

**MAHARASHTRA AUTHORITY FOR ADVANCE RULING**  
**GST Bhavan, 8<sup>th</sup> floor, H-Wing, Mazgaon, Mumbai – 400010.**  
 (Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)  
**BEFORE THE BENCH OF**

- (1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)  
 (2) Shri B. V. Borhade, Joint Commissioner of State Tax, ( Member)

GSTIN Number, if any/ User-id		27AAGCK0390Q1Z0
Legal Name of Applicant		Konkan LNG Private Limited
Registered Address/Address provided while obtaining user id		RGPPL , Guhagar Road, Anjanwel, Ratnagiri , Maharashtra Ratnagiri - 415634
Corresponding Address		13D ,Atma Ram House, 13 <sup>th</sup> floor 1, Tolstoy Marg, New Delhi 110001
Details of application		GST-ARA, Application No. 123 Dated 22.02.2019
Concerned officer		State Tax Officer (RAT-VAT-C-006) Ratnagiri
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service Recipient
B	Description (in brief)	Entitlement to avail the input tax credit under CGST/SGST Act on the construction/reconstruction of Break Water wall adjacent to the existing jetty within the plant area of the KLPL. located at Ratnagiri, Maharashtra
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 **Konkan LNG Private Limited**, the applicant, seeking an advance ruling in respect of the following question.

1. **Whether on the facts and circumstances of the case and as per the law, the applicant is not eligible to avail/utilize the input tax credit of the taxes paid in terms of section 16 read with section 17 of the MGST ACT / CGST ACT (CGST/SGST / IGST ) to the supplier of goods/ services on the construction of the break water wall, which is an important and integral part of the existing jetty and very much required for the purpose of safety and longevity of the jetty and it imperative for making the existing jetty as fully workable as an all-weather jetty and hence improves the operational efficiency of the applicant.**
2. **Whether on the facts and circumstances of the case, as per the law and scope of work, the works contract services which the KLPL intends to procure is not predominantly earth work (that is, constituting more than 75 percent. of the value of the works contract) and the services of the works contract by the contractor is covered under item (vii) of serial No.3 of**



**Table of the Notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017 as amended by Notification No. 31/2017 - Central Tax (Rate) dated 13th October, 2017.**

At the outset, we would like to make it clear that the provisions of both the CGST Act and the 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, the expression 'GST Act' would mean CGST Act and MGST Act.

**02. FACTS AND CONTENTION - AS PER THE APPLICANT**

The submissions, as reproduced verbatim, could be seen thus-

1. That, Dabhol Power Company (DPC) was incorporated by Enron Corp., USA for production of 2184 MW of electricity in Maharashtra (Dabhol Power Project) along with 5MMTPA integrated LNG Terminal. Enron, GE and Bechtel through their ultimate subsidiaries alongwith Maharashtra Power Development Corporation Limited (MPDCL) were the only four shareholders of DPC.
2. That, after the Enron Corp. filing Applications under the Bankruptcy Laws of USA, DPC was abandoned by Enron, GE and Bechtel.
3. That, Empowered Group of Ministers constituted by Government of India took the step for revival of DPC.
4. That, in meeting held on 11.11.2004 chaired by Cabinet Secretary, GOI towards formation of Project SPV in which GAIL, NTPC and Lenders to contribute Rs. 500 crore each towards equity of the same.
5. That, Ratnagiri Gas and Power Private Limited (RGPPL) was incorporated to take over inter-alia the Dabhol Power Project in July 2005.
6. That, by the order dated 22nd September, 2005 passed by the Hon'ble Bombay High Court in Suit No. 1116 of 2005 whereby the secured Lenders of DPC viz. IDBI and others have invoked their English Mortgage in respect of all the assets and properties (moveable as well as the immovable) owned and/or held by DPC and as such the entire assets held and/or owned by DPC have been transferred to RGPPL as more particularly set out in the said Order dated 22nd September, 2005 passed by the Hon'ble Bombay High Court.
7. That, Thus the Ratnagiri Gas and Power Pvt. Ltd.(RGPPL) is a special purpose Vehicle (SPV) formed in order to restart the abandoned assets of Dabhol Power Project (DPC) in Distt. Ratnagiri, Maharashtra which was a state sector Project and Memorandum of Understanding for the same was entered into between of Government of Maharashtra & Enron, a US based private company, in June, 1992. Enron subsequently established the Dabhol Power Company (DPC) for implementing the project in following two phases:



- (a) Phase-I consists of Power Block (670MW) capacity including Single Point Mooring (SPM) system, which was commissioned and operated for commercial production of electricity.
- (b) Phase-II consists of Power Block-II & III (each Block of 740 MW capacity). Power Block II was commissioned but had not started commercial production; Power Block-III and Liquefied natural Gas (LNG) facility were under erection and was not commissioned before the whole plant project was abandoned.
8. That, Government of Maharashtra gave a guarantee which covered the payments due from the Maharashtra State Electricity Board (MSEB) to DPC under the Power Purchase Agreement (PPA). Govt. of India has also given a counter guarantee for the project covering some of the capacity and energy payments as well as termination payments. Due to high tariff & other contractual reasons, dispute arose between the DPC and MSEB on PPA, resulting in abandoning the project by its promoters. Thereafter, DPC invoked the Govt. of India counter guarantee claiming payments of amount due from MSEB. Matter went into litigation at various legal forums including arbitration at London, Supreme Court of India etc.
9. That, In view of substantial public money invested in the project, instance of prospective liabilities on Govt. and GoM on account of their respective guarantees on the project as well as the dire need of power in the state of Maharashtra, the Union Government formed an Empowered Group of Ministers (EGOM) to examine the issues related to erstwhile Dabhol Power project in the year 2004. The EGOM in its meetings held on 08.08.2005 considered the restructuring plan and the recommendations of the EGOM were considered by the CCEA in its meeting held on 11.08.2005. Pursuant to the CCEA approval in its meeting held on 11.08.2005, Ministry of Power vide OM dated 23.08.2005 had conveyed the decisions of Government which inter-alia included the following:
- RGPPL to be made an inter-state project with minimum sale of 5% of the installed capacity outside Maharashtra. Ministry of Power (MOP) to accord Mega Power status to RGPPL upon completion of the project for the integrated facility, including the power plant and the LNG terminal.
10. That, RGPPL got its service tax registration number i.e. AADCR1375FST001 on 31.03.2006 and post GST, its GSTIN is 27AADCR1375F1ZG.
11. That, further the RGPPL demerged with the approval of NCLT and through the scheme of demerger the power plant is with the RGPPL whereas the LNG terminal has been transferred to Konkan LNG Private Limited (herein after referred as the applicant).
12. That, Post demerger, applicant got its separate GST registration and its GSTIN is 27AAGCK0390Qizo in the state of Maharashtra. 13. That the present equity shareholding pattern of the applicant is as under:



Name of Shareholder	% of holding as per paid up share capital
GAIL (India) Ltd.	40.921
NTPC Ltd.	20.225
MSEB Holding Co. Ltd	10.717
IDBI Bank Limited	9.999
State Bank of India	7.958
ICICI Bank	7.068
Canara Bank	1.707
IFCI Ltd	1.404
RGPPL	0.001

Additionally GAIL has also contributed Rs. 75.60 crores towards Cumulative Compulsorily Convertible Preference Shares

14. That, through this demerger, the applicant is having the LNG regassification plant at Dabhol, Maharashtra and hereby engaged in the regassification of the LNG.
15. That the applicant is providing the taxable services and on the taxable services it is collecting the CGST and SGST and paying the tax and filling the returns as required under the provision of GST law.
16. That, the LNG which is the raw material of the plant, reaches to plant through the jetty where it is unloaded from various cargoes. The captive jetty is situated in sea and it is about 1.8 km from the tanks areas and is well within the plant area. The length of the jetty is around 300 meters & handles around 20 LNG Cargo in a year. Generally the capacity of the cargoes is around 130000 to 170000 Cubic meters with a length of 280-300 meter length.
17. That, adjacent to the jetty, there is existing break water wall which was constructed by then DPC and still incomplete, which prevents the high waves and tide to touch the jetty and cargo/ships of LNG and thus acts as a safety wall from the jetty as well as the ship from the danger of damage due to high waves and water current. However the existing break water wall was not complete and requires immediate reconstruction in order to keep the jetty and cargo safe during the LNG unloading process.
18. That due to existing incomplete Break water wall, the NPSC provides only provisional clearances for the berthing and unloading of the LNG cargo and therefore does not allow the berthing of the cargo unless the height of the wave (swell) is less than 0.5 meters.
19. That, due to the above mentioned operational restriction, the jetty cannot work and therefore the existing break water wall: requires reconstruction and for this purpose, the applicant has invited the tender where the scope of work are as follows –  
*Basic design, detail engineering and physical model test, surveys, temporary work, development of quarries, supply of material, construction of balance portion of break water and removal of temporary works as per the assessment reports, job specification, codes and recommendation of license holder and drawings.*



20. That, with the given scope of work and the award of the work to various contractors, the services of the contractor will be covered under the services of works contract as defined under section 2(119) of the CGST/SGST Act and it is as under  
*"works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;*
21. That, with the scope of the work and Bill of quantity (as per page No -6 of the scope of the work), the majority of the work can be covered as "Earth work" as it involves as it involves the dredging work, quarrying and placing the core material as well as secondary material and placing of different sizes of Acropods.
22. That the contractors/vendors supplying the goods or services for the purpose of the construction of the break water wall will raise their Invoice/Tax Invoice in terms of Section 2(66) read with section 31 of the CGST/SGST/IGST Act and the applicant will have to pay the CGST/SGST) IGST in terms of above said invoices to the vendor/contractor and further may have to pay the CGST/SGST AIGST in terms of section 9(3) and /or Section 9(4) for the supply of goods or services covered thereunder.
23. That the applicant has filed this application for the determination of its eligibility to take the input tax credit in terms of section 16 read with section 17 of the CGST/SGST/IGST paid/to be paid to the various contractors/ vendors or taxes paid in terms of section 9(3) and also section 9(4) or any other provisions of the SGST/CGST Act for the purpose of above said construction /reconstruction of the break water wall.
24. That the applicant has also filed this application for the classification of services procured for the purpose of above said completion of the break water wall in terms of Notification No. 11/2017 – C.T. (Rate) dated 28th June, 2017 as amended by Notification No. 31/2017 – C.T. (Rate) dated 13th October, 2017 25. That the applicant has invoked the provision of Section 97 and the question asked is well covered under the jurisdiction of the Honourable Bench of the AAR in terms of section 97(2) of the GST Act .

3.B. **Grounds of law**

**Question No.1**

1. Because the applicant is an registered person under the MGST/CGST provision and the works contract service to be supplied by the contractor for the proposed reconstruction of the break water wall which is very much integral part of the existing jetty itself and very much required for the safety and increase of operational efficiency as it will help the jetty to function in all weather across the year. Thus the break water wall will be used for the furtherance of the business of the applicant.

2. Because it is not covered under the exclusion clause of section 17(5) of the GST Act , as the works contract services are for the purpose of the construction of the plant and Machinery.
3. Because the applicant is not covered under exclusion clause of Section 17(5)(d) as the goods or services or both received by the applicant is construction of the plant or machinery in his own accounts and it is used for the course of furtherance of business of the applicant.
4. Because the term "plant or Machinery" has not been defined in the explanation to the section 17. The applicant has relied on the jurisdictional High Court ruling in the case of Mazagoan Dock Limited – reported in 191 ÍTR 460 wherein the court has held that Dry Dock and wet dock created for ship are to be treated as plant and not building:
5. Because the Supreme Court in the case of Dr B Venkata Rao Hospital as reported in 243 ITR 81 (SC) laid down the principle to distinguish between plant and building and stated that in the case of operation theatre in a hospital has been held as part of the plant and not part of the building. The apex court held that operation theatre in a hospital building is not a civil structure simplicitor but necessarily a part of running a hospital and the assessee is entitled to claim depreciation as applicable to plant & machinery.
6. Because the applicant has relied on the ruling of the Honourable Supreme Court in the case of Karnataka Power corporation as reported in (2001) 247 ITR 268 (SC). In this case the Honourable court on the issue of whether a building is a plant or not has set the following guidelines -

*The question whether a building can be treated as plant, basically it is a question of facts and where it is found as a fact that building has been planned or constructed as to serve an assessee special technical requirements, it will qualify to be treated as plant for the purpose of investment allowance. Held accordingly, that there was a finding by the fact finding authority that the assessee generating station building was so constructed as an integral part of the generating system. It was a plant and hence entitled for investment allowance.*

**Question -2**

7. Because the applicant is covered under item (vii) of serial No. 3 of Table of the Notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017 as amended by Notification No. 31/2017 - Central Tax (Rate) dated 13th October, 2017.  
The applicant carves the leave of the Honourable Authority to submit any other information & documents and take any other grounds of law during the proceedings of this case.

**PRAYER**

The applicant humbly prays the Honourable -



1. To allow the applicant contentions and its entitlement to avail/utilize the input tax credit of the taxes paid for the supply of goods or services or both for the proposed construction/reconstruction of the Break water wall.

2. To allow the applicant contention that it is squarely covered in the item (vii) of the SN-3 of the notification no 11/2017 Central Tax (Rate) dated 28th June,2017 as amended by Notification No. 31/2017 - Central Tax (Rate) dated 13th October, 2017 3. To pass any other order as the Honourable Authority may deem fit.

**3C. Additional submissions**

The rejoinder is as follows:

1. The Government of India has entrusted the task of reviving and restructuring of the Dabhol Project to GAIL and NTPC (both are Government of India Undertakings). GAIL and NTPC have formed a Joint Venture Company, named Ratnagiri Gas and Power Private Limited (RGPPL) to complete the balance of the works at the LNG Terminal and Power Plant, commission the same and thereafter, operate the facility. GAIL is managing after the balance of the works for the completion at the LNG Terminal.
2. RGPPL has engaged GAIL as the Owner's Engineer and in turn GAIL has appointed Engineers India Limited (EIL), as their primary Project Management Consultant (PMC) for PMC services for the completion and commissioning of the balance of the works of LNG Terminal.
3. Engineers India Ltd. (EIL) on behalf of Owner's Engineer i.e. M/S GAIL (India) Limited, Noida (A Government of India Undertaking - A Maharatna Company), invites bids through e-tendering on International Competitive Bidding basis for "Completion of Balance Works of Breakwater at LNG Terminal" under single stage two e envelopes system from competent agencies meeting the Bid Evaluation Criteria as detailed herein. Bids submitted online shall only be considered for processing.  
(The above facts are already mentioned in the Global Notice for invitation for BIDS which is available on record - page 42 of the written submission)
4. The scope of the work is mentioned in the Page No. 88 of the written submission. As per the scope of work, the contractor who will supply the construction services for the breakwater has to install the acropods". These acropods have to be installed upon the core structure of the rocks and 1.5 to 3.0 MT secondary armour layer of rocks. The picture of the breakwater cross-section & the existing breakwater status is enclosed herewith for your perusal.(Annexure-1)



"An apparatus is a compound instrument designed to carry-out a specific function or for a particular use. According to the McGraw Hill Dictionary of Scientific and Technical Terms, apparatus is a compound instrument designed to carry out a specific function.

In the Words and Phrases permanent Edition Vol.7 A, apparatus has been defined as a collection or set of materials, implements or utensils for a given work; a complex device or machine or a set of tools, appliances, any complex instrument for a specific action or operation, machinery or mechanism (refer Union Carbide India. Ltd. v. Collector of Central Excise, Calcutta- I - 1996 (86) E.L.T 613 (Tribunal).

In this connection, para-5 of Hekotronics Pvt. Ltd. v. Collector of Central Excise, Bombay -1996 (88) E.L.T. 682 (Tribunal) is extracted below :

5. The appellants have contended that their product is a single instrument and not a group of instruments.

According to them, a single instrument would not be covered by the expression 'apparatus'. As per the Dictionary meaning of the term 'apparatus' as set out in various dictionaries, it is defined as an appliance and the term 'appliance' had been defined as a device or a piece of equipment. The term 'appliance' in Law Lexicon has been defined as under :

From the meanings by different dictionaries. "it becomes clear that (1) an "appliance" is quite distinct from "materials" from which it is made, and (2) an "appliance" as an apparatus, device or instrument is "means to an end" These two aspects should be borne in mind while considering whether a particular article can be called an appliance. The first aspect seeks to take an integrated view of the article concerned and says that materials or component parts of an appliance should not be mistaken as tantamount to the appliance itself. The second aspect emphasizes the fact that the importance of an appliance consists in its utility to serve the object for which it is possessed."

Para-16 of I.C.B (P) Ltd. v. Collector of Central Excise, Baroda - 1997 (95) E.L.T 239 (Tribunal)

is also given below :

16. We also consider that they were not an apparatus, appliance or equipment. The apparatus is a compound instrument designed to carry out a specific function or for a particular use. In order to decide whether a particular object is an apparatus, an inquiry has to be made as to what operation it performs.

Appliance is a device that draws electric or other energy and produces a desired work saving or other result. The Gujarat High Court in Star Radio Electric Co. Vs Commissioner of Sales Tax, 1971 (27) STC 367; had observed that appliance has been defined or employed as meaning a mechanical thing; an apparatus or device; an instrumental means, aid or appurtenance; a thing applied or used as a means to an end, either independently or subordinately, Equipment is one or more assemblies capable of performing a complete function - an outfit, furnishings, supplies, tools for performing a job."

(C) In the case of Union Carbide India Ltd. Vs. Collector of C.excise, 1996, 86 ELT 613 (Tribunal ), Apparatus has been also defined in Para 21 as under(Annexure-7):

"A compound instrument designed to carry out a specific function."





*"It means a collection or set of materials, implements or utensils for a given work, a complex device or machine or a set of tools, appliances, any complex instrument for a specific action or operation, machinery or mechanism."*

10. In view of the above submission and the definition of the terms apparatus and equipment, the applicants submits that the acropods are the apparatus ( an interlocking device ) which has to used for a specific purpose in the construction of the Breakwater.

Legal submission -

11. As submitted, the applicants ( KLPL) is a taxable person and providing the outwards supply of the regasification services and therefore has obtained the registration in terms of section 22 and is a taxable person and hence in terms of section 17(5) (d).
12. That the goods or services or both which will be received by the KLPL in terms of the proposed tender for the construction of immovable property i.e. Break water in this case **the construction of suck break water** is for own account of KLPL.
13. That, although the break water, being an immovable property, it is covered under the term " Plant or Machinery " for which an exception has been carved out from the clause of block credit of provision 17(5)(d)
14. The Acropods TM, which is an interlocking device are covered in the terms apparatus or equipment and it has to fixed to the earth by foundation of the rock amour of different sizes,
15. Therefore the breakwater is not covered with the term "**other civil structure**" as mentioned in the clause (i) of explanation to section 17(5).
16. Thus the construction of the **breakwater services** which would be received by the KLPL is covered under the exclusion clause of section 17(5)(d) and therefore is eligible to avail the input credits in terms of section 16.

The KLPL submits that the in a recent case where the similar matter was argued before the Honourable High Court of Orissa , in the case of Safari Retreats Private limited VS CC CGST and others. ( copy of the order enclosed ), in a similar fact of the case, the Honorable court has read down the rigorous of section 17(5)(d) and has allowed the Input credit on the construction of an immovable property. The court has observed that if it is not read down it will become ultra-virus.

18. The KLPL submits that its case is on the same facts where the construction of breakwater will enable the KLPL to operate in all weather condition and therefore there is no break in the chain from the construction of the break water to the additional revenue and consequently additional tax that it will be generate for the exchequer. Therefore the case of the KLPL is squarely covered in the above mentioned case of Safari Retreats Private limited VS CC CGST and others. (case law enclosed-Annexure-8).



04. CONTENTION - AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

After going through the application as well as after paying a visit at the place of business, I humbly put forth the following observations before the Hon'ble Advance Ruling Authority.

- 1) The applicant itself is a service provider, who provides 'service of regasification of Liquefied Natural Gas (LNG) to the Ratnagiri Gas and Power Private Limited (RGPPL). The Service, mentioned as "Regasification of LNG" in the supply invoice to RGPPL, covered under HSN Code - 9997 and having GST Tax rate of 18% (CGST - .9% and SGST 9%). The Applicant neither makes purchases of LNG nor make sales of it in the original or any other form directly.

The dealer is planning to build a 'breakwater wall beyond the existing operational "Captive Jetty", which (wall) the applicant says is a part of the existing plant, and wants to take input tax credit of it. In order to clear the doubts, whether the 'breakwater wall will be treated as immovable property or a plant, an advance ruling has been sought.

- 2) In the Grounds of law, submitted along with the application, at point no. 3 the applicant has quoted that "the applicant is not covered under the exclusion clause of section 17(5)(d) of the Goods and Service Tax Act (CGST/MGST) (hereinafter referred to as GST Act)". Whereas section 17(5)(d) of the GST Act states that "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." Here the applicant assumes that the proposed break water wall is plant and machinery,

But in the Section 17(6) of the GST Act explanation has been given for the expression Plant and Machinery as " Plant and Machinery means apparatus, equipments 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 support but excludes:

- i) Land, Building or any other Civil Structure;
- ii) Telecommunication Towers; and
- iii) Pipelines laid outside the factory premises.

From the above explanation it is clear that the dealer is covered under this section. And the proposed 'breakwater wall' is a civil structure.

- 3) On the grounds of law at point no. 4 the applicant has further quoted a High Court ruling in the case of Mazgaon Dock Limited- reported in 191 ITR 460, clarifying the term 'Plant and Machinery' as has not been defined in the section 17 of the GST Act. In the said judgment Hon'ble High Court has stated as follows,



*"In order for a building or concrete structure to qualify for inclusion in the term 'plant', it must be established that it is impossible for the equipment to function without the particular type of structure."*

- 4) At the point no. 5 the applicant has quoted a Supreme Court ruling in the case of Dr. B Venkata Rao Hospital as reported in 243 ITR 81 (SC). In this case Hon'ble Supreme Court directed that,

*"In a case such as this the tribunal should proceed upon material placed by assessee which establishes that the building is specially equipped as a plant for the assessee's business."*

- 5) At the point no. 6 the applicant has quoted a Supreme Court ruling in the case of Karnataka Power Corporation as reported in (2001) 247 ITR 268 (SC). In this ruling Hon. Supreme Court has stated,

*"In the instant case, there is a finding by the fact finding authority that the assessee's generating station building is so constructed as to be an **integral part of its** generating system. It must, therefore, be held that it is a "plant" and entitled to investment allowance accordingly."*

If we look at the dictionary meaning of "integral Part", as mentioned in above ruling, it means, necessary to make a whole complete or fundamental or without something functioning is impossible. And from rest of the rulings it is crystal clear that any civil construction or building or both in order to treat as a 'plant' has to be an indispensable part of the concerned working unit, and without them basic functioning of that unit is not possible.

In view of the above facts and the reasoning given by the applicant in his application, applicant could not established that it is impossible for him to function without breakwater wall. Also the applicant has shown total outward supply of Rs.335,82,08,218/- in the GST return form GSTR 3B, filed for the period From April 2018 to January 2019, which reveals that his activities are efficiently carrying on. Hence the activity of construction of 'breakwater wall' falls under the section 17(5)(d) of the GST ACT, on account of being a civil structure and an immovable property. And under this section the applicant becomes ineligible to avail input tax credit on the proposed construction of 'breakwater wall'.

#### 05. HEARING

Preliminary hearing in the matter was held on 13.03.2019. Sh. Prakash Sinha, C.A., appeared and requested for admission of their application. Jurisdictional Officer Sh. Amol Shedbale, State Tax Officer (RAT-VAT-C-006) Ratnagiri, appeared & made written submissions.



The application was admitted and called for final hearing on 22.05.2019. Sh. Prakash Sinha, C.A., appeared, made oral & written submissions. Jurisdictional Officer was not present.

**06. OBSERVATIONS**

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.

The applicant, having a LNG regasification plant at Dabhol, Maharashtra are engaged in the regasification of the LNG therein. The LNG which is the raw material reaches their plant through a jetty where it is unloaded from various cargoes. They have submitted that, adjacent to the jetty, there is an existing breakwater wall which is in an incomplete state of construction, which acts as a safety wall by preventing high waves and tides to touch the jetty and cargo/ ships of LNG and thus prevents damage to the ships due to high waves and water current. However the existing break water wall being incomplete requires reconstruction in order to keep the jetty and cargo safe during the LNG unloading process. Due to Break water wall being incomplete, for safety purposes berthing of the cargo of LNG is only permitted when the height of the waves are less than 0.5 meters. Hence the berthing of ships is not possible at any or all times of the day.

Hence the breakwater will be constructed, for which the tendering process would be done and the work of building such breakwater wall would be allotted to contractors. The services of the contractor will be covered under the services of works contract as defined under section 2(119) of the CGST/SGST Act and such contractors will raise taxable Invoice on the applicant charging GST. Hence the applicant has queried whether they are eligibility to take the input tax credit in terms of section 16 read with section 17 of the GST paid/to be paid to the various contractors/ vendors to whom they have paid such GST.

The applicant's contention in support of their eligibility to avail ITC is that the break water wall is very much integral part of the existing jetty itself & will be used for the furtherance of their business. They are contending that the services received by them by way of construction of breakwater wall are for the purpose of the construction of the plant and Machinery.

From the submissions made by the applicant we find that as per the scope of work, the contractor will have to install 'acropods' upon the core structure of the rocks and the lay 1.5 to 3.0 MT secondary armour layer of rocks. Such acropods according to the applicant are forming a part of plant and machinery in their case because they are a kind of apparatus used for a specific purpose in the construction of the Breakwater.

We find that the applicant provides the service of regasification of LNG to the Ratnagiri Gas and Power Private Limited (RGPPL) for which LNG is supplied to them by transportation in ships which are berthed at the captive jetty. This LNG is then transferred to the applicant's unit for re-gasification. The applicant is getting the breakwater constructed to ensure safety of the



ships that are berthed at the jetty and also to allow the ships to enter the jetty at any point of time irrespective of the severity of the waves and tides. At present the ships are allowed only at certain times when the intensity of waves is less than a certain limit. After the construction of breakwater there would be no time restriction on ships entering the jetty.

The basic question before us is whether the breakwater that is being constructed for the applicant can be considered to be "Plant and Machinery". The applicant contends that although the break water is an immovable property, it is covered under the term " Plant or Machinery " since 'acropods' which are used to construct the breakwater are interlocking devices fixed to the earth by foundation of the rock amour of different sizes are nothing but apparatus. We find that a breakwater is a barrier built out into the sea to protect a coast or harbour from the force of waves. Breakwaters reduce the intensity of wave action in inshore waters and thus reduces coastal erosion or provide safe harbourage to ships.

The applicant has agreed that the breakwater is an immovable property. To find whether they are eligible to avail ITC of tax paid on the construction of such breakwater we need to find whether the same can be considered to be 'Plant and Machinery'. We shall now consider the meaning of the expression "Plant and Machinery" by referring to the provision of Section 17(6) of the CGST Act. The explanation under Section 17 (6) is reproduced below:-

Explanation : For the purposes of this Chapter and Chapter VI, the expression "*Plant and Machinery*" means *apparatus, equipments 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 support but excludes*

- i) Land, Building or any other Civil Structure;*
- ii) Telecommunication Towers; and*
- iii) Pipelines laid outside the factory premises.*

From a reading of the above we find that any apparatus, equipment & machinery fixed to earth by foundation or structural support **that are used for making outward supply of goods or services or both** can be considered as plant and machinery. Further, the exclusion clause includes Land, Building or any other Civil Structure.

We find that the breakwater can be considered as a civil structure. We also find from the above that such apparatus, equipment and machinery should be used **for making outward supply of goods or services or both**. In the subject case the breakwater will, if any, be facilitating the receipt of raw material i.e. LNG by the applicant. **It is not going to be used for rendering outward supply of goods or services or both.**

As per Section 17 (5) (d) of the CGST Act, ITC shall not be available "when goods or services or both received by a taxable person (in this case the applicant) for construction of an



immovable property (other than Plant or Machinery), [in the subject case the breakwater is an immovable property, a fact accepted by the applicant and the said breakwater cannot be considered to be plant or machinery as per explanation to Section 17(6) of the CGST Act].

The Hon'ble High Court in the case of Mazgaon Dock Limited- reported in 191 ITR 460, clarifying the term 'Plant and Machinery' has stated as follows,

*"In order for a building or concrete structure to qualify for inclusion in the term plant', it must be established that it is impossible for the equipment to function without the particular type of structure."*

Hence as per this decision for the breakwater, to qualify for inclusion in the term 'plant', it must be established that it is impossible for the regasification plant to function without the breakwater. In the subject case the applicant's regasification plant is already functioning without the complete breakwater in place, as can be seen from their submissions.

The applicant has cited a couple of more judicial decisions but we find that the same have no relevance in the subject matter. The applicant has not been able to establish that it is impossible for them to function without breakwater wall.

We now take up the second question for discussion. The same is reproduced as follows:-

**Question No. 2 :** Whether on the facts and circumstances of the case, as per the law and scope of work, the works contract services which the KLPL intends to procure is not predominantly earth work (that is, constituting more than 75 percent. of the value of the works contract) and the services of the works contract by the contractor is covered under item (vii) of serial No.3 of Table of the Notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017 as amended by Notification No. 31/2017 - Central Tax (Rate) dated 13th October, 2017.

Here the applicant's query is whether the services of the works contract by the contractor is covered under item (vii) of serial No.3 of Table of the Notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017 as amended. This authority is governed by the provisions of Chapter XVII of CGST ACT and the relevant Sections 95 to 98, 102, 103, 104 and 105. As per section 95, the term 'advance ruling' means a decision provided by this authority to the applicant on matters or questions specified in subsection 2 of Section 97, **in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.** We find primarily that, as per provision of section 95 of CGST ACT, **this authority can give a ruling to the applicant on matters or questions raised, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.** Since the breakwater is going to be constructed by a contractor the supply, if any, in such a case will be undertaken by the contractor and not the applicant. Hence in view of the provisions of Section 95



of the GST Act, the issue is not within the purview of this authority and therefore this question is not being answered.

07. 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- 123/2018-19/B-

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Mumbai, dt. 24/5/2019

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

**Question 1:-** Whether on the facts and circumstances of the case and as per the law, the applicant is not eligible to avail/utilize the input tax credit of the taxes paid in terms of section 16 read with section 17 of the MGST ACT / CGST ACT (CGST/SGST / IGST ) to the supplier of goods/ services on the construction of the break water wall, which is an important and integral part of the existing jetty and very much required for the purpose of safety and longevity of the jetty and it imperative for making the existing jetty as fully workable as an all-weather jetty and hence improves the operational efficiency of the applicant.

**Answer :- Answered in the affirmative.**

**Question 2:-** Whether on the facts and circumstances of the case, as per the law and scope of work, the works contract services which the KLPL intends to procure is not predominantly earth work (that is, constituting more than 75 percent. of the value of the works contract) and the services of the works contract by the contractor is covered under item (vii) of serial No.3 of Table of the Notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017 as amended by Notification No. 31/2017 - Central Tax (Rate) dated 13th October, 2017.

**Answer:- Not answered in view of discussions made above.**



—sd—  
B. TIMOTHY  
(MEMBER)

—sd—  
B. V. BORHADE  
(MEMBER)  
**CERTIFIED TRUE COPY**

**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.

  
**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.