

**AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH****Goods and Service Tax****O/o THE COMMISSIONER, COMMERCIAL TAX,****MOTI BUNGALOW,****MAHATMA GANDHI MARG, INDORE (M.P.) - 452007****e-mail : aar@mptax.mp.gov.in Phone : 0731- 2437315 fax, no. : 0731-2536229****PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING**  
**U/S,98 OF THE GOODS AND SERVICES TAX ACT,2017****Members Present**1. Shri Manoj Kumar Choubey  
Joint Commissioner

Office of the Commissioner of Commercial Tax, Indore Division-1

2. Shri Virendra Kumar Jain  
Joint Commissioner

Office of the Commissioner CGST and Central Excise, Indore

GSTIN Number. If any/User-id	Unregistered
Name and address of the applicant	M/s Atriwal Amusement Park 24, HIG Sukhliya, Indore,( M.P.)
Point on which advance ruling sought	d. Admissibility of input tax credit of tax paid or deemed to have been paid;
Present on behalf of applicant	CA Ankit Khatri
Case Number	29/2019
Order dated	09/06/2020
Order Number	12/2020

**PROCEEDINGS****(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)**

1. M/s Atriwal Amusement Park (hereinafter referred to as the Applicant) is engaged in construction of Water Park. for construction of the same various components & services will be used. All such components & services are taxable under GST. The Applicant is not registered. However the Applicant has declared that he is desirous of obtaining registration in GST.
2. The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a



reference to the CGST Act would also mean a reference to the same provision under the MP GST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

3. **BRIEF FACTS OF THE CASE –**

- 3.1 Atriwal Amusement Park was incorporated on 13th March 2018. With 5000000 Share Holders Holding 4970000 shares of Rs. 10/- each.
- 3.2 Applicant has a proposed activity of construction of Water Park, for construction of the same various components & services will be used. All such components & services are taxable under GST.

4. **QUESTION RAISED BEFORE THE AUTHORITY -**

- 4.1 Whether we are eligible to take credit on Input Tax paid on Purchase of Water Slides? Water Slides are made up of Strong PVC.
- 4.2 Water Slides are installed on Steel and Civil Structure. Credit of Tax paid on Input goods and services used in construction of this support structure will be available or not?
- 4.3 Input Tax will be available or not on Goods and services used for area development and preparation of land on which water slides are erected.
- 4.4 Whether applicant will be eligible to take credit of Input Goods and Services used for construction of Swimming Pool / Wave Pool as water slides directly run into pools?

5. **RECORD OF PERSONAL HEARING -**

- 5.1 CA Ankit Khatri, ..... appeared for personal hearing on and they reiterated the submission already made in the application and attached additional submission which goes as follows –

5.2 **In Regards to question No. 1 -**

In regards to point no. 1 it is hereby submitted that according to the nature of industry applicant is required to buy Plant & Machinery that are used in providing output services & it includes Water Slides, kids play slide, wave generation machine & other machinery to be used in waterpark. These are clearly covered under the definition of plant & 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.) hence credit is allowable.

- 5.3 In regards to point no. 2 it is hereby submitted that for the installation of water slides applicant is required to construct support structure ( Commonly known as Tower) on which water slides are installed as without those civil and steel structure water slides cannot be installed. The support structure is generally made up of steel, Iron & other civil work. Definition of plant & machinery specifically includes **foundation or structural support** hence its credit should be allowed.

Also for Installation of Machines (Machine generating waves in water pool) applicant is required to construct machine foundation and room for protection of this machine as without that protection machine cannot operate effectively.



As per the explanation it is specifically covered under the definition of plant & machinery in **foundation or structural support** hence its credit should be allowed.

5.4 In regards to point no. 3 it is hereby submitted that for installation of water slides applicant is required to create a strong base which involves area development, digging process & creation of base using concrete, iron, steel etc. As without creating base nor the structural support can be installed nor the water slides. It is the foundation for placing water slide as slides will be attached to base through screw. Hence Input and input service used in construction of base/ foundation for laying slides directly covered under the definition of P & M under structural support and foundation.

5.5 **In Regards to Point No. 4-**

Swimming pool / Wave Pool is the integral part of water slides and should be considered as single unit as without Swimming pool / Wave Pool there is no use of water slides.

Hence this forms the support structure for water slides as slides are directly connected to swimming pool / Wave Pool.

## 6. DISCUSSIONS AND FINDINGS –

1. The explanation below Section 17(6), relating to the expression “plant and machinery” has included foundation and structural support in the term “plant and machinery”. It has also been stated that such foundation and structural support are used for fixing apparatus, equipment and machinery. Therefore, in the definition, foundation and structures are duly included. Further the definition has excluded land building and any other civil structure from the definition of the “plant and machinery”. Prima facie, there seems to be contradiction in the inclusion of “such foundation and structural supports” and exclusion of “...building or any other civil structures”.

2. Foundation:

2.1. Foundation means a usually stone or concrete structure that supports a building or structure from underneath. Foundation Bolts are used to fasten machinery or structures to the foundations. Dictionary meaning of Foundation is as under:

- the structures below the surface of the ground that support a building (<https://dictionary.cambridge.org/dictionary/english/foundation>)
- an underlying base or support (<https://www.merriam-webster.com/dictionary/foundation>)

2.2. Further, in the SB Sarkar’s Words and Phrases of Excise, Customs & Service Tax, it has been stated as under:

“The lowest load-bearing part of a building, typically below ground level”. It further states that that Foundation is the construction below the ground that distributes the load of a building, wall etc.

2.3. Foundation thus is a civil structure, which forms the base of a structure. This structure can be that a building or a support structure. Therefore, it is not under any doubt that Foundation is a sub-specie of the genus Civil Structure.



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3. This apparent contraction is however negated by the fact that the exclusion of the building or civil structure is for plant and machinery per se, while the inclusion is for foundation and structure is only to the extent that such foundation and structure is used to fasten the apparent, equipment or machinery to earth. Thus, if the plant and / or machinery is fixed / fastened to the earth by a foundation or civil structure then such foundation or civil structure shall be included in plant and machinery.
4. It is important to see why the exclusion to the term "building and civil structure" has been provided for in law. The term plant has a wide meaning and it changes with the context and purpose of the law under which the matter is being sought to be interpreted. The term plant is defined as under in Cambridge Dictionary:
  - machines used in industry; a factory in which a particular product is made or power is produced; a large, heavy machine or vehicle used in industry, for building roads, etc.

(<https://dictionary.cambridge.org/dictionary/english/plant>)

5. Further in Merriam Webster, plant is defined as under:
  - a : the land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or an industrial business
  - b: a factory or workshop for the manufacture of a particular product also : power plant
  - c: the total facilities available for production or service
  - d: the buildings and other physical equipment of an institution

(<https://www.merriam-webster.com/dictionary/plant>)

6. Again, in in M.C. Graw Hill dictionary as below:
  - "Plant - The land, buildings and equipment used in an industry."
7. Judicial pronouncements have also enlarged the definition of the term plant. Some of the pronouncements are as under:
- 7.1. In the matter of SHANMUGARAJA SPINNING MILLS LTD. Versus COMM. OF C. EX., COIMBATORE reported in 1998 (98) E.L.T. 702 (Tribunal) it has been stated as under by the Honorable CESTAT:

2....."Plant" is a very wide term. Supreme Court observed that the word must be construed in its popular sense and that the very fact that even books and surgical instruments have been included showed the meaning to be given to "Plant" was wide. The Court referred to the decision in *Jarrod v. Case* - 1982 (40) TC 681 (C.A.), assets such as heating, air-conditioning and water-softening installations were held to fall within the meaning of 'plant' in the English judgment, although they played a passive role. Supreme Court held that sanitary fittings in the bathroom in a hotel would be 'plant' within the ambit of Section 10(5) I.T. In *C.I.T. v. Tajmahal Hotel* - (1971) 82 I.T.R. 44 (SC). It was held by Allahabad High Court that "the word 'plant' in common parlance included within its meaning buildings and equipments used for manufacturing purposes" *C.I.T. v. Kanodia Cold Storage* - (1975) UPTC 169. 'plant' has been defined as machinery, fixtures, etc. used in industrial process vide Words & Phrases of Central Excise & Customs - S.B. Sarkar p. 532.



7.2. Again, in the matter of VIVEK ALLOYS LIMITED Vs COMMISSIONER OF C. EX., COIMBATORE, reported in 1998 (98) E.L.T. 156 (Tribunal) the Honorable stated as under:

13. For the purpose of Income Tax Act, capital goods include appliances used for the purpose of trade or business. The definition of "capital goods" in the explanation to Rule 57Q of the Rules follows quite a different scheme. The sub-rule itself referred to capital goods used by the Manufacturer in his factory. Explanation 1(a) refers to Machines, Machinery, Plant, Equipment, apparatus, tools or appliances used for producing or processing of any goods or for bringing about any change in any substance for the manufacture of final products. Considering the scheme of Rule 57Q, the definition in Explanation 1(a) of capital goods, as meaning machines, equipments, apparatus, tools, appliances used for producing or processing the goods etc., clearly indicate the intention of the rule making authority to give the wider meaning to the expression "plant" but to give a narrower meaning which is suitable in the context. "Plant", therefore, could be regarded as machine or group of machines fitted in such a manner as to serve the purpose of manufacturing any particular product, and the whole system of machine has to be regarded as Plant.

7.3. The Karnataka High Court in the matter of J.K. CEMENT WORKS Vs STATE OF KARNATAKA reported in 2017 (7) G.S. I.L. 408 (Kar.) came to the conclusion that Cement although specified in Fifth Schedule, since it is used for laying foundation and erection of cement manufacturing plant and machinery, prior to commencement of commercial production, constitutes part and parcel of 'plant' and thus 'capital goods' used for manufacturing of cement later on. In the order, at para 11 and 12 the Honorable High Court stated as under:

11. We see no justification in the contention of the learned Additional Government Advocate appearing for the Revenue that a narrow meaning should be given to the word "Plant" and restrict it to the value or cost of purchase of plant itself. The plant and machinery for manufacturing of cement by itself would be nothing and would be useless, unless they are properly installed and erected with proper foundations and civil work for erection thereof and in that process, the use of cement would constitute an integral part of the overall cost of the plant and machinery itself. Such overall immovable asset in the form of plant and machinery purchased, installed and erected by the petitioner assessee, would only be fit for use for manufacturing of cement itself later on. But, the term "Plant" is not defined in the KVAT Act and therefore, one can take a broad view and interpret the meaning of the word 'Plant' with the help of precedents or case laws, which we would shortly refer.

12. Once the Court comes to the conclusion that the *cement*, used for erection and setting up of the Plant and machinery, would constitute a "Plant" and therefore, is *Capital Goods*, as defined under Section 2(7) of the KVAT Act, the recourse can also be made to Section 12 of the KVAT Act quoted above and the input tax in respect of the purchase of capital goods, including the cost of "Plant and machinery" and cost of cement for erection thereof, would constitute jointly *capital goods*, which are used for manufacture and sale of the cement ultimately produced with such plant and machinery.

7.4. In the matter of Income Tax proceedings, in the case of *M/s. Jaysulek Oil Mill, Hubli*, The Additional Commissioner of Commercial Taxes, Belgaum, a Division Bench of Karnataka High Court in STA No. 23 of 1994 held as under:

10. In deciding whether a 'building' or a structure is a plant, the *functional test* has to be applied as indicated in the said decisions. If the 'building' is an apparatus or tool used by



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the Assessee for carrying on the business or manufacturing activity, then it would be part of the 'plant'. If on the other hand, if a building or a part of a building has no connection with the business or manufacturing activity that is being carried on, then obviously such a building or portion of the building will not be part of the plant. These aspects of the matter have not been considered or dealt with by the Revisional authority. He has merely proceeded on the basis that the decisions relied on by the appellant are not applicable as they were rendered with reference to Income-tax Act.

11. Therefore, the word 'installed' is used in connection with the words 'plant and machinery', can also refer to 'installation' of a factory building. After all, the intention of the Notification is to encourage setting up of new industries in Karnataka. There is nothing in the Act or the Notification to exclude the factory building from 'plant'. We find no reason why the meaning attached to the said word, while examining the provisions of the Income-tax Act, cannot be applied while construing the meaning of the said word in the exemption Notification issued under the Karnataka Sales Tax Act. Therefore, the mere use of the word 'installed' with reference to 'plant and Machinery' is not sufficient to exclude the factory building, from the scope of the 'plant and machinery' used in the Notification dated 15-10-1981. Hence, we feel that the Revisional Authority ought to have examined these aspects with reference to the functional tests. In fact, none of the authorities have examined the matter with reference to the functional tests, repeatedly prescribed by the Supreme Court and this Court.

12. In the circumstances, we set aside the orders of the Revisional Authority, Appellate Authority and the Assessing Authority and remit the matter to the Assessing Authority for reconsideration of the matter.

7.5. Further, the Honorable Supreme Court in the case of *Scientific Engineering House Pvt. Ltd.* (supra) relied upon certain following foreign decisions while dealing with the explanation 'Plant' and gave it a wide meaning under the provisions of Income Tax law in the following manner:

"The classic definition of 'plant' was given by Lindley, L.J. in *Yarmouth v. France*, [1887] 19 Q.B.D. 647, a case in which it was decided that a cart-horse was plant within the meaning of section 1(1) of Employers' Liability Act, 1880. The relevant passage occurring at page 658 of the Report runs thus:-

"There is no definition of plant in the Act; but, in its ordinary sense, it includes *whatever apparatus is used by a businessman for carrying on his business*, - not his stock-in-trade which he buys or makes for sale; but all goods and chattels, fixed or movable, live or dead, which he keeps for permanent employment in his business."

In other words, plant would include any article or object fixed or movable, live or dead, used by businessman for carrying on his business and it is not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in mechanical or industrial business. In order to qualify as plant the article must have some degree of durability, as for instance, in *Hinton v. Maden & Ireland Ltd.*, 39 I.T.R. 357, knives and lasts having an average life of three years used in manufacturing shoes were held to be plant. In *C.I.T. Andhra Pradesh v. Taj Mahal Hotel*, 82 I.T.R. 44, the respondent, which ran a hotel, installed sanitary and pipeline fittings in one of its branches in respect whereof it claimed development rebate and the question was whether the *sanitary and pipeline fittings installed fell within the definition of plant given in Sec. 10(2) of the 1922 Act which was similar to the definition given in Sec. 43(3) of the 1961 Act and this Court after approving the definition of plant given by Lindley L.J. in Yarmouth v. France as expounded in Jarrold v. John Goud and Sons Limited*, 1962 40 T.C. 681 C.A., held that *sanitary and pipeline fittings fell within the definition of plant.*



In *Inland Revenue Commissioner v. Barclay Curie & Co. Ltd.*, 76 I.T.R. 62, the House of Lords held that a dry dock, since it fulfilled the function of a plant, must be held to be a plant. Lord Reid considered the part which a dry dock played in the assessee company's operations and observed :

"It seems to me that every part of this dry dock plays an essential part....The whole of the dock is, I think, the means by which, or plant with which, the operation is performed."

Lord Guest indicated a functional test in these words :

"In order to decide whether a particular subject is an 'apparatus' it seems obvious that an enquiry has to be made as to what operation it performs. The functional test is, therefore, essential at any rate as a preliminary".

7.6. Indian Courts as well as English Courts, depending upon the context of law, have treated even the assets like dry dock, silos built in the shipyard freezing chamber in the case of cold storage, cinema building, etc. as falling within the definition of 'Plant'

- *IRC v. Barclay, Curie and Co. Ltd.* [1970] 76 ITR 62 (HL.). The question that arose for consideration was whether a dry dock could be construed as plant for the purposes of the trade of the company within section 279(1) of the English Act. In that case, the dry dock had been made, the walls and bottom of which had to be strong and impervious to water so that large vessels could get into it for the purposes of repairs. In the facts and circumstances of the said case, it was held that the entire dry dock together with the ancillary structures constituted plant.
- In *Schofield v. R. and H. Hall Ltd.* [1974] 49 TC 538 (CA) concerning silos built in the shipyard. The company carried on a trade which consisted of storage of grain. The question was whether the silos is part of the setting in which such trade was carried on. It was found that considering the function of the silos in relation to the assessee's trade, the silos served as an essential part of the overall trading activity. Their function was to hold the grain in a position from which it could be conveniently discharged in varying quantities. Hence, it was held that the silos would rank for capital allowance.
- In *CTI v. Kanodia Cold Storage*, the question was whether the building with insulated walls used as a freezing chamber, though it is not machinery or part thereof, is part of the air-conditioning plant of the cold storage of the assessee, entitled to special depreciation on its written down value. In the specific facts of the case, the whole freezing chamber including walls and structure was held to be a plant with which the assessee was carrying on his business activity. On the analogy of the above cases, Sri Prasad, learned counsel for the assessee, contended that the whole theatre should be treated as plant with which the assessee carries on his show business.
- In *Benson v. Yard Arm Club Ltd.* [1978] 2 All ER 958, 968; [1979] Tax I.R. 778, 785 (Ch D), the subject-matter was a ship which was converted into a restaurant by the assessee. The whole ship was claimed as an apparatus for carrying on their business of a floating restaurant, and as such it was a plant to claim allowance. On a review of various earlier decisions, the Chancery Division has held that the vessel is the place or setting where the restaurant business was carried on and was not plant and hence, the expenditure on them did not qualify for capital allowance."

8.

To set to rest the disputes regarding the definition of the Plant, in light of the fact that input tax credit of works contract services, goods and services

*MP*

received as input for construction of immovable property on own account has been specifically put under the Blocked Credit list with the rider that it shall not apply to plant and machinery, it was incumbent that there should be clarity regarding classification of buildings and civil structures that were hitherto been classified as 'Plant'.

9. Accordingly, in the explanation relating to Plant and Machinery, beneath subsection (6) of Section 17, while providing the meaning of the term plant and machinery, it has been clearly stated that Buildings and Civil Structures shall not be covered under the term Plant. However, while so clarifying, it has been accepted and understood that plant and machinery many a times requires support structure and / or foundation for installation and cannot work otherwise. Thus, civil structures and foundation as supporting structure for fastening of plant and machinery to earth has been included as part of plant and machinery.

## 7. Ruling

7.1 Regarding the eligibility of ITC in case of Input Tax paid on Purchase of Water Slides, we have to state that Water Slides shall fall within the meaning of the term apparatus, equipment and machinery and therefore, shall be eligible for claim of ITC.

7.2 Regarding the Steel and Civil Structure on which the Water Slides are installed, we have to state that foundation and support structures which are used to fasten plant and / or machinery to the Earth is classifiable as 'Plant and / or Machinery'. In the instant case, slides are fastened to the Steel and Civil Structure are affixed to the Earth through these Steel and Civil Structures. Therefore, these Steel and Civil Structures shall form part of the Plant and Machinery. Accordingly, the credit of Tax paid on Input goods and services used in construction of this support structure shall be available.

7.3 It has been stated that for Wave Pool, Machines have been installed. The foundation for these machines are eligible to be part of the Machines and the ITC shall be treated in a manner similar to that of the Machines. However, the Machine Room, which is a civil structure, erected for protecting machine is neither foundation nor civil structure for machine therefore, IT relatable to the construction of the room for Housing the machine shall not be eligible for ITC.

7.4 Regarding the Input Tax on Goods and services used for area development and preparation of land on which water slides are placed, we have to state that area development and expenditure on preparation of land like site formation services are part of the cost of the land and thus are interminably bound with land. These expenses are liable to be capitalized under the head Land. Therefore, on account of the specific exclusion of Land from the meaning of 'plant and machinery', ITC related to Land Development, subject to its capitalization as per accounting principles shall not be available.

7.5 Regarding eligibility of Input Tax Credit on Goods and Services used for construction of swimming pools / Wave Pool in which the water slides directly run into, we have to state that such Swimming Pools / Wave Pools are not support structure or foundation for a plant.



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but are independent items *per se*. Since they are not foundation or support structure on which slides are fasted for affixing them to earth and also on account they being Civil Structures, they are therefore excluded from the meaning of 'plant and machinery'. Thus, the ITC related to the construction of the Swimming Pools and Wave Pools, subject to its capitalization shall not be available.

7.6 The provision of facilities like transformers, sewage treatment plant, Electrical Wiring and Fixtures, Surveillance systems, D.G. Sets, Lifts, Air Handling Units etc. are *sine qua non* for a commercial mall and hence cannot be considered separate from the building or civil structure. The provision of these are either statutory for a building or defines the nature of the building as a commercial mall. Hence the input tax credit on the inward supplies of goods or services involved in the construction of immovable property which is a civil structure or building is not available to the applicant and hence blocked.

8.7 The ruling is valid subject to the provisions under section 103 (2) until and unless declared void under Section 104 (1) of the GST Act.

*SK*  
(Manoj Kumar Choubey)  
(Member)

*SK*  
(Virendra Kumar Jain)  
(Member)

Copy to:- NO. 29/2019/A.A.R/R-28/25

INDORE, dated 09/06/2020

1. Applicant
2. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore
4. The Commissioner, CGST & Central Excise, Indore
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

सत्यप्रतिलिपि

*Manoj*



