IS ITC ON LIFT ALLOWED?

INTRODUCTION

The lift is treated as Plant and Machinery fixed to earth under GST. There are some judgments related to GST which we will discuss further in the article.

Section 16(1) states

Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49 , be entitled to take credit of input tax charged on any supply of goods or services or both to him **which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.**

But Section 17(5)(c) & (d) blocks the ITC.

Section 17(5)(c) & (d) states

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.

Whereas, Explanation to sub – section 6 of Section 17 clearly defines Plant & Machinery

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.

Further Lift is classified under the GST HSN 8428 which covers under the head of 'Industrial Machinery'.

Some of the Judgments are as follows: -

The Maharashtra AAAR ruled that no Input Tax Credit (ITC) can be claimed on Lift Installation Charges. In the Judgment of M/S Las Palmas Co-operative Housing Society Ltd. (Dated 20/07/2020 Order No MAH/AAAR/RS-SK/24/2020-21). The Appellant is recovering an 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.

The Appellant has given a contract to Fujitec India Pvt. Ltd. for the installation of new Lift for which they booked as Capital Expenditure in their books without availing the depreciation on tax component charged by Fujitec.

The AAAR ruled that the Appellant would not be eligible to avail the ITC in respect of the GST paid to the

lift contractor, in terms of Section 16(2)(b) read with Section 17(5)(d) of the CGST Act, 2017.

Further more AAR of MP in the case of M/S Jabalpur Hotels Pvt. Ltd. Dated 08/06/2020 Order No. 10/2020). In this case is held that lift has become the part of the building and ITC shall not be available in terms of Section 17(5)(d) of the CGST Act, 2017. In this the AAR finds that lift consists of components or parts (goods) like lift car, motor, ropes, rails etc. and each of them has its separate identity prior to installation and when they are assembled/installed together they create lift.

Parts of lift are assembled/installed 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.

A lift does not have a separate identity when removed from the building. Therefore, the lift cannot be said separate from a building.

AUTHOR VIEW

It is very unfortunate to say that all the judgment delivered till now has denied the ITC of the tax component paid as GST on lift. I respectfully disagree with the judgements above as the Explanation to sub –

section 6 of Section 17 has clearly stated the definition of Plant & Machinery which will constitute as a part of Land & Building whereas it has also excluded land & Building whereas in the judgment of AAR mentioned above stated lift has become the part of land and building.

Now, I would to conclude stating that ITC should not be denied if used for furtherance of business and such lift are booked as expenses in the books of accounts.

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