

**MAHARASHTRA AUTHORITY FOR ADVANCE RULING**

**GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.**

**(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)**

**BEFORE THE BENCH OF**

**(1) Ms. P. Vinitha Sekhar, Addl. Commissioner of Central Tax, (Member)**

**(2) Shri A. A. Chahure, Joint Commissioner of State Tax, (Member)**

GSTIN Number, if any/ User-id	27 AAABL0207 AIZG
Legal Name of Applicant	LAS PALMAS CO-OPERATIVE HOUSING SOCIETY LIMITED
Registered Address/Address provided while obtaining user id	20, Little Gibbs Road, Malabar Hill, Mumbai -400006
Details of application	GST-ARA, Application No. 31 Dated 25.07.2019
Concerned officer	Assistant Commissioner Div-X CGST, Mumbai South
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	<b>Service Provision ,</b>
B Description (in brief)	Residential Housing Society Registered under Maharashtra Co-operative Housing Society Act
Issue/s on which advance ruling required	(iv) admissibility of input tax credit of tax paid or deemed to have been paid
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

**PROCEEDINGS**

**(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)**

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act”] by **M/s. LAS PALMAS CO-OPERATIVE HOUSING SOCIETY LIMITED**, the applicant, seeking an advance ruling in respect of the following questions.

- Whether the Applicant - a Co-operative Housing Society paying Goods and Services Tax (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 the vendor registered under the Goods and Services Tax Act for manufacture, supply, installation and commissioning of lift/ elevator?; and**

**2. Whether the Input Tax credit, if available; is not covered under blocked credits under the Goods and Services Tax Act?**

At the outset, we would like to make it clear that the provisions of both the CGST Act and MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to “GST Act” would mean CGST Act and MGST Act.

**2. FACTS AND CONTENTION – AS PER THE APPLICANT**

**The submissions of the applicant made is as under:-**

- 2.1. Applicant, a Co-operative Housing Society registered under the Maharashtra Co-operative Housing Society Act, provides various services to its Residents for which members are charged Maintenance charges under various Heads like - Service Charges, Electricity Charges, Lift Charges, Insurance, etc. The Applicant Society charges GST on such Maintenance Bills as applicable.
- 2.2. Applicant has proposed to replace the existing LIFT along with its supporting structures.
- 2.3. Applicant’s query is whether they shall be entitled to claim Input Tax Credit (ITC) of GST paid, on replacement of existing lift/ elevator, to the vendor registered under the GST Act for manufacture, supply, installation and commissioning of lift/ elevator?
- 2.4. Applicant has reproduced the provisions of Section 16 (1) of the CGST Act, pertaining to eligibility and conditions for taking ITC. They have also reproduced the relevant portion of the definition of a “works contract” as mentioned in Sec. 2 (119) of the CGST Act, 2017. defines "works contract". They have stated that Sch. II of the CGST Act, 2017 describes "works contract" as defined in clause (119) of Section 2 as a Composite supply which shall be treated as supply of services under the Act. They have further reproduced Section 17 of the CGST Act, 2017 which provides for Apportionment of credit and blocked credits.
- 2.5. They have reproduced the definition of a ‘Lift’ and ‘Appliance’ as per P Ramanatha Aiyar's Advanced Law Lexicon; 4th Edition and in view of the above Legal provisions, explanation as per the GST Act and meanings covered under Advanced Law Lexicon, the Applicant is of the view that –
  - Manufacture, Supply, Installation and Commissioning of Lifts/ Elevators is in the nature of Works Contract activity which is covered under the category of ‘services’ under the GST Act;



- the Lift is an "equipment" which shall be fixed to earth by foundation and structural support and used for making outward supply of services to its members;
- "equipment" is "plant and machinery" as per the Explanation mentioned in Section 17 of the Goods and Services Tax Act, 2017;
- **Plant and Machinery is not covered under the blocked list of ITC u/s. 17; and**
- **Therefore Applicant is entitled to claim ITC as per the provisions of the Goods and Services Tax Law.**

### **03. CONTENTION – AS PER THE JURISDICTIONAL OFFICER**

The jurisdictional office has made written submissions as under:-

Details of benefit of notification of Service Tax if any availed:- As per Sr. No. 28(c) of Notification No. 25/2012 - S.T. 28.

*Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution*

(a) as a trade union;

(b) for the provision of carrying out any activity which is exempt from the levy of service tax;  
or

(c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.

### **04. HEARING**

Preliminary hearing in the matter was held on 20.11.2019. Mr. Manish Goel, C.A., appeared and requested for admission of their application. Jurisdictional Officer Ranjit Verma, Superintendent, Division – X, Range –III, Mumbai South Commissionerate also appeared.

The application was admitted and called for final hearing on 12.12.2019. Mr. Manish Goel, C.A., appeared and made oral and written submissions. The Authorised Representative was asked to submit the copy of contract and related documents. Jurisdictional Officer Ranjit Verma, Superintendent, Division – X, Range –III, Mumbai South Commissionerate appeared, and made written submissions. Mr. Manish Goel, C.A. appeared on 02.01.2020 and submitted copy of contract and invoices.

### **05. OBSERVATIONS**

- 5.1 We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the jurisdictional office.
- 5.2 Applicant plans to replace the existing LIFT/ELEVATOR in their society building, along with its supporting structures. Their query is whether they will be entitled to claim Input Tax



Credit of GST paid on replacement of existing lift/ elevator to the vendor registered under the GST Act for manufacture, supply, installation and commissioning of lift/ elevator.

5.3 In order to replace the existing lift/elevator, the society may have go in for erection and installation of lift in their building, probably on the basis of a lump sum contract price. The contracts entered into by the applicant with the contractor, in such a case will be considered as indivisible works contracts which will involve high technical skill, knowledge and experience of mechanical and electrical as well civil engineering including preparation of designs, drawings and compliance with engineering specifications and knowledge of lift codes, standards and safety requirements and other regulations prescribed by the Government and other authorities in this behalf. The erection of lift can be done only inside the building structure as an integral part of the building in which the lift is to be installed. The erection of a lift has, to be correlated with and tailored, to meet the needs and requirements of a particular building. Once the lift is installed and commissioned in the building, it becomes integral part of the immovable property i.e. the building. The lift when installed in the building makes the building fit for occupation and becomes a permanent fixture of the building itself. Hence the same will be considered as an immovable property. The Authorized Representative was asked to submit the copy of contract and related documents during the course of the hearing held on 12.12.2019. On 02.01.2020, the applicant submitted a copy of Invoice No. 9-LIFT/2019-20 on a Flat Owner showing a contribution of Rs. 51,445/-, plus GST thereon towards installation of a new lift. They have also submitted a copy of Circular No. 109/28/209-GST dated 22.07.2019 which contains clarifications pertaining to issues related to GST on monthly subscription/contribution charged by a Resident Welfare Association from its members. However the applicant has not submitted any copy of contract in respect of erection and installation of lift in their building.

5.4 The Hon.ble Apex Court in the case of Triveni Engg. Industries Ltd. v. C.C.E., 2000(40) RLT 1 (SC) - 2000 (120) ELT 273, clearly laid down that after assembling, on completion of process of erection, the item becomes a part of the building or an immovable property. In the case of Quality Steel Tubes (P) Ltd. v. C.C.E., U.P., it was held by the Apex Court that Erection and maintenance of the lifts forms part of the immovable property.

In the case of Otis Elevator Company (India) vs Superintendent Of Central Excise on 27 August, 2002, the Mumbai High Court Bench consisting of Justices V Daga and J Devadhar Equivalent citations: 2003 (151) ELT 499 Bom, observed that :

*“9. Having heard the rival contentions and having examined all the citations referred to hereinabove, we are clearly of the opinion that the same shall apply to the facts of this case in*



*full force and item in question being immovable property cannot be subjected to excise under the tariff heading claimed by the Revenue. The case sought to be made out by the petitioner is also covered by the decision of the Government of India in reference, Otis Elevator Company (India) Ltd., 1981 (3) ELT 720 (GOI), wherein it was clearly held that if an article does not come into existence until it is fully erected or installed, adjusted, tested and commissioned in a building, and on complete erection and installation of such article when it becomes part of immovable property, .....*”

- 5.5 In view of the above we have no doubt that the lift would become an immovable property after being erected and installed, as it is attached to the building itself.
- 5.6 Section 16 of the CGST Act, 2017 provides for Eligibility and conditions for taking Input Tax Credit. As per Section 16(1) *“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....”*
- 5.7 Section 17 of the CGST Act, 2017 provides for Apportionment of credit and blocked credits and Section 17 (5) (d) is reproduced as under:-

*“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 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.*

*The Explanation to Section 17 states that –“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.”*

Explanation to Section 17(5) is very clear. ITC is available for “plant and machinery”. 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 - **Land, building or any other civil structures.**

- 5.8 The lift, after erection and installation is an immovable property because it becomes a part of an immovable property i.e a building. In other words it is to be considered as an integral part of the building itself. It is not a separate part of the building. When any person speaks of such a building, he also includes the lifts as an integral part of the building, like storage water tanks, etc.



To summarize, Manufacture, Supply, Installation and Commissioning of Lifts/ Elevators is in the nature of Works Contract activity which results in creation of an immovable property. Hence in view of the above discussions and Explanation to Section 17 of the CGST Act, we are of the opinion that the applicant is not entitled to ITC of GST paid on replacement of existing Lift/Elevator, in its premises.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

**ORDER**

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA-31/2019-20/B- 13 Mumbai, dt. 22/01/2020

For reasons as discussed in the body of the order, the questions are answered thus –

Question-1:- Whether the Applicant, a Co-operative Housing Society paying Goods and Services Tax (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 the vendor registered under the Goods and Services Tax Act for manufacture, supply, installation and commissioning of lift/ elevator?;

Answer :- Answered in the negative.

Question-2:- Whether the Input Tax credit, if available; is not covered under blocked credits under the Goods and Services Tax Act?

Answer :- Not answered in view of answer to Question No. 1 above.



*st*  
P. VINITHA SEKHAR  
(MEMBER)

*sd*  
A. A. CHAHURE  
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint Commissioner of State Tax, Mahavikas for Website.

**CERTIFIED TRUE COPY**

*A. Chahure*  
**MEMBER**  
**ADVANCE RULING AUTHORITY**  
**MAHARASHTRA STATE, MUMBAI**

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15<sup>th</sup> floor, Air India building, Nariman Point, Mumbai – 400021.