M/s. Konkan LNG Private Limited (Appellant)

Appellate Authority for Advance Ruling — Maharashtra

ORDER NO. MAH/AAAR/SS-RJ/14/2019-20, Date 06.11.2019 Dated **06.11.2019**

Q Questions Before the Authority

- Whether the appellant is eligible to take input tax credit under sections 16 and 17 of the CGST/MGST Act on the GST paid for construction of a breakwater that is part of its existing captive jetty and is needed for the safety, longevity and all-weather operation of the jetty.

F Facts

The appellant runs an LNG regasification plant at Dabhol, Maharashtra, and its captive jetty, about 300 metres long, receives LNG cargo. A partly built breakwater, originally part of the approved design, does not fully protect the jetty, so the NSPC allows berthing only in waves below 0.5 metres. The appellant tendered for completion of the breakwater, with scope covering design, dredging, quarrying, Accropode units and core material, and sought ITC on the construction cost.

H Ruling

Eligibility for ITC on GST paid for construction of the breakwater attached to the captive LNG jetty (ss. 16 and 17)	**Not eligible. The AAR ruling is confirmed.**	The order has no numbered RULING section. The row reflects the operative order, which confirms the AAR's single answer. The bar rests on s.17(5)(d) because the breakwater is a civil structure and not plant and machinery.

The Appellate Authority confirmed the advance ruling, holding that the breakwater is an immovable civil structure and not plant and machinery. ITC on its construction is therefore **blocked under section 17(5)(d)** . The authority did not need to decide the outward-supply argument, because the breakwater falls outside the definition of plant and machinery.

R Reasoning

The authority read s.17(5)(d) with its explanation defining plant and machinery as apparatus, equipment and machinery fixed to earth, and noted that land, buildings and other civil structures are excluded. Relying on dictionary meanings and ejusdem generis, it held that a sea wall of Accropodes and core material is a civil structure and not apparatus or equipment. It rejected the appellant's reliance on Mazgaon Dock, holding that the Income Tax definition of 'plant' is not pari materia with the GST definition, which is exhaustive ('means'). It also held that the breakwater is not an integral part of any machinery and that the essentiality test was not needed to decide the case.

P Provisions Relied On

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

Section 16 of the CGST Act and MGST Act (input tax credit eligibility)

Section 17(5)(d) of the CGST Act and MGST Act, including its explanations on 'construction' and 'plant and machinery'

Explanation to section 17 (definition of 'plant and machinery', excluding land, building or other civil structures, telecommunicat…

Section 97 (application for advance ruling), section 100 (appeal) and section 101 (appellate powers)

Case law cited and distinguished: Mazgaon Dock Ltd (reported as 191 ITR 460/490 in the document; the two reference numb…

! For the Practitioner

This order is useful for captive port, jetty and marine works. It confirms that sea walls and breakwaters built as civil works are not plant and machinery, so s.17(5)(d) blocks ITC on them even where they protect a plant. It does not decide whether a structure that serves as the foundation or structural support of apparatus can qualify as plant and machinery. Nor does it resolve the outward-supply question the appellant raised, since the authority found that unnecessary.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> mah aaar ss-rj 14 2019-20 06.11.2019.pdf

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