BEFORE THE AUTHORITY FOR ADVANCE RULINGS FOR THE STATE OF UTTARAKHAND

(Goods and Services Tax)

समक्ष अग्रिम विनिर्णय प्राधिकारी उत्तराखण्ड (माल और सेवा कर)

Present:
Shri Vipin Chandra (Member)
श्री विपिन चन्द्र (सदस्य)
Shri Amit Gupta (Member)
श्री अमित गुप्ता (सदस्य)

The 28th day of August, 2018
Ruling No 06 /2018-19
अग्रिम विनिर्णय संख्या.
In
Application No: 01/2018-19
आवेदन संख्या. _____

1	Applicant आवेदक	Vindhya Telelinks Ltd, Ground Floor, Wing-B, Commercial Plaza, Hotel Radisson, NH-8, Mahipalpur, New Delhi,
2	Jurisdicational Officer अधिकारिता अधिकारी	Assistant Commissioner, Sector-6, Dehradun
3	Present for the Applicant आवेदक की ओर से उपस्थित	Shri Sanjay Gupta, Vice President
4	Present for the Jurisdictional Officer अधिकारिता अधिकारी की ओर से उपस्थित	None
5	Date of receipt of application आवेदन प्राप्ति की तिथि	18.04.2018
6	Date of Personal Hearing सुनवाई की तिथि	28.08.2018

Note : Under Section. 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, an appeal against this ruling lies before the appellate authority for advance ruling constituted under section- 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order.

नोट : इस अग्रिम विनिर्णय की प्राप्ति के 30 दिन के अन्दर उत्तराखण्ड माल और सेवा कर अधिनियम 2017 की धारा– 99 के अन्तर्गत गठित अग्रिम विनिर्णय अपील प्राधिकारी के समक्ष धारा– 100(1) के अन्तर्गत अपील दायर की जा सकती है।

****

1. This is an application under Sub-Section (1) of Section 97 of the CGST Act and the rules made thereunder filed by M/s Vindhya Telelinks Ltd., Ground Floor, Wing-B, Commercial Plaza, Hotel Radisson, NH 8, Mahipalpur, New Delhi seeking an advance ruling on the question whether cenvat credit of goods and services used for erection of infrastructure to which fibre cables are connected for leasing to Telecommunication Operators, is available to them.

2. Advance Ruling under GST means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in sub section (2) of section 97 or sub section (1) of section 100 in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

3. As per Section 97(2)(d) of CGST/SGST Act, 2017 the advance ruling can be given on "admissibility of input tax credit of tax paid or deemed to have been paid". In the present case applicant has sought advance ruling in respect of admissibility of input tax credit (hereinafter referred to as ITC) of goods and services used for erection of infrastructure to which fibre cables are connected for leasing to Telecommunication Operators. Therefore, in terms of said Section 97(2)(d) of CGST/SGST Act, 2017, the present application is hereby admitted.

4. Accordingly opportunity of personal hearing was earlier granted on 14.06.2018 and the applicant attended the hearing. That time the authority had Shri Anil Singh, Joint Commissioner, SGST and Shri Amit Gupta, Joint Commissioner, CGST were members. Since Shri Anil Singh, has been promoted and transferred, therefore fresh PH has been given to the applicant on 01.08.2018 and 13.08.2018 and the applicant had sought adjournments vide letters dated 28.07.2018 & 08.08.2018. Another personal hearing was fixed on 28.08.2018 and Shri Sanjay Gupta, Vice President of the applicant attended the hearing on the designated date.

5. In the present application, applicant has requested for advance ruling on admissibility of cenvat credit of goods and services used for erection of infrastructure which is discussed as under :

6.1 **Admissibility of ITC of goods & services used for erection of infrastructure for Telecommunication Operators**: From the documents submitted by the applicant we find that applicant is registered in Uttarakhand with GSTIN bearing no. 05AAACV7757J1ZY and engaged in providing services including trenching, laying, jointing and installation of cables to companies

operating in the telecommunication and power sector. The applicant has obtained Registration for Infrastructure Provider category-1 (IP-1) from Department of Telecommunication, Government of India wherein the scope of activities are limited to establish and maintain assets such as Dark Fibres, Right of Way, Duct space for grant on lease/rent/sale basis only to licensed Telecom Service Providers.

6.2 The issues to be decided in the present case is whether applicant is eligible of ITC on goods & services used in erection of infrastructure, which consists of "steel tabular pole, galvanized iron wire, nuts & bolts, optical fibre cables, plastic pipes, clamps ", for telecommunication service providers since the infrastructure provided by the applicant is different from "Telecommunication Tower" .

6.3 To give decision on the issues, we have to go through the background of telecommunication services how it works.

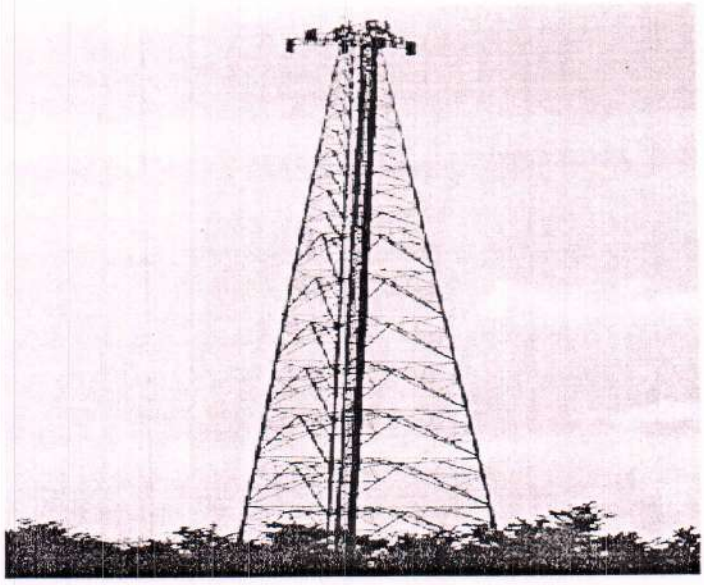
The mobile telecommunications industry provides cellular telephone services through the use of active and passive infrastructure, to use industry terminologies. The active infrastructure, as the name implies, comprises the core elements of cellular telephony in the form of a network of contiguous radio cells providing coverage through operating on a dedicated set of radio channels of defined frequencies. ***Elements of the active infrastructure are the base transceiver station (BTS), the base station controller (BSC), the mobile switching centre (MSC) and microwave and GSM antennae.*** The antennae enable both the transmission and receipt of radio signals, enabling the cellular telephony to proceed uninterrupted as the subscriber is mobile.

In contrast, the passive infrastructure comprises the elements which enable the active infrastructure to operate as described above.

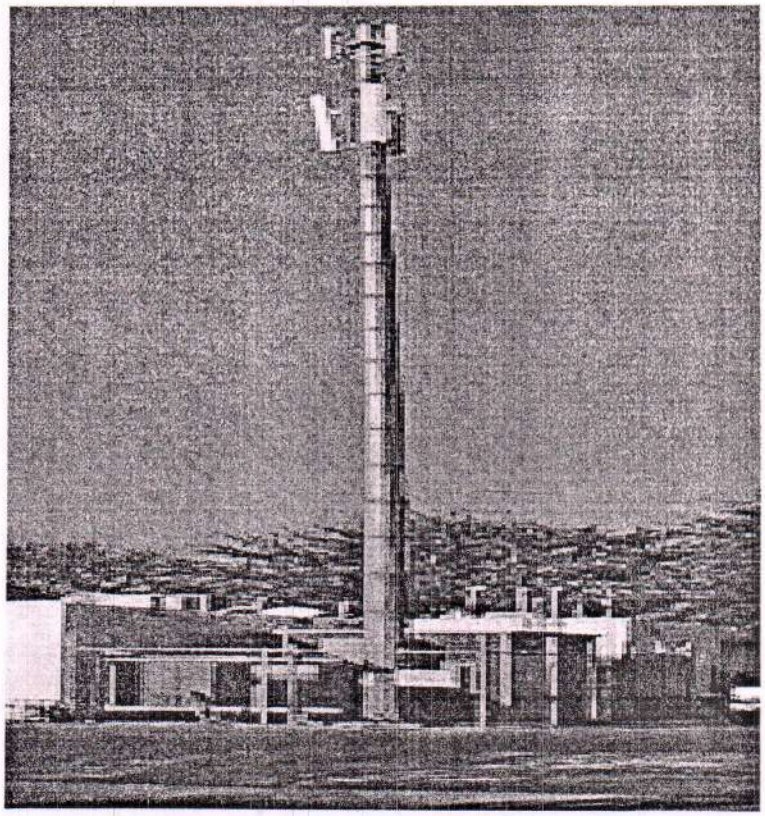
6.4 A telecommunication/cell tower houses the electronic communications equipment along with an antenna to support cellular communication in a network. A cell tower is usually an elevated structure with the antenna, transmitters and receivers located at the top. A cell tower also known as cellular tower or cell site. The primary function of a telecommunication/cell tower is to ensure proper elevation to antennas that receive and transmit radio-frequency signals from cell phones and other devices. There are different types of telecommunication/cell phone towers viz. Monopole, Lattice, Guyed. The details of the same are as under:

(a) **Lattice Tower** - also referred to as a self-supporting tower. The lattice tower affords the greatest flexibility and is often used in heavy loading

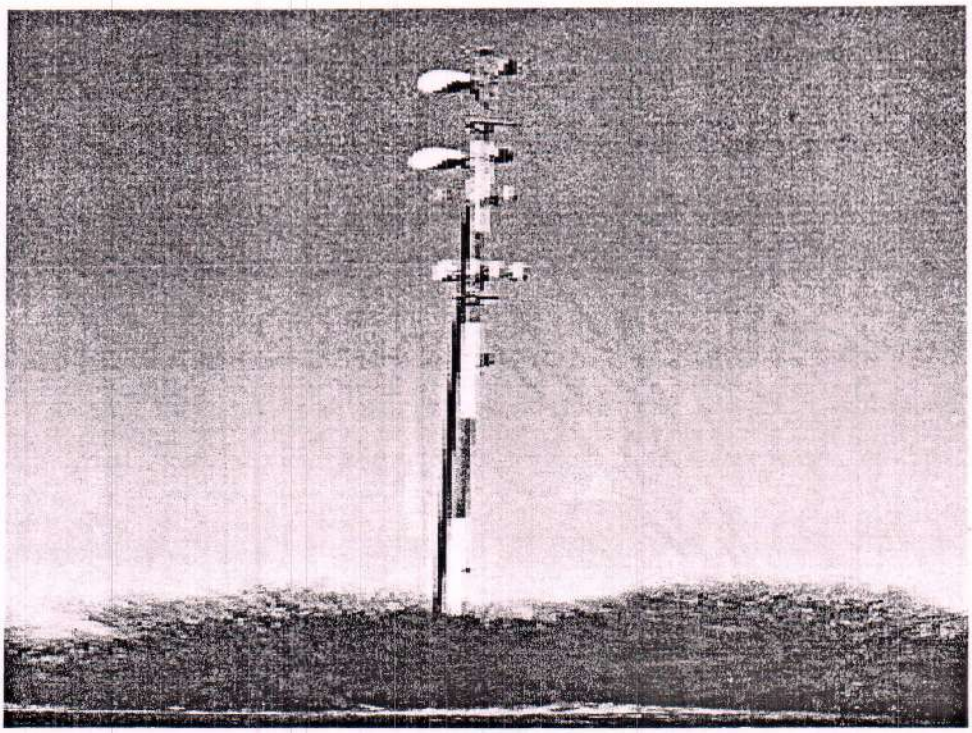
conditions. A lattice tower is typically three or four sided, with similar shaped bases.



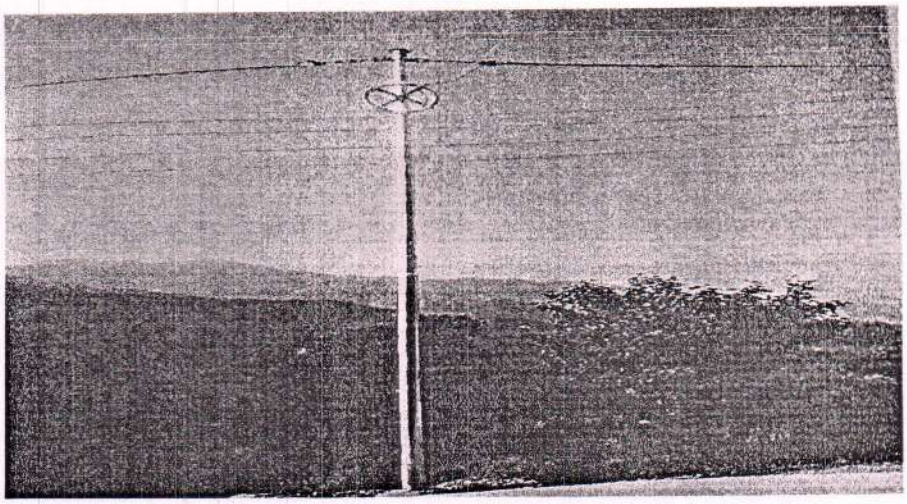
(b) **Monopole Tower** - A monopole tower is a single steel or concrete tube tower. It requires one foundation and typically don't exceed 50 metres. The antennas are mounted on the exterior of the tower.



(c) **Guyed Tower/Mast** - Guyed towers used to be the cheapest tower to construct, but require the greatest amount of land. For taller heights (100 metres and greater) it is much cheaper to build a guyed tower. Most radio and television towers are guyed towers. A guyed tower is a straight tower (also referred to as mast) connected by guy wires attached to the ground in all directions, which anchor and support the tower.



6.5 As per applicant, they are engaged in leasing of 'Telecommunication Fibre'. In hilly areas, the telecommunication fibres are kept to be elevated unlike in plain areas where the fibres are put underground. It is only because of this reason the fibres cannot be put underground in the hilly areas, they are placed on the poles. The infrastructure so erected by them to elevate the fibre so that "Telecommunication Operators" can connect the fibre to their "Telecommunication Towers". The picture of the said infrastructure is as under:



6.6 The process of creation of aerial network done by the applicant is as under:

a. The creation of aerial network begin with erection of pole which involves excavation of pit with particular specification, placing of earthing coil in the pit to protect the pole & fibre from damage in the event of lightening. Thereafter muff is installed in the pit, inside which pole is erected.

b. After installation of muff, the pole is place inside the muff with concrete. Additional structure referred to as "GI Support" is also erected near some poles which are used for bringing the fibre down whenever needed. GI support is used to pass cables from within so that fiber can be diverted to a different direction or can be connected to an underground network.

c. Connection of fibres is then done on the poles either using the winch or manually. Joint closures are placed on pole to joint the incoming end of the fibre to outgoing end of the fibre. Loop brackets are placed on the pole to hold extra fibre so that fibre can be reconnected in case there is any cut or damage in the existing fibre. A pulley also placed on top of the pole which is useful for pulling the fibre down whenever so needed.

d. Stay wires are used in some poles for protecting them from bending.

6.7 The details of items used in the infrastructure are as under:

a. The poles used in the infrastructure are hollow and does not contain any fibre inside.

b. GI Support erected is also hollow, from which fibres are passed.

c. The height of pole is 7m while in exceptional cases it is 9m.

d. The pole along with muff installation can be removed using civil work without any damage to the entire infrastructure. After removal of the said infrastructure, it can be used easily at another location without any damage to the fibre connected to the structure or the structure as a whole.

6.8 To appreciate the law position in this regard, first we have to go through the provisions of Input Tax Credit of CGST/SGST Act, 2017 and the relevant portion of the same are reproduce below:

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 and the said amount shall be credited to the electronic credit ledger of such person.*

17(5) *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 and other conveyances except when they are used—

(i) for making the following taxable supplies, namely:—
(A) further supply of such vehicles or conveyances ; or
(B) transportation of passengers; or
(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods;

(b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making anoutward taxable supply of the same category of goods or services or both or asan element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre;

(iii) rent-a-cab, life insurance and health insurance except where—

(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or

(B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and

(iv) travel benefits extended to employees on vacation such as leave or home travel concession;

***(c) 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;

***(e) goods or services** or both on which tax has been paid under section 10;*

***(f) goods or services** or both received by a non-resident taxable person except on goods imported by him;*

***(g) goods or services** or both used for personal consumption;*

***(h) goods** lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and*

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

17(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

Explanation.— 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.

6.9 The explanation (supra) put restrictions on availment of cenvat credit in respect of 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 in respect of (i) land, building or any other civil structures; (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises.

6.10 The applicant in their submission has claimed that the infrastructure (supra) provided by them is different from "Telecommunication Tower". Thus we are not deciding any wider question but restricting our conclusion to the facts and circumstances which was filed for our consideration in the application. So we have to know about the charactistics and use of "Telecommunication Tower" . The details of the same are as under:

a. Telecommunications tower is the generic description of Radio masts and towers (tall structures designed to support antennas) built primarily to hold telecommunications antennas.

b. It typically stands between 70m to 90m with antennas mounted on the exterior of the tower.

c. The primary job of a telecommunication tower (cell tower) is to elevate antennas that transmit and receive radio-frequency (RF) signals from mobile phones and devices. Wires run from the tower antennas to base station equipment, typically located at ground level in sealed telecom equipment cabinets.

d. A cell site or cell tower is a cellular-enabled mobile device site where antennae and electronic communications equipment are placed.

e. The telecommunication towers during the course of providing output services of telecommunication affixed to the earth becomes immovable property as it cannot be moved to another place for use in the same position.

6.11 On analyzing the work being undertaken by the applicant as discussed above, we observe that:

a. The poles erected by the applicant are used for stringing of fibres

b. Height of the poles varies from 7m to 9m.

c. The poles do not contain antennas electronic communications equipment.

d. There is no cell site where antennae and electronic communications equipment are placed.

e. The infrastructure was affixed to the earth in such a way that without any damage to the entire infrastructure it can be moved to another place for use.

6.12 Telecommunication Tower is not defined in CGST/SGST Act, 2017. So to know what is "Telecommunication Tower", we have gone through the Hon'ble Gujarat High Court judgment dated 24/25.04.2013 in the case of GTL Infrastructure Ltd Vs State of Gujarat (Through Secretary). The relevant portion of the same is reproduce below:

> *5. The petitioner is a company registered under the Companies Act. The petitioner is engaged in providing infrastructure for Mobile Telecommunication Services. The petitioner enjoys necessary license and registration issued by the competent authority under the Indian Telegraph Act, 1885.* ***For providing such infrastructure to its customers, the petitioner company is required to install Base Transceiver Station (BTS for short), more commonly known as mobile towers.*** *For setting up such mobile towers, the petitioner enters into agreements with private owners. Armed with such agreements, the petitioner would apply to the local authorities for permission to erect such a structure. As pointed out by the petitioner in the petition, such structure consists of the following :*
>
> *a. A pre-fabricated shelter made of insulating PUF material made of fibres.*
>
> *b. Electronic Panel.*
>
> *c. Base Transceiver Station (BTS) and other radio transmission and reception equipment.*

d. A diesel generator set.

e. Six poles of 6 to 9 meters length each made of hollow steel galvanized pipes.

6. To understand the purpose of such BTS , we may refer to the booklet circulated by the Department of Telecommunications Ministry of Communications & IT, Government of India and titled as Mobile Communication Radio Waves & Safety, in which it is stated as under :

Cellular Phone tower & waves Mobile phone base stations are radio transmitter with antennas mounted on either transmission towers or roof tops on buildings. The antennas need to be located at optimum locations and heights so they can adequately cover the area. Antenna position usually range in height from 50-200 feet. When a person makes a cell phone call, a signal is sent from the mobile phone s antenna to the nearest base station antenna. The base station responds to this signal by assigning it an available radio frequency channel. RF waves transfer the information to the base station. The voice/data signals are then sent to a switching center, which transfers the call to its destination. The voice signals are then relayed back and forth during the call. In India mobile phones operate in the frequency range of :

869-890 MHz(CDMA) 935-960 MHz(GSM900) 1805-1880 MHz(GSM1800) 2110-2170 Mhz(3G) Cell phones connect with the base station as frequently as every minute so as to relay information about your location which generates a near-field by the cell phone even when you are not making a call. When you make a call on a mobile phone, the phone transmits radio waves to the antenna of a nearby base station. The base station then transmits the call using the mobile telecommunications network to the phone of the person you are calling.

In town and cities where there are many phone users, more base stations are needed than in rural areas. ***The antenna of the base stations are mounted on mast, buildings or towers.*** *The intensity of the radio waves emitted from base stations in places where the public have access are generally found to be hundreds of times below the health and safety guidelines.*

The intensity of electro-magnetic wave (power density) weakens very quickly as it moves away from the antenna. It is reduced to ¼ when the distance from the antenna double and to 1/9 when the distance is three times.

6.13 The hon'ble Supreme Court of India in civil appeal nos.5360-5363 of 2013 in the case of Ahmadabad Municipal Corporation versus GTL Infrastructure Ltd. & ors. also confirm the fact of hon'ble Gujarat High Court (supra). The relevant portion of the same is reproduce below:

22. We may now see what a Mobile Tower is and consists of. ***In technical terms a Mobile Tower is called a "Base Transceiver Station."*** *It involves the making of structure consisting of the following:*

a. A pre-fabricated shelter made of insulating PUF material made of fibres.

b. Electronic Panel.

c. Base Transceiver Station (BTS) and other radio transmission and reception equipment.

d. A diesel generator set.

e. Six poles of 6 to 9 meters length each made of hollow steel galvanized pipes.

6.14 In light of above we observe that the telecommunication towers are used for hoisting the antennae to predetermined and technically viable heights for optimum coverage of the cellular network. The towers are typically erected at the site and also comprise poles for mounting the antennae, shelters and housing for electrical and telecom equipment. Telecommunication Towers are in the nature of immovable property and are consists of

a. *A pre-fabricated shelter made of insulating PUF material made of fibres.*
b. *Electronic Panel.*
c. *Base Transceiver Station (BTS) and other radio transmission and reception equipment.*
d. *A diesel generator set.*

e. *Six poles of 6 to 9 meters length each made of hollow steel galvanized pipes.*

6.15 We observed that each of these goods had independent functions and hence, they cannot be treated and classified as single unit. It also observed that all goods are not eligible for credit and only those relatable to the output services would be eligible for credit. Since the towers merely enabled the antennae to function, they did not enter the composition of the antennae themselves and could not be construed as components or parts thereof. We further observed that only telecom equipments like BTS transmitters which are used in providing telecom services alone would be liable to input credit. The towers and PFB are in the nature of immovable goods hence, ITC not admissible on the same.

6.16 We find that "immovable property" has not been defined in CGST/SGST Act, 2017. So we have to go through the Section 3 of General Clauses Act, 1897, the relevant portion of the same is reproduce below:

> *(26) "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;*
>
> *(36) "movable property" shall mean property of every description, except immovable property;*

6.17 We also find that the hon'ble High Court of Bombay in Central Excise Appeal no. 73 & 119 of 2012 in the case of Bharti Airtel decided the case on 26.08.2014 wherein it was held as under:

> *32. ---------- tower and parts thereof are fastened and are fixed to the earth and after their erection become immovable and therefore cannot be goods.*

6.18 The goods has been defined under section 2(52) of CGST/SGST Act, 2017 which is read as under:

> "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply"

6.19 As discussed supra we observe that if the goods are movable from one place to another in the same position or liable to be dismantled and re-erected at the later place, if it is liable to be shifted and was dismantled or re-erected at a later place, it will be movable property. But if erected permanently with out being shifted from place to place, then it would be treated as permanently attached to the earth and the same will be treated as immovable property.

6.20 Thus we observe that "telecommunication tower" does not come within the purview of goods in as much as the same being a immovable property and the ITC on "telecommunication tower" is not admissible as per explanation to Section 17(6) of the CGST/SGST Act, 2017.

6.21 In view of the above discussion we observe that the infrastructure provided by the applicant is different from "Telecommunication Tower" in as much as

(i) the infrastructure provided by the applicant does not contain *a. pre-fabricated shelter made of insulating PUF material made of fibres; b. electronic Panel; c. Base Transceiver Station (BTS) and other radio transmission and reception equipment ; d. diesel generator set ;*

(ii) the infrastructure is not a immovable property as it can be easily be moved to another place for use without any damage to the entire infrastructure. Therefore the infrastructure provided by the applicant is to be construed as "movable property".

(iii) height of pole is 7m to 9m whereas height of telecommunication tower is 70m to 90m.

(iv) the infrastructure being a movable property can be classified as 'goods' in terms of section 2(52) of CGST/SGST Act, 2017.

6.21 Thus, we hold that the infrastructure provided by the applicant is different from "Telecommunication Tower" and accordingly applicant can avail ITC on GST paid on the goods (supra) & services in terms of section 16(1) of CGST/SGST Act, 2017, consumed while providing the supply in question.

VIPIN CHANDRA (MEMBER)

AMIT GUPTA (MEMBER)

To,

M/s Vindhya Telelinks Ltd.,
Ground Floor, Wing-B, Commercial Plaza,
Hotel Radisson, NH-8, Mahipalpur, New Delhi

AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX, UTTRAKHAND

F.NO. : 01/2018-19/ Adv Ruling/ D.Dun/ 4233 Dated : 28/08/18

Copy to :

1. The Chief Commissioner, CGST, Meerut Zone, Meerut
2. The Commissioner, CGST, Commissionerate Dehradun
3. The Commissioner, SGST, Commissionerate Uttrakhand
4. Assistant Commissioner, CGST, Division Dehradun
5. Deputy Commissioner, SGST, Dehradun-II
6. Guard File