

THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX

(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/SS-RJ/14/2019-20

Date- 06.11.2019

BEFORE THE BENCH OF

(1) Smt. Sungita Sharma, MEMBER

(2) Shri. Rajiv Jalota, MEMBER

GSTIN Number	27AAGCK0390Q1Z0
Legal Name of Appellant	M/s. Konkani LNG Private Limited.
Registered Address	RGPPL, Guhagar Road, Anjanwel, Ratnagiri, Maharashtra, Ratnagiri-415634
Details of appeal	Appeal No. MAH/GST-AAAR-14/2019-20 dated 08.08.2019 against Advance Ruling No. GST-ARN-123/2018-19/B- 56 Dated 24.05.2019
Jurisdictional Officer	State Tax Officer (RAT-VAT-C-006), Ratnagiri

PROCEEDINGS

(Under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 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 such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.

The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by **M/s. Konkani LNG Private Limited.** (herein after referred to as the "Appellant") against the Advance Ruling No. **GST-ARN-123/2018-19/B- 56 Dated 24.05.2019.**



BRIEF FACTS OF THE CASE

1. That the appellant is the company having its LNG regasification plant at Dabhol, Maharashtra and hereby engaged in the regasification of the LNG. Its GSTIN in the state of Maharashtra is 27AAGCK0390Q1Z0.
2. That, the LNG reaches to plant through jetty where it is unloaded from various ship/cargos. The captive jetty is situated in sea and it is about 1.8 km from the tanks farm area and is well within the plant area. The length of the jetty is around 300 meters and handles presently around 20 LNG Cargo in a year without the breakwater.
3. That, in order to protect the jetty from the high tide and forceful sea waves, there is existing partly constructed break water which was constructed by Dabhol Power Company (DPC). This break water was the part of the original of the approved design itself, meaning thereby, the jetty was not workable at its potential without the existence of break water.
4. That, the Break water was designed to prevent the high waves and tide to touch the jetty and cargo/ ships of LNG and thereby important for the safety for the jetty as well as the ship from the risk of damage.
5. That, although having the break water was absolute necessity, the existing break water was not complete and requires immediate reconstruction in order to keep the jetty and cargo safe during the LNG unloading process.
6. That due to existing incomplete Break water facility, the NSPC, the authority for the clearance of jetty, 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. Thus the performance of the jetty is much below its potential/ capacity and that too has always suffers the risk of damage due to of high tides and waves.
7. That, due to the above mentioned operational technical restriction, the appellant 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 .



assessment reports , job specification , codes and recommendation of license holder and drawings .

8. That for the purpose of determination whether the appellant will be able to claim the inputs on the GST paid on such construction/reconstruction of the break water, the appellant had preferred the application under section 97 of the GST Act and question for determination was as under –

“Whether the appellant is eligible for taking ITC in terms of section 16 read with section 17 of the MGST ACT / CGST ACT (CGST/ SGST / IGST) on construction of the above said Breakwater, 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 appellant”

9. That the advance ruling authority on 24/05/2019 has passed the order under section 98 and relying on section 17(5)(d) read with explanation, held that the appellant is not allowed to take the credit of the ITC of the amount of the GST paid to the contractors / supplier of the goods or services However said order was communicated to us through Email dated 10/07/2019.
10. That the learned ARA , through its order has held that the KLPL is not eligible to claim ITC mainly on the below mentioned three grounds: -
- Construction of Breakwater is only facilitating receipt of raw material i.e. LNG and is not going to be used for rendering outward supply.
 - The Breakwater, being an immovable structure, cannot be considered as Plant & Machinery.
 - KLPL is already functioning without the complete break water and hence could not able to establish that it is impossible for them to function without Break water.
11. That the appellant being aggrieved by the impugned order has preferred an appeal before the appellate authority for advance ruling under section 100 of the CGST/MGST Act on the following grounds:-



GROUND OF APPEAL

12. Because on the facts and circumstances of the case, the learned ARA has failed to appreciate the definition of the term "Plant and Machinery" as defined in the explanation to section 17. Although the learned authority has rightly appreciated the function of the breakwater when it has stated that "in the subject case the breakwater will, if any, be facilitating the receipt of raw material i.e. LNG by the applicant". However it has misinterpreted and has taken a myopic view, when it says that "It is not going to be used for rendering outward supply of goods or services or both".
13. Because on the facts and circumstances of the case, the learned ARA has failed to appreciate section 17(5)(d) read with explanation when it stated that breakwater being an immovable property cannot be considered as "plant and machinery" whereas the position of law is otherwise. The foundation or structural support of the plant & machinery, even though it is an immovable property, will be considered as an integral part of plant & machinery. Therefore, all immovable structures are not disqualified from being covered in the term plant & machinery.
14. Because on the facts and circumstances of the case, the learned ARA has relied on the theory of the essentiality test when it mentions that "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". However there is no such essentiality test provided in the explanation to section 17.
15. The appellant craves the leave of the Honourable Appellate Authority to submit any other information & documents and take any other grounds of law during the proceedings of this case.

Prayer

16. In View of the foregoing, it is respectfully prayed that the Ld. Appellate Authority, Maharashtra may be pleased to:
 - a. Set aside/modify the impugned advance ruling passed by the Authority for Advance Ruling as prayed before.
 - b. Grant a personal hearing; and



c. Pass any such further or other order (s) as may be deemed fit and proper in facts and circumstances of the case.

And for this act of Kindness, the appellatant, as is duty bound, shall ever pray.

RESPONDENT'S SUBMISSION dated 04.11.2019

17. The details of the registration of the applicant:-

Name of the Dealer: - M/S Konkan LNG Private Limited

GSTIN:- 27AAGCK0390QIZO

Date of Commencement of Business: - 19-03-2018.

Date of Application: - 19-03-2018

Effective Date of Registration: - 22-03-2018

Reason for Registration: - De merger.

Date of Incorporation of the company: - 04-12-2015.

Nature of Business: - Service Provider.

Types of Services: Business Auxiliary Services.

Address of Place of Business: - RGPPL, Guhagar Road, At/Post - Anjanwel,

Taluka - Guhagar, District - Ratnagiri. Pin

Code - 415634.

Additional Place Of Business: - No Additional Place of Business

registered. Authorised Signatory: - Alok Kumar Jain, Gen. Manager.

18. **Written contention given before the Advance Ruling-**

18.1 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, is 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 etty", which (wall) the applicant says is a part of the existing plant, and wants to take input tax credit f 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.



18.2 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.

18.3 In 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."

18.4 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."



- 18.5 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 the 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 establish 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'.

19. Submission before the Hon'ble Appellate Authority-

- 19.1 The applicant, M/S Konkan LNG Pvt. Ltd., is planning to build a breakwater wall beyond the existing operational "captive jetty", which (the breakwater) applicant says is a part of existing plant and wants to avail input tax credit of it. In order to clear the doubts whether the breakwater wall will be treated as plant & machinery or an immovable property (civil structure) an advance ruling had been sought.
- 19.2 As per the order passed by the Advance Ruling Authority, the proposed breakwater wall is a civil structure and falls under the exclusion clause of section 17 (5) (d).
- 19.3 This office humbly puts forth before the Hon'ble Appellate Authority that it sticks up with the submission made before the Advance Ruling Authority. This office would



like to draw attention of the Hon'ble Authority that the applicant has agreed that the breakwater wall is an immovable property (please refer page no. 14 of the Advance Ruling order). And according to the section 17 (5) (d) of the CGST/MGST Act, ITC shall not be available when goods or services or both received by a taxable person for construction of an immovable property (other than plant and machinery).

19.4 And as per the explanation of plant and machinery, given in the section 17 (6) of the CGST/MGST

"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."

The breakwater wall does not support or act as a foundation to any machinery, equipment or apparatus; rather it is an independent civil structure.

19.4 In the grounds of law of appeal at the point no.2 the applicant says that,

"because on the facts and circumstances of the case, the learned ARA has failed to appreciate section 17(5)(d) read with explanation when it stated that breakwater being an immovable property cannot be considered as plant and machinery, whereas the position of law is otherwise. The foundation or structural support of the plant & machinery, even though it is an immovable property, will be considered as an integral part of plant & machinery. Therefore all immovable structures are not disqualified from being covered in the term plant & machinery." Here if we read section 17(5)(d) with the explanation in section 17(6) it makes clear that any immovable civil structure attached to the apparatus, equipments and machinery can be treated as plant and machinery whereas the breakwater wall is an independent civil structure.

19.5 In a high court ruling in the case of Mazgaon Dock Limited — reported in 191 ITR 460, the same had been quoted by the applicant in his Advance ruling application in support of his ITC claim on breakwater wall, wherein the Hon. Court has stated that,



"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".

19.6 In the grounds of law of appeal at the point no.3 the applicant has questioned the essentiality test and quoted that no such essentiality test provided in the explanation to section 17 of the CGST/MGST Act. But the essentiality test is a logical and substantial test to consider any structure to be a part of plant and machinery, hence the above ruling cannot be neglected. Further, the applicant has shown total outward supply of Rs.4110838049/- in the GST return form GSTR 3B filed for the period from April 2018 to August 2019, which reveals that his activities are efficiently carrying on, which proves that it is not impossible for the applicant to function without the breakwater wall. Hence the activity of construction of breakwater wall falls under the section 17(5)(d).

19.7 **Details of visit conducted on 07.03.2019:-**

An official visit was conducted on 07-03-2018 at 10.30am, at the registered place of business, of the dealer, at RGPPL Compound, At-Post Anjanwel, Taluka -- Guhagar, District Ratnagiri, in connection with the activity in which advance ruling has been sought. Shri. Alok Kumar Jain, Manager (Finance & Accounts) and authorised signatory, was present at the time of visit. He was requested to furnish details relating to the commencement of business and whether the company was registered under the Central Excise Act or Service Tax Act. In reply he explained that though the company had been incorporated on 04-12-2015, the de-merger process of Ratnagiri Gas and Power Private Limited (RGPPL) completed on 26-03-2018 and the company had started functioning since then i.e. from 26-03-2018. Before that the company was not functioning hence it had not obtained any registration under the Central Excise Act or Service Tax Act. He also furnished a copy of GST Registration Certificate and a copy of annexures submitted with the application for Advance Ruling which is kept on record. He was asked about the nature of activity of the company and the commodities they are dealing in. He said that, the company is basically a processing unit which neither make purchases or sales of any commodity but provides a service of "Regasification of Liquefied Natural Gas (LNG). The service falls under the HSN Code 9997 having GST rate 18% (9% SGST and 9% CGST). He showed us the "Jetty"



beyond which they want to construct a break water wall, a partly constructed wall was laying there, which he said, was built by the Enron Corporation. The Jetty was in operation where the cargo ships dock and from where they transfer LNG through a Pipeline from a cargo ship to the processing unit and further after regasification to the RGPPL. The visit concluded around 12.15 pm.

20. **3B RETURN CONSOLIDATION OF M/S KONKAN LNG PRIVATE LIMITED, GSTIN 27AAGCK0390QIZO, PERIOD FROM APRIL 2018 TO AUGUST 2019:-**

MONTH	OUTWARD TAXABLE SUPPLY	IGST	CGST	SGST	INWARD SUPPLY LIABLE TO REVERSE CHARGE	IGST	CGST	SGST
Apr-18	408969219	135	36806993	36806993	0	0	0	
May-18	109993273		9899394	9899394	25000	0	2250	2250
Jun-18	20637375		1857364	1857364	48610	8749	0	0
Jul-18	21875653		1968809	1968809	0	0	0	0
Aug-18	20920120		1882812	1882812	1347527	206555	18000	18000
Sep-18	82748704		7447384	7447384	0	0	0	0
Oct-18	673061220	2331	60574344	60574344	3690042	651608	6300	6300
Nov-18	494509180	1068	44505293	44505293	7769605	1387458	5535	5535
Dec-18	542923070	1800	48862175	48862175	0	0	0	0
Jan-19	465725368	1392	44614587	44614587	5000		4500	4500
Feb-19	440857349		39677161	39677161	75000		6750	6750
Mar-19	11932	2148			1880977	321152	8712	8712
Apr-19	0				19160310	3448855		
May-19	9864303	48294	863640	863640	4709921	845751	1017	1017
Jun-19	152093527	31136	13672850	13672850				
Jul-19	20135329	5850	1809255	1809255	2793401	501336	738	738
Aug-19	14859449	678	1337012	1337012	1249280	224870		
TOTAL	3479185071	94832	315779073	315779073	42799673	7596334	53802	53802

Personal Hearing



21. A personal Hearing in the matter was conducted on **04.11.2019**, wherein ShriAjay Kumar (Advocate), Prakash Sinha (C.A), Alok Jain, representatives of the Appellant, reiterated their written submissions. Shri Amol S. Shedbale, State Tax Officer (Rat-Vat-C-006), Ratnagiri, appearing as jurisdictional officer, reiterated the submissions, which had been made earlier before the Advance Ruling Authority.

Discussions and Findings

22. We have gone through the facts of the case, documents on record and submissions made by both appellant as well as the jurisdictional officer. The appellant having a LNG regasification plant at Dabhol, Maharashtra are engaged in the regasification of the LNG therein. The LNG which is raw material reaches plant through the jetty where it is unloaded from various ships/cargos adjacent to the jetty breakwater wall which is in incomplete stage of construction. The captive jetty is situated in sea and the length is around 300 meters and is about 1.8 km from the tanks farm area. In order to protect the jetty from the high tide and the forceful sea there is a partly constructed break water wall which was originally constructed by Dabhol Power Company. This break water was the part of the original approved design itself. The break water was designed to prevent the jetty from erosion of high waves and tide to touch the jetty and ships. As the existing break water was not complete contract was given for completion of the break water facility. In order for the completion of break water a tender was given where scope of the work is 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.

23. The issue of the appellant is whether he will be able to claim the ITC on such construction/reconstruction of the break water. The AAR held that as per section 17(5)(d) of the CGST Act, the appellant is not allowed to take the credit of ITC of the amount paid to the contractors on the basis of the following reasons:-
- a) Construction of Breakwater is only facilitating receipt of raw material i.e. LNG and is not going to be used for rendering outward supply.



- b) The Breakwater, being an immovable structure, cannot be considered as plant and machinery.
- c) KLPL is already functioning without the complete break water and hence could not able to establish that it is impossible for them to function without Break water.

The appellants have raised the following grounds to support their contention that they are eligible for ITC on the said transaction.

- i) ITC will be eligible because it is going to be used for rendering outward supply of goods or services or both.
- ii) The AAR failed to consider that though break water is an immovable property it can be considered as plant and machinery as all immovable structure are not disqualified from being covered in term 'plant and machinery'.
- iii) The AAR has stated that to qualify for inclusion in the term 'plant and machinery' it must be established that it is impossible for regasification plant to function without the breakwater. However, there is no such test provided for the explanation to section 17 of the Act.

24. The section under consideration is Section 17(5)(d) of the CGST Act reproduced as under:-

(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;

Explanation:- For the purposes of this Chapter and Chapter VI, the expression 'plant and machinery' means apparatus, equipment and machinery fixed to the earth by foundation or structural support that are used for making outward supply of goods and services or both and includes such foundation and structural support but excludes :-

- (i) Land, building or any other civil structures*
- (ii) Telecommunication towers; and*
- (iii) Pipelines laid outside the factory premises.*

A reading of the above section shows that plant and machinery though immovable are eligible for ITC. The meaning of 'plant and machinery' is given in the explanation. Thus, in order to come in the explanation to section 17(5)(d) of the Act, the inputs must be used for making a)



plant and machinery which should be apparatus, equipment and machinery; b) it should be used for outward supply of goods or services; c) it should be neither of the following:-

- 1) Land, building or any other civil structure;
- 2) Telecommunication tower;
- 3) Pipe line laid outside the factory premises.

It is seen from the facts presented by the appellant that he provides the services of regasification of LNG to the Ratnagiri Gas and Power Pvt. Ltd. for which LNG is supply to them by transportation in ship which are berth at the captive jetty. LNG is transferred to appellant's unit for regasification. The appellant is getting the break water constructed to ensure safety of the ship that are berth at the jetty and also to allow the ship to jetty at any point of time irrespective of the severity of the waves and tides. At present ships are allowed only at certain time when the intensity of waves is less than certain limit. After the construction of the break water there will be no time restriction on ships entered the jetty.

25. Looking to the above issue, it is a basic question is as whether the break water constructed for the appellant can be considered to be 'plant and machinery'. The appellant has contended that though break water is an immovable property it is covered under the term 'plant and machinery' since Accropods which are used to construct the break water are interlocking device fixed to the earth by foundation are nothing but apparatus. In order to appreciate the contention let us have a look at the various meanings of the term 'Plant'.

Cambridge Dictionary

- 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
- place where an industrial or manufacturing process takes place.

Cambridge (Business English)

[U]

- 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.

Collins Dictionary

Plant is large machinery that is used in industrial processes.



...investment in plant and equipment.

Oxford Dictionary

a factory or place where power is produced or an industrial process takes place

- a nuclear power plant
- a processing/manufacturing plant
- Japanese car plants
- a water treatment plant
- a chemical/steel/coal plant

26. A reading of the above makes it clear that 'plant' generally means and includes a place where industrial activity takes place or a factory where certain material is produced or big machinery used to carry out certain processes of production. The term 'plant and machinery' is used in conjunction with each other and by the application of the principle of 'ejusdem generis', it is clear that the meaning to be given to the term 'machinery' should take its color from the word 'plant'. The term 'plant and machinery' therefore should be interpreted to mean a place where certain commercial /manufacturing activities/ processes of production are carried out with the help of inputs. In the present case, the breakwater wall or the Accopods that are an essential part of it certainly do not qualify as 'plant and machinery'. The explanation to section 17(5)(d) says that the term 'plant and machinery' covers apparatus, equipment and machinery. The break water wall constructed on the sea to protect the ship from high waves can hardly be called machinery or apparatus or equipment. Neither in common parlance nor in technical parlance would one associate a civil structure like a breakwall to be 'plant and machinery' or 'machinery, apparatus or equipment. Machines are something which employ power to achieve. Equipment and apparatus mean tools for a particular purpose. The term 'tool' here is very important. It is meant to be a device or implement, especially one held in the hand, used to carry out a particular function. The breakwater wall does not remotely fall under any of these description. The images of the project show that it is essentially a wall or a civil structure meant to protect the jetty from tides and waves. In regard with our finding that the breakwater does not come under the definition of plant and machinery, there seems no purpose in examining whether it is used for making outward supplies.
27. It is seen from the scope of work documents i.e. scope of work given in Clause (6) covers a type of work which is civil in nature. We will see the clauses in brief as under:-



6.1. Basic design, physical model tests, detailed and construction engineering with calculations and drawings, as required in documents "Design Criteria for Completion of Breakwater (6724-000-83-41-BD-4005)"

6.3 Pre-engineering, Pre-construction/regular surveys during construction and post-construction surveys of bathymetry, meteorological parameters and partially constructed sections, as indicated in "Construction Specifications for completion Breakwater (6724-000-83-41-BD-4005)". Contractor shall also carry out bathymetry survey of existing navigation channel before and just after monsoons (2016 monsoon and 2017 monsoon) and report shall be submitted to the owner. All surveys including pre-engineering surveys, preconstruction/regular surveys during construction and post construction surveys shall be carried out by a qualified third party survey agency appointed by contractor.

6.4 Site survey, assessment, identification of quarry, acquisition/leasing, obtaining license from various authorities, development, quarrying, and restoration of quarry including temporary production and handling facility.

6.6 Quarrying of required rock core and underlayer armours.

6.7 Testing, sorting and screening of rock material.

6.8 Production of balance ACCROPODE units required to complete the breakwater as per license holder's specifications (refer clause 8.2 regarding use of existing ACCROPODE units at old casting yard).

6.13 Dredging and removal of silt/sand deposits on the sides of the existing partly completed submerged breakwater as well as in the virgin area. Disposal of the dredged material in the offshore dumping site about 15 km offshore the site indicated by the Owner.

6.14 Reshaping of existing core material within the theoretical profile in partially build breakwater as per drawings and specifications.

6.16 Construction of balance portion of breakwater, after dredging of soft material: placing of core material, rock and ACCROPODE units (as per license holder's specifications and requirements including supervision) and approved drawings and documents.

The above clauses shows that break water not only comprises piling of Accropods on top of each other but involves extensive civil work and foundation laying in order to build the break water wall and the Accropods is only a part of it. It is therefore an immovable structure though not plant and machinery. It is seen from the explanation that land, building and civil structures are specifically excluded from the scope of 'plant and machinery'. Therefore even though assuming that the structure is a plant and machinery (which it is not as we have concluded in the preceding paragraph) it will be excluded by virtue of it being a civil structure. The extensive earthwork as well as civil work which has gone into the making of the breakwater wall makes it clear that the entire thing is nothing but a civil structure. The terminology itself says that it is a wall.



28. The appellant has quoted Bombay High Court judgement in the case of Mazagaon Dock (191 ITR 490). However, the said decision was given with reference to the definition of the term 'plant' as occurring under section 43 (3) of the Income Tax Act which said '3) " plant" includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession² but does not include tea bushes or livestock. The said definition is not *pari materia* to the one under the CGST Act. Moreover, the explanation which defines plant and machinery is exhaustive as illustrated by the term 'means' used after plant and machinery vis-à-vis the use of the term 'includes' occurring in the definition under the Income Tax Act. Therefore, the said decision is not applicable to the case in hand.

In view of the above discussions, we pass the following order:

ORDER

We, hereby, confirm the order passed by the AAR.


(RAJIV JALOTA)
MEMBER




(SUNGITA SHARMA)
MEMBER

- Copy to- 1. The Appellant
2. The AAR, Maharashtra
3. The Pr. Chief Commissioner, CGST and C.Ex., Mumbai
4. The Commissioner of State Tax, Maharashtra
5. The Respondent.
6. The Web Manager, WWW.GSTCOUNCIL.GOV.IN
7. Office copy