Konkan LNG Private Limited

Authority for Advance Ruling — Maharashtra

GST-ARA-123/2018-19/B-56, Mumbai, dt. 24/5/2019 (date partly legible in… Dated **24.05.2019**

Q Questions Before the Authority

- Whether, on the facts and as per the law, the applicant is not eligible to avail or utilise the input tax credit of taxes paid under section 16 read with section 17 of the MGST/CGST Act to the supplier of goods or services for the construction of the break water wall, which is an integral part of the existing jetty and required for safety and longevity of the jetty and for making it an all-weather jetty.
- Whether, on the facts and the scope of work, the works contract services which KLPL intends to procure are not predominantly earth work (more than 75 per cent. of the works contract value), and whether the works contract services of the contractor are covered under item (vii) of serial No. 3 of the Table to Notification No. 11/2017-Central Tax (Rate) dated 28 June 2017, as amended by Notification No. 31/2017-Central Tax (Rate) dated 13 October 2017.

F Facts

The applicant provides regasification of LNG to Ratnagiri Gas and Power Private Limited at the Dabhol plant, with LNG unloaded at a captive jetty inside the plant area. An existing breakwater wall adjacent to the jetty is incomplete, and the port authority permits berthing only when wave height is below 0.5 metres. The applicant has tendered for completion of the breakwater as a works contract, with contractors to charge GST on their invoices.

H Ruling

Q1: Eligibility of applicant to take ITC on taxes paid to contractors for construction of the breakwater wall (s.16 r/w s.17)	****Not eligible. Answered in the affirmative.****	Breakwater is an immovable property and a civil structure, not plant or machinery. It is not used for making outward supply, and the applicant did not show that the regasification plant cannot function without it.
Q2: Whether the works contract is predominantly earth work (above 75 per cent.) and covered under item (vii) of serial No. 3 of Notification 11/2017-CT(Rate) as amended by 31/2017-CT(Rate)	**Not answered.**	The question was held to be outside the Authority's purview under section 95, because the supply, if any, will be undertaken by the contractor and not by the applicant.

Question 1 is answered in the affirmative: the applicant is not eligible to take input tax credit on the construction of the breakwater wall. The Authority held that the breakwater is a civil structure and an immovable property, so it is not plant or machinery and falls within the blocking provision of section 17(5)(d). Question 2 was not answered, because the supply will be made by the contractor and not by the applicant, so it falls outside section 95.

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

R Reasoning

The Authority accepted that the breakwater is immovable property, which the applicant conceded. It then applied the explanation to section 17 defining plant and machinery, which excludes land, buildings and other civil structures, and treated the breakwater as a civil structure. It also held that the apparatus must be used for making outward supply of goods or services, whereas the breakwater only facilitates receipt of LNG as raw material. Following the Mazagon Dock test (191 ITR 460), the Authority found that the applicant had not shown the regasification plant cannot function without the breakwater, since it already operates without the completed wall. The decisions cited by the applicant, including Safari Retreats (Orissa HC), were considered to have no relevance.

P Provisions Relied On

- Section 16 of the CGST/MGST Act (eligibility to ITC)
- Section 17(5)(d) of the CGST/MGST Act (block on ITC for construction of immovable property other than plant or machinery)
- Explanation to Section 17 (definition of plant and machinery, excluding civil structures), cited by the Authority as section 17(6)
- Section 95 (scope of advance ruling; basis for not answering Q2)
- Section 97 and Section 98 (application and procedure for advance ruling)
- Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended by Notification No. 31/2017-Central Tax (Rate) d...

! For the Practitioner

This ruling is useful for port, jetty and LNG terminal operators who want ITC on marine civil works such as breakwaters, as it shows the Authority will treat such works as civil structures that are blocked under section 17(5)(d) unless the applicant proves the plant cannot function without them. It does not decide whether the classification of the works contract under the rate notification is correct, because Q2 was left unanswered. The ruling binds only the applicant and the jurisdictional authority, and it does not address acropods as apparatus, which the applicant argued but the Authority did not separately decide.

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 -> maharashtra_aar_123_2018-19_klpl_24.05.pdf

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