a part of immovable property, hence does not contravene the provisions of blocked credit under GST.

c. Company complies with all the requirements of section 16 of CGST Act 2017, the credit is not blocked by the provisions of section 17(5) of CGST Act.

d. The capital goods are used in providing taxable services and hence the input credit on purchase of lift should be eligible.

9. PERSONAL HEARING

The appellant was called for personal hearing on 25.08.2020 and was deferred for 15 16.10.2020. On 16.10.2020 the appellant was heard through Shri Neeraj Agarwal, Chartered Accountant. After hearing the appellant has expressed his satisfaction through a letter and asked for decision.

10. DISCUSSION AND FINDINGS

- We have carefully gone through the submissions made by the appellant in his application as well as the submission made at the time of personal hearing.
- Vide above application, Appellant states that input tax credit on purchase of lifts which are purchased and installed in the hotel should be available as it would be used in the course or for the furtherance of business.
- The relevant provision 17 (5) of the CGST Act, 2017 is re-produced below:-

> *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) motor vehicles . . .*
>
> *(b) - - -*
>
> *(c) - - - -*
>
> *(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.*

- As per the Section 17 (5) of CGST Act mentioned above, the Input tax credit shall not be available on the goods and 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.

- The definition of immovable property is not provided under GST Act. According to section 3(26) of the General Clauses Act, 1882, "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". According to section 3 of the Transfer of Property Act, 1882, "Immovable property does not include standing timber, growing crops or grass".
- In his submission appellant has 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 17(5) (d), again appellant has pleaded that the plant and machinery includes certain foundations and structures however certain structures and foundations are excluded from Plant and Machinery and these are, land, building or any other civil structures, telecommunication towers and pipelines laid outside the factory premises. The officer misinterpreted the above explanation and concluded that any plant or machinery attached to land, building or any other civil structures, telecommunication towers and pipelines laid outside the factory premises shall not be considered as plant and machinery. This is an incorrect interpretation of the explanation. The lift installed in the building for the purpose of furtherance of business cannot be deemed to be a part of the building or an immovable property just because of the fact that it was fastened in the civil structure of the building by way of nuts, bolts and fasteners. Further, the lift so installed in his Hotel is not a customized lift but a pre-designed lift. These lifts require a specified area in a building and can easily be installed by fastening nut and bolts and other fasteners in the building and no specific modification or alteration is required in the building structure. Thereafter these lifts can be disassembled without causing any structural

damage to the building and reassembled on need and can be resold in open market. The arguments of appellant are same as raised before AAR. We do not find any new point here to consider.

- The judicial citations relied upon by the appellant have been duly perused and considered by us. However, we find that all these cases pertain to pre-GST era and since Sec 17(5) of the CGST Act 2017 has put to rest all such issues in unambiguous terms; the legal citations adduced by appellant do not come to his rescue.
- Lift purchase does not qualify as goods but is works contract resulting into an immovable property. High rise buildings' sanctioned plan includes lifts or escalators as fixtures.
- The appellant has not made any statement regarding capitalization of lift expenses.
- In view of above, it is concluded that the ITC is not admissible on purchase of Lift as per the Section 17(5) (d) of CGST Act, 2017.

ORDER

In light of the above, we find nothing objectionable in the order given by the M.P. Advance Ruling Authority and accordingly, dismiss the appeal of the Appellant.

V.K. Saxena
(Member)
Madhya Pradesh Appellate Authority

Raghwendra Kumar Singh
(Member)
Madhya Pradesh Appellate Authority

No.04/2020/A.A.A.R./36 Indore, dated - 23.10.2020

Copy to:-

1. The Appellant
2. The AAR, Madhya pradesh
3. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
4. The Commissioner of State Tax, Madhya Pradesh
5. The Commissioner, CGST and Central excise, Indore
6. The Jurisdictional officer State/ Central

7. The web Manager, www.gstcounsil.gov.in
8. Office Copy