

**THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560009**

Advance Ruling No. KAR ADRG 46/2020

Date : 11-09-2020

Present:

- 1. Dr. Ravi Prasad M.P.**
Additional Commissioner of Commercial Taxes Member (State Tax)
- 2. Sri. Mashhood Ur Rehman Farooqui,**
Joint Commissioner of Central Tax, Member (Central Tax)

1.	Name and address of the applicant	M/s. Mother Earth Environ Tech Pvt Ltd., #2542, 28 th Cross, 17 th Main, Banashankari 2 nd Stage, Bengaluru-560070
2.	GSTIN or User ID	29AAHCM2560M1Z1
3.	Date of filing of Form GST ARA-01	03.07.2020
4.	Represented by	Sri. S.R.Raghunatha, C A Authorised Representative
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Central Tax, Bangalore West Commissionerate, Bengaluru. (CWD7)
6.	Jurisdictional Authority - State	LGSTO-155,Ramanagara.
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act and Rs 5,000/- under KGST Act vide CIN CNRB20032900073617 dated 09.03.2020

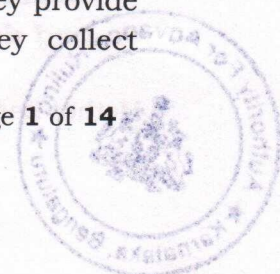
**ORDER UNDER SECTION 98(4) OF THE CGST TAX ACT, 2017
& UNDER 98(4) OF THE KGST ACT, 2017**

1. M/s Mother Earth Environ Tech Pvt Ltd., (called as the 'Applicant' hereinafter), #2542, 28th Cross, 17th Main, Banashankari 2nd Stage, Bangalore-560070, Karnataka, having GSTIN number 29AAHCM2560M1Z1, have filed an application for Advance Ruling under Section 97 of CGST Act,2017 & KGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act 2017.

2. The applicant is into the business of solid waste management. They provide services for treatment, storage and disposal of hazardous waste. They collect

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hazardous wastes from various industries across Karnataka and dispose the same as per the guidelines of Central Pollution Control Board (CPCB) and Karnataka State Pollution Control Board (KSPCB). They obtained the land on lease from the Government and constructed land filling pit for processing and disposal of solid waste. They have given a detailed brief on the construction of the land fill pit. On completion of filling landfill pit, it is closed and sealed as per the environmental guidelines and it is maintained for further 30 years without doing any activity on that particular landfill pit. The applicant contends that the landfill pit is plant and machinery and they have capitalised the same in their books of accounts. Further, they have claimed depreciation under the income tax excluding the GST paid thereon.

3. In view of the above, the applicant has sought advance ruling on the following question:

Whether the term "other civil structure" used in the definition of "Plant and Machinery" restricts the Land filling Pit from considering it as Plant & Machinery and thereby restricts ITC to be availed on it.

4. Admissibility of the application: The question is about admissibility of input tax credit of tax paid or deemed to have been paid and hence is admissible under Section 97(2)(d) of the CGST Act 2017.

5. Applicant's interpretation of the Law:

5.1 As per Section 17(5) (d) of CGST act 2017 ITC cannot be availed on Goods and Services utilized for construction of immovable property (other than Plant or Machinery) on his own account including when such Goods or Services is used in course or Furtherance of business.

"It is to Say that ITC can be availed on supplies of Goods and Services used for construction of Plant and Machinery and further the act has provided the definition of plant and machinery".

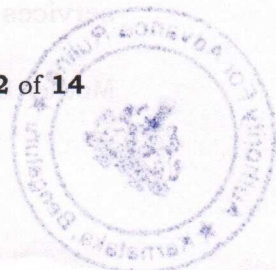
5.2 As per **Explanation 2** to **Sec 17(5)** "Plant and Machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes —

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

"Here the Plant and Machinery the Company is referring to is a "Land Filling Pit" which is an apparatus fixed to earth with the help of a structural support that are used for making outward supply of services and does not amounts to any Civil Structure".



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5.3 Documents needed for claiming ITC.

- a. An invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;
- b. An invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;**
- c. A debit note issued by a supplier in accordance with the provisions of section 34;
- d. A bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made there under for the assessment of integrated tax on imports;
- e. An Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

“As per point (b) the assessee has Valid Invoices as per section 31(3)(f)”

As per sec 16(2) An entity is eligible to claim ITC if all the following conditions are satisfied.

(a) Entity is in possession of a tax invoice or debit note issued by a supplier registered under GST Act or such other taxpaying document as may be prescribed.

(b) Entity has received the goods or services or both.

(c) subject to section 41 of CGST Act, the tax charged in respect of such supply has been actually paid to the credit of the appropriate Government, either in cash or through utilization of input tax credit admissible in respect of the said supply [section 41 of CGST Act allows taking input tax credit in electronic credit ledger on self-assessment basis].

(d) Entity has furnished the return under section 39 [every taxable person is required to file electronic return every month as per section 39 of CGST Act].

“Entity is in the possession of tax Invoice. It has made payment for the services availed within 180 days and the counterparty has also uploaded the invoice in Form GSTR 1 which is reflected in form GSTR 2A of the assessee . It has also filed Form GSTR 3B“.This makes the assessee eligible to claim ITC.

As per **Sec 2(19) Capital Goods** means goods, the value of which is capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business.



As per **Sec 16(1)** ITC can be availed on goods and services which are used in the course of furtherance of business. Since the words '**goods**' have been used, it implies that goods includes '**capital goods**' and 'inputs'.

"Here the Land Filling Pit satisfies the definition of capital asset and therefore, the entity is rightful in claiming ITC".

"However the Depreciation has not been claimed on the ITC portion".

5.4 The Industrial waste management is essential to protect the environment, the applicant company has undertaken the work of the collection of the medical and industrial solid waste for processing and then disposal of the same scientifically, which in turn helps the country to maintain the intention of "**Swatch Bharath**".

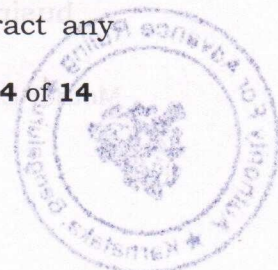
In the process of construction of Plant and Machinery which involves various inputs viz., cement, sand, steel, aluminium, wires, plywood, paint, electrical equipments, etc., and also services in the form of consultancy service, architectural service, legal and professional service, engineering service and other services. Therefore, the applicant has to purchase/receive these goods and services for carrying out the said construction. All these goods and services which are purchased / received for such constructions are taxable under the GST Act.

5.5 The GST Act was implemented with effect from 1st July, 2017 inter-alia with the object of avoiding the cascading effect of various indirect taxes and so as to reduce the multiplicity of a number of indirect taxes. The said GST Act is based on the VAT concept of allowing input tax credit of tax paid on inputs, input services and capital goods which can be utilised for payment of output tax so as to obviate the cascading effect of multistage levies and taxes. GST is levied on supply of the goods or services or both, in India w.e.f. 1st July, 2017.

5.6 However, the benefit of input tax credit has been denied to the client by applying Section 17(5) (d) of the CGST Act as well as of the KGST Act and the language of the said sub-section in both the Acts is identical. The said Section 17(5) (d) of both the aforesaid Acts inter alia provides that notwithstanding anything contained in sub-section (1) of Section 16 of both the aforesaid Acts and sub section (1) of Section 18 of both the aforesaid Acts, input tax credit shall not be available in respect of the goods and 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.

5.7 "On a plain reading of Section 17(5)(d), it is clear that what it contemplates and provides for is a situation where inputs are consumed in the construction of an immovable property which is meant and intended to be sold. The sale of immovable property post issuance of completion certificate does not attract any

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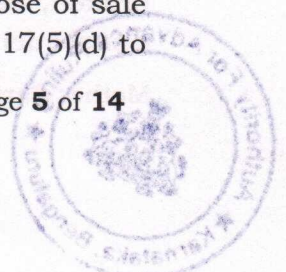
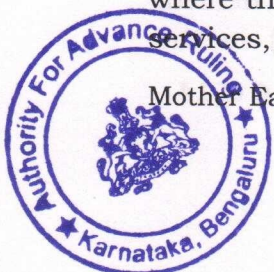


levy of GST. Consequently, in such a situation, there is a break in the tax chain and, therefore, there is full justification for denial of input tax credit as, on the completion of the transaction, no GST would at all be payable and, therefore, no set-off of the input tax credit would be required or warranted or justified. But the position is totally different where the immovable property (Plant and Machinery) is used in course and furtherance of business, because, in that event, the tax chain is not broken and, on the contrary, the construction of the Plant and Machinery will result in a fresh stream of GST revenues to the Exchequer on the services offered. The denial of input tax credit in such a situation would be completely arbitrary, unjust and oppressive and would be directly opposed to the basic rationale of GST itself, which is to prevent the cascading effect of multi-stage taxation and the inevitable increase in costs which would have to be borne by the consumer at the end of the day. In the present case also, the effect of denial of input tax credit would be a sharp and inevitable increase in the cost which the owner of the Plant and Machinery would be compelled to incur.

5.8 As already pointed out, these two types of transactions cannot possibly be compared or bracketed together, for the purpose of levy of GST, as already explained in detail earlier. The treatment of these two different types of immovable properties as one for the purpose of GST is itself contrary to the basic principles regarding classification of subject matter for the levy of tax and, therefore, violates Article 14 of the Constitution. Such a classification also constitutes the treatment of assessee like the client on a totally different footing as compared with other assessee who have a continuous business and an unbroken tax chain. Thus, the same violates the client's fundamental right to equality guaranteed by and under Article 14 of the Constitution, on this distinct and independent ground also. Further, as also pointed out hereinafter, the GST authorities are themselves reading down Section 17(5)(d) and treating it as inapplicable for any person who constructs Plant and Machinery for further supply of Goods and Services and pays CGST/SGST on the amount of sale price received by him.

5.9 Further, such an interpretation of Section 17(5)(d) of both CGST and SGST Act leads to double taxation, i.e., firstly, on the inputs consumed in the construction of the Plant and Machinery and secondly, on Services offered through such Plant and Machinery. It is also a settled principle of interpretation of tax statute, that interpretation should be adopted which avoids or obviates double taxation. This principle is also directly applicable to the present case. It would also violate the client's fundamental right to carry on business under Article 19(1)(g) of the Constitution as it would impose a wholly unwarranted and unreasonable and arbitrary restriction.

5.10 It is therefore, submitted that, in accordance with well-settled principles of interpretation of statutes, Section 17(5)(d) requires to be read down in order to save it from the vice of unconstitutionality, by confining the provision to cases where the Plant and Machinery in question is constructed for the purpose of sale services, thereby terminating the tax chain, and by not applying Section 17(5)(d) to



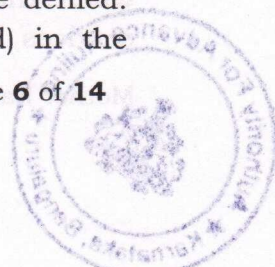
cases where the Plant and machinery in question is constructed for the purpose of sale of services and where the tax chain is not broken. It is further submitted that if this interpretation of Section 17(5)(d) is not accepted, then there would be no alternative except to declare that provision as unconstitutional and illegal and null and void.

5.11 The interpretation of Section 17(5) (d) of both CGST Act and SGST Act which leads to the conclusion that on the facts and circumstances of the present case the client is not entitled to avail the benefit of taking input tax credit while paying CGST and SGST on services offered, clearly goes against the intention of the Legislature and also frustrates the object sought to be achieved by the Legislature in enacting the said CGST Act and SGST Act. It is an undisputed fact that CGST Act and SGST Act are implemented to obviate the cascading effect of various indirect taxes and to reduce multiplicity of indirect taxes. Therefore, when there is no break in supply of services, which implies the continuation of the business activity of the client and there is no break in the tax chain and if that is the undisputed clear position then by interpreting Section 17(5) (d) of both CGST Act and SGST Act, the authorities under both the Acts cannot contend that in the middle of the business the client is not entitled to take credit of input tax, against the CGST and SGST paid on services rendered using such plant and machinery and such an interpretation clearly goes against the intention of the Legislature and also frustrates the object for which the aforesaid Acts were enacted. Such an interpretation will debar those taxable persons like the client, who carry on a continuous business without any break but in spite of that they would be treated differently being denied the benefit of taking input tax credit as available to those taxable person under Section 16 of both CGST Act and SGST Act and such classification of taxable persons into two category even though both have continuous business activities and both have an unbroken tax chain is a clear violation of the fundamental rights of the client as guaranteed under Article 14 and 19(1) (g) of the Constitution of India.

5.12 The classification which the legislature has made in CGST Act and SGST Act by denying input tax credit to one class of taxable persons having a continuous business by placing them under Section 17 (5) (d) of both the aforesaid Act while other taxable persons coming under the aforesaid two Acts are allowed to avail the benefit of input tax credit under Section 16 of both the aforesaid two Acts, has no reasonable basis underlying such classification when both categories of taxable persons are carrying on a continuous business without any break in the tax chain. It is very important to note that when a builder sells units in a building before issuance of a completion certificate, he is required to pay CGST and SGST on the amount of sale price received and at the same time he is also allowed credit and set off of the CGST and SGST paid on the inputs consumed to construct the building and thus the GST authorities themselves recognise and have accepted the position that where, in respect of a building under construction, the tax chain is not broken, Section 17(5)(d) is not applicable and input tax credit cannot be denied.

Consequently, not to adopt the same interpretation of Section 17(5)(d) in the

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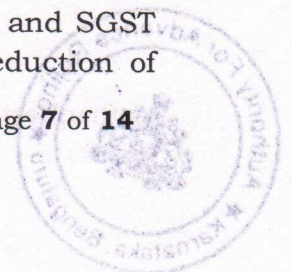
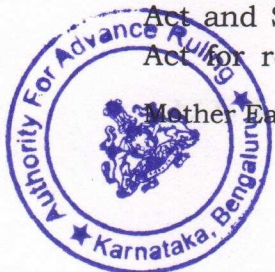
present case where also there is no break in the tax chain, is highly arbitrary and discriminatory. In the case of the client even the business is a continuous one without a break in the tax chain, yet it has been placed under Section 17(5) (d) of the CGST Act and SGST Act and the benefit of taking input tax credit has been denied and therefore on that ground alone and by itself Section 17(5) (d) of CGST Act and SGST Act requires to be struck down as it violates Article 14 of the Constitution if the said clause (d) of sub-section (5) of Section 17 is not read down as submitted earlier.

5.13 Schedule II Paragraph 5 (b) inter alia provides that sale of a building to a buyer before issuance of a completion certificate etc. is a supply of service for the purpose of imposing CGST and SGST. Here the legislature used the phrase 'intended for sale' whereby the intention of the builder was made the decisive factor by the Legislature. Precisely the same approach should have been adopted in the present case also. Otherwise, it would be highly arbitrary and discriminatory application of the provision. Therefore, two different categories of builders were mentioned one in paragraph 5 (b) of Schedule II and the other is in Section 17 (5) (d) of the CGST Act and SGST Act. But the case of the client is completely different from the two categories mentioned hereinbefore. The Plant and Machinery which the client is constructing is neither "intended for sale' nor "on his own account' but it is "intended for offering services". Therefore, by no stretch of imagination, it can be concluded that the Plant and Machinery which is constructed by the client is 'intended for sale' or 'on his own account' and as such when the said Plant and Machinery is constructed purely for the purpose of offering service, then such construction of the Plant and Machinery will not come within the mischief of Section 17(5)(d) of CGST Act and SGST Act. On the aforesaid clear position of law, if the GST authorities are trying to bring the client case under section 17(5) (d) of both the aforesaid Acts then several words has to be read into the Section 17(5) (d) of the said two Acts which are not permissible in law and it is a well settled law that in constructing fiscal statute and in determining the liability of a subject to tax, one must have regard to the strict letter of law and no words can be added to a statute or read into it which are not there.

5.14 Legislature has also imposed another condition in Section 17(5) (d) of both the aforesaid Acts which reads as 'when such goods or services or both are used in the course or furtherance of business' this condition is applicable only when the immovable property is constructed 'on his own account' as appearing in that sections, which means that the taxable person on whose account the said immovable property is constructed. The said condition cannot be applied to any other cases far less when the construction of the immovable property is intended for offering services.

5.15 If the benefit of taking credit of input tax under Section 16 of the CGST Act and SGST Act is denied to the client by invoking Section 17(5) (d) of the CGST Act and SGST Act, in that event, the very object of enacting CGST Act and SGST Act for reducing the cascading effect of various indirect taxes and reduction of

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multiplicity of indirect taxes, will be frustrated even when the business of the client is a continuous one and there is no break at any point of time. It is a well settled law that the interpretation which defeats the very intention of the legislature should be avoided and that interpretation which advances the legislative intent will have to be accepted.

5.16 To conclude the client is into the business of Treatment, Storage and Disposal of Common Hazardous Waste and for the purpose of same has to construct a land fill Pit (Plant and Machinery). It shall use such land fill pit for offering services to its customers and thereby shall be liable to discharge GST on the service charges collected. The client is of the opinion that since plant and machinery is not covered u/s 17(5)(d) it is eligible to claim input tax credit on inputs and input services used for construction of such plant and machinery. In this instant situation there is no break in the chain of Input Tax Credit which fulfils the very objective of GST (Tax on value addition) to prevent the cascading effect. Further the client will be aggrieved of his fundamental right if he is denied the input tax credit on inputs and input services used for construction of plant and machinery, there would also be discontinuance in the credit chain.

The client fulfils all the further stated criteria's which makes it eligible to claim input tax credit.

6. **Opinion of the Jurisdictional Officer:**

The authority received opinion/comments from the jurisdictional office of the Principal Commissioner of Central Tax, West Commissionerate, Bangalore, which are as under:

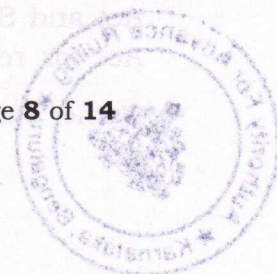
6.1 The work involved in the construction of the landfill, as seen from the scope of work documents, is civil in nature on the basis of the following lines.

- Basic design of cells in landfills, liner installation and leachate collection system.
- Technical specifications for single composite liner system, double composite liner system, cover system.
- Construction of main leachate pipe, tank and treatment facility
- Design of slopes
- Various design requirements for liner system's adequate stability at the base of the landfill (in soft soil), along the sides of the landfill, adequate strength to withstand construction loads/vehicle loads et al.

6.2 The above-mentioned details as per applicant's submission clearly shows that the landfill pit comprises extensive civil work in order to be built which is



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basically a concrete structure after undertaking extensive geological survey of the property, a design is made and then extensive construction work is undertaken.

6.3 Further, the term 'immovable property' has not been defined in the GST law but it is defined in Section 3(26) of the General Clauses Act, 1897 as including land, benefits arising out of land, and things attached to the earth, or permanently fastened to anything attached to the earth." "Attached to earth" is defined in Section 3 of the Transfer of Property Act as meaning:

- a) Rooted in the earth, as in the case of trees and shrubs;
- b) Embedded 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.

Accordingly, it can be said that landfill pit is an immovable property, an embedded civil structure in the earth (like any-other immovable civil structure viz. building, road, dam, bridge etc.) which is constructed by taxpayer on his own account during the course of supplying service of disposal of hazardous waste.

Landfill Pit also doesn't fit into definition of plant and machinery viz. apparatus. Plant and machinery in common parlance mean a place where industrial activity takes place or a factory where certain material is produced or big machinery used to carry out certain processes of production. The term 'plant and machinery' therefore should be interpreted to mean a place where certain manufacturing activities/processes of production are carried out with the help of inputs.

6.4 However, in this case, once landfill pit is filled with waste, this pit will be covered and closed permanently (and it will become part of land itself which is clearly excluded for availing ITC). Further once waste is buried inside the pit, there is no control over the actual activity undergoing inside pit which is a natural decomposition process. Hence time taken by this process and final outcome is not certain, whereas, in case of plant and machinery viz. apparatus, there is a controlled and mechanized process/ activity wherein inputs are known and final outcome is certain.

6.5 Taxpayers' submission that Landfill Pit is used towards supply of services & hence eligible as plant and machinery (e.g. apparatus) can be discussed by applying the same analogy in the case of providing services of - Renting of building or Storage services. During supply of these services, whether ITC is allowed on construction of building or godown considering them as plant and machinery viz. (apparatus) being used in course of supply of service? However, inadmissibility of ITC is clearly stated for - "land, building or any other civil structures". Also, on similar issue in the case of Safari Retreats Private Limited, the Department has filed an appeal before Hon'ble Supreme Court of India as Hon'ble High Court of



Orissa has allowed ITC (though not declared ultra vires) on goods and services consumed in construction of shopping malls rented out by the assessee.

Hence as discussed above, it is opined that ITC cannot be claimed on construction of Landfill Pit as per Section 17(5)(d) of CGST Act 2017.

PERSONAL HEARING / PROCEEDINGS HELD ON 30.07.2020

7. Sri. S R Raghunatha, C A and duly authorised representative of the applicant appeared for personal hearing proceedings held on 30.07.2020, reiterated the facts narrated in their application & furnished written submissions, in support of their argument.

DISCUSSION & FINDINGS

8. We have considered the submissions made by the Applicant in their application for advance ruling as well as the issues involved & relevant facts having a bearing on the questions in respect of which advance ruling is sought by the applicant.

9. At the outset, we would like to state that the provisions of both the CGST Act, 2017 and the KGST Act, 2017 are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the corresponding similar provisions under the KGST Act.

10. The applicant is into the business of Treatment, Storage and Disposal Facility (TSDF) of hazardous waste and has constructed a Land filling Pit for processing and Treatment, Storage and Disposal of Hazardous Waste. The applicant has capitalized the land filling Pit as Plant and Machinery and consider itself to be eligible to claim ITC on the material and services utilized for its construction.

11. Section 17 (5) of CGST Act, 2017 reads 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:—

(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 capitalization, to the said immovable property;



Further another Explanation is provided for the purpose of Chapter V (Section 17 falls under Chapter V of CGST Act, 2017) which is given below:

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

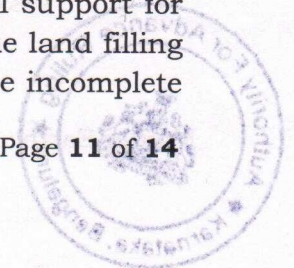
12. The applicant, in their submissions, basically emphasized on three aspects, i.e. denying the ITC on landfill pit which is used for outward taxable supply is against the spirit of the Act and would result in cascading effect. Secondly, land filling plant is an apparatus fixed to earth with the help of structural support and for that reason can be called plant & machinery. Lastly, it is not a civil structure. We will discuss these in the following paragraphs.

13. Section 17(5)(d) of the CGST Act, 2017 denies availment of ITC on goods and services when supplied for construction of an **immovable property** (other than plant and machinery) **on his own account** including when such goods or services are both are used in the furtherance of business. Here, two aspects are noteworthy. One is that such goods and services should be used for the construction of an immovable property and the other is that the activity is carried on his own account. Applicant does not deny that the land filling pit is an immovable property. However, the applicant contends that the activity is not carried on his own account but is intended for offering services. We do not agree with the applicant's view because applicant has not constructed the landfill pit on behalf of someone else. He is not under any contractual obligation with any entity to construct the land filling pit. In fact he has obtained land from Government on long term lease basis and has done the construction on his own account to provide the output service. Now, we proceed to discuss the exclusion mentioned in Section 17(5)(d) of CGST Act, 2017, i.e plant and machinery.

14. The explanation given at the end of Section 17(5) of CGST Act, 2017 defines plant and machinery as *apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes Land, building or any other civil structure*. We find that land filling pit is a combination of earth work and other capital goods as given in the brief submitted by the applicant. It can't solely or in itself be identified as apparatus, equipment and machinery fixed to earth by foundation. It is also not a structural support for anything. Therefore, we do not agree with the applicant's view that the land filling pit falls under plant and machinery. However, the discussion would be incomplete

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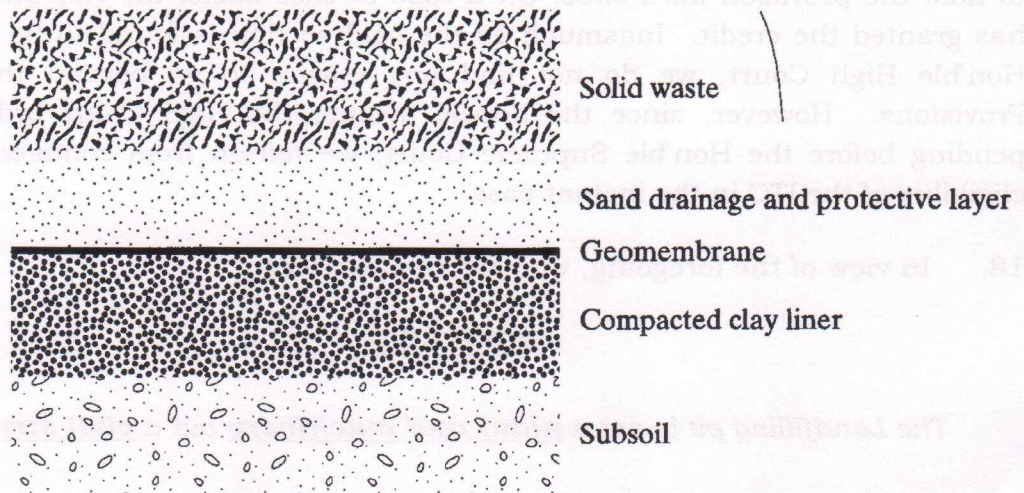


without deciding the question of Civil Structure, i.e. whether the land filling pit is a civil structure or not.

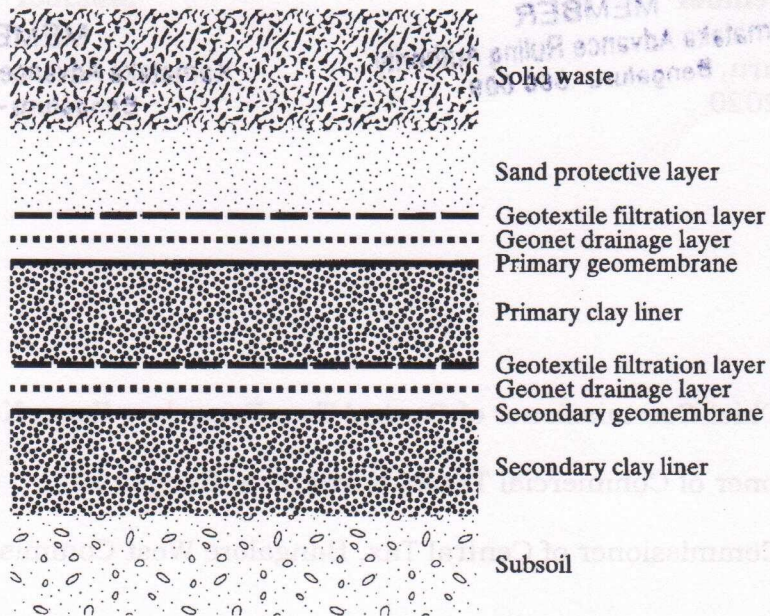
15. We find that the applicant has not given any reason as to why the land filling pit should not be called a civil structure. Hence, we go to the brief submitted by the applicant regarding construction of the landfilling pit. Components of Landfill Design are:

- A liner system at the base and sides of the landfill, which prevents migration of leachate or gas to the surrounding soil.
- A leachate collection and treatment facility, which collects and extracts leachate from within and from the base of the landfill and then treats the leachate to meet standards, notified under EP Act 1986.
- A gas collection and treatment facility (optional), which collects and extracts gas from within and from the top of the landfill and then treats it or uses it for energy recovery.
- A final cover system at the top of the landfill, which enhances surface drainage, prevents infiltration of water and supports surface vegetation.
- A surface water drainage system, which collects and removes all surface runoff from the landfill site.
- An environmental monitoring system, which periodically collects and analyses air, surface water, soil-gas (option) and ground water samples around the landfill site.
- A closure and post-closure plan which lists the steps that must be taken to close and secure a landfill site once the filling operation has been completed and the activities for long-term monitoring, operation and maintenance of the completed landfill.
- These guidelines also emphasize adoption of single liner system or double liner system depending upon the rainfall, type of sub-soil and the water table beneath the base of the landfill. In a place where rainfall is high and /or sub-soil is highly permeable (e.g. gravel, sand, silty sand) and /or the water table is within 2.0 m to 6.0 m, the guidelines suggest to adopt double composite liner. The specifications of the single composite liner, double composite liner system and cover system are given below in Figures:





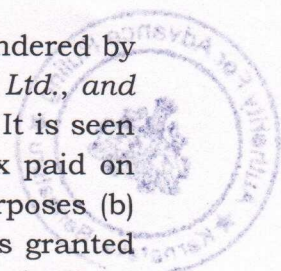
Single Composite Liner System



Double Composite Liner System

16. We observe that civil structure involves engineering work at both levels i.e above and below the ground. We find that the applicant has performed civil work to create the landfill pits below the ground and therefore it is a civil structure.

17. The applicant has further placed reliance on the judgment rendered by the Hon'ble High Court of Orissa in the case of "M/s. Safari Retreats Pvt. Ltd., and Another v. Chief Commissioner of Central Goods & Service Tax & Others". It is seen that in the said case, the prayers are (a) eligibility to credit of input tax paid on goods/services used for construction which is rented for commercial purposes (b) to hold Section 17(5)(d) as *ultra vires*. While the Hon'ble High Court has granted the prayer at (a) has not accepted the prayer at (b) stating that they are not inclined

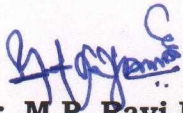


to hold the provision *ultra vires*. On a case to case basis, the Hon'ble High Court has granted the credit. Inasmuch as the said section is found to be valid by the Hon'ble High Court, we do not find any reason to go beyond the Statutory Provisions. However, since the appeal against the High Court order supra is pending before the Hon'ble Supreme Court, we refrain from commenting on the eligibility of the ITC in the instant case.

18. In view of the foregoing, we pass the following

RULING

*The Landfilling pit is not a **plant and machinery** but a **civil structure**.*



(Dr. M.P. Ravi Prasad)

Member MEMBER
Karnataka Advance Ruling Authority

Place : Bengaluru, Bengaluru - 560 009
Date : 11-09-2020



(Mashhood Ur Rehman Farooqui)

Member

MEMBER

Karnataka Advance Ruling Authority
Bengaluru - 560 009

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Principal Commissioner of Central Tax, Bangalore West Commissionerate, Bengaluru.

The Asst. Commissioner, LGSTO- 155, Ramanagara.

Office Folder.



Mother Earth

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