

- Ref. 1. ARA Order passed on dated 24.05.2019.
 2. AAAR order passed on dated 06.11.2019.
 3. Order passed by the Hon'ble High Court dated 10.06.2025.

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai - 400010.
 (Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri. D. P. Gojamgunde, Joint Commissioner of State Tax, (Member)
 (2) Smt. Himani Dhamija, Joint Commissioner of Central Tax, (Member)

ARN No.	NA
GSTIN Number, if any/ User-id	27AAGCK0390Q1Z0
Legal Name of Applicant	M/s. Konkan LNG Private Limited
Registered Address/Address provided while obtaining user id	RGPPL, Guhagar Road, Anjanwel, Ratnagiri, Maharashtra Ratnagiri - 415634
Details of application	Original GST-ARA, Application No. 123 Dated 22.02.2019 and restored for fresh order by Hon'ble High Court order dated 10.06.2025.
Concerned officer	DIVISION-V-RATNAGIRI, RANGE-I
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A	Category
B	Description (in brief)
	Service Recipient
	The Applicant having the LNG regasification plant at Dabhol, Maharashtra and hereby engaged in the regasification of the LNG and its transportation of its clients.
Issue/s on which advance ruling required	➤ 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 applicant M/s. Konkan LNG Private Limited filed an application for Advance Ruling dated 22.02.2019 for the following questions:

- 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.
- 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.



The Advance Ruling Authority passed the order dated 22.02.2019 and answered these questions are below:

Answered for question no.1: Answered in the affirmative.

Answered for question no. 2: Not answered in view of the fact that the issue involved the supplier of invoices.

Aggrieved by this order, said applicant filed an application before the Appellate Authority for Advance Ruling (AAAR). The AAAR decided the matter and, vide order dated 06.11.2019, upheld the order passed by the AAR.

The applicant was not satisfied with the decision passed by the AAAR and filed petition before the Hon'ble Bombay High Court (Writ Petition no. 313 of 2021) and Hon. High Court passed the Order on 21.10.2024 as below.

Hon'ble High Court set aside the order dated 24.05.2019 made by the Authority for Advance Ruling ("AAR") and the order dated 06.11.2019 passed by the Appellate Authority and remanded the matter to the AAR for a fresh ruling in the light of the observations of the Hon'ble Supreme Court in the case of M/s. Safari Retreats Private Limited.

The application remanded back to the Advance Ruling Authority with permission to submit additional material. The applicant submitted the submission before the Advance Ruling Authority dated 20.08.2025 as below:

1. FACTS AND CONTENTION - AS PER THE APPLICANT:

In the light of Hon. High Court judgment, applicant has submitted his additional submission on 20.08.2025.

1.1 That the applicant company emerged out of demerger of M/s Ratnagiri Gas and Power Pvt. Ltd. (in short, RGPPL), which was a joint venture of NTPC, GAIL and Maharashtra State Govt. M/s RGPPL was incorporated in July, 2005 to takeover Dabhol Power Company promoted by Enron Corporation, USA and others. Later through scheme of demerger approved by the National Company Law Appellate Tribunal (NCLAT), M/s RGPPL retained the power plant whereas the LNG Terminal was transferred to the applicant M/s Konkan LNG Ltd. and since then is engaged in regasification of LNG (liquefied natural gas) at its regasification plant situated in Dabhol in the vicinity of Dabhol LNG Terminal, District Ratnagiri, Maharashtra.

1.2 That the geographical position of LNG regasification plant of the applicant is in open Arabian Sea.

1.3 That the Dabhol LNG Terminal being open to unpredictable and rough sea conditions, construction of Break water project before the jetty inside the sea was an integral part of the regasification plant designed by Enron International in 1992. Therefore, Enron International commenced the construction of Break water project in the initial period of plant construction. However, it remained incomplete for a long time.

1.4 That unloading facilities such as Unloading Arms mounted on Jetty, Marine Fenders, Mooring Hooks etc. are designed to function only with Break water conditions due to rough sea conditions during monsoon season. The above equipments are absolutely necessary for berthing of marine cargo and in case of breakdown of these equipments due to flow of high strong water waves / tides, particularly in rough monsoon season,



the vessel cannot stay at the jetty area and consequently unloading operations cannot take place leading to complete shutdown of the Regasification plant.

1.5 That when break water project was under construction phase, plant was roughly operating for around 7 months in a year. As per Maharashtra Maritime Board (MMB), the port was not an "All Weather Port" but was just a "Fair Weather Port" and hence it did not allow the applicant to operate the plant during the monsoon period (rough weather from May to August every year). Further, it can also be noted that if rough sea conditions are experienced for the entire year due to unpredictable natural conditions, the plant will not be able to operate at all in the absence of break water project. Thus, jetty as well as Break water project are integral parts of the LNG regasification plant of the applicant.

1.6 That with a view to fight against strong sea waves / tides moving during rough weather (monsoon season), the applicant constructed Break water project at a distance of 750 meters from the jetty line. The total length of Break water project is 2300 meters inside the sea water area. The primary function and purpose of the break water is to absorb or throw back as completely as possible the energy of the maximum sea waves assailing the coast. It is to ensure that the swell and wave height is kept at minimum with desired limit thereby preventing damage to the jetty and other structures on shore.

1.7 That the applicant submits that they were not allowed to berth and unload LNG from the vessel during monsoon and rough weather conditions. The Ratnagiri port itself used to be closed for shipping activities by the Maharashtra Maritime Board, Ratnagiri. Copies of 2 circulars dated 19.05.2023 and 21.05.2024 issued by the Regional Port Officer, Maharashtra Maritime Board, Ratnagiri declaring foul weather season from 26.05.2023 to 31.08.2023 and similarly from 26.05.2024 to 31.08.2024 are attached with the application.

1.8 That the Board closed the navigation of vessels at Ratnagiri port during the dangerous period (May to August). During this period, due to non-arrival of LNG vessels, the LNG regasification plant of the applicant came to complete halt. Therefore, to continue non-stop business activities of regasification of LNG into natural gas (gaseous form) on job work basis, the applicant decided to complete the construction of Break water project to ensure safety of the jetty and LNG carrier / vessel so that the vessel could take berth and unload LNG even during tough monsoon season. For this purpose, the applicant awarded contract to M/s. Larsen & Toubro Ltd. for completion of balance work of Break water project at LNG Terminal, Dabhol. A copy of Letter of Acceptance (LOA) dated 18.02.2020 issued by the applicant to M/s L&T is enclosed with submission.

1.9 That the work of construction of Break water project was completed on 12.04.2025. A completion certificate dated 18.04.2025 issued by M/s. Engineers India Ltd. who were engaged by the applicant as Engineer-in-Charge in the Break water project is enclosed with submission.

1.10 That consequent upon completion of work of constructing / reconstructing Break water project near the jetty area at Dabhol LNG Terminal, Maharashtra, the office of Director General of Shipping, Ministry of Shipping, Govt. of India issued Certificate of



Compliance on 14.05.2025 for Safe Operational Port. A copy of Certificate of Compliance for NSPC issued by the Director General of Shipping is enclosed with submission.

1.11 That the Maharashtra Maritime Board has recently recognized Dabhol LNG Terminal as full-fledged Terminal / all-weather port for berthing and unloading of LNG cargo at applicant's LNG Terminal jetty at Dabhol during the entire year without any restriction on the business of the applicant. A copy of permission letter dated 22.05.2025 issued by Maharashtra Maritime Board is enclosed with submission.

1.12 ARA Proceedings held in the past in the case of the applicant.

1.12.1 That for the purpose of construction of Break water project to save the jetty and the standing vessel from the impact of strong sea waves / tides flowing during rough weather, the applicant invited tender from the interested parties for the following scope of work:

"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."

1.12.2 That the applicant awarded the contract to M/s Larsen & Toubro Ltd. vide LOA dated 18.02.2020 for original contract value of Rs. 592.96 cr. + EURO 18.86 lacs and further amended to Rs. 722.66 cr. + EURO 19.07 lacs. The contract value was inclusive of all taxes and duties except GST which was payable by the applicant extra to the contractor. The contractor was required to supply of goods as well as services in the process of completion of work i.e. construction of Break water project.

1.12.3 That since the applicant were not clear as to their eligibility to avail Input Tax Credit (ITC) of GST taxes paid to the contractor for supply of goods and / or services used in the construction of Break water project, the applicant filed application seeking advance ruling under section 97 of CGST / MGST Act, 2017 about admissibility of ITC to the applicant. The application for advance ruling was registered as Application No. 123 dated 22.02.2019 in the office of AAR, Maharashtra, Mazgaon, Mumbai.

1.12.4 That the Maharashtra Authority for Advance Ruling refused to recognize Break water project as "plant". The AAR held that to qualify the Break water project as "plant" it must be established that it is impossible for the regasification plant to function without Break water. The AAR further held that since the applicant's regasification plant is already functioning without complete Break water in place, the applicant could not establish that it is impossible for them to function without Break water project and therefore the Break water project is merely an immovable property and does not qualify as "plant or machinery" as referred to in section 17(5)(d) of CGST Act, 2017. Accordingly, the AAR vide order dated 24.05.2019 denied benefit of ITC of taxes paid by the applicant to the supplier



of goods / services on the construction of Break water project adjacent to the jetty in the LNG Terminal, Dabhol.

1.12.5 That in first appeal, the Maharashtra Appellate Authority for Advance Ruling (AAAR) confirmed the order of the AAR holding that the judgment of the Bombay High Court in the case of CIT Vs. Mazagaon Dock Ltd. reported in (1991) 191 ITR 460 (Bom) was delivered w.r.t. definition of "plant" defined in section 43(3) of Income Tax Act, 1961. The AAAR viewed that the said definition is not pari materia to the one under CGST Act. Moreover, the Explanation below section 17(6) of CGST Act defines "plant and machinery" in exhaustive manner as the definition starts with the term "means" while the definition of "plant" u/s 43(3) of Income Tax Act begins with the term "includes" and therefore the decision under Income Tax Act is not applicable in the case of the applicant. The AAAR passed order No. MAH/AAAR/SS-RJ/14/2019-20 dated 06.11.2019.

1.12.6 That the applicant filed Writ Petition No. 313 of 2021 before the Hon'ble Bombay High Court to contest the appellate order dated 06.11.2019 passed by the AAAR Authority. The High Court vide order dated 28.06.2024 dismissed the petition on the following grounds:

- (a) The term "plant" suggests that it would mean and include a place where an industrial activity takes place and / or factory where certain material is produced and machinery is used to carry out certain process or production. Going by this logic, the Break water project or accropodes used in the wall do not qualify as "plant or machinery".
- (b) Break water project is used for protecting the vessel from tides while unloading the LNG received and not for making outward supply of goods or services. Therefore, Break water project cannot be treated as "plant and machinery" as defined in the Explanation given below section 17(6) of CGST Act, 2017.



1.12.7 That against the High Court order, the applicant filed SLP (Civil) No. 847 of 2025 (Converted into Civil Appeal No. 2631 of 2025) in the Supreme Court of India. The Apex Court vide order dated 17.02.2025 set aside the High Court order and restore the writ petition on the file of the Bombay High Court to enable the High Court to make adjudication keeping in view the latest judgment of the Supreme Court in the case of Chief Commissioner of CGST Vs. Safari Retreats Pvt. Ltd. and Others reported 2024 (90) GSTL 3 (SC).

1.12.8 That on request of the counsels of the parties, the Bombay High Court has further remanded the matter to the AAR for fresh consideration in accordance with law after taking into account the decision of the Supreme Court in Safari Retreats case and retrospective amendment in CGST Act, 2017 vide Finance Act, 2025. The Bombay High Court passed judgment on 10.06.2025 with directions that both the parties may file additional material before the AAR and all contentions of the parties are left open.

1.12.9 That this how the applicant is presenting their case before the Hon'ble Authority for Advance Ruling under GST Law, Maharashtra w.r.t. their ARA No. 123 of 2019.

1.13 Break Water Project - Technical aspects.

1.13.1 That at the outset, the applicant submits that the Break water project is not a simple earthwork or civil structure but it is scientifically designed and engineered layout. The project is not made of cement, sand, stone dust or other usual materials for construction of civil construction wall / structure as such. On the other hand, the Break water project consists of Core, Armour layer and Accropodes which are specially-shaped concrete armour units installed as outer layer of Break water project.

1.13.2 That the complete Break water project comprises of accropodes to be installed on core structure of rocks and 1.5 MT to 3.0 MT of secondary armour layer of boulders. The uneven surface of accropodes leads inter-locking capacity and therefore, Break water consists of accropodes, rocks and boulders. The primary function of Break water is to absorb or throw back as completely as possible the energy of maximum sea waves assailing the coast in a stronger manner during rough weather. It is to ensure that swell and wave height is kept at the minimum limit thereby preventing damage to the jetty and other structures on shore.

1.13.3 A copy of Technical Note dated 07.08.2025 on Break water project issued by M/s Engineers India Limited, the Engineer-in-Charge (EIC) is enclosed with submission.

1.14. Admissibility of input tax credit of taxes paid on supply of goods and / or services for construction of Break Water Project.

1.14.1 That it is provided in section 16(1) of CGST Act, 2017 that every registered person shall 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. The end use of goods or services or both should be in the course or furtherance of business of the taxpayer. In case the goods or services are used for personal purposes or non-business purposes, the benefit of ITC is not available to the taxpayer.

1.14.2 That the expression "business" is defined in section 2(17) of the CGST Act in an inclusive manner. The definition is a broad definition for the purpose of GST law. However, the legislature has not explained or defined the expression "in the course or furtherance of business" used in section 16(1) of the CGST Act, 2017.

1.14.3 That at the time of GST roll over, the Ministry of Finance issued clarification by way of FAQ on GST issues. In one of the FAQs elaborating the scope of the term "in the course or furtherance of business" the Ministry clarified as under:

'Q9. What do you mean by "supply made in the course or furtherance of business"?

Ans. No definition or test as to whether the activity is in the course or furtherance of business has been specified under the MGL. However, the following business test



is normally applied to arrive at a conclusion whether a supply has been made in the course or furtherance of business:

- (1) Is the activity, a serious undertaking earnestly pursued?
- (2) Is the activity is pursued with reasonable or recognisable continuity?
- (3) Is the activity conducted in a regular manner based on sound and recognised business principles?
- (4) Is the activity predominantly concerned with the making of taxable supply for consideration / profit motive?

The test may ensure that occasional supplies, even if made for consideration, will not be subjected to GST.

1.14.4 That the applicant submits that the meaning of the expression "in the course or furtherance of business" is similar to the expression "used for the purposes of business or profession" appearing in section 32(1) of Income Tax Act, 1961 which allows specific deduction in respect of depreciation allowable on buildings, machinery, plant or furniture as tangible assets.

1.14.5 That the words 'used for the purposes of the business' obviously mean as used for the purpose of enabling the owner to carry on the business and earn profits in the business. In other words, the machinery or plant must be used for the purpose of that business which is actually carried on and the profits of which are assessable u/s. 28 [Liquidators of Pursa Ltd. v. CIT, (1954) 25 ITR 265 (SC)].

1.14.6 That the expression 'used for purposes of business' takes into account emergency spares also which even though ready for use are not as a matter of fact consumed or used during relevant period as these are spares specific to a fixed asset and will, in all probability, be useless once asset is discarded [CIT v. Insilco Ltd., - (2010) 320 ITR 322]. The phrase 'used for purpose of business' should be interpreted to mean that such plant or machinery must be open to use for business and proof of actual user is not necessary.

1.14.7 That in view of similarity of expressions "used for the purposes of business or profession" under section 32 of Income Tax Act and the expression "used in the course or furtherance of business" under section 16(1) of CGST Act, 2017, the applicant submits that the interpretation placed by the Courts under Income Tax Law is equally applicable in ITC cases regulated by section 16(1) of CGST Act, 2017.

1.14.8 That since in the opinion of the applicant, ITC is lawfully available to the applicant in respect of goods and services used in the construction of Break Water project which is plant and machinery / capital asset, the applicant has capitalized the entire expenditure (excluding ITC portion) under the head "Plant and Machinery" in the books of accounts of the applicant. In support, the applicant encloses a certificate from their Chartered Accountant M/s P.D. Agrawal & Co., New Delhi to certify that in respect of Break Water project, the company has capitalized expenditure of Rs. 1194.46 crores (excluding GST ITC of Rs. 129.42



crores) under the head "Plant and Machinery" as on 30.06.2025. The CA certificate dated 04.08.2025 is enclosed with submission.

1.15 Blocked ITC on goods and / or services supplied for construction of immovable property (other than plant and machinery).

1.15.1 That the provisions of section 17(5) of CGST Act, 2017 list out goods and services which are blocked from admissibility of ITC to the taxpayer. The provisions of Section 17(5) are legislated notwithstanding the provisions of section 16(1) and 18(1) of CGST Act, 2017. In particular, the applicant refers to clause (c) and (d) of section 17(5) where the benefit of ITC has been blocked by the legislature on construction of civil structure / immovable property. These clauses are reproduced below: -

Section 17(5): Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely: -

"(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 and machinery) on his own account including when such goods or services or both are used in the course or furtherance of business."

1.15.2 That the applicant submits that clause (c) applies when works contract services are provided for construction of immovable property. A works contract as defined in section 2(109) is a contract for building, construction, fabrication, erection, installation, completion, repair, maintenance etc. of any immovable property wherein transfer of property in goods is involved in the execution of such contract. Thus, in the case of works contract, services supplied for the construction of immovable property, benefit of ITC is not available. However, there are exceptions to clause (c). These exceptions are outlined below:

(a) When the goods or services or both are received by the taxable person for the construction of plant and machinery;

(b) When the works contract service is supplied for the construction of immovable property which is an input service for further supply of works contract service.

1.15.3 That clause (d) of section 17(5) is different from clause (c) in various aspects. Clause (d) seeks to exclude goods or services or both received by a taxable person to construct an immovable property on his own account. There is **no** similarity between clause (c) and (d) of section 17(5) except for the fact that both the clauses apply as an exception to section 16(1) of CGST Act. Secondly, both the clauses refer to construction of immovable property where benefit of ITC is not available to the taxpayer except where goods and services are used for construction of plant and machinery.



1.15.4 That the applicant further submits that works contract services or goods and / or other services received by a taxable person for construction of immovable property are disqualified / blocked from the benefit of ITC. The construction of plant and machinery is excluded from the ambit of clause (c) and (d) of section 17(5) of CGST Act, 2017. Since these clauses are applicable to immovable properties other than plant and machinery, it is not necessary that the plant and machinery should necessarily be movable property. In other words, plant and machinery so constructed can either be movable or immovable property. An immovable property can still qualify as plant and machinery in case the property can be considered as "plant and machinery" in the popular sense.

1.16 Meaning of "plant and machinery" in clause (c) and (d) of section 17(5).

1.16.1 That for the purpose of ITC provisions, the expression "plant and machinery" is defined in the Explanation given below section 17(6) of CGST Act as under:

"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."

1.16.2 That on going through the definition of "plant and machinery" (supra), it means an apparatus, equipment and machinery fixed to earth by foundation or structural support. Secondly, the plant and machinery is such that is used for making outward supply of goods or services or both. Thirdly, foundations and structural support to plant and machinery are also part of plant and machinery. However, the following items are excluded by name from the definition of "plant and machinery". The excluded items are

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises.

1.16.3 That as the "plant and machinery" means apparatus, equipment etc. used for making outward supply of goods or services, the applicant submits that Break water project so constructed by the applicant with the help of core structure of rocks, armour layer of boulders and finally placing accropodes to absorb or throw back the energy of maximum sea waves assailing the coast, is an apparatus itself and thus it qualifies as "plant and machinery" and not mere civil structure / immovable property.

1.16.4 That the expression "apparatus" is a group of instruments, tools etc. for a specific use. A collection of equipment's used for a particular purpose are denoted as "apparatus". As per dictionary meanings, "apparatus" means an implies.

- (1) A compound instrument designed to carry out a specific function.



(2) Set of materials or equipments designed for a particular function.

(3) An instrument or appliance designed for a specific operation.

1.16.5 That the word 'apparatus' would certainly mean the compound instrument or chain of series of instruments designed to carry out specific function or for a particular use. [Commer. of Customs v. C-NET Communication (I) (P) Ltd., (2007) 12 SCC 72]. A similar view has been taken by the Tribunal in the case of I.C.B. (P) Ltd. v. CCE, Baroda reported at 1997 (95) ELT 239 (Trib).

1.16.6 That by applying the meaning of the word "apparatus", the Tribunal has held the following items as apparatus:

(1) Fibre glass filter mesh used or filtering out the impurities from the molten metal - Escorts Ltd. Vs. CCE - 1993 (68) ELT 682 (Trib-Mad).

(2) Bladders, airbags, shaper tubes and curing bags used inside the tyers during vulcanization for giving proper shape to the tyre.

(3) Grinding wheels used in cleaning or polishing tool before nickel plating process - Mascot (India) Tools and Forgings (P) Ltd. Vs. CCE - 1994 (72) ELT 339 (Tri-Delhi).

(4) Sintered Glass Crucibles having a life of 25/30 sinterings and are used for bringing about change in the raw materials are apparatus.

1.16.7 That the applicant submits that the complete Break water project comprises of accropodes to be installed on core structure of rocks and armour layer of boulders. The uneven surface of accropodes leads to inter-locking of boulders and therefore the Break water consisting of accropodes, rocks and boulders is covered by the term "apparatus" since it is a collection of materials with specific function of absorbing or throwing back the energy of strong / intensive sea waves assailing the coast. As Break water project is considered to be apparatus, it is wholly irrelevant and immaterial whether the Break water is an immovable property. Being apparatus, the Break water project is eligible for the benefit of ITC on goods and services used in the construction of the project.

1.17 Functionality Test of Plant and Machinery

1.17.1 That in order to decide whether a building or civil structure is a "plant" for the purpose of section 17(5)(d) of CGST Act, 2017, the Hon'ble Supreme Court has recently applied Functionality test in the case of Chief Commissioner of CGST Vs. Safari Retreats Pvt. Ltd. reported in 2024 (90) GSTL 3 (S.C.). Para 52 from the said judgment is reproduced below for ease of understanding: -

"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."

1.17.2 That the question whether a mall, warehouse or any other building constructed for renting purpose can be classified as a "plant", the Apex Court summarized the legal position in para 65(c) as under: -

"The question whether a mall, warehouse or any building other than a hotel or a cinema theatre can be classified as a plant within the meaning of the expression "plant or machinery" used in Section 17(5)(d) is a factual question which has to be determined keeping in mind the business of the registered person and the role that building plays in the said business. If the construction of a building was essential for carrying out the activity of supplying services, such as renting or giving on lease or other transactions in respect of the building or a part thereof, which are covered by clauses (2) and (5) of Schedule II of the CGST Act, the building could be held to be a plant. Then, it is taken out of the exception carved out by clause (d) of Section 17(5) to sub-section (1) of Section 16. Functionality test will have to be applied to decide whether a building is a plant. Therefore, by using the functionality test, in each case, on facts, in the light of what we have held earlier, it will have to be decided whether the construction of an immovable property is a "plant" for the purposes of clause (d) of Section 17(5)."

1.17.3 That applying the functionality test, the Hon'ble Delhi High Court in the case of Vodafone Mobile Services Ltd. Vs. Commissioner of Service Tax, Delhi reported in 2019 (27) GSTL 481 (Delhi) held that if an item is required for providing output service by the service provider on a commercial scale, the functional test would be satisfied. It was held that Base Transceiver Station (BTS) is an integrated system and each of the components have to work in tandem with one another to provide the required connectivity to the cellular phone users and for effective telecommunication services. The towers and pre-fabricated shelters form an essential in the provision of telecommunication service. The towers in CKD condition are used for the purpose of supplying the service and therefore would qualify as "input". There is actual use of the towers and shelters in conjunction with the Antenna and BTS equipments in providing the output service. As towers and shelters are integrally connected to the rendition of telecommunication services being components and accessories of Antenna and BTS equipments, CENVAT credit is available on inputs and input services used in the construction of telecommunication towers.

1.17.4 That the applicant submits that the functionality test is not a new test. It has been applied and tested in plethora of judgments passed by the several High Courts and the Supreme Court time and again in taxation laws. A gist of important judgments wherein functionality test has been successfully applied by the judiciary is given in the succeeding paragraphs.



1.17.5 CIT Vs. RG Ispat Limited - (1994) 210 ITR 1018 (Raj) The assessee was engaged in the manufacture of grinding media balls and ingots. The assessee constructed structures within the factory with extraordinarily heavy and specially designed to take up heavy dynamic live and static loads of cranes and handle hefty ladles with hot molten metal, scrap furnaces etc. The assessee claimed that the massive reinforced concrete structure, specially designed to take up loads of material constituted "plant" within the meaning of section 43(3) of Income Tax Act, 1961. The Rajasthan High Court applied functionality test to check whether structure is used for carrying on business and hence it is a tool of the trade or whether it is only a place of business within which the business is carried on. By examining the nature of the structure on the basis of functional test, the Rajasthan High Court held as under: -

"The Tribunal has observed that the blue print of the structure was produced before them and they were satisfied that the structure has been raised to provide support to the gigantic cranes. On the basis of this blue print, the Tribunal came to the conclusion that the structures were raised to make the plant operative which could not have functioned in its absence. It was further observed that it is not a mere structure for location of the plant but the structure which makes the plant operative and workable. There may be a structure which falls within the category of building and plant. Whether the structure is a building or a plant has to be examined on the basis of the functional test. The use of the structure makes the distinction between plant or building in which it could be categorised. In the present case, the revised return was submitted in the proceedings initiated on the basis of the directions issued under section 263 of the Income-tax Act. The claim of the assessee was rejected by the Income-tax Officer and the said revised return was not accepted. The proper course for the Commissioner of Income-tax would have been to first determine as to whether the revised return was liable to be entertained or to be ignored. No such decision has been taken by the Commissioner of Income-tax and he has proceeded on the basis of the nature of the structure and held that it is plant. The only question which has been raised before us is with regard to the justification in holding the structure as plant within the meaning of section 43(3) of the Income-tax Act and the Income-tax Appellate Tribunal has mentioned that the structure was raised to make the plant operative which could not have functioned in its absence.

Therefore, we are of the view that the portions of the structure which were required to make the cranes operative and in the absence of which it was not possible to operate the cranes and the construction of such structure was specially designed for that purpose, the structure would fall within the definition of "plant". The extra structure which is in addition to such structure could not be considered as "plant".

1.17.6 CIT Vs. Victory Acqa Farm Ltd. - (2004) 271 ITR 530 (Kerala) The assessee was a company doing business in aquaculture. The assessee constructed specially designed ponds for the purpose of breeding of fish within those ponds. The case



of the assessee was that in order to keep the order at the required level for the purpose of breeding shrimps or prawns, the pond is the foremost requirement. According to the assessee the pond constitutes "plant" eligible for depreciation at the rate as applicable to the plant and machinery. The question, therefore, before the Kerala High Court was whether the pond is a "plant" for the purpose of claiming depreciation thereon under the Income Tax provisions. The High Court affirmed the views of the Tribunal in holding that the pond was a plant and hence entitled to statutory depreciation. The relevant paragraphs from the High Court judgment are reproduced below: -

"In order to keep the water at the required level for the purpose of breeding shrimps or prawns the pond is a must. The breeding of fish cannot be carried on within the ponds. As referred to by the Tribunal, water plays the role of a machine just like a timber merchant. If the timber merchant requires a sawing machine to cut and shape the log such sawing machine constitutes a plant for him. Water in the case of the assessee plays same role. Water has to be stored within the ponds. Therefore, the ponds also constitute part of the machinery in the business of the assessee. Learned counsel for the Revenue submitted that it was only a natural pond. It is not correct. According to us, the decision in CIT v. Victory Acqa Farm Ltd. [2004] 271 ITR 528 (Ker) was presumed to be covered as per the decision of the Supreme Court in CIT v. Anand Theatres [2000] 244 ITR 192. According to us, in the facts and circumstances of the case, the Tribunal was right in holding that the pond is a plant and hence, entitled to statutory depreciation."

1.17.7 CIT Vs. Victory Acqa Farm Ltd. - (2015) 379 ITR 335 (S.C.) That the against the order passed by the Kerala High Court in the case of Victory Acqa Farm Ltd., the Revenue filed appeal before the Hon'ble Supreme Court. The Apex Court after taking into account the judgment passed by the said court in CIT Vs. Karnataka Power Corporation reported in (2001) 247 ITR 268 (S.C.) upheld the High Court order. The Apex Court observed that since the ponds were specially designed for rearing / breeding of the prawns, they have to be treated as "tools" of the business of the assessee and depreciation was admissible on these ponds as "plant".

1.17.8 That by applying Functionality test, the Courts have held that the goods, drawings, designs etc. as plant for the purpose of claiming depreciation and investment allowance (formerly development rebate) under Income Tax Act, 1961. A gist of these reported judgments is given in the Table as under:

Sr. No.	Cause Title	Decision
1	Scientific Engineering House Pvt. Ltd. Vs. CIT, AP - (1986) 157 ITR 86 (SC)	Manufacturing drawings, processing documents, designs, charts, plans and other literature are depreciable assets and purchased on Capital account. Hence cost of these documents is eligible for depreciation under section 32 of Income Tax Act, 1961.
2	CIT, Gujarat-II Vs. Elecon	Drawings and patterns procured by the respondent from foreign collaborators for manufacture of elevators in India with the help of technical

	Engineering Co. Limited - (1974) 96 ITR 672 (Guj)	knowhow provided by foreign parties are "plant" and eligible for depreciation.
3	CIT Vs. Sri Krishna Bottlers Pvt. Ltd. - (1989) 175 ITR 154 (AP)	Empty bottles purchased by the respondents- assessee and used in the manufacturer of soft drinks packed in bottles, were held as "plant" and hence eligible for depreciation under section 32 of Income Tax Act, 1961.
4	CIT, Lucknow-II Vs. Kanodia Warehousing Corporation- (1980) 121 ITR 996 (Alld)	The assessee constructed warehouse for storage of potatoes for the customers on payment of rental charges of the space booked by the customer for some duration of time. The High Court applied the functionality test to decide whether a building or structure constitutes an apparatus or tool of the taxpayer's trade or it is merely a space where the taxpayer carries on his business. By applying functionality test, the High Court held that warehouse constructed by the assessee does not play any part in carrying of business activities but merely provide a space within which business activities are carried on. With this finding, the High Court held that the assessee was not entitled to claim development rebate on the warehouse buildings.

1.17.9 That the applicant refers to the latest Advance Ruling passed by Kerala Authority, GST Department, Kerala in the case of M/s Nitta Gelatin India Limited reported in 2025-VIL-112-AAR. In this case the assessee is engaged in manufacturing Gelatin using ossein, which is derived from animal bones. The assessee with a view to enhance operational efficiency at the Koratty facility (producing ossein) constructed a fresh water storage tank of 2000 KL capacity and a guard pond (effluent storage tank) with 7000 KL capacity. These facilities are crucial for maintaining free flow plant operations through proper water storage and effluent management. The applicant approached AAR to determine eligibility for claiming ITC of GST paid on goods and services used in the construction of the water storage tank and guard pond (effluent storage tank). The AAR after examining the definition of "plant and machinery" given in the Explanation below section 17(6) of CGST Act, 2017 held as under:

- (a) The definition of "plant and machinery" in the Explanation excludes land, building and other civil structures. This creates an important exception i.e. even though something may be immovable property in the ordinary sense (being fixed to the earth), ITC on the construction is not blocked under clause (c) and (d) of section 17(5), if the immovable property qualifies as "plant and machinery". In other words, "plant and machinery" can be immovable property.
- (b) The fresh water tank constructed by the assessee ensures uninterrupted availability of water necessary for production process while the guard pond provides essential effluent storage capacity to meet environmental



compliance and enable continuous operations. The structures are not administrative buildings or ornamental constructions, rather they serve dedicated and essential production - related functions.

(c) As regards the categorization of water storage tank or ponds as civil structure or part of the plant and machinery, the AAR referred to the judgment of the Hon'ble Supreme Court in the case of Chief Commissioner of CGST Vs. Safari Retreats Pvt. Ltd. wherein the Apex Court emphasized that classification of an asset must be based not merely on its form or structural characteristics but on the functional role in the business of the taxpayer. In case a building or structure is essential for carrying out the taxable activities such as renting space, manufacturing goods or processing outputs, it may be considered as "plant" rather than an excluded civil structure. By applying the test in the present case, the AAR held that both fresh water storage tank and guard pond serve the indispensable roles in the manufacturing process of the applicant. These installations are not passive civil structures but integral components of the production infrastructure. The dominant function of the storage tank and pond is operational and structural. As such they fulfil the functionality and essentiality criteria laid down by the Supreme Court. The AAR finally held that these assets merit classification as "plant and machinery" and so the restrictions under section 17(5)(d) are not attracted.

1.17.10 That the applicant refers to judgment of Gujarat Appellate Authority for Advance Ruling under GST law in the case of M/s KEI Industries Ltd. reported in 2025-VIL-37-AAAR. In this case the assessee was engaged in the manufacture and supply of extra-high voltage (EHV), medium voltage (MV) and low voltage (LV) cables upto 400 KV. The assessee upgraded its technology to manufacture EHV cables by setting up a new plant in Gujarat by using vertical continuous vulcanization (VCV) process by collaborating with foreign company to upgrade the technology. The assessee procured various inputs goods and input services to construct the outer square structure with concrete columns and concrete foundation to support the erection of the VCV line. The assessee claimed VCV line as "plant and machinery" and accordingly the input and input services procured by the assessee and used in the construction of VCV line are eligible for ITC benefit. The AAR authority held that the assessee was not eligible to avail ITC on input and input services used for construction of concrete tower to support and erect the VCV lines at the factory of the assessee for manufacture of EHV cables, in terms of section 17(5)(c) and 17(5)(d) of CGST Act, 2017.

1.17.11 Against the order of AAR, the assessee approached the Appellate Authority for advance ruling (AAAR), Gujarat GST law. The appellate authority set aside the AAR order and held that the assessee was 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 assessee for manufacture of EHV cables. Para 15, 16 and 17 from the AAAR ruling are reproduced below: -



"15. On going through the impugned ruling, we find that the GAAR has not given a finding on whether the concrete structure, claimed by the appellant to be necessary to support and erect the VCV lines, forms a part of plant and machinery. Irrespective of the fact that whether it is a works contract or otherwise, in terms of section 17(5) (c) and (d), plant and machinery stand excluded from the apportionment of credit and blocked credits. We are also mindful of the fact that section 17(5)(d) uses plant or machinery. However, vide section 124 of the Finance Act, 2025, the word 'or' has been changed to 'and', though the same is yet to be notified.

16. On going through the layout of the VCV line which is reproduced in the impugned ruling, the process inside VCV tower undertaken at each floor and the weight of the significantly heavy components to be placed on each floor [reproduced supra], we are in agreement with the appellant's averment that the concrete structure is essential to support and erect the VCV lines. It is more so since the appellant has stated that the concrete structure in the form of VCV tower serves as a critical foundation and support system for the manufacturing process; that it provides stable base for tower components; that it absorbs vibrations & ensures accurate positioning of extruder, cross head and other elements. Given these facts, we find that plant and machinery in terms of the second explanation, placed beneath section 17, ibid, specifically includes foundation and structural support. The exclusions from plant and machinery are also listed viz (i) land, building or any other civil structures; (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises. Further, 'other civil structures' means civil structures other than foundation and structural support to plant and machinery.

17. Thus, the moment it is held that the ITC sought is on construction of foundation and structural support relating to plant and machinery, it moves out of the ambit of section 17(5)(c) and (d) even if it is on their own account. This being the case, we find that the applicant is eligible for availing 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 appellant for manufacture of EHV cables."

1.17.12 That in view of the functionality test approved by the Hon'ble Supreme Court in the case of Safari Retreats Pvt. Ltd. and applied by several High Courts and the Apex Court on taxation side, the applicant submits that the Break water project constructed adjacent to jetty at Dabhol LNG Terminal have functional role in the business of the applicant. Without Break water project in existence, the intensity of sea water waves / tides during rough season/ monsoon season assailing the coast would damage the jetty as well as the standing ship and consequently halt the activity of regasification of LNG which is the core business of the applicant. The Break water project is a tool or apparatus for the applicant to carry on their business activities without any interruption even during monsoon period and as



such the Break water is a "plant and machinery" for the applicant on which the ITC embargo contained in clause (c) and (d) of section 17(5) does not apply.

1.18 Meaning and scope of "Plant"

1.18.1 That the applicant submits that the term "plant" has not been defined anywhere in the CGST /SGST Act, 2017 in spite of the fact that in the ITC provisions, the expressions "plant and machinery" or "plant or machinery" (before the Finance Act, 2025) are used. The term "plant" is defined in section 43(3) of Income Tax Act, 1961 as under:

Section 43(3)

"plant" includes ships, vehicles, books, scientific apparatus and surgical equipments used for the purposes of the business or profession but does not include tea bushes or livestock or buildings or furniture and fittings"

1.18.2 That it has been considered by various High Courts and the Hon'ble Supreme Court whether buildings with fitting of process-based machinery, equipments and other process controls are "plants" eligible for depreciation and other incentives like development rebate, investment allowance etc. from the taxable income of the assessee. In many cases the courts have held the buildings / civil structures as "plant" by considering the process requirements. A gist of relevant case law on this subject is given in the subsequent paragraphs.

1.18.3 RC Chemical Industries Vs. Commissioner of Income Tax, New Delhi - (1982) 134 ITR 330 (Del) The primary issue was whether the building used for manufacturing of saccharine and other chemicals was eligible for development rebate u/s 33 of the Income Tax Act, 1961 as "plant". The assessee carrying on the business of manufacturing of saccharine and other allied chemicals and essences, erected a new factory at Okhla Industrial Area. In one of the buildings, the assessee installed machinery and plant for the manufacture of saccharine and other chemicals. Apart from machinery, certain atmospheric controls i.e. moisture, temperature and provision for filtered air, were required for manufacture of saccharine. As such the assessee had constructed the building with particular specifications and standards to install the machinery and plant. The assessee claimed development rebate not only on the value of machinery and plant but also on the value of building in which machinery was installed. The lower authorities upto ITAT decided the matter against the assessee. The Delhi High Court after examining the definition of "plant" and its scope as interpreted by the various courts propounded the following principles: -

1. *The definition of "plant" in section 43(3) should be given a wide meaning as it is an inclusive definition.*
2. *All buildings are not "plant" despite the dictionary meaning which includes buildings; but a building or structure is not per se to be excluded from the ambit of the expression "plant"*
3. *If the concrete construction or building is used as the premises or setting in which the business is carried on in contradistinction to the fulfilling of the*



function of a plant, the building or construction or part thereof is not considered a plant. The true test is whether it is the means of " carrying on the business " or the location for so doing.

4. *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.*
5. *The particular apparatus or item must be used for carrying on the assessee's business and must not be his stock-in-trade. The matter has to be considered in the context of the particular business of the assessee, e. g., books are a lawyer's plant but a bookseller's stock-in-trade.*

Applying the above principles to the facts of the above case, the High Court held that

- (a) the building in question would not come within the expression "plant".
- (b) It is a mere setting, albeit a convenient one, where the business of manufacturing saccharine is carried on.
- (c) It has not been established that the manufacture of saccharine was not possible without the particular features said to have been incorporated in the building, nor is there any finding to this effect.
- (d) A building free from atmospheric vagaries might have certain advantages as compared with normal construction, but in the facts of the present case, it remained the space or shelter where the business of manufacturing saccharine is carried on.

1.18.4 Commissioner of Income Tax Vs. Mazagaon Dock Ltd. - (1991) 191 ITR 460 (Bom) In this case the assessee incurred heavy expenditure on the Kasara Basin Wet Dock. The assessee claimed the entire expenditure represented cost of plant and machinery and so the assessee was entitled to depreciation and development rebate on that basis. The Income Tax officer held that a major expenditure incurred by the assessee represented cost of excavation and masonry work including RCC works etc. and therefore not entitled to the benefit of development rebate. The appellate authority found that an impounded wet dock is used in fitting out works on ships. It is an enclosure which impounds sea water and consists of walls on 3 sides and a flap gate on the entrance. The walls are reinforced concrete walls of cellular construction. The dock is equipped with all equipments necessary for supply of compressed air, salt water etc. A pump-house with powerful pumps is also positioned on either side of the basin for easy fitting out work. The new ships under construction are berthed alongwith the quarry walls of the basin for the fitting out work. The appellate authority held that an impounded wet dock, as a whole was plant by itself and used in the construction of new ships. Giving this reasoning, the appellate authority allowed the benefit of depreciation as well as development rebate on the entire cost of Kasara basin wet dock. In appeal, the



Tribunal maintained the order of the appellate authority and dismissed the appeal of the Revenue.

Applying the principles laid down by the Delhi High Court in the case of RC Chemical Industries (supra), the Bombay High Court held that found that dock acted like a large vice for building ships in position where they were repaired or cleaned. The High Court observed that the dry dock was not mere setting or premises where the ships were repaired. It was different from the factory which housed the machinery for the reason that in the operation of dock, the dock itself plays a part in the control of water and enabled the valves, pumps and electricity generator which are integral part of the construction to perform these functions. As the dock was not a mere shelter or home but itself played an essential part in the operation which took place in getting the ship into the dock, holding it securely and then returning it to the river. As these items were considered as integral part of the plant which could not have worked without these items, the Bombay High Court held that the Tribunal was correct in concluding that the entire expenditure incurred on Kasara Basin Wet Dock constituted a plant eligible for benefit of depreciation and development rebate under Income Tax Act, 1961.

1.18.5 Commissioner of Income Tax, Bombay Vs. Tata Hydro Electric Power Supply Company Ltd. - [1980] 122 ITR 288 (Bom) In this case the core issue was whether the expenditure incurred by the assessee on anchoring of Walawhan Dam and cement grouting of Shirawata Dam constructed for generation and supply of electric power was entitled to development rebate under section 33 of Income Tax Act, 1961.

The assessee constructed dams as a mass and coarse rubble masonry structure with lime surki mortar. No cement was used at all. After years of weathering, it was considered necessary to strengthen the dams by the Coyne method which involves anchoring high tension steel into the bedrock of the dams, which is subsequently tensioned and grouted. The inside the structure of the dams made of rubble and surkilime mortar was also consolidated and made waterproof to protect the high tensile steel cables used for anchoring the dams from corrosion. The assessee claimed that the considerable expenditure incurred on giving the dams a new stability may be treated as creation of new assets entitled to development rebate.

The ITO as well as AAC (appellate authority) rejected claim of the assessee by holding that the dams retained their essential identity and no new dams were created. In appeal, the Tribunal accepted the contention of the assessee and accepted their appeal holding that the assessee was entitled to claim development rebate on the expenditure incurred by them during the period in dispute. Challenging the order of the Tribunal, the Department filed appeal to the Bombay High Court. The High Court affirmed the order of the Tribunal favouring entitlement of the assessee to claim development rebate on the



expenditure incurred on anchoring Walawhan Dam and cement grouting Shirawata Dam. The relevant portion of the High Court is reproduced below: -

"It is undoubtedly true that by incurring this expenditure no independent asset has come into existence but in order to entitle an assessee to claim development rebate creation of an independent asset is not essential. If by incurring this expenditure the existing dams have been so strengthened as to prolong their lives for a sufficiently long duration, then by incurring this expenditure a new plant can be said to have been installed so as to entitle the assessee to claim development rebate. Instead of demolishing the old dams and constructing new ones in their place, what has been done by the assessee by modern scientific technique is that huge expenditure has been incurred as a result of which the lives of the existing dams will be prolonged for a sufficiently long period. This will result in a new plant being installed within the meaning of s. 33 of the Act, even though by the incurring of the expenditure, the dams are not having any independent existence apart from the old dams themselves. Thus, by adopting the Coyne method of anchoring the two dams the new plant can be said to have been installed within the meaning of s. 33 of the Act, and the Tribunal was right in allowing the claim of the assessee for development rebate."

1.18.6 That the High Courts have held that the buildings or civil structures as plant entitled to the benefit of development rebate and depreciation under the provisions of Income Tax Act, 1961. A brief account of the High Court judgments is tabulated below: -

Sl. No.	Cause Title	Decision
1	Commissioner of Income Tax, Lucknow Vs. Kanodia could storage- (1995) 100 ITR 155 (All)	Building constructed by the assessee engaged in cold storage business was held to be part of plant of air conditioning the cold storage.
2	Commissioner of Income Tax, Bombay City-I Vs. Caltex Oil Refining (India) Limited - [1976] 102 ITR 260 (Bom)	Fencing constructed around the refinery processing unit was held as part of the "plant". The High Court observed that under the Petroleum Rules, 1937 which was obligatory upon the Refinery to surround the installation by a wall or fencing to safeguard against entry of unauthorized persons into the Refinery area.
3	Commissioner of Income Tax Vs. Dr. B. Venkata Rao - [2000] 243 ITR 81 (SC)	The building used as nursing home not only to house patients but also treat them with the help of equipments and instruments installed in the nursing home was held as "plant".
4	Dy. Commissioner of Income Tax Vs. Astra-IDL Ltd. - [2001] 247 ITR 564 (Kar)	The building equipped with air conditioning facility in the entire building and used as Pharma building to manufacture and supply medicines, was held by the Karnataka High Court as



		"plant" or "apparatus" for carrying out business activities.
5	Commissioner of Income Tax Vs. Karnataka Power Corporation - [2001] 247 ITR 268 (S.C.).	Power generating system building was held to be an integral part of the generating system and hence "plant" eligible for investment allowance under the provisions of Income Tax Act, 1961.
6	Addl. Commissioner of Income Tax, Madras-I Vs. Madras Cements Limited - [1977] 110 ITR 281 (Mad).	Special reinforced concrete foundation to support rotary kiln was held as part of the plant within the scope of section 43(3) of Income Tax Act, 1961.
7	Commissioner of Income Tax, AP Vs. Warner Hindusthan Limited - [1979] 117 ITR 15 (AP)	A well dug out by the assessee for carrying out manufacturing activities of Pharmaceuticals was held to be a plant for the reason that the well was used for the purpose of carrying on business activities of the assessee i.e. manufacture of pharmaceuticals.

1.18.7 That in view of the case law cited above covering the building fitted with special equipments and devices or even a well dug for carrying out business activities of the assessee as "plant" under the Income Tax Act, 1961, the applicant submits that Break water project constructed by the applicant with the help of core, armour and accropodes to achieve the stability, durability and effectiveness of entire structure to absorb or throw back the energy of maximum sea waves assailing the coast is noneless "plant and machinery" defined in the Explanation below section 17(6) of CGST Act, 2017. Accordingly, the blocked provisions of section 17(5)(c) and 17(5)(d) of CGST Act do not apply to the construction of plant and machinery, whether through the works contractor or by the taxpayer on his own account. In either case, the bar is applicable to construction of immovable property (other than plant and machinery). Since the Break water project is not merely a civil structure or immovable property but it represents plant and machinery used in carrying out business activities of the applicant, the Break water project being plant and machinery is eligible for the benefit of ITC.

1.19 Accropodes laid as uppermost layer of Break water structure are movable apparatus

1.19.1 That as already averred in para 14 that Break water project is not made of cement, sand, stone dust or other civil materials. It is not a simple earthwork or civil structure. On the other hand, this project consists of Core, Armour layer and Accropodes. The Accropodes are specially shaped concrete armour units installed as outer layer of the Break water project. The primary function of Accropodes is to absorb or throw back the intensity of strong sea waves assailing the coast during rough weather, thereby enabling berthing of LNG vessel for unloading. The accropodes ensures that the swell and wave height of sea waves / tides is kept at the minimum limit thereby preventing damage to the Jetty and other structures on shore.



1.19.2 That without prejudice to the submissions in the preceding paragraphs, the applicant submits that accropodes procured and laid as uppermost layer of the Break water structure are movable goods and are kept on the existing structure of core and armour boulders / rocks as third layer. The accropodes are placed on the existing structure by cranes. The accropodes are heavy in weight and are of such shape which leads to their inter-locking with each other and then they acquire the capacity to throw back the intensity of water waves as completely as possible, which in turn saves the jetty and the standing ship from damage.

1.19.3 That the expressions "movable property" and "immovable property" are defined in General Clauses Act, 1897 and Transfer of Property Act, 1882 in the following manner: -

Section 3(36) of the General Clauses Act.

"Movable property" shall mean property of every description, except immovable property;

Section 3(26) of the General Clauses Act.

"Immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

Section 3 of the Transfer of Property Act.

"Immovable property" does not include standing timber, growing crops or grass.

Section 3 of the Transfer of Property Act

The expression "attached to the earth" means:

- (a) rooted in the earth, as in the case of trees and shrubs;
- (b) imbedded in the earth, as in the case of walls or buildings; or
- (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

1.19.4 That the question whether a property is a movable property or it is immovable property, the courts have invented the following principles to determine the nature of the property. These tests are highlighted in the judgment of the Supreme Court in the case of Bharti Airtel Ltd. Vs. Commissioner of Central Excise, Pune reported in 2025 (391) ELT 3 (S.C.). Para 11.8.1 from the Apex Court judgment is reproduced below: -

"11.8.1 We may summarise some of the principles applied by the Courts in the decisions referred to above to determine the nature of the property as follows:

- (1) Nature of annexation: This test ascertains how firmly a property is attached to the earth. If the property is so attached that it cannot be removed or relocated without causing damage to it, it is an indication that it is immovable.*
- (2) Object of annexation: If the attachment is for the permanent beneficial enjoyment of the land, the property is to be classified as immovable. Conversely, if the*



attachment is merely to facilitate the use of the item itself, it is to be treated as movable, even if the attachment is to an immovable property.

- (3) *Intendment of the parties: The intention behind the attachment, whether express or implied, can be determinative of the nature of the property. If the parties intend that the property in issue is for permanent addition to the immovable property, it will be treated as immovable. If the attachment is not meant to be permanent, it indicates that it is movable.*
- (4) *Functionality Test: If the article is fixed to the ground to enhance the operational efficacy of the article and for making it stable and wobble free, it is an indication that such fixation is for the benefit of the article, such the property is movable.*
- (5) *Permanency Test: If the property can be dismantled and relocated without any damage, the attachment cannot be said to be permanent but temporary and it can be considered to be movable."*
- (6) *Marketability Test: If the property, even if attached to the earth or to an immovable property, can be removed and sold in the market, it can be said to be movable."*

1.19.5 That by applying the above test, the Apex Court held that mobile towers and pre-fabricated buildings / shelters are movable properties and hence goods. The Apex Court observed that the mobile tower which is attached to the earth and hence appears to be immovable, can be dismantled from the existing site and reassembles without causing any change in its structure. It can be moved to any other place and also sold in the market. Hence permanency test is lacking. The tower can be dismantled by unbolting nuts and bolts without damaging the tower per se.

1.19.6 That the Apex Court further examined whether mobile tower and shelters / pre-fabricated building can be treated as "accessories" of Antenna and BTS of Chapter 85 which are "capital goods" under CENVAT Credit Rules, 2004. The Apex Court observed that function of Antenna as part of BTS is to receive and transmit radio signals and is used for providing mobile telecom service to the subscribers. The mobile tower helps in keeping the Antenna at proper height and in a stable position so that the Antenna can transmit signals for ensuring uninterrupted and seamless service to the subscribers. Without the tower, Antenna cannot function effectively and therefore the tower and pre-fabricated building / shelter are accessories of the Antenna.

1.19.7 That taking note of the fact that mobile tower is not an immovable property / structure, the Delhi High Court in the case of Bharti Airtel Ltd. Vs. Commr. Of CGST, Delhi reported in 2025 (92) GSTL 467 (Delhi) has recently held that clause (d) of section 17(5) of CGST Act, 2017 denying ITC benefit on goods or services or both used by a taxable person for construction of immovable property (other than plant and machinery) is not applicable on telecommunication tower which is movable goods. The High Court further held that the exclusion of telecommunication towers from the definition of



"plant and machinery" in the Explanation given below section 17(6) would not mean that the telecommunication towers are immovable property. The High Court came to the conclusion that telecommunication towers would not fall within the ambit of section 17(5)(d) of CGST Act and therefore denial of ITC in respect of goods and services used in the construction and installation of telecommunication tower would not sustain for the principal reason that clause (d) is applicable only to the goods and / or services received by the taxable person for construction of an immovable property other than plant and machinery of immovable nature. Goods and / or services used in the construction of movable property are eligible for ITC without application of blocked ITC provisions contained in section 17(5) of the CGST Act, 2017.

1.19.8 That the applicant submits that the Department filed SLP against the judgment of Delhi High Court in the Apex Court challenging the High Court order. The Supreme Court having considered the matter did not find it a fit case to exercise their discretion under Article 136 of the Constitution of India and therefore the SLP was dismissed as reported in 2025 (8) TMI 707 (S.C.).

1.19.9 That the applicant submits that the tests emphasized by the Supreme Court in para 11.8.1 in the case of Bharti Airtel Ltd. Vs. CCE, Pune reported in 2025 (391) ELT 3 (S.C.) are duly satisfied by the applicant w.r.t. accropodes laid on the structure of core and armour rocks. The accropodes are the devices / apparatus with inter-locking capacity and helps to absorb or throw back the energy of sea water waves / tides assailing the coast in stronger manner during monsoon period. The accropodes are placed on the layer of armour rocks by crane in such a manner that the same can be removed or relocated without causing damage to the accropodes. Secondly, the object of placing accropodes is to facilitate use of the accropodes itself and hence the goods are movable even if attached to an immovable property. Thirdly, the intention of the applicant is not to make accropodes as permanent fixture or addition to the immovable property, it will not become a part and parcel of immovable property. Fourthly, the placement of accropodes satisfy the functionality test in as much as the article is fixed to the second layer of armour rocks to enhance the operational efficiency of the accropodes and hence it is for the benefit of the article itself. The functionality test is satisfied. Fifthly, the accropodes can be dismantled and relocated to another place without any damage and so the attachment cannot be said to be permanent. Sixthly, the accropodes can be removed and sold in the market and so marketability test is also satisfied. In view of satisfaction of these tests of nature and object of annexation, intent of the parties, functionality test, permanency test and marketability test, the applicant submits that accropodes are movable articles which are used in the construction of Break water project and so clauses (c) and (d) of section 17(5) of the CGST Act are no longer applicable to block the ITC on accropodes and services obtained from the contractor for the installation of accropodes.



1.19.10 That the applicant further submits that the core and armour rocks are accessories to the accropodes. A structure is created below the sea water level by placing core as the bottom-most layer and thereon armour rocks are placed as the second layer. The structure made of core and armour rocks is itself an accessory for placement of accropodes so that the accropodes can work effectively and discharge functionality test. Since accropodes are movable goods, the core and armour rocks are accessories for placement of accropodes on the armour rocks. As accessories to movable articles, the benefit of ITC on procurement of goods (core and armour rocks) used in the construction of Break water structure is also available to the applicant under the provisions of section 16(1) of CGST Act, 2017.

1.20 That the applicant further submits that Break water project is an integral part of LNG regasification plant at Dabhol. Since LNG is imported by the customer GAIL (India) Ltd. at Dabhol LNG Terminal and delivered to the applicant for regasification of LNG into natural gas (gaseous form), the applicant has constructed jetty in the sea water. The distance of jetty from land area is about 1.8 km. The ship containing LNG tankers is anchored by jetty line for offloading the LNG tankers. During the rough weather when the sea waves / tides are high and strong, the jetty as well as the standing ship could be damaged by the strength of these waves / tides. Therefore, to save the jetty and the ship from damage, the applicant has constructed the Break water project at a distance of 750 meters from the jetty area. Break water is made from sea bed at 17-18 meters up to the sea level and it is 7.35 meters above water level. It is made from special material of core, armour layers and accropodes which are specially shaped concrete armour units laid as outer layer. The property of the Break water project is such that it can absorb or throw back the energy of maximum sea waves assailing the coast. Break water ensures that the swell and wave height is kept at the minimum within desired limit thereby preventing damage to the jetty and other structural on shore. In view of these facts, the construction of Break water project is indispensable for the protection of jetty which itself is an integral part of the regasification plant of the applicant. Consequently, the Break water project constructed by the applicant as well as the jetty already in existence are inseparable sections of the LNG regasification plant.

21 That the applicant submits that Break water project as plant and machinery is used for making outward supply of services by the applicant. The construction of Break water project ensures that Dabhol LNG Terminal operates as "All weather port" and for that purpose, Maharashtra Maritime Board has granted permission to the applicant for berthing and unloading of LNG cargo at Dabhol during all weather conditions. The permission letter dated 22.05.2025 has been issued by the Board and the permission is valid for full one year from 26.05.2025 to 26.05.2026.

Accordingly, the applicant can now work throughout the year including during monsoon season receiving LNG cargoes and continuously engaged in regasifying the LNG into natural gas as outward supply of service. Without the Break water project,



the applicant's plant remains unoperational during rough season (May to Sept every year) due to non-arrival of vessel at Dabhol LNG Terminal. The existence of Break water project has enabled the applicant to engage in regasification activities throughout the year without any break as there is no hurdle in safe arrival and landing of vessels at the Terminal. Since the definition of "plant and machinery" covers apparatus, equipment and machinery that are used for making outward supply of goods or services or both, the applicant submits that the Break water project satisfies the condition of making outward supply of services (regasification activity) by the applicant.

PRAYER

That in view of the above submissions, the applicant prays that the Hon'ble Maharashtra Authority for Advance Ruling under GST may be pleased to

- (a) allow the application and hold that the applicant is eligible to avail Input Tax Credit in respect of CGST/SGST/IGST paid on procurement of goods and / or services for the purpose of construction of Break water project;
- (b) hold that the Break water project is a plant and machinery forming integral part of the applicant's regasification plant and consequently the blocked provisions of clause (c) and (d) of section 17(5) of CGST Act do not apply in the facts and circumstances of the case;
- (c) grant personal hearing;
- (d) pass such other order as the authority may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

2. CONTENTION - AS PER THE JURISDICTIONAL OFFICER

2.1 Before presenting new facts to the Hon. Authority of Advance ruling this office is kindly invited your attention to the detail discussion took place in the Law committee and then after councils' decision which have subsequently resulted into amendment of subsection 17(5) d. The entire discussion abundantly clears the intention of legislature and government regarding the treatment to input tax credit availment in case of proviso 17 5(c) and 17 5 (d).

2.2 Issues recommended by the Law Committee for the consideration of the GST Council.

Agenda item 3(i): Amendment in Section 17(5)(d) of CGST Act, 2017 consequent to judgement of Hon'ble Supreme Court dated 03.10.2024 in the case of M/s Safari Retreats Pvt. Ltd. The Hon'ble Supreme Court of India vide its order dated 03.10.2024 in the case of M/s Safari Retreats Pvt. Ltd. has ruled that the expression "plant or machinery" used in clause (d) of section 17(5) of the CGST Act, 2017 is distinct from the expression "plant and machinery" used elsewhere in the Act and defined by the Explanation to Section 17 of the CGST Act. Hon'ble Supreme Court has also ruled that for the purpose of clause (d) of section 17(5) of CGST Act, functionality test would have to be applied on a case-to-case basis, so as to decide as to whether an immovable property could qualify to be a "plant" or not, to determine the eligibility for availment of input tax credit on goods or services or both used in the construction of the said immovable property. The relevant extracts of the judgement are reproduced below for reference.



2.3 ANALYSIS OF CLAUSES (c) AND (d)

... Para 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 say to be on a taxable person's "own account" if it is intended to be sold or given on lease or license. ...

2.4 MEANING OF THE EXPRESSION "PLANT OR MACHINERY" IN CLAUSE (d) OF

SECTION 17(5) Para 42. The question is whether the explanation that lays down the meaning of the expression "plant and machinery" in Section 17 will apply to the expression "plant or machinery" used in Section 17 (5)(d).

2.5 Para 43. Learned ASG himself accepted that the expression "plant and machinery" appears at ten different places in Chapters V (Input Tax Credit) and VI (Tax Invoice, Credit and Debit Notes) of the CGST Act. According to him, the expression "plant or machinery" appears only in clause (d) of Section 17(5). His submission is that the use of the word "or" in clause (d) is a mistake of the legislature. To counter this, it was submitted that in the Model GST Law, which the GST Council Secretariat circulated in November 2016 to invite suggestions and comments. From the public, the expression 'plant and machinery' was used in clauses (c) and (d).

2.6 However, while enacting the CGST Act, the legislature has consciously chosen to use the expression "plant or machinery" only in clause (d). The impugned judgment in the main Civil Appeal is more than five years old. The writ petition in which the impugned decision was rendered is a six-year-old writ petition. If it was a drafting mistake, as suggested by learned ASG, the legislature could have stepped in to correct it. However, that was not done. In such circumstances, it must be inferred that the legislature has intentionally used the expression "plant or machinery" in clause (d) as distinguished from the expression "plant and machinery", which has been used in several places. 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.

2.7 Para 44. The explanation to Section 17 defines "plant and machinery". The explanation seeks to define the expression "plant and machinery" used in Chapter V and Chapter



VI. In Chapter VI, the expression "plant and machinery" appears in several places, but the expression "plant or machinery" is found only in Section 17(5)(d). If the legislature intended to give the expression "plant or machinery" the same meaning as "plant and machinery" as defined in the explanation, the legislature would not have specifically used the expression "plant or machinery" in Section 17(5)(d). The legislature has made this distinction consciously. Therefore, the expression "plant and machinery" and "plant or machinery" cannot be given the same meaning. It may also be noted here that the expression 'plant or machinery' is used in dealing with a peculiar case of goods or services being received by a taxable person for the construction of an immovable property on his own account, even when such goods or services or both are used in the course of furtherance of business. Therefore, if the expression "plant or machinery" is given the same meaning as the expression "plant and machinery" as per the definition contained in the explanation to Section 17, we will be doing violence to the words used in the statute. While interpreting taxing statutes, it is not a function of the Court to supply the deficiencies.

2.8 Para 45. Now, the question which arises is what meaning should be given to the expression "Plant or machinery". When the legislature uses the expression "plant and machinery," only a plant will not be covered by the definition unless there is an element of machinery or vice versa. This expression cannot be read as "plant or machinery". That is so clear from the explanation in Section 17, which says that plant and machinery mean apparatus, equipment and machinery fixed to the earth by foundation or structural support that are used for making outward supply of goods or services or both. The expression includes such foundation and structural support fixed to the earth. However, the definition excludes land, buildings or any other civil structure.

2.9 Para 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.

2.10 Para 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. ...



2.11 Para 65. Some of our conclusions can be summarised as under

- a. The challenge to the constitutional validity of clauses (c) and (d) of Section 17(5) and Section 16(4) of the CGST Act is not established
- b. The expression "plant or machinery" used in Section 17(5)(d) cannot be given the same meaning as the expression "plant and machinery" defined by the explanation to Section 17;
- c. The question whether a mall, warehouse or any building other than a hotel or a cinema theatre can be classified as a plant within the meaning of the expression "plant or machinery" used in Section 17(5)(d) is a factual question which has to be determined keeping in mind the business of the registered person and the role that building plays in the said business. If the construction of a building was essential for carrying out the activity of supplying services, such as renting or giving on lease or other transactions in respect of the building or a part thereof, which are covered by clauses (2) and (5) of Schedule II of the CGST Act, the building could be held to be a plant.

2.12 Then, it is taken out of the exception carved out by clause (d) of Section 17(5) to sub-section (1) of Section 16. Functionality test will have to be applied to decide whether a building is a plant. Therefore, by using the functionality test, in each case, on facts, in the light of what we have held earlier, it will have to be decided whether the construction of an immovable property is a "plant" for the purposes of clause (d) of Section 17(5)."

2.13 In this regard, it is to be mentioned that section 17 of the CGST Act deals with apportionment of credit and blocked credits. Clauses (c) and (d) of section 17(5) of CGST Act and the relevant explanations to the said section read as under: -

"17.

(5) Notwithstanding anything contained in sub-section (1) of Section 16 and subsection (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 reconstruction, 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.”

2.14 Sub-section (5) of Section 17 of CGST Act is a non-obstante sub-section. Clause (d) of section 17(5) of CGST Act restricts availment of input tax credit in respect of 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. Further, clause (c) of section 17(5) of CGST Act denies ITC in respect of 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.

2.15 The Law Committee deliberated on the issue in its meeting held on 13.11.2024. It observed that in essence, both clause (c) and (d) of section 17(5) of CGST Act intend to disallow input tax credit on the goods or services or both when used for construction of an immovable property (other than plant and/or machinery). The rationale behind this is that GST is not leviable on sale of immovable property, which leads to a clear case of break in tax chain. Sale of land and building are clearly outside the purview of GST in terms of S. No. 5 of Schedule III to Section 7 of CGST Act, 2017 which provides that the “sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building” shall neither be treated as supply of goods nor as supply of services.

2.16 The Law committee took a note that that there is a minor difference in the usage of words in clause (c) and clause (d) of sub-section (5) of section 17, i.e. the expression ‘plant and machinery’ has been used in clause (c) of the said section and the same has been defined in the Explanation to section 17 of CGST Act (reproduced below) and has been used multiple times in the Act, whereas the expression ‘plant or machinery’ has been used in the clause (d) of the said section which is only used once in the Act i.e. in the said clause. “.. 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 Law Committee noted that the legislature/ GST Council, on their own, to clear ambiguity regarding interpretation of the said expression, have clearly defined the expression ‘plant and machinery’, for the purposes of Chapter V & VI of CGST Act. However, the expression ‘plant or machinery’ have not been separately defined either in any of the above chapters or elsewhere in CGST Act. Whereas, as discussed above, the intention of the legislature/ GST Council was to deny the benefit of ITC in respect of construction of immovable property, other than when the immovable property was in nature of plant and/ or machinery.

2.18 The Law Committee also felt that while defining ‘plant and machinery’ in the Explanation at the end of section 17(5) of CGST Act, and not separately defining ‘plant or machinery’ in the Act, the legislature/ Council apparently intended both ‘plant and machinery’ as well as ‘plant or machinery’ to be read from the said definition given in



Explanation at the end of section 17(5) of CGST Act, as it would never have intended to define one expression viz 'plant and machinery' in the Act to remove ambiguities, while leaving other expression viz 'plant or machinery' open to varied interpretations, which may have caused confusion and legal disputes. The same implies that legislature/ Council never wanted to treat the expression 'plant or machinery' any different from the expression 'plant and machinery'. Further, had the legislature/ Council intended to treat them differently, it would have defined either the expression "plant or machinery" or the words "plant" and "machinery" separately in the of Chapter V and VI or elsewhere in CGST Act.

2.19 It was also noted that in the draft Model GST Law circulated on November, 2016, the expression 'plant and machinery' were used in both clause (c) and (d) of section 17(5). However, the vetted draft of CGST Law presented before the 11th GST Council meeting held on 4th March, 2023 carried the expression 'plant or machinery' only in clause(d) of section 17 (5) of the CGST Act.

2.20 The Law Committee also discussed that there is catena of judgements where the Hon'ble Supreme Court of India has held that 'and' or 'or' must be read as 'and'. However, in the case of M/s Safari Retreats Pvt. Ltd., the Hon'ble Supreme Court of India has assigned distinct meaning to the expression "plant and machinery" and "plant or machinery" used in clause (c) and clause(d) respectively of section 17(5) of the CGST Act and has left the meaning of the word "plant" in the expression "plant or machinery" in clause(d) of section 17(5) of the CGST Act, to be interpreted on a case-to-case basis, applying the functionality test to the facts of the case. The Law Committee observed that the word "plant" is not defined under the CGST Act or even in the General Clauses Act, 1897. The Law Committee felt that the said distinction between "plant and machinery" and "plant or machinery" may also result in unequal treatment on the availability of input tax credit on works contract services for the construction of immovable properties under clause (c) and on goods or services or both, for the construction of immovable properties under clause (d). While one set of taxpayers, who would procure goods or services separately for construction of an immovable property, may become eligible for input tax credit, by qualifying the said property as a "plant", the other set of taxpayers who procure same goods or service through a works contract service provider for the construction of a similar type of immovable property would continue to be restricted to avail input tax credit, which would get added to their cost, thus creating a non-level playing field.

2.21 The Law Committee felt that both the clauses (c) and (d) of Section 17(5) deal with the same subject matter, i.e., immovable property and therefore, they must not be treated unequally and the said Explanation to Section 17(5) which applies to Chapters V and VI ought to apply to clause (d) of the said section as well. The Law Committee felt that the interpretation laid by the Hon'ble Supreme Court regarding the expression "plant or machinery" appears to defeat the intention of GST Council as well as the legislature to deny benefit of availment of input tax credit on goods and services used for construction



of immovable property, other than when used in specific situations mentioned in the said clauses read with the Explanation provided below the said section.

2.22 Law Committee also observed that determining as to whether an immovable property falls under the expression "plant" under clause (d) of section 17(5) of CGST Act or not based on the functionality test as per facts of each of the case, as per principles decided by Hon'ble Supreme Court in the above mentioned judgement, may create a lot of confusion and chaos and may result in multitude of litigations, which may not be desirable from the perspective of smooth tax administration and ease of doing business. It may also re-open all the past cases related to availment of ITC in respect of goods or services used for construction of immovable property, further adding to confusion and litigation.

2.23 In view of the above, to clear ambiguity and also to prevent litigation which may happen post the judgement of Hon'ble Supreme Court in the case of M/s Safari Retreats Pvt. Ltd., Law committee recommended that necessary amendments may be carried out in Section 17(5) (d) of CGST Act, 2017, retrospectively w.e.f. 01.07.2017, as below:

"17.

(5) Notwithstanding anything contained in sub-section (1) of Section 16 and subsection (1) of Section 18, input tax credit shall not be available in respect of the following, namely: -

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or and machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

2.24 Law Committee also recommended that while making the above amendment through Finance Bill, it may specifically be mentioned that the said amendment is being done notwithstanding anything to the contrary contained in any judgment, decree or order of any court or any other authority.

2.25 Background

The Hon'ble Supreme Court in the matter of Union of India v. Bharati Airtel has clarified the criteria for determining the movability or immovability of an object, as per the provisions of the General Clauses Act, 1897. This ruling has direct implications on the classification of property in the context of construction works, specifically in determining whether the breakwater wall constitutes movable property under the Goods and Services Tax (GST) regime.

2.26 Contract Agreement Overview

The subject contract ("Agreement") pertains to the construction of the breakwater wall at a designated site between Konkan LNG ("First Party") and M/s. Larsen & Toubro Limited ("Second Party"), detailing the remaining works related to the project.

2.26.1 Scope of Work:

The scope outlined in the Agreement includes the following major tasks:



- (1) Mobilization of Equipment and Personnel: Mobilization of quarry equipment, marine spread, and other machinery at the quarry and marine site.
- (2) Construction of Access Roads: Completion of roads for material transportation.
- (3) Survey, Engineering, and Modelling: Surveying, engineering, and modelling necessary for project execution.
- (4) Quarrying and Material Handling: Quarrying of core materials and installation of armour structures (secondary and big armour).
- (5) Dredging and Breakwater Construction: Dredging and site preparation for the breakwater wall, along with its maintenance.

2.26.2 Completion and Handover: Upon the completion of the works, M/s. Larsen & Toubro Ltd. shall hand over the completed breakwater wall project to Konkan LNG in accordance with the terms of the Agreement.

2.27 Works Contract Classification under GST:

The services rendered by M/s. Larsen & Toubro, including the supply of goods (quarry materials, rock, secondary armour, big armour, accropodes, etc.) and associated services (mobilization, fabrication, and installation), qualify as a "Works Contract" under the provisions of the GST Act.

Annexure: Scheme of Classification of services			
Sr. No.	Chapter, Section, Heading of Group	Services Code (Tariff)	Service Description
(1)	(2)	(3)	(4)
1	Chapter 99		All Services
2	Section 5		Construction Services
3	Heading 9954		Construction Services
4	Group 99541		Construction Services of Business
5		995411	Construction services of single dwelling or multi dwelling or multi-storied residential buildings
6		995412	Construction services of other residential buildings such as old age homes, homeless shelters, hostels etc
7		995413	Construction services of industrial buildings such as buildings used for production activities (used for assembly line activities), workshops, storage buildings and other similar industrial buildings
8		995414	Construction services of commercial buildings such as office buildings, exhibition & marriage halls, malls, hotels, restaurants, airports, rail or road terminals, parking garages, petrol and service stations, theatres and other similar buildings.
9		995415	Construction services of other non-residential buildings such as educational institutions, hospitals, clinics including veterinary clinics, religious establishments, courts, prisons, museums and other similar buildings
10		995416	Construction Services of other buildings n.e.c
11		995419	Services involving Repair, alterations, additions, replacements, renovation, maintenance or remodelling of the buildings covered above.



12	Group 99542		General construction services of civil engineering works
13		995421	General construction services of highways, streets, roads, railways and airfield runways, bridges and tunnels
14		995422	General construction services of harbours, waterways, dams, water mains and lines, irrigation and other waterworks
15		995423	General construction services of long-distance underground/overland/submarine pipelines, communication and electric power lines (cables); pumping stations and related works; transformer stations and related works.
16		995424	General construction services of local water & sewage pipelines, electricity and communication cables & related works
17		995425	General construction services of mines and industrial plants
18		995426	General Construction services of Power Plants and its related infrastructure
19		995427	General construction services of outdoor sport and recreation facilities
20		995428	General construction services of other civil engineering works n.e.c.
21		995429	Services involving Repair, alterations, additions, replacements, renovation, maintenance or remodelling of the constructions covered above.
22	Group 99543		Site preparation services
23		995431	Demolition services
24		995432	Site formation and clearance services including preparation services to make sites ready for subsequent construction work, test drilling & boring & core extraction, digging of trenches.
25		995433	Excavating and earthmoving services
26		995434	Water well drilling services and septic system installation services
27		995435	Other site preparation services n.e.c
28		995439	Services involving Repair, alterations, additions, replacements, maintenance of the constructions covered above.
29	Group 99544		Assembly and erection of prefabricated constructions
30		995441	Installation, assembly and erection services of prefabricated buildings
31		995442	Installation, assembly and erection services of other prefabricated structures and constructions
32		995443	Installation services of all types of street furniture (e.g., bus shelters, benches, telephone booths, public toilets, etc.)
33		995444	Other assembly and erection services n.e.c.
34		995449	Services involving Repair, alterations, additions, replacements, maintenance of the constructions covered above.
35	Group 99545		Special trade construction services
36		995451	Pile driving and foundation services
37		995452	Building framing & Roof Framing services
38		995453	Roofing and waterproofing services
39		995454	Concrete services
40		995455	Structural steel erection services
41		995456	Masonry services
42		995457	Scaffolding services



43		995458	Other special trade construction services n.e.c.
44		995459	Services involving Repair, alterations, additions, replacements, maintenance of the constructions covered above.
45	Group 99546		Installation services
46		995461	Electrical installation services including Electrical wiring & fitting services, fire alarm installation services, burglar alarm system installation services.
47		995462	Water plumbing and drain laying services
48		995463	Heating, ventilation and air conditioning equipment installation services
49		995464	Gas fitting installation services
50		995465	Insulation services
51		995466	Lift and escalator installation services
52		995468	Other installation services n.e.c.
53		995469	Services involving Repair, alterations, additions, replacements, maintenance of the installations covered above.
54	Group 99547		Building completion and finishing services
55		995471	Glazing services
56		995472	Plastering services
57		995473	Painting services
58		995474	Floor and wall tiling services
59		995475	Other floor laying, wall covering and wall papering services
60		995476	Joinery and carpentry services
61		995477	Fencing and railing services
62		995478	Other building completion and finishing services n.e.c.
63		995479	Services involving Repair, alterations, additions, replacements, maintenance of the completion/finishing works covered above.

- Invoicing: The invoice issued by M/s. Larsen & Toubro Ltd. (Invoice No. LEMHLE-25 IN001962, dated 25th June 2025) references the Works Contract services as per SAC Code 9954, qualifying under the GST regime for such contracts.

2.28 Breakwater Wall: Immovable Property Classification

The central issue under discussion is whether the breakwater wall, particularly the accropodes, can be classified as movable property, and consequently, eligible for Input Tax Credit (ITC).

2.28.1 Annexation Tests Applied:

- (1) Nature of Annexation: The breakwater wall is permanently affixed to the seabed with layers of rock, secondary armour, and accropodes. Removal of the accropodes would lead to damage to the entire structure.
- (2) Object of Annexation: The breakwater wall is a permanent addition designed for the protection of marine structures, serving a protective and functional purpose.
- (3) Intent of the Parties: The contract envisages the construction of a permanent civil structure, evidenced by the nature and permanence of the annexation.



- (4) **Functionality and Permanency:** The breakwater wall, being a permanent fixture, cannot be dismantled without causing structural damage, fulfilling the criteria of a civil structure as opposed to movable machinery.
- (5) **Marketability Test:** The breakwater wall cannot be relocated without significant damage, and the accropodes cannot be resold or reused for the purpose of a similar construction elsewhere.

Based on the above annexation tests, it is concluded that the breakwater wall is a permanent civil structure and does not qualify as movable property under the applicable legal framework.

2.29 This detailed analysis addresses the question of whether the breakwater wall can be classified as "plant and machinery" under the GST Act, and thus eligible for input tax credit. The argument is centered around whether the breakwater wall is fulfilling a direct role in the outward supply of services related to regasification, as required by the GST provisions.

2.29.1 Definition of "Plant and Machinery" under GST:

- (1) The GST Act specifically outlines that "plant and machinery" includes apparatus, equipment, and machinery that are fixed to the earth with structural support and are used for making outward supply of goods or services (Sections 16 and 17). However, it excludes civil structures such as land and buildings. This is a crucial point because the breakwater wall is classified as a civil structure, which is explicitly excluded from the definition of "plant and machinery."

2.29.2 Role of the Breakwater Wall:

- (1) The breakwater wall serves as a protective structure for ships and cargo during the unloading of LNG, as well as protecting the jetty from high tides and the power of sea waves.
- (2) While it is important for the safety and operational stability of the port, it does not directly contribute to the regasification process or to the outward supply of LNG. The regasification activity continues unaffected by the presence or absence of the wall.

2.29.3 Legal Precedent and Interpretation:

- (1) The Hon'ble High Court ruling in Mazgaon Dock Ltd. (191 ITR 460) established that for a structure to qualify as "plant" under the Income Tax Act, it must be essential for the equipment or machinery to function. In this case, the regasification plant operates without the breakwater, which indicates that the wall is not integral to the plant's function.
- (2) Therefore, it does not meet the requirement of being an essential support for machinery or equipment that is used to make outward supply.

2.29.4 Practical Considerations:

- (1) The analogy drawn between the breakwater wall and a factory compound is interesting. Both serve protective functions – one for land-based activities (the compound) and the other for maritime activities (the breakwater wall).



However, both are civil works and, as such, are not eligible for input tax credit under Section 17(5)(d) of the GST Act.

2.29.5 Common Parlance and Technical Terminology:

- (1) The distinction between the technical and common parlance of "plant and machinery" is also important. In both senses, a breakwater wall would not typically be considered as "plant" because its purpose is to provide protection, not to facilitate the outward supply of goods or services.

Based on the provisions of the GST Act and relevant legal precedents, it seems clear that the breakwater wall cannot be classified as "plant and machinery" for the purposes of claiming input tax credit. Its function is protective in nature and is not directly linked to the regasification activities carried out by Konkan LNG Ltd. As such, it does not fulfill the criteria of being used for making an outward supply of goods or services, and it falls within the exclusions outlined in the Act for civil structures. Therefore, the input tax credit claim for the breakwater wall would not be eligible under Section 17(5) of the GST Act.

2.30 Eligibility of ITC

The taxpayer, Konkan LNG Ltd., seeks to claim ITC on the services rendered by M/s. Larsen & Toubro Ltd. in relation to the breakwater wall construction. However, upon scrutiny, it is observed that the ITC claim is inadmissible due to the following:

2.30.1 Deficiency in Tax Invoice:

- (1) The tax invoice issued by M/s. Larsen & Toubro Ltd. does not disclose the requisite six-digit HSN/SAC code, as mandated by Notification No. 78/2020 dated 15.10.2020, effective from 01.04.2021. As per Rule 46 of the CGST Rules, failure to mention the six-digit code renders the invoice non-compliant.
- (2) This constitutes a violation of the conditions laid down under Section 16(2)(a) of the CGST Act, disqualifying Konkan LNG from claiming ITC on these invoices.



Financial Year	Larsen & Toubro Ltd.			GAIL (India) Limited	Bharati Defence and Infra. Ltd.	Square Port Shipyard Pvt Ltd	Total	Claimed on	Reversed on	Remarks
	INR	EURO	Total							
FY 2018-19	-	-	-	1,53,89,512	-	-	1,53,89,512	On monthly basis during FY 2018-19	Jan-21	Availed and Reversed
FY 2019-20	-	-	-	56,91,067	-	-	56,91,067	On Monthly basis during 2019-20	Jan-21	Availed and Reversed
FY 2020-21	18,82,06,167	1,44,10,493	18,26,36,660	78,24,911	-	-	19,04,41,571			Not availed as the application was pending before AAR
FY 2021-22	11,23,68,504	14,74,513	11,38,43,017	79,02,260	-	-	12,17,45,277			Not availed as the application was pending before AAR
FY 2022-23	29,77,75,109	-	29,77,75,109	70,91,142	80,03,184	-	31,28,69,434			Not availed as the application was pending before AAR
FY 2023-24	37,14,98,413	77,10,195	37,92,08,608	60,71,338	1,22,612	5,36,419	38,59,38,977	Oct-24	Feb-25	Availed and Reversed
FY 2024-25	21,34,87,749	43,93,730	21,78,81,479	74,96,707	-	6,60,407	22,60,38,593	Mar-25	Mar-25	ITC of Rs. 22,53,25,284/- Availed and Reversed, balance of Rs. 7,13,308/- to be availed
FY 2025-26	3,41,40,390	9,66,755	3,51,07,145	8,46,348	-	1,04,346	3,60,57,839			Yet to be availed
TOTAL	1,19,74,76,332	2,89,55,886	1,22,64,32,018	5,83,13,284	81,25,796	13,01,172	1,29,41,72,269			

After overlooking the ITC statement submitted by The Taxpayer on today on mail regarding the claim of ITC on the said Break water wall it is noticed that taxpayer is

failed to comply with the provision of sub section 4 of Section 16 of CGST act 2017 which is reproduced as under

2.31 Failure to Meet ITC Claim Conditions:

(1) Under Section 16(4) of the CGST Act, the taxpayer is restricted from claiming ITC after the 30th day of November following the end of the financial year to which the invoice pertains, or the filing of the relevant annual return, whichever is earlier. Since the taxpayer failed to claim ITC for the financial years 2020-21, 2021-22, and 2022-23, the provisions of Section 16(4) prohibit such claims.

2.32 Conclusion and Legal Position In light of the Hon'ble Supreme Court's decision in the Union of India v. Bharati Airtel case and relevant legal precedents, the breakwater wall (including accropodes) is to be classified as immovable property and not as plant and machinery. As such, ITC cannot be claimed on the services provided for its construction under the CGST Act. Additionally, the tax invoices issued by M/s. Larsen & Toubro Ltd. fail to comply with Rule 46 of the CGST Rules, thus further disqualifying the taxpayer from availing ITC.

2.33 In conclusion:

1. The construction of the breakwater wall constitutes a civil structure and not movable property or machinery.
2. As per recommendations of the 55th GST council Meeting Law Committee also recommended that while making the above amendment through Finance Bill, it may specifically be mentioned that the said amendment is being done notwithstanding anything to the contrary contained in any judgment, decree or order of any court or any other authority, then after councils amendment to section 17(5)(d) abundantly clear legislature intention regarding the transaction fall under section 17 (5) (c) and (d) to not to allow ITC for the works contract resulted in immovable or goods or services received for the purpose of construction of immovable property except plant and machinery in both the case..

3. The invoices issued by M/s. Larsen & Toubro Ltd. are deficient and cannot be considered valid for the purpose of claiming ITC. 4. The taxpayer is restricted from claiming ITC for unclaimed invoices from financial years 2020-21, 2021-22, and 2022-23 due to the provisions under Section 16(4) of the CGST Act.

2.34 Relevant Case Laws

- (1) M/s. Safari Retreats Pvt. Ltd. v. Chief Commissioner of CGST (SC, 03.10.2025): Clarified that immovable structures do not qualify as plant and machinery for ITC purposes.
- (2) Union of India v. Kesoram Industries Ltd. (2024): ITC disallowed on breakwater and other immovable structures.
- (3) M/s. Shakti Pumps (India) Ltd. v. Commissioner of CGST (2021): Only movable equipment used in active production qualifies for ITC.



(4) Commissioner of Central Excise v. Larsen & Toubro Ltd. (2009): Permanent civil structures are excluded from the scope of "plant and machinery."

(5) Bajaj Electricals Ltd. v. State of Maharashtra (2010): Definition of "plant" excludes immovable structures.

4. HEARING

Applicant has submitted a letter regarding intimation of matter remanded back for fresh consideration along with order passed by Hon'ble High Court of Bombay on 10.06.2025 and made additional submission on 20.08.2025.

In this case, Advance Ruling Authority had passed order on 24.05.2019. Being aggrieved, applicant had filed appeal with the appellate authority for advance ruling and AAAR order had passed on 06.11.2019 confirmed the order passed by the Advance Ruling Authority. Then, applicant filed Writ Petition with Hon'ble High Court of Bombay (Writ Petition no. 313 of 2021). Hon'ble High Court of Bombay has passed the order on 10/06/2025 and set-aside the order dated 24/05/2019 made by authority for advance ruling and the order dated 06/11/2019 made by the appellate authority and remanded the matter to the Advance Ruling Authority for a fresh ruling in the light of observations made by the Hon'ble Supreme Court in its judgment and order dt. 03/10/2024 in the case M/s. Safari Retreat. Hon'ble High Court with permission to submit additional material. Final hearing was scheduled on 15.10.2025. The Authorized representative of the applicant, Mr. S.C. Kamar, Advocate and Mr. Sandip Mane, Deputy Commissioner of SGST for the department were present.

Final E-Hearing dated 15.10.2025

Final hearing was held on 15.10.2025. Mr. S.C. Kamar, Advocate, Authorized Representative, appeared and retreated the written submissions made by the applicant. Jurisdictional Officer, Mr. Sandip Mane, Deputy Commissioner of SGST appeared. We heard both the sides.

5. OBSERVATIONS AND FINDINGS

5.1 We have gone through the records of the case and the submissions made by the applicant from time to time. We have also considered the submissions made by the applicant at the time of the Personal Hearing. We have also seen the video clip of the constructed breakwater wall shown by the applicant at the time of the personal hearing.

We find that the applicant has constructed a breakwater wall with a view to fight against strong sea waves / tides moving during rough weather (monsoon season). The applicant has constructed Break water project at a distance of 750 meters from the jetty line. The total length of Break water project is 2300 meters inside the sea water area. The primary function and purpose of the break water is to absorb or throw back as completely as possible the energy of the maximum sea waves assailing the coast. It is to ensure that the swell and wave height is kept at minimum with desired limit thereby preventing damage to the jetty and other structures on shore. It is seen that the contract



for construction of the Break Water was given to M/s.Larsen & Toubro Ltd., vide LOA dated 8.2.2020. The contractor was required to supply the goods as well as services in the process of completion of the work i.e. construction of Break Water Project. Thus, it is seen that the services provided by the contractor can be treated as works contract. The applicant had filed the Application for Advance Ruling No.123 dated 23.2.2019 seeking ruling whether they would be entitled to the input tax credit of the GST paid to the supplier of services of works contract for the construction of the Break Water Project. The learned AAR vide order dated 24.5.2019 denied the benefit of ITC of taxes paid by the applicant to the supplier of goods/services. The first appeal before the Maharashtra Appellate Authority for Advance Ruling was dismissed vide order dated 6.11.2019. The applicant filed Writ Petition No.313 of 2021 before the Hon'ble Bombay High Court which was dismissed on 28.6.2024. The applicant preferred an appeal before the Hon'ble Supreme Court which vide its order dated 17.2.2025 set aside the High Court Order and restored the Writ Petition filed before the Bombay High Court to enable the High Court to decide the matter keeping in view the latest judgement of the Supreme Court in the case of Chief Commissioner of CGST Vs. Safari Retreats Pvt; Ltd. And others reported in 2024 (90) GSTL 3 (SC). The Hon'ble Bombay High Court has remanded the matter back to the AAR for fresh consideration after taking into account the decision of the Supreme Court in the Safari Retreats case and retrospective amendment in CGST Act, 2017, vide Finance Act, 2025 vide its decision dated 10.6.2025.

5.3. From the technical note dated 7.8.2025 of M/s.Engineers India Ltd., submitted by the applicant, it is seen that the total length of the break water is 2300 meters out of which 0.5 Km length was already constructed in 2005 by Dabhol Power Company, and the balance of 1.8 Km of breakwater was constructed by the applicant. It is further seen that the distance of break water from the jetty area is 750 meters. The construction of Break water is made from sea bed at 17-18 meter up to the sea water level (60 ft) and it is 7.35 meter above the water level. The width of the Break Water at base level is 100 meter and it is 7.35 meter at the top. As per the said report, the Break Water project is not a simple earthwork but scientifically designed and engineered structure. The Breakwater project consist of various constituents namely Core, Armour Big Armour, Accropode and Toe blocks. Each layer works together to resist the forces of waves, prevent erosion and maintain integrity of the break water over time. The core provides primary structure support for the armour layers above. It is typically made of small, inexpensive quarry run rock or rubble. The armour layer protects the core layer and is made up of heavy units or large rocks used to stay in place during high energy wave impacts and shield the core and filter layers from direct wave attack. The accropodes are specifically shaped concrete armour units which can be interlocked due their unique shape. We find that the structure, so developed, is called a Break Water and they function unitedly to dissipate the wave energy and protect the shoreline. The Break Water Wall comprises of all these elements, which together performs the function for which it was built and provides stability to the structure. The Break water



wall cannot exist or function effectively if one of the three elements are missing, thus giving due importance to each element in carrying out the function for which it was designed.

5.4 From Para 2 of the Bidding Document NO. AK/6724-000-CR-TN-9501/1047) it is seen that the scope of the project includes the following: -

- i Basic Design, Physical Model Tests, Detailed and construction engineering with calculations and drawings as detailed in design criteria.
- ii Survey of Armour of constructed part of breakwater prior to detailed design and construction by ECHOSCOPE and divers in parallel, as required in tender specifications.
- iii Pre engineering pre-construction-regular during construction and Post construction surveys of bathymetry, meteorological parameters and partially constructed sections as detailed in tender specifications.
- iv Site Survey, assessment, identification of quarry, Acquisition/leasing, obtaining licence from various authorities, development, quarrying and restoration of quarry including temporary production and handling activities.
- v. Quarrying of required rock core and underlayer armour.
- vi Testing, sorting and screening of rock material.
- vii Production of balance ACCROPODE units required to complete the breakwater as per licence holder's specifications.
- viii Taking over of existing ACCROPODE available in Bharat shipyard on "As is where is" basis and furnishing the receipt of free issue ACCROPODE units (indicating total number). Carrying out inspection survey of existing Accropodes as per Artelia specification for ACCROPODE blocks stored at land and submitting survey results to company for issue of Fit for purpose certificate for use in breakwater construction. Minor repair to existing ACCROPODE if any required. Any ACCROPODE damaged during transportation and found not fit for use shall be replaced with new ACCROPODE units without any additional cost and time effect. Balance rejected Accropodes will be disposed by contractor at its own cost.
- ix Disposal of rejected ACCROPODE units and other material in the disposal site indicated by the Owner.
- x Stockpiling of all materials and Transportation of all materials to breakwater construction site.
- xi Repairs and modifications (if any, following analysis of results of survey to existing construction of the breakwater.
- xii Dredging/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.
- xiii Construction of balance portion of breakwater, after dredging of soft material; placing of core material, rock and ACCROPODE units (as per licence holders'



specifications and requirement including supervision)) and approved drawings and documents.

xiv Repairs to breakwater (if any) during construction period.

xv Removal of old and new temporary works in Owner's provided land, as per directions of Engineer in Charge.

xvi Installation of Swell measurement meter as per attached specifications.

xvii Any other works required to complete the breakwater as per design requirements and specifications.

Thus, it can be seen from the submissions made by the applicant from time to time that the breakwater is a composite structure of 2300 Sq. Meters, constructed approximately 750 meters from the jetty and around 2.5 Km from the land. It is a permanent structure constructed using rocks, boulders and accropodes.

5.5 We find that the applicant has availed works contract services of M/s. Larsen & Toubro for the construction of the breakwater and are seeking a ruling whether they are entitled for availment of input tax credit on the said services received from M/s. Larsen & Toubro. In this regard, the provisions of Section 17 of the CGST Act, 2017, provides the situations in which the Input Tax credit can be restricted. The relevant portion of the said Section is as under: -

(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (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;

5.6. The Section 17(5) starts with a non-obstinate clause and states that irrespective of anything contained in Section 16 or Section 18, input tax credit shall not be available in certain situations. Section 17(5)(c) states that input tax credit of works contract service 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 would not be available. This clause lays down the following conditions for denial of input tax credit: -

- i) The service supplied should be works contract service.
- ii) The service should be for the construction of an immovable property.
- iii) The service should not be supplied as service for further supply of works contract service.

The only exception to this rule is that Input Tax Credit would be available if the works contract service is provided for construction of an immovable property, if the same is a plant and machinery. The term 'Plant and Machinery' has been defined under Section 17 as under: -

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.

As per this definition, plant and machinery includes any apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services but excludes land, building or any other civil structures. Thus, on a conjoined reading of the clause 17(5)(c) and the definition of Plant and Machinery, it is seen that even if the works contract service is provided for construction of an immovable property but the same can be considered as plant and machinery, even then the input tax credit would not be available if the said immovable property is a land, building or a civil structure, telecommunication towers and pipelines laid outside the factory premises. Further, if the said plant and machinery is not used for making outward supply of goods or services, the credit can be denied. Keeping in mind the aforesaid legal position, we now proceed to examine the facts of the instant case and determine whether the Input Tax Credit would be available to the applicant.

5.7 We find that it is not a disputed fact that the services provided by M/s. Larsen & Toubro is a works contract service. This fact has been accepted by the applicant as can be seen from their application where in Para 10 of Annexure 1 of the application, they mention that "given the scope of work and award of work to various contractors, the services of contractor will be covered under the services of works contract as defined under Section 2(119) of the CGST/SGST Act". We have examined the entire scope of work and we find that the services provided by the contractor is for construction of an immovable property and since the goods and services are provided in a composite manner for construction of the breakwater, we find that the services provided by the contractor to the applicant is a works contract services involving supply of both goods and services for construction of a breakwater project.

5.8 We find that the breakwater wall is embedded on the ocean floor with the help of rocks, boulders and accropodes. It is a permanent structure, constructed on the seabed. Breakwaters are permanent costal structures designed to protect shorelines, harbours and ports from tidal waves and storm surges. They are constructed with a solid foundation that is fixed on embedded into the sea bed to ensure stability against wave forces and to prevent movement or collapse. The embedding into the seabed is essential for maintaining structure integrity and effectiveness in wave energy dissipation or reflection. We also find that the breakwater is a composite structure of various materials and in the instant case comprises of rocks, roubles and accropodes. When affixed together in a carefully designed format, they form the breakwater wall. Thus, the breakwater wall, so designed and constructed, is an immovable structure which is permanent in nature and cannot be moved from one place to another. At this



point, we may like to emphasise, that each individual component such as rock, rubble or the accropode may be movable in itself. However, after construction of the breakwater wall, the individual components lose their significance and merges into the structure called the breakwater wall and such a breakwater wall is immovable. It is immaterial whether any of the component can be moved or removed. It is a well-established fact that the breakwater wall is an immovable structure which can be broken down and dismantled and the individual components moved from one place to another, but the entire breakwater wall cannot be moved from one place to another and can be considered to be an immovable structure constructed on the sea bed. In this regard, we conclude that.

- i. The breakwater wall is permanently affixed to the seabed with layers of rock, secondary armour, and accropodes. Removal of the any of the component i.e. rock, rubble or the accropodes would lead to damage to the entire structure and it will fail to fulfil the function for which it was designed and built.
- ii. The breakwater wall is a permanent addition designed for the protection of marine structures, serving a protective and functional purpose.
- iii. The contract envisages the construction of a permanent civil structure, evidenced by the nature and permanence of the structure.
- iv. The breakwater wall, being a permanent fixture, cannot be dismantled without causing structural damage, fulfilling the criteria of a immovable structure when compared to movable machinery.
- v. The breakwater wall cannot be relocated without significant damage, and the breakwater wall cannot be brought and sold in the market as goods or shifted to any other place for similar use.

5.9 In the instant case, the applicant is not providing any works contract service and the works contract service received by them is also not for further supply as a works contract. Therefore, we find that all the three basic conditions for denying the benefit of Input tax credit in the instant case is fulfilled. However, the only exclusion in this clause 17(5)(c) is that Input Tax Credit will be available if the so constructed immovable property can be considered as plant and machinery. Therefore, we now proceed to decide whether the breakwater wall project can be treated as 'plant and machinery' as envisaged under Section 17 of the CGST Act, 2017.

5.10 We find that the word 'Plant and Machinery' has been defined under Section 17 in the Explanation as under: -

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.



From a plain reading of the said definition, it is seen that any apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services can be treated as a plant and machinery. However, there are certain things which have been specifically excluded from the scope of the term 'plant and machinery' by the legislature. The most relevant exclusion from the term 'plant and machinery' to the facts of the present case is the exclusion of land, building or any other civil structure. Thus, we find that all types of civil structures are excluded from the definition of 'plant and machinery'.

5.11 We find that the word 'civil structure' has not been defined in the CGST Act. Therefore, we have to take resort to meaning of 'civil structure' in common parlance. A general understanding of the term can be derived from the definition of 'civil engineering' given as: *"The profession of designing and executing structural works that serve the general public, such as dams, bridges, aqueducts, canals, highways, power plants, sewerage systems and other infrastructure"*. Further, a 'structure' in the context of civil engineering refers to anything that is constructed or built from different interrelated parts with a fixed location on the ground. Accordingly, a civil structure would be any man-made structure which is built by applying the science of civil engineering. A civil structure can be built with cement and steel or by means of other materials depending on the purpose of the structure and its feasibility. The materials used for construction of structure does not play a vital role in defining it as a "civil structure" or otherwise. We also find that as per The Construction (Design and Management) Regulations 2015, United Kingdom, a structure has been defined as under: -

"structure" means—

- (a) any building, timber, masonry, metal or reinforced concrete structure, railway line or siding, tramway line, dock, harbour, inland navigation, tunnel, shaft, bridge, viaduct, waterworks, reservoir, pipe or pipeline, cable, aqueduct, sewer, sewage works, gasholder, road, airfield, sea defence works, river works, drainage works, earthworks, lagoon, dam, wall, caisson, mast, tower, pylon, underground tank, earth retaining structure or structure designed to preserve or alter any natural feature and fixed plant;
- (b) any structure similar to anything specified in paragraph (a);
- (c) any formwork, falsework, scaffold or other structure designed or used to provide support or means of access during construction work, and any reference to a structure includes part of a structure;

5.12 On examining the nature of the breakwater project, the construction of the said breakwater using rocks, roubles and accropodes, we find that the said breakwater project is nothing but a civil structure, constructed with the aforesaid materials. Each layer of the structure be it the core, the armour or the top accropodes, has a role to function. Removal of any one of the said layers would result in the collapse of the entire breakwater or result into breakdown of the said breakwater and it would fail to fulfil the function for which it was designed. Thus, the entire structure i.e. the



breakwater wall project is nothing but a civil structure. At this juncture, we would also like to emphasise that the accropodes in itself cannot fulfil the function of a breakwater, though it is one of the most important elements in the entire project. It cannot be said that only the accropodes by themselves have the capacity to contain the tide energy or storm surges during the monsoon. The function is carried out by the integrated breakwater comprising of the core, the middle armour and the top accropode. Thus, it cannot be stated that the core and the middle armour are merely the foundation or structural support for placing the accropode. The entire breakwater wall functions as an integrated whole and as such the breakwater wall has to be considered as a complete civil structure, thus differentiating itself from the materials used for construction of the said wall.

5.13 Once it is held that the breakwater wall is nothing but a civil structure, it will be excluded from the definition of 'plant and machinery' as laid down in explanation to Section 17 of the CGST Act, 2017, and there is no reason to examine further any of the other elements of the term 'plant and machinery'. However, we would further like to dwell on the issue whether the breakwater project would fall under the definition of plant and machinery and whether it fulfils the other conditions laid down in the said definition. We find that the equipment, apparatus or tool to be considered as plant as machinery should be an immovable property and should be used for making outward supply of goods and services. At this state, it is very important to understand the word used by the legislature 'making outward supply of goods and services'. These words are different from the terms 'furtherance of business' or 'used for the purpose of business'. The legislature has used a very restrictive term by the words 'making outward supply of goods and services', thus restricting the scope of the plant and machinery only for making outward supply of goods and services. In the instant case, it is seen that even when the breakwater project was not commissioned, the plant of the applicant was functioning and they were able to conduct regassification of the liquid petroleum gas received through the ships and make outward supply of the said gas. The regassification plant of the applicant could function, even in the absence of the breakwater wall. It was only during the monsoon, due to heavy winds and tides, that there were restrictions on the applicant in the sense that the ships carrying the liquified petroleum gas could not be moored on the jetty. Thus, we find that the absence of the breakwater would disrupt the inward supply of raw materials to the applicant through the sea route. This activity may disrupt the outward supply, in absence of enough raw material stock. However, it does not restrict the applicant from procuring the raw materials through the land routes, thereby ensuring continuous outward supply. Further, the breakwater does not contribute in making outward supply of goods or services. It contributes in making inward supply of goods or services. The definition of plant and machinery and the conditions it lays down has to be interpreted strictly and in a restrictive manner. The definition does not provide for inclusion as plant and machinery at each and every stage of the business but restricts



it positively and purposefully only for making outward supply of goods or services. If each type of plant and machinery was to be included, the words used would not be 'making outward supply of goods or services. Thus, taking into consideration the restrictive definition of plant and machinery in Section 17, we find that the breakwater wall cannot be considered as a plant and machinery which is used for making outward supply of goods or services.

5.14 Further, we find that the applicant has procured works contract services from the contractor for construction of breakwater. They have not purchased the accropodes from the contractor. The contract is not for purchase of accropodes and affixing them on a stable structure or foundation for use of the accropodes. The contract is for construction of a breakwater and the accropodes is only one element or constituent of the said breakwater. Therefore, the argument that the accropodes are movable goods and can be bought and sold in the market is immaterial. By such interpretation, it can also be stated that the rocks and boulders used as core and armours are also movable goods. However, even if individually, each material constituent is a movable goods, once they are used for the construction of breakwater, the entire structure becomes an immovable property and the argument that some of the elements are movable becomes irrelevant.

5.15 We find that the case of the applicant is covered under Clause 17(5)(c) of the CGST Act, 2017. However, we find that even clause 17(5)(d) restricts the Input Tax Credit to the applicant. Clause 17(5)(d) reads 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.

If we consider that the services received by the applicant is for construction of breakwater on its own account, even then, as per the discussions made herein above, the Input Tax Credit would not be applicable. The only difference in both the clauses was the words 'Plant or Machinery' used in Clause 17(5)(d) as opposed to the word 'plant and machinery' used in Clause 17(5)(c). Based on this difference and based on the decision of the Hon'ble Supreme Court in the case of Chief Commissioner of CGST Vs. Safari Retreats Pvt. Ltd. And others reported in 2024 (90) GSTL 3 (SC), the applicant has sought to make an argument that the breakwater wall is a plant and has argued that the test of functionality envisaged by the Hon'ble Supreme Court should be considered.

5.16 We find that the applicant in their submissions dated 18.8.2025 have basically relied upon the decision of the Hon'ble Supreme Court in the case of Chief Commissioner of CGST Vs. Safari Retreats Pvt. Ltd. And others reported in 2024 (90) GSTL 3 (SC) and have relied upon the definition of 'plant and machinery' in the popular sense. On the basis of the said decision of the Hon'ble Supreme Court, the applicant has dwelled deep into the definition of plant and machinery, as it is known in common parlance, in the



Income Tax Act and the dictionary meaning of the word plant and machinery. They have relied upon various decisions of judicial bodies to augment their argument that the breakwater is a part of the plant and machinery. They have further argued that in view of the function of the said breakwater to stop the high tidal waves and enable mooring of ships near the jetty during monsoon, thus enabling them to operate the jetty and regassification plant throughout the year, it should be treated as a part of the plant and machinery, especially in view of the functionality test envisaged by the Hon'ble Supreme Court in the Safari Retreats case. Thus, by emphasizing on the function of the breakwater project which enables them to operate the plant throughout the year, they have stated that the said breakwater has to be treated as a plant and machinery.

5.17 In this regard, we find that the decision of the Hon'ble Supreme Court in the case of Safari Retreats was based on the legal position of Section 17(5)(d). The relevant parts of Section 17(5) which at the relevant period was as under: -

(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (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.

5.18 We find that the Hon'ble Supreme Court in the case of M/s. Safari Retreats was deciding on the issue whether the ITC would be available with respect to Clause (d) of Section 17(5) of the CGST Act, 2017. From the decision of the Hon'ble Supreme Court in the said case, it is clear that the main distinction which was pointed out by the Hon'ble Court was that the words used in the clause (c) of the Section 17(5) was 'Plant and Machinery' and the words used in Clause (d) of the Section 17(5) was 'Plant or Machinery'. The Supreme Court then went on to the Explanation given under Section 17 which defined the meaning of the term 'Plant and Machinery' and came to a conclusion that the explanation covered only the term 'plant and machinery' which is different from the expression used in clause (d) of Section 17(5) i.e. 'Plant or

Machinery'. The Hon'ble Supreme Court then proceeded to examine the definition of the word Plant and held that since the GST Act does not provide any definition for the said expression, the definition of 'plant' as is understood in common parlance should be considered. It was on the basis of such an understanding that the Hon'ble Supreme Court went on to define the meaning of the term 'plant' in common parlance and envisaged the test of 'functionality' as a factor to determine whether any immovable property can be considered as a plant or machinery. Thus, we find that the entire decision of the Hon'ble Supreme Court was based on the fact that the term 'plant or machinery' used in clause (d) to Section 17 (5) has to be interpreted on the basis of the definition of the said term in common parlance. The relevant para of the decision of the Supreme Court is as under: -

24. Considering the submissions made by the parties, the following main questions arise for consideration: (i) Whether the definition of "plant and machinery" in the explanation appended to Section 17 of the CGST Act applies to the expression "plant or machinery" used in clause (d) of sub-section (5) of Section 17?

(ii) If it is held that the explanation does not apply to "plant or machinery", what is the meaning of the word "plant"? and

(iii) Whether clauses (c) and (d) of Section 17(5) and Section 16(4) of the CGST Act are unconstitutional?

....

41. It is also necessary to bear in mind the philosophy of the GST regime, which is discussed in the case of Mohit Minerals¹⁴. This Court held that the philosophy of the GST is to incorporate a consumption and destination-based test. The emphasis is on taxing supplies of goods and services. If we apply the well-settled principles on the interpretation of taxing statutes, as discussed in the earlier part of this judgment, there is no scope to give any meaning to clause (c) of Section 17(5) other than its plain and natural meaning. The expression "plant and machinery" has been specifically defined in the explanation of Section 17. Works contract service has been defined under the CGST Act. We cannot add anything to clause (c) or subtract anything from clause (c). ITC is a creation of legislature. Therefore, it can exclude specific categories of goods or services from ITC. Exclusion of the category of works contracts by clause (c) will not, per se., defeat the object of the CGST Act.

MEANING OF THE EXPRESSION "PLANT OR MACHINERY" IN CLAUSE (d) OF SECTION 17(5)

42. The question is whether the explanation that lays down the meaning of the expression "plant and machinery" in Section 17 will apply to the expression "plant or machinery" used in Section 17 (5)(d).

...

44. The explanation to Section 17 defines "plant and machinery". The explanation seeks to define the expression "plant and machinery" used in Chapter V and Chapter VI. In Chapter VI, the expression "plant and machinery" appears in several places, but the expression "plant or machinery" is found only in Section 17(5)(d). If the legislature intended to give the expression "plant or machinery" the same meaning as "plant and machinery" as



defined in the explanation, the legislature would not have specifically used the expression "plant or machinery" in Section 17(5)(d). The legislature has made this distinction consciously. Therefore, the expression "plant and machinery" and "plant or machinery" cannot be given the same meaning. It may also be noted here that the expression 'plant or machinery' is used in dealing with a peculiar case of goods or services being received by a taxable person for the construction of an immovable property on his own account, even when such goods or services or both are used in the course of furtherance of business. Therefore, if the expression "plant or machinery" is given the same meaning as the expression "plant and machinery" as per the definition contained in the explanation to Section 17, we will be doing violence to the words used in the statute. While interpreting taxing statutes, it is not a function of the Court to supply the deficiencies.

45. Now, the question which arises is what meaning should be given to the expression "plant or machinery". When the legislature uses the expression "plant and machinery," only a plant will not be covered by the definition unless there is an element of machinery or vice versa. This expression cannot be read as "plant or machinery". That is so clear from the explanation in Section 17, which says that plant and machinery mean apparatus, equipment and machinery fixed to the earth by foundation or structural support that are used for making outward supply of goods or services or both. The expression includes such foundation and structural support fixed to the earth. However, the definition excludes land, buildings or any other civil structure.

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.

5.19 In the instant case, we find that the work of construction of the breakwater project was handled by M/s. Larsen & Toubro. The applicant themselves has stated that the services provided by the said contractor was a works contract service. Therefore, we



find that the clause which restricts Input Tax Credit in such cases would be clause 17(5)(c) and not 17(5)(d). This is a case of supply of works contract for which ITC is restricted under clause 17(5)(c) which restricts availment of ITC in respect of 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. Therefore, primarily, we find that the decision of the Hon'ble Supreme Court in the case of M/s. Safari Retreats is not applicable to the facts of this case and the applicant's reliance upon the decision of the Hon'ble Supreme Court in the case of Safari Retreats is misplaced as their case is not covered by Clause 17(5)(d) of the CGST Act, 2017. In the instant case, the definition of Plant and Machinery provided under Section 17 has to be considered for deciding the admissibility of Input Tax Credit and resort to any functionality test or the meaning of Plant or Machinery in common parlance would not be applicable.

5.20 Without prejudice to the above, we find that the provisions of Section 17(5)(d) of CGST Act, 2017, was also amended by the Government vide Section 124 of the Finance Act, 2017. The relevant portion of the Finance Act, 2017, is as under: -

124. In section 17 of the Central Goods and Services Tax Act, in sub-section (5), in clause (d), -- (i) for the words "plant or machinery", the words "plant and machinery" shall be substituted and shall be

(ii) the Explanation shall be numbered as Explanation 1 thereof, and after Explanation 1 as so numbered, the following Explanation shall be inserted, namely: --

'Explanation 2. --For the purposes of clause (d), it is hereby clarified that notwithstanding anything to the contrary contained in any judgment, decree or order of any court, tribunal, or other authority, any reference to "plant or machinery" shall be construed and shall always be deemed to have been construed as a reference to "plant and machinery";'

This Section has come into effect from 1.10.2017 as per Notification No.16/2017 Central Tax dated 17.9.2017.

In view of the above amendment, the decision of the Hon'ble Supreme Court in the case of Safari Retreats is no longer valid or relevant, to the facts of this case. The entire

decision of the Hon'ble Supreme Court in the said case was based on the fact that words 'plant or machinery' has not been defined under Section 17. However, in view of the retrospective amendment to the said Section and the introduction of Explanation 2 which states that notwithstanding anything to the contrary contained in any judgment, decree or order of any court, tribunal, or other authority, any reference to "plant or machinery" shall be construed and shall always be deemed to have been construed as a reference to "plant and machinery" Thus, the very basis on which the decision of the Hon'ble Supreme Court in the case of Safari Retreats rests, has been amended retrospectively by the Government, thereby rendering the said decision otiose, in respect to the facts of the present case.



5.21 In view of the above, we find that the arguments raised by the applicant in their submissions dated 18.8.2025 and the various case laws relied upon by them with respect to the functionality test and the meaning of the term 'plant' in various judicial forums, especially the Income Tax Act and other Acts become inapplicable in the present case. Since the definition of Plant and Machinery has been provided in the CGST Act, the same has to be taken into consideration for deciding whether the applicant is eligible to avail ITC on the breakwater project.

5.22 We find that the other question on which ruling is sought by the applicant is whether the services of the works contract by the contractor is covered under item (vii) of S.No.3 of Notification No.11/2017 Central Tax (Rate) dated 28.6.2017. In this regard, we find that the advance ruling authority is governed by the provisions of chapter XVII of the CGST Act, 2017. As per Section 95 of the CGST Act, 2017, the term 'advance ruling' means a decision provided by the authority to the applicant on matter or questions specified in sub section 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. Since the breakwater project is constructed by a contractor, the supply, if any will be undertaken by the contractor and not the applicant. Further, we find that as per Section 100, an appeal against the order of the Authority for advance ruling and the Appellate Authority for advance ruling can be filed by the jurisdictional officer, concerned officer or the applicant. If any advance ruling is made on this question raised by the applicant, it would affect the rights of the contractor who provided the works contract service to the applicant. However, they will not be able to file any appeal against the said order if they are not party to the application. Such a ruling wherein the aggrieved party is unable to file an appeal against the said order is not envisaged under the GST Act. Further, in terms of Section 103(1), the order of the advance ruling authority is binding on the applicant and the concerned jurisdictional officer. Therefore, an order which affects the activities of the supplier of works contract service but is not enforceable against him is not envisaged under the GST Act. Therefore, we refrain from answering this question.

6. 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- 123/18-19/2024-25/B- 640

Mumbai, dt. 18/12/2025

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

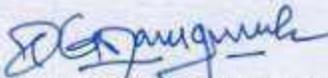
Question 1: - Whether on the facts and circumstances of the case and as per the law, the applicant is not eligible to avail/utilize the input tax credit of the taxes paid in terms of section 16 read with section 17 of the MGST ACT / CGST ACT (CGST/ SGST / IGST) to the supplier of goods/ services on the 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.

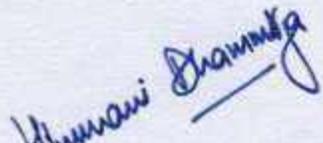
Answer: - Yes. The applicant is not eligible to avail the ITC in respect services on the construction of the break water wall.

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: - No ruling is given.




DIPAK GOJAMGUNDE
(MEMBER)


HIMANI DHAMIJA
(MEMBER)

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint commissioner of State Tax, Mahavikas for Website.

Note: -An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai - 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.