LAS PALMAS CO-OPERATIVE HOUSING SOCIETY LIMITED

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-31/2019-20/B-13, Mumbai, dated 22/01/2020 (Maharashtra… Dated **22.01.2020**

Q Questions Before the Authority

- Whether the Applicant, a Co-operative Housing Society paying GST on Maintenance Charges collected from its Members, shall be entitled to claim Input Tax Credit of GST paid on replacement of existing lift/elevator at its own premises to a GST-registered vendor for manufacture, supply, installation and commissioning of lift/elevator?
- Whether the Input Tax Credit, if available, is not covered under blocked credits under the GST Act?

F Facts

The Applicant is a residential housing society registered under the Maharashtra Co-operative Housing Society Act. It collects maintenance charges from members, including lift charges, and charges GST on those bills. It proposes to replace the existing lift along with its supporting structures, probably under a lump-sum works contract with a registered vendor. The Applicant submitted an invoice (No. 9-LIFT/2019-20) for Rs. 51,445 plus GST for installation of a new lift, but no contract for the replacement was produced.

H Ruling

Q1: ITC on GST paid for replacement of existing lift/elevator at the society's premises, supplied, installed and commissioned by a registered vendor	**No. Answered in the negative.**	The lift, once erected and installed in the building, becomes immovable property. The credit falls within the blocked credits in Section 17(5)(d) and is not available.
Q2: Whether ITC, if available, is not covered under blocked credits	**Not answered.**	The Authority held that the answer to Q2 was unnecessary in view of its answer to Q1.

The Authority answered the first question in the **negative** , holding that the Applicant is not entitled to ITC of GST paid on replacement of the existing lift/elevator at its premises. It found that manufacture, supply, installation and commissioning of a lift is a works contract that results in the creation of an **immovable property** . Because of that finding, it did not answer the second question, which it treated as academic.

R Reasoning

The Authority treated the lift as an indivisible works contract that, on installation and commissioning, becomes part of the building and so an immovable property. It relied on Supreme Court and Bombay High Court decisions (Triveni Engineering, Quality Steel Tubes and Otis Elevator) and a Government of India decision holding that items becoming part of immovable property after erection are not goods for excise purposes. It then applied Section 16(1), which gives the right to ITC only subject to Section 17. Under Section 17(5)(d), ITC is barred for

goods or services received for construction of an immovable property other than plant and machinery. The Authority held that the Explanation to Section 17 does not rescue the claim, because the lift is an integral part of the building and not plant and machinery. The order also notes that the jurisdictional officer's reference to the service tax exemption in Notification No. 25/2012-S.T. (entry 28(c)) was not decisive.

P Provisions Relied On

- Section 16(1) of the CGST Act, 2017
- Section 17 of the CGST Act, 2017, including the Explanation defining plant and machinery
- Section 17(5)(d) of the CGST Act, 2017
- Section 2(119) of the CGST Act, 2017 (works contract) and Schedule II
- Sections 97 and 98 of the CGST Act and MGST Act, 2017 (advance ruling)
- Notification No. 25/2012-S.T., entry 28(c) (cited by the jurisdictional officer)
- Circular No. 109/28/209-GST dated 22.07.2019 (as legible; produced by the Applicant on monthly subscriptions)
- Triveni Engineering Industries Ltd. v. CCE, 2000 (120) ELT 273 (SC)
- Quality Steel Tubes (P) Ltd. v. CCE, U.P. (SC)
- Otis Elevator Company (India) v. Supdt. of Central Excise, 2003 (151) ELT 499 (Bom.)
- Otis Elevator Company (India) Ltd., 1981 (3) ELT 720 (GOI)

! For the Practitioner

This ruling is useful for any housing society or building owner planning lift replacement, because it treats lift installation as creating an immovable property and so blocks ITC under Section 17(5)(d). A practitioner can cite it to advise against claiming credit on such works contracts. It does not decide whether ITC is available for lifts supplied as movable plant and machinery in a different setting, or for other building services such as maintenance contracts. Its reasoning on the Explanation to Section 17 is brief, so the full order should be read before relying on it for a contested claim.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> mah_aar_31_2019-20_b-13_22.01.2020_lpchsl.pdf

Prepared 17-11-2026.

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