

**GUJARAT AUTHORITY FOR ADVANCE RULING  
GOODS AND SERVICES TAX  
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,  
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/2025/06  
(IN APPLICATION NO. Advance Ruling/SGST& CGST/2024/AR/12)  
Date: 21.03.2025

Name and address of the applicant	:	M/s. KEI Industries Ltd., 209, 212/3, 217/1, NH No. 8, Jetalpur, Daskroi, Ahmedabad, Gujarat 382426.
GSTIN of the applicant	:	24AAACK0251C1ZD
Jurisdiction Office	:	Center Commissionerate- Ahmedabad South, Range- IV, Division-IV
Date of application	:	09.05.2024
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(d)
Date of Personal Hearing	:	4.12.2024
Present for the applicant	:	Ms Priyanka Kalwani, Advocate, Ms Devanshi Sharma, Advocate, Shri Dayanand Sharma, Shri Sonu Sharma Shri Ajit Kumar Bhandari

**Brief facts:**

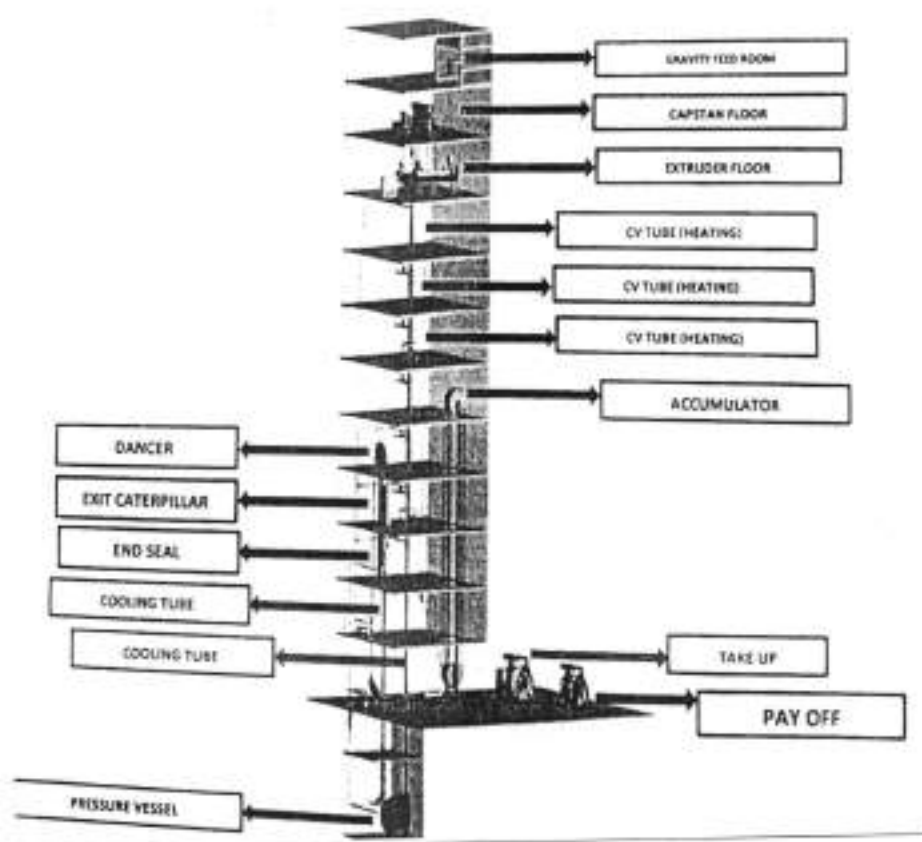
M/s KEI Industries Limited, 209, 212/3, 217/1, NH No. 8, Jetalpur, Daskroi, Ahmedabad, Gujarat 382426 (for short - 'applicant') is engaged in the manufacture and supply of Extra-High Voltage ('EHV'), Medium Voltage ('MV') and Low Voltage (LV) power cables. The applicant has collaborated with M/s Brugg Kabel AG, a Swiss company, to upgrade its technology to manufacture EHV cables up to 400 KV. The applicant is registered with the department and their registration No. is 24AAACK0251C1ZD.

2. Briefly, the technical details as submitted by the applicant are as under:

- that presently they manufacture EHV cables using Continuous Catenary Vulcanization (CCV) process;
- they are in the process of setting up a new manufacturing plant in Gujarat for making HV/EHV cables using the Vertical Continuous Vulcanization (VCV) process;
- that while insulation of cable cores in CCV process happens in horizontal heating tubes, in VCV lines, the process of insulation is done in vertical tubes;
- that the VCV manufacturing line is required to be supported by concrete structure in square form on all sides;



- that the total height of the VCV line from the ground floor is approximately 152 meters; that each floor inside the VCV tower will be 1.2 meters height upto initial 60 - 70 meters and thereafter, the height of each floor will be changed to 6 meters as per the requirements of the line;
- that there will be passenger lifts and material handling lifts installed in this VCV tower; that there will also be a staircase with emergency exit and fire hydrants on each floor.
- that this VCV tower will be used exclusively for the purpose of manufacturing HV/EHV cables;
- the layout of the VCV line is reproduced below for ease of reference:



- that the capstan floor level in the above diagram is 136.6 meters, and the extrusion floor level is at a height of 128.7 meters;
- that the pressure vessel is at the ground level of the tower;
- that the process undertaken at each floor and the weight of the significantly heavy components to be placed on each floor to run the VCV line is submitted by the applicant;
- that the total load at different floors will be transferred through tower columns to the VCV tower footings, which is the foundation for the VCV tower;
- that when the machinery runs, there will be a dynamic load on each floor which will be borne by the floor and subsequently the footing;
- that the VCV tower has to be constructed in a manner so as to withstand such heavy loads along with the self-load of the tower, wind load and seismic load.

3. The applicant is procuring various inputs and input services in order to construct the outer square structure with concrete columns and concrete foundation to support the erection of the VCV line. They are of the view that ITC on inputs and input services is received by them for the construction of the concrete structure, used for structural and foundational support of the VCV line



is available to them in terms of sections 16 & 17 of the CGST Act, 2017. To substantiate, the applicant has made the following submissions viz

- that the term 'apparatus' and 'equipment' signify an aggregation of tools, materials or machine designed to perform a specific function;
- that the term 'machinery' signifies an assembly of items designed to perform mechanical function entailing application of force either manually or otherwise to achieve a predetermined result;
- that the VHV line qualifies as apparatus and machinery;
- that in order to qualify as plant & machinery in terms of explanation to section 17, *ibid*, the two major requirement to be satisfied are that
  - it is an apparatus, equipment or machinery fixed to earth by foundation or structural support and
  - that it is used for making an outward supply of goods & service or both;
- that the input & input services procured for construction of concrete tower to support & erect the VCV lines at the factory to be used for manufacturing EHV cables to be supplied to the customers, is in the course of furtherance of business;
- that the following test would determine whether a particular product would fall under the category of plant and machinery, viz common parlance test, functional test, durability test and close nexus test;
- that the input and input services are used for foundational & structural support of the VCV lines which are plant & machinery; that ITC is not restricted when supply involves construction or works contract service pertaining to plant & machinery; that in terms of explanation to section 17, *supra*, plant & machinery includes foundation and structural supports;
- that the concrete structure in a VCV tower plays a fundamental role in maintaining stability precision and overall efficiency throughout the manufacturing process of insulated cables;
- that they would like to rely on the case of viz
  - ICB P Ltd <sup>1</sup>
  - Ambica Wood Works<sup>2</sup>
  - Sirpur Paper Mills <sup>3</sup>.

4. In view of the foregoing, the applicant has sought ruling on the below mentioned question viz:

*Whether the applicant is eligible to avail ITC on inputs and input services used for construction of concrete tower to support and erect the VCV lines at the factory of the applicant, for manufacture of EHV cables, in terms of Section 17(5)(c) and (d) of the CGST Act, 2017?*

5. Personal hearing was granted on 04.12.2024, wherein Ms. Priyanka Kalwani, Advocate, Ms. Devanshi Sharma, Advocate, Shri Dayanand Sharma, Shri Sonu Sharma Shri Ajit Kumar Bhandari appeared on behalf of the applicant and reiterated the submission already made in the application. The also submitted a compilation of case laws in the matter. The judgements relied upon are as under:

<sup>1</sup> 1997 (96) ELT 239 (Tri)

<sup>2</sup> 1979 43 STC 338 Guj

<sup>3</sup> 1998 (97) ELT 3 (SC)



- Karnataka Power Corporation<sup>4</sup>
- Victory Aqua Farm Ltd<sup>5</sup>
- Scientific Engineering House P Ltd<sup>6</sup>
- Indian Oil Corporation Ltd<sup>7</sup>
- Dr B Venkata Rao<sup>8</sup>
- Cachet Pharmaceuticals P Ltd<sup>9</sup>
- Seimens India Ltd<sup>10</sup>
- Nowrangroy Metals P Ltd<sup>11</sup>
- Barclay, Curle & Co Ltd<sup>12</sup>
- British Columbia Forest Products Ltd<sup>13</sup>

### **Discussion and findings**

6. At the outset, we would like to state that the provisions of both the CGST Act and the GGST 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 GGST Act.

7. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made during the course of personal hearing, additional written submissions and oral submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

8. To summarize, the short issue involved in the application filed seeking a ruling is regarding, eligibility of the applicant to avail the ITC on *inputs and input services* used for construction of concrete tower to support and erect the VCV lines at the factory of the applicant.

9. Before dwelling on to the questions on which the applicant has sought ruling, it would be prudent to reproduce the relevant sections, notifications, etc. for ease of understanding *viz*

<sup>4</sup> (2002) 9 SCC 571 SC

<sup>5</sup> (2015) 9 TMI 758 SC

<sup>6</sup> 1986 (1) SCC (11)

<sup>7</sup> AIR 1991 SC 686

<sup>8</sup> 1999 (2) TMI 11-SC

<sup>9</sup> 2016 (4) TMI 713 Patna HC

<sup>10</sup> 1996 (217) ITR 622 Bom

<sup>11</sup> 2003 (6) TMI 21 Gauhati HC

<sup>12</sup> (1970) 76 ITR 62 (HL)

<sup>13</sup> 1971 CanLII 1956 (SCC)



➤ **Section 2. Definitions.-**

*In this Act, unless the context otherwise requires,-*

(59) "input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;

(60) "input service" means any service used or intended to be used by a supplier in the course or furtherance of business;

➤ **Section 16. Eligibility and conditions for taking input tax credit**

(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.

➤ **Section 17. Apportionment of credit and blocked credits**

(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:-

(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;

**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.

➤ **Circular No. 219/13/2024-GST dated 26.6.2024 [relevant extracts]**

*Subject: Clarification on availability of input tax credit on ducts and manholes used in network of optical fiber cables (OFCs) in terms of section 17(5) of the CGST Act, 2017 -reg*

.....





2. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issue as below.

<p>Whether the input tax credit on the ducts and manholes used in network of optical fiber cables (OFCs) for providing telecommunication services is barred in terms of clauses (c) and (d) of sub-section (5) of section 17 of the CGST Act, read with explanation to section 17 of CGST Act?</p>	<p>1. 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; or</p> <p>2. 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.</p> <p>3. Explanation in section 17 of CGST Act provides that 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 land, building or any other civil structures; telecommunication towers; and pipelines laid outside the factory premises.</p>
<p>3. Ducts and manholes are basic components for the optical fiber cable (OFC) network used in providing telecommunication services. The OFC network is generally laid with the use of PVC ducts/sheaths in which OFCs are housed and service/connectivity manholes, which serve as nodes of the network, and are necessary for not only laying of optical fiber cable but also their upkeep and maintenance. In view of the Explanation in section 17 of the CGST Act, it appears that ducts and manholes are covered under the definition of "plant and machinery" as they are used as part of the OFC network for making outward supply of signals from one point to another. Moreover, ducts and manholes used in network of optical fiber cables (OFCs) have not been specifically excluded from</p>	<p>2. Explanation in section 17 of CGST Act provides that 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 land, building or any other civil structures; telecommunication towers; and pipelines laid outside the factory premises.</p> <p>3. Ducts and manholes are basic components for the optical fiber cable (OFC) network used in providing telecommunication services. The OFC network is generally laid with the use of PVC ducts/sheaths in which OFCs are housed and service/connectivity manholes, which serve as nodes of the network, and are necessary for not only laying of optical fiber cable but also their upkeep and maintenance. In view of the Explanation in section 17 of the CGST Act, it appears that ducts and manholes are covered under the definition of "plant and machinery" as they are used as part of the OFC network for making outward supply of signals from one point to another. Moreover, ducts and manholes used in network of optical fiber cables (OFCs) have not been specifically excluded from</p>



	<p>the definition of "plant and machinery" in the Explanation to section 17 of CGST Act, as they are neither in nature of land, building or civil structures nor are in nature of telecommunication towers or pipelines laid outside the factory premises.</p> <p>4. Accordingly, it is clarified that availment of input tax credit is not restricted in respect of such ducts and manhole used in network of optical fiber cables (OFCs), either under clause (c) or under clause (d) of sub-section (5) of section 17 of CGST Act</p>
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10. The eligibility of ITC, hinges to the aforementioned sub-sections viz section 17(5)(c) and (d), *ibid*. However, the Hon'ble Supreme Court, in a recent judgement in the case of M/s. Safari Retreats P Ltd, reported at [2024 INSC 756], while examining the above sub-sections has held as follows:

#### **ANALYSIS OF CLAUSES (c) & (d)**

31. Now, we analyse clauses (c) and (d) of Section 17(5). Clause (c) applies when works contract services are supplied for constructing immovable property. The definition of "works contract" under Section 2(119) is extensive. It reads thus:

"2. Definitions:-

(119) "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;"

**Thus, in the case of works contract services supplied for the construction of immovable property, the benefit of ITC is not available.** However, there are exceptions to clause (c). First is when goods or services, or both, are received by a taxable person for the construction of "plant and machinery", as defined in the explanation to Section 17. The second exception is where the works contract service supplied for the construction of immovable property is an input service for further supply of the works contract.

32. Clause (d) of Section 17(5) is different from clause (c) in various aspects. Clause (d) seeks to exclude from the purview of sub-section (1) of Sections 16 and 18, goods or services or both received by a taxable person to construct an immovable property on his own account. There are two exceptions in clause (d) to the exclusion from ITC provided in the first part of Clause (d). The first exception is where goods or services or both are received by a taxable person to construct an immovable property consisting of a "plant or machinery". The second exception is where goods and services or both are received by a taxable person for the construction of an immovable property made not on his own account. **Construction is said to be on a taxable person's "own account" when (i) it is made for his personal use and not for service or (ii) it is to be used by the person constructing as a setting in which business is carried out.** However, construction cannot said to be on a taxable person's "own account" if it is intended to be sold or given on lease or license.



33. Section 17(5) incorporates an explanation which provides that the word "construction" used in clauses (c) and (d) includes reconstruction, renovation, additions, alterations or repairs, to the extent of capitalisation, to the immovable property. Thus, a very wide meaning has been assigned to the expression "construction" by the said explanation.

34. There is hardly a similarity between clauses (c) and (d) of Section 17(5) except for the fact that both clauses apply as an exception to sub-section (1) of Section 16. Perhaps the only other similarity is that both apply to the construction of an immovable property. Clause (c) uses the expression "plant and machinery", which is specifically defined in the explanation. Clause (d) uses an expression of "plant or machinery", which is not specifically defined.

35. Now, what is material is the explanation to Section 17, which reads thus:

"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."

The explanation defines the meaning of the expression "plant and machinery". However, as stated earlier, the expression "plant or machinery" has not been defined under the CGST Act. It is pertinent to note that clauses (c) and (d) do not altogether exclude every class of immovable property from the applicability of ITC. In the case of clause (c), if the construction is of "plant and machinery" as defined, the benefit of ITC will accrue. Similarly, under clause (d), if the construction is of a "plant or machinery", ITC will be available.

[emphasis supplied]

11. We find that the Hon'ble Supreme Court, while analyzing section 17(5)(c), *ibid*, has concluded that in the case of works contract, benefit of ITC is not available in respect of services supplied for the construction of immovable property, subject however to two exceptions [a] when the goods, services, or both, are received for construction of 'plant and machinery'; and [b] where the works contract service supplied for the construction of immovable property is an input service for further supply of the works contract.

12. Further, while analyzing section 17(5)(d), *ibid*, the Hon'ble Supreme Court has concluded that it seeks to exclude from the ambit of sub-sections 16(1) & 18(1), *ibid*, services received by a taxable person to construct an immovable property on his own account subject however, to two exceptions, where goods or services or both are received by a taxable person to

[a]construct an immovable property consisting of a "plant or machinery"; and





[b] for the construction of an immovable property made not on his own account;

The Hon'ble Supreme Court further, explains that construction is said to be on a taxable person's "own account" when (i) it is made for his personal use and not for service; or (ii) it is to be used by the person constructing as a setting in which business is carried out, further stating that construction cannot be said to be on a taxable person's "own account" if it is intended to be sold or given on lease or license.

13. The Hon'ble Supreme Court, in the case of M/s. Safari Retreats P Ltd, *ibid*, while further analyzing has held as follows viz

43. ....As the expression "plant or machinery" appears to be intentionally incorporated, it is not possible to accept the contention of the learned ASG that the word "or" in clause (d) should be read as "and". If the said contention is accepted, there will not be any difference between the expressions "plant and machinery" and "plant or machinery". This will defeat the legislative intent.

46. The expression "plant or machinery" has a different connotation. It can be either a plant or machinery. Section 17(5)(d) deals with the construction of an immovable property. The very fact that the expression "immovable property other than "plants or machinery" is used shows that there could be a plant that is an immovable property. As the word 'plant' has not been defined under the CGST Act or the rules framed thereunder, its ordinary meaning in commercial terms will have to be attached to it.

52. This Court has laid down the functionality test. This Court held that whether a building is a plant is a question of fact. This Court held that if it is found on facts that a building has been so planned and constructed as to serve an assessee's special technical requirements, it will qualify to be treated as a plant for the purposes of investment allowance. The word 'plant' used in a bracketed portion of Section 17(5)(d) cannot be given the restricted meaning provided in the definition of "plant and machinery", which excludes land, buildings or any other civil structures. Therefore, in a given case, a building can also be treated as a plant, which is excluded from the purview of the exception carved out by Section 17(5)(d) as it will be covered by the expression "plant or machinery". We have discussed the provisions of the CGST Act earlier. To give a plain interpretation to clause (d) of Section 17(5), the word "plant" will have to be interpreted by taking recourse to the functionality test.

53. One of the submissions of the learned ASG is that as the Union legislature cannot levy tax on land and buildings, the chain is broken once a building comes into existence by using goods and services. As discussed earlier, Schedule II of the CGST Act recognises the activity of renting or leasing buildings as a supply of service. Even the activity of the construction of a building intended for sale is a supply of service if the total consideration is accepted before the completion certificate is granted. Therefore, if a building qualifies to be a plant, ITC can be availed against the supply of services in the form of renting or leasing the building or premises, provided the other terms and conditions of the CGST Act and Rules framed thereunder are fulfilled. Therefore, the argument regarding breaking the chain cannot be accepted in its entirety. However, if the construction of a building by the recipient of service is for his own use, the chain will break, and therefore, ITC would not be available.



14. We find that the Hon'ble Supreme Court while analyzing the expression plant or machinery, held that there could be a plant that is an immovable property; that the word 'plant' not having been defined under the Act, its ordinary meaning in commercial terms will have to be attached to it. The Hon'ble Court, thereafter laid down a functionality test, further concluding that if a building qualifies to be a plant, ITC can be availed against the supply of services in the form of renting or leasing the building or premises, provided the other terms and conditions of the CGST Act and Rules framed thereunder are fulfilled; that however, if the construction of a building by the recipient of service is for his own use, the chain will break, and ITC would not be available.

15. The appellant has stated that the VCV lines can be termed as apparatus and machinery; that the construction of concrete tower for erection and support of VCV lines are eligible for ITC as they are used for providing foundation and structural support. We find that the aforementioned judgement lays down the law as far as section 17(5)(d), *ibid*, is concerned, ITC on services received for construction of immovable property on his own account is blocked subject however, to two exceptions, as listed *supra*. The Hon'ble Court further explains taxable person's "own account" to be when (i) it is made for his personal use and not for service or (ii) it is to be used by the person constructing as a setting in which business is carried out. On examining the applicant's case in light of the above, we find that the ITC on inputs and input services used for construction of concrete tower to support and erect EHV cables, is hit by section 17(5)(d), *ibid* and therefore ITC is not eligible on this count.

16. Now on examining the matter as to whether it would fall within the other exception of 17(5)(d), *ibid*, i.e. construction of an immovable property consisting of a "plant or machinery", we find that the Hon'ble Court has laid down a functionality test, holding that if a building qualifies to be a plant, ITC can be availed. However, even on this count, if the construction of a building by the recipient of service is for his own use, the chain will break, and therefore, ITC would not be available. We have already held that in the present dispute, the appellant has not been in a position to prove that it is not on his own account. Going by the rationale of the judgement, *supra*, we hold that on this ground also, the appellant would not be eligible for ITC.




17. The plethora of judgements relied upon by the appellant, would not support his case, more so because, in paragraph 25 in the case of Safari Retreats P Ltd, *supra*, the Apex Court, has summarized the law regarding interpretation of taxation statutes and thereafter, passed the aforementioned judgement, which we have relied in coming to the aforementioned findings. Even otherwise, we find that the case laws relied upon is not relevant as it mostly pertains to the Income Tax Act.

18. The other averments especially reliance on the circular dated 26.6.2024 wherein clarification is provided regarding ITC on ducts and manholes used in network of optical fiber cables (OFCs) in terms of section 17(5) of the CGST Act, 2017, is not applicable to this matter since the clarification provided is specifically on ducts and manholes. The other averments raised by the appellant, are not being gone into since in the judgement of Safari Retreats Pvt Ltd., the Hon'ble Apex Court has examined section 17(5)(d), *ibid*, in its entirety and has laid down the law, which in terms of Article 142 of Constitution of India, is the law of the land.

19. In view of above, we rule as under:

#### **RULING**

*The applicant is not eligible to avail ITC on inputs and input services used for construction of concrete tower to support and erect the VCV lines at the factory of the applicant, for manufacture of EHV cables, in terms of Section 17(5)(c) and (d) of the CGST Act, 2017.*

  
(Kama Shukla)  
Member (SGST)

  
(P.B. Meena)  
Member (CGST)



Place: Ahmedabad  
Date: 21.03.2025