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

Advance Ruling No. KAR ADRG 46.1/2020
Date: 30-07-2021

Present:

1. **Dr. Ravi Prasad M.P.**
   Additional Commissioner of Commercial Taxes . . . . Member (State Tax)

2. **Sri. Mashhood Ur Rehman Farooqui,**
   Joint Commissioner of Customs & Indirect Taxes . . . Member (Central Tax)

1.	Name and address of the applicant	M/s. Mother Earth Environ Tech Pvt Ltd., #2542, 28th Cross, 17th Main, Banashankari 2nd 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. K.J.Kamat, Advocate and Duly 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 CGST ACT, 2017
AND UNDER SECTION 98(4) OF KGST ACT, 2017

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 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 have 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. An Advance Ruling had been issued in this case on 11.09.2020 and the applicant had filed a writ petition before the Hon'ble High Court of Karnataka vide W.P.No.2140/2021 (T-Res). The learned counsel of the applicant (petitioner) had argued before the Hon'ble Court that the Advance Ruling Authority had referred the matter to the Principal Commissioner of Tax, West Commissionerate, Bengaluru who is the top most officer in the Commissioner's Office and the said Principal Commissioner had given an opinion on the subject and in his report he had stated that the structure constructed was a concrete structure and based on the report submitted by the Principal Commissioner of Central Tax, an order has been passed by the Advance Ruling Authority. Further, he had argued that the report of the Principal Commissioner of Central Tax was not given to the petitioner at any point of time and the order based on the aforesaid report is violative of the principles of natural justice. The Hon'ble Court had come to the conclusion that the principles of natural justice and fair play have been violated as the report of the Principal Commissioner of Central Tax was not given to the petitioner at any point of time and now that the petitioner has obtained the detailed report submitted by the Principal Commissioner of Central Tax from the Right to Information Act and he is having that report. The Hon'ble Court has set aside the advance ruling dated 11.09.2020 and remitted back the case to the Advance Ruling Authority. It has also ruled that the petitioner shall be free to argue the matter afresh taking into account the report submitted by the Principal Commissioner of Central Tax as the same is already in his possession and the Authority for Advance Ruling shall be free to pass appropriate order in accordance with law without being influenced by its own earlier order within a period of 45 days. The Hon'ble Court has not expressed any opinion on merits of the case.

5. In view of the above, the case is further heard.

6. **Applicant's interpretation of the Law**:

In the original application filed by the applicant for the first time, he had made the following submissions:

6.1 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".

6.2 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".

6.3 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 of 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 counter party has also uploaded the invoice in Form GSTR 1 which is reflected in form GSTR 2A of the assesse . It has also filed Form GSTR 3B".This makes the assesse 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".

6.4 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 **"Swachch 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.

6.5 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.

6.6 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.

6.7 "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 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.

6.8 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 assesse like the client on a totally different footing as compared with other assesse 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.

6.9 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.

6.10 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.

6.11 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.

6.12 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 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.

6.13 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 herein before. 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.

6.14 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.

6.15 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 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.

6.16 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 criterias which makes it eligible to claim input tax credit.

7. **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:

7.1 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.*

7.2 The above-mentioned details as per applicant's submission clearly shows that the landfill pit comprises extensive civil work in order to be built pit, which is basically a concrete structure after undertaking extensive geological survey of the property, a design is made and then extensive construction work is undertaken.

7.3 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.

7.4 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.

7.5 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."

8. Sri.K.G.Kamat, Advocate and Duly Authorised Representative of the above concern appeared and made the following additional submissions in support of the application of the applicant and in addition to those that are already on record: and the same reads as under:

"**A. The exclusion contained under Second Explanation in Section 17 of the CGST Act, is not applicable to Section 17(5)(d) as the former explains the expression "plant and machinery" and not "plant or machinery"**

1. According to literal rule of statutory interpretation if the words of a statute are clear and unambiguous primarily they should be given effect. It is submitted that the term used in the Second Explanation to S.17 and the term used in S. 17(5)(d) is not the same. The Second Explanation to S. 17 explains the term "plant and machinery". Whereas the term referred to in S.17 (5)(d), which is applicable to the present application, is "plant or machinery". The Principal Commissioner of Central Tax ("PCCT") in its opinion has submitted that the Applicant's land filling pit is a "civil structure" and therefore falls within the exclusion clause as contained in clause (i) to Second Explanation under Section 17 of the GST Act. The said explanation reads as follows:

"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." (emphasis supplied)

2. It is submitted that the above interpretation of law is erroneous. This is because the exclusion as contained in the Second Explanation is

not applicable to the case of the Applicant as it is in respect of expression "plant **and** machinery" and not "plant or machinery". The Applicant's application is in respect of Section 17(5)(d) and not Section 17(5)(c). This difference is well illustrated through a comparison of the following provisions:

Section 17(5)(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;

Section 17(5)(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"

Therefore, the Applicant's land filling pit cannot be held to be excluded from the purview of a plant or machinery on the ground that it is a civil structure, assuming not accepting that it is a civil structure, as the law does not exclude civil structure from being a plant or machinery.

B. Assuming not accepting that civil structure can be excluded from plant or machinery, the Applicant's land filling pit is not a civil structure

3. It is observed from the comments on the application from the office of the PCCT, that all the relevant facts have not been understood or considered, in its proper perspective, before giving the opinion that the land filling pit qualifies to be a civil structure as it comprises extensive civil work and that it is basically a concrete structure. It is opined that the following structures are proposed to be constructed on the project site:

1. Land filling pit
2. Temporary Waste Storage Area
3. Utility / Parking
4. Green Belt Area
5. Office & Laboratory Area
6. Labour shed
7. Compound wall

4. One of the fundamental facts which is missed to be considered by the PCCT is that it is only the other structures and not the land filling pit which involve the use of concrete, bricks or cement. Construction materials like steel, cement and bricks will be sourced from local manufacturers for the purposes of other structures only and not for the land filling pit, in respect of which the input tax credit is sought. In fact, no cement, steel or bricks are used in the land filling pit to any extent and this absolute fact has been completely mis-understood by PCCT and as such a factually erroneous observation has been made which are practically not applicable to the actual facts and circumstances of the Applicant as narrated in the application. Thus, the land filling pit

cannot be termed as a civil structure. The detailed explanation of the structures has been provided in the Application.

5. Without prejudice to the above, even assuming not accepting that the use of cement is a relevant fact, it is submitted that it is an established principle of law that merely because steel, cement or bricks are used for construction of a structure, it does not cease to be a plant or machinery. In support of this submission, the Applicant places reliance on the decisions of the Hon'ble High Courts in **J.K. Cement Works Vs. The State of Karnataka (2017[7] G.S.T.L. 408)** and **State of Kerala Vs. Ambuja Cements Ltd (2020 (1) KHC 884)**. The Hon'ble High Court of Karnataka in the case of **J.K. Cement Works Vs. The State of Karnataka (2017[7] G.S.T.L. 408)** held as follows:

> *"21.....We do not find any good reason to hold that cement* ***used for civil works and laying foundation and erection of plant and machinery by the assessee during the relevant period should not constitute a part and parcel of "plant"*** *and thus, Capital Goods used for manufacturing of cement by the petitioner assessee later on and, in our opinion, the petitioner would thus be entitled* ***to claim input tax credit in respect of the tax paid by it in respect of such cement purchased and used by it during the relevant period****, prior to the commencement of its commercial production,* ***for the purpose of erection of the plant and machinery****."*

6. Similarly, the Hon'ble High Court of Kerala in the case of **State of Kerala Vs. Ambuja Cements Ltd (2020 (1) KHC 884)** held as follows:

> *"10. With respect to 'silos' the Tribunal had placed reliance on the decision in Nowrangroy Metals (P) Ltd. V. JCIT (MANU/GH/0044/2003 : 2003 (2) KLT OnLine 1213 (Gau.) : (2003) 262 ITR 231), C.I.T. V. R.G. Ispat Ltd. MANU/RH/0130/2003 : (2003 (3) KLT OnLine 1223 (Raj.) : (2004) 266 ITR 327) and various other rulings, rendered in the subject of Cenvat Credit.* ***Based on those principle, it was held that, merely for the reason that some of the machinery or parts of 'silos' are made out of steel and cement, it will not fall within the exempted group of civil structure, not eligible for input tax credit.*** *It further observed that, the 'silos' with various machineries form an integral part of it, need to be considered as plant and the 'steel and cement' used for construction of the 'silo' and the connected machineries, by itself will loss its identity as 'steel and cement', but it gets merged as a final plant with a specific purpose.* ***On going through the explanation extracted as above, with respect to the construction, purpose, mechanism and usage of the 'silos', we are in perfect agreement with the***

findings of the Tribunal that 'silos' cannot be identified as mere 'civil structure' falling within the negative list under S.R.O. 324/2005. The 'silos' which forms integral part of the machinery has the real characteristics of a plant or machinery, mentioned in the definition contained in Section 2(x) of the K.V.A.T. Act, which makes them to fall within the category 'capital goods' for which input tax credit can be allowed." *(Emphasis supplied)*

7. Therefore, assuming not accepting there is use of cement, despite the same, the land filling pit qualifies to be a plant and cannot be construed as a civil structure. It is submitted that the land filling pit is an apparatus fixed to earth and cannot be classified as Land by itself. It is further submitted that the land filling pit serves as a device for decomposition of hazardous waste and cannot be considered a Building.

C. Without prejudice to the above, the opinion of the PCCT that the land filling pit is not a plant or machinery under Section 17(5)(d) is contrary to the applicable law and facts.

8. Assuming not accepting that the Explanation to S.17 is applicable in the present case, the land filling pit qualifies as plant and machinery for the following reasons:

i. Land filling pit is an apparatus without which the Applicant cannot carry out his business and thus qualifies as plant or machinery under Section 17(5)(d)

9. It is relevant to note that once the Applicant receives waste from industries, it is tested to decide the type of treatment required for it. Depending on the type of waste, the various processing action would be determined to avoid any emission from the hazardous waste. The Applicant in the course of processing of the hazardous waste gathered, has to use lime or fly ash or other neutralising agents to the waste for stabilizing it as per the protocols of the Central Pollution Control Board. After the waste is deposited in the land filling pit the further process of disposal takes place in the land filling pit continuously to avoid any explosion within the pit. These facts have been completely overlooked by the PCCT as well as in the formation of the earlier opinion now being set aside by the Hon'ble Court. Therefore, the Applicant prays to take cognizance of all these material facts to the effect that the land filling pit is plant or machinery under Section 17(5)(d) of the CGST Act.

10. A relevant decision supporting the submissions of the Applicant is in the case of **S. K. Tulsi and Sons v. CIT (1991 187 ITR 685 All).** The Hon'ble Allahabad High Court observed and held that :

"If it was found that the building or structure constituted an apparatus or a tool of the taxpayer by means of which

business activities were carried on, it amounted to a "plant"; but where the structure played no part in the carrying on of those activities but merely constituted a place wherein they were carried on, the building could not be regarded as a plant".

ii. PCCT's interpretation of meaning of "plant and machinery" is against well settled principles of law

11. The PCCT has opined that 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. The PCCT has not provided any supporting statutory provisions or judicial decisions to state how the said opinion regarding the meaning of plant and machinery is arrived at. Without prejudice, it is respectfully submitted that such a narrow interpretation of the word "plant" is against well settled principles of law.

12. The said observation is contrary to the law laid down by the Hon'ble Apex Court in the case of **Scientific Engineering House (P) Ltd. Vs. Commissioner of Income Tax, Andhra Pradesh (AIR 1986 SC 338)**. The Hon'ble Supreme Court, while holding that technical know-how in the shape of drawings, designs charts, plans, processing data and other literature falls within the definition of 'plant', has held as follows:

"12.....The classic definition of 'plant' was given by Lindley, L.J. in Yarmauth v. France [1887] 19 Q.B.D. 647, a case in which it was decided that a cart-horse was plant within the meaning of Section 1(1) of Employers' Liability Act, 1880. The relevant passage occurring at page 658 of the Report runs thus:

There is no definition of plant in the Act: but, in its ordinary sense, it includes whatever apparatus is used by a businessman for carrying on his business-not his stock-in-trade which he buys or makes for sale; but all goods and chattels, fixed or movable, live or dead, which he keeps for permanent employment in his business.

In other words, plant would include any article or object fixed or movable, live or dead, used by businessman for carrying on his business **and it is not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in mechanical or industrial business.** In order to qualify as plant the article must have some degree of durability, as for instance, in Hinton v. Maden & Ireland Ltd., 39 I.T.R. 357, knives and lasts having an average life of three years

used in manufacturing shoes were held to be plant- In C.I.T. Andhra Pradesh v. Taj Mahal Hotel, MANU/SC/0239/1971 : [1971]82 ITR 44 (SC) , the respondent, which ran a hotel, installed sanitary and pipeline fittings in one of its branches in respect whereof it claimed development rebate and the question was whether the sanitary and pipe- line fittings installed fell within the definition of plant given in Section 10(5) of the 1922 Act which was similar to the definition given in Section 43(3) of the 1961 Act and this Court after approving the definition of plant given by Lindley L.J. in Yarmouth v. France as expounded in Jarrold v. John Good and sons limited 1962, 40 T.C. 681. , held that sanitary and pipe-line fittings fell within the definition of plant.

13. In Inland Revenue Commissioner v. Early Curie & Co. Ltd.76 I.T.R. 62, the House of Lords held that a dry dock since it fulfilled the function of a plant mist be held to be a plant. Lord Reid considered the part which a dry dock played in the assessee company's operations and observed:

> ***It seems to me that every part of this dry dock plays an essential part.... The whole of the dock is I think, the means by which, or plant with which, the operation is performed.***

Lord Guest indicated a functional test in these words:

In order to decide whether a particular subject is an 'apparatus' it seems obvious that an enquiry has to be made as to what operation it performs. The functional test is, therefore, essential at any rate as a preliminary.

In other words the test would be: Does the article fulfil the function of a plant in the assessee's trading activity? Is it a tool of his trade with which he carries on his business? If the answer is in the affirmative, it will be a plant."

13. Therefore, the restrictive meaning sought to be given to the term "plant" by the PCCT is contrary to law. It is relevant to note that the Hon'ble High Court of Karnataka, refused to give a restrictive meaning to term "plant", in view of the above decision of the Hon'ble Supreme Court. The Hon'ble High Court of Karnataka in the case of J.K. Cement Works Vs. The State of Karnataka (2017[7] G.S.T.L. 408) held as follows:

> *"11.* ***We see no justification in the contention of the learned Additional Government Advocate appearing for the Revenue that a narrow meaning should be given to the word "Plant" and restrict it to the value or cost of purchase of plant itself.*** *The plant and machinery for manufacturing of cement by itself would be nothing and would be useless, unless they are properly installed and erected with proper foundations and civil work for erection*

thereof and in that process, the use of cement would constitute an integral part of the overall cost of the plant and machinery itself. Such overall immoveable asset in the form of plant and machinery purchased, installed and erected by the petitioner assessee, would only be fit for use for manufacturing of cement itself later on. But, the term "Plant" is not defined in the K.V.A.T. Act and therefore, one can take a broad view and interpret the meaning of the word 'Plant' with the help of precedents or case laws, which we would shortly refer.

17. Now, we may refer to some cases under the Income Tax laws dealing with the definition of 'Plant' which have a bearing on the present controversy before us as well.

19. The Hon'ble Supreme Court in the case of Scientific Engineering House Pvt. Ltd. (Supra) relied upon certain following foreign decisions while dealing with the explanation 'Plant' and gave it a wide meaning under the provisions of Income Tax law in the following manner:

.....

20. In the following case, disposed of by the learned Single Judge of this Court in Santosh Enterprises v. CIT, MANU/KA/0052/1988 : (1993) 200 ITR 353 (Kar), observed that the Indian Courts as well as English Courts, depending upon the context of income tax law, have treated even the assets like dry dock, silos built in the ship yard, freezing chamber in the case of cold storage, cinema building, etc. as falling within the definition of 'Plant'. The relevant extract from the said judgment is also quoted below to emphasize that there is no justification for giving a restrictive meaning to the word 'Plant' as only meaning of machinery which would be useless without proper foundation and fixation attaching it with the earth and making it immoveable asset rather than a moveable property:....

21. Thus, on a conspectus of the legal precedents cited above, when we view the facts and controversy in the present case, we find considerable force in the submissions made by the learned counsel for the petitioner assessee and we do not find any good reason to hold that cement used for civil works and laying foundation and erection of plant and machinery by the assessee during the relevant period should not constitute a part and parcel of "plant" and thus, Capital Goods used for manufacturing of cement by the petitioner assessee later on and, in our opinion, the petitioner would thus be entitled to claim input tax credit in respect of the tax paid by it in respect of such cement purchased and used by it during the relevant period, prior to the commencement of its

commercial production, for the purpose of erection of the plant and machinery."

14. In the present case, the land filling pit is a plant. The entire process of disposal takes place in the land filling pit and it is not a mere storage mechanism as the processing of content of the land filling pit and its monitoring is continuous as per the standards prescribed by the concerned Statutory authorities having control on such hazardous wastes collected by the Applicant.

iii. Plant need not be used for mechanical operations

15. The observations of PCCT that for a structure to qualify as plant and machinery there must be control on the activity going on in the structure, the outcome and the time taken by the process must be certain do not find any backing in law. Without prejudice to the said submission, it is submitted that in the present case as evident from the materials on record, the entire process is controlled as well as supervised for the specific purpose of management and disposal of hazardous waste to ensure that land and water are not contaminated. Further, the observation that the process carried out in a plant must be a controlled/ mechanized process/ activity is contrary to the position laid down by the Supreme Court in Scientific Engineering House (P) Ltd. Vs. Commissioner of Income Tax, Andhra Pradesh (AIR1986SC338). The Hon'ble Supreme Court thus made it clear that the term plant need not be used for mechanical operations as was erroneously understood in the previous clarification. Thus, applying the principles of law laid down by the Hon'ble Supreme Court which was not brought to the notice of this Authority on the earlier occasion, it is submitted that the land filling pit qualifies as a plant.

iv. Land Filling Pit is a plant and satisfies the 'functionality test'

16. In Santosh Enterprises vs. Commissioner of Income Tax (MANU/KA/0052/1988) the High Court of Karnataka noted the functionality test explained by Lord Guest in IRC vs. Barclay, Curle and Co. Ltd.([1970] 76 ITR 62). The Hon'ble Court held as follows:

"15. In other words, the test would be :

Does the article fulfil the function of a plant in the assessee's trading activity ? Is it a tool of his trade with which he carries on his business ? If the answer is in the affirmative, it will be plant."

17. It is, thus, clear that in order to find out if a building or structure or part thereof (in this case the theatre) constitutes "plant", the functional test must be applied. It must be seen whether the subject-matter involving building or structure or part thereof constitutes an apparatus or tool of the taxpayer or whether it is merely a space where the taxpayer carries on his business.

For this purpose the user which is made of the subject-matter under consideration is to be kept in view. If, as stated above, the building, structure or part thereof is something by means of which the business activities are carried on, it would amount to a plant. On the other hand, where the structure plays no part in carrying on of those activities, but merely constitutes a place in which such activity is carried on, it cannot be regarded as a plant. Viewed from this angle even if a building has special features, generally speaking, it may remain a building and not a plant.

18. On the application of the principles laid down in the above decisions, the Tribunal, in our opinion, has rightly come to the conclusion that the screening wall and the ceiling of the auditorium having been constructed with requisite installations so as to have a proper control of the sound effect and for the efficient screening of the films may be treated as part of "plant" but no other part of the building can be included in the said term. The furniture, fittings and fixtures consisting of wooden walls including false ceiling and wooden panelling of the walls and the walls including false ceiling and wooden panelling of the walls and the chairs would come within the purview of "plant" for development rebate. However, as held by the Tribunal, the case of the chairs outside the auditorium would be different and they cannot come within the definition of "plant."

17. The Applicant is engaged in the business of providing services of treatment, disposal and management of hazardous waste to industries. The services provided by Applicant include not only disposal of waste but also ensuring that during the period of disposal any leachate from the waste does not escape. All precipitation that falls onto an open landfill is absorbed into the waste. As precipitation leaches through the waste, it picks up contaminants such as metals, nitrogen, silt, salts, volatile organic compounds and oxygen demanding wastes. The liquid waste is known as leachate. If not managed and treated properly, the leachate can cause serious damage to the environment. For disposal of hazardous waste and to manage the leachate, the Applicant has constructed a land filling pit. The two most important aspects of land filling pit design include Liner Installation and Leachate Management.

a. Liner Installation:

The base of each land filling pit 1 is composed of many layers of liner material. The liners are constructed of high density polyethylene (HDPE) plastic. The first layer is composed of an over-lapping geo-synthetic clay layer (GCL). The GCL provides defence against leakage of leachate into groundwater. If liquid comes into contact with the GCL it immediately softens and expands to close off any holes,

therefore halting any leaks. The middle layer consists of the primary and secondary liners. These impermeable HDPE liners are the main defense against leachate leakage. These impermeable HDPE liners are the main defense against leachate leakage. The final layer is comprised of another geo-textile composite drainage layer. This layer is located on top of the primary liner system and allows leachate to flow quickly into the leachate collection system and offers protection against objects which could possibly penetrate the liner systems.

b. Leachate Management

The leachate is collected at the bottom of the lined landfill in the leachate collection system The leachate collection system is comprised of a network of inter connected perforated collection piping that flows by gravity to a sump area. From the sump leachate is pumped to a stabilization basin for pre-treatment. After pre-treatment, the leachate undergoes further treatment through a conventional wastewater treatment plant constructed wetland treatment system.

Applying the above principles to the present case, the functionality test is satisfied by the land filling pit of the Applicant, without which neither the hazardous waste can be decomposed, nor can the leachate be managed. It is submitted that the process of disposal of hazardous waste takes place in the land filling pit only. It is a tool of his trade and thus fulfils the functionality test.

D. The observation that the Land Filling Pit is embedded in the earth and therefore not a plant is contrary to the law:

18. The PCCT has observed that the land filling pit is embedded in the earth and therefore, applying the definition of 'immovable property' from General Clauses Act, the pit is not a plant or machinery. It is respectfully submitted that there is no basis at law, to arrive at such an opinion.

19. Without prejudice to the above, the PCCT has placed reliance on Section 3 of the Transfer of Property Act on the definition of "attached to earth". It is relevant to note that this definition is in the light of transfer of an immovable property as Section 8 of the Transfer of Property Act, 1882 in as much as it states what all are deemed to be transferred when a property is transferred. The said definition is given in a different context and has no bearing on the interpretation of a taxing statute. In any event, assuming not accepting any reliance can be placed on the Transfer of Property Act, the Hon'ble Supreme Court and various High Courts have held that things imbedded in the earth, as in the case of walls or buildings are plant. In Santosh Enterprises vs. Commissioner of Income Tax

(MANU/KA/0052/1988) the High Court of Karnataka, applying the functionality test held as follows:

> *"18. On the application of the principles laid down in the above decisions, the Tribunal, in our opinion, has rightly come to the conclusion that the screening wall and the ceiling of the auditorium having been constructed with requisite installations so as to have a proper control of the sound effect and for the efficient screening of the films may be treated as part of "plant" but no other part of the building can be included in the said term. The furniture, fittings and fixtures consisting of wooden walls including false ceiling and wooden panelling of the walls and the walls including false ceiling and wooden panelling of the walls and the chairs would come within the purview of "plant" for development rebate. However, as held by the Tribunal, the case of the chairs outside the auditorium would be different and they cannot come within the definition of "plant".*

20. Similarly, in CIT v. Kanodia Cold Storage ([1975]100ITR155(All)) the question was whether the building with insulated walls used as a freezing chamber though it is not machinery or part thereof, is part of the air-conditioning plant of the cold storage of the assessee entitled to special depreciation on its written down. In the said case, the whole freezing chamber including walls and structure was held to be a plant with which the assessee was carrying on his business activity.

21. Thus, as evident from the various judgements of the Hon'ble Supreme Court as well as the Hon'ble High Court of Karnataka and other relevant jurisdictional High Courts, it is an established position of law that the only test to qualify as plant or machinery is whether the structure is used by the Assessee for carrying on his business in view of the functionality test.

22. Without prejudice to the above submission, there have been several instances where the Hon'ble Courts have held that a structure is a "plant" even though it was embedded in the earth. Some of these decisions are as follows:

a. In ***Commissioner of Income Tax Vs. Oil India Ltd.(1992) 105 CTR (Cal) 356)*** it was held that oil wells constitute plant

b. In ***Tribeni Tissues Ltd. Vs. Commissioner of Income Tax [1991] 190 ITR 487 (Cal)*** it was held that tube wells constitute plant.

23. In fact, in the case of ***Scientific Engineering House (P) Ltd. Vs. Commissioner of Income Tax, Andhra Pradesh (AIR 1986 SC 338)*** it was held that plant would include any article or object, fixed or movable, used by businessman for carrying on his business. Therefore, the fact

that the land filling pit is embedded in the earth is not relevant to understand if it falls within the ambit of Plant or Machinery. The land filling pit qualifies to be a plant or machinery as provided under Section 17(5)(d) of the CGST Act.

24. In view of these decisions the observation made in the erstwhile Clarification now being set aside by the Court, that as the land filling pit is not a plant because it is embedded in the earth, requires to be re-considered in the light of the judicial interpretations as well as factual events re-submitted now.

25. It is submitted that if the land filling pit is not held to be Plant or Machinery it would go against the settled position of law, as explained in the above cited cases. Therefore, in view of the said submissions, it is prayed that a clarification be given to the effect that the land filling pit used by the Applicant is a plant or machinery under Section 17(5)(d).

PERSONAL HEARING / PROCEEDINGS

9. Sri. K.J.Kamat, Advocate and duly authorised representative of the applicant appeared for personal hearing proceedings held on 30.06.2021, reiterated the facts narrated in their application and furnished written submissions in support of their argument.

DISCUSSION & FINDINGS

10. 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.

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

12. 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.

13. 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:—

(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 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

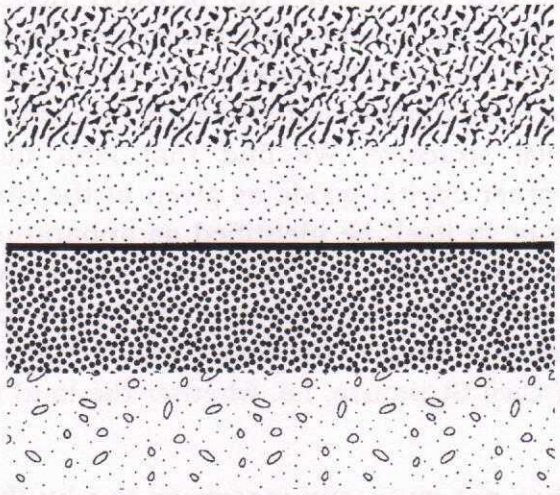
14. The applicant, in their submissions, basically emphasized on three aspects, i.e. denying the ITC on landfill pit which is used for outward taxable supply is against the spirit of the Act and would result in cascading effect. Secondly, land filling pit is an apparatus fixed to the earth with the help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

15. 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 or 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 or machinery.

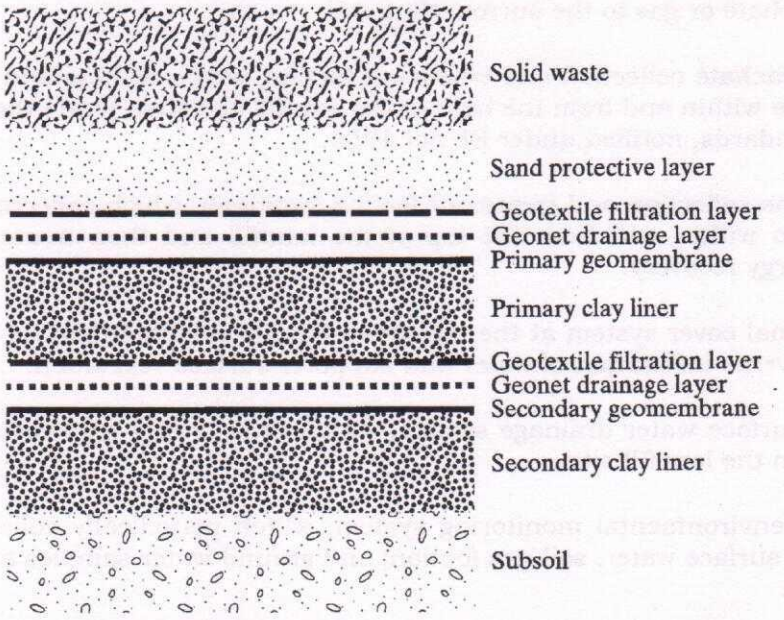
16. The explanation given at the end of Section 17(5) of CGST Act, 2017 defines plant and machinery *as apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural 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 without deciding the question of Civil Structure, i.e. whether the land filling pit is a civil structure or not.

17. 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

18. 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.

19. The learned Advocate and duly authorised representative in his argument has stated that the exclusion of civil structures as contained in Second Explanation is not applicable to his case as the expression "plant and machinery" and not for "plant or machinery". This cannot be accepted in the sense that machinery was never an immovable property unless it is fixed permanently to the ground and all the three exclusions are related to plant and not machinery. Hence, the exclusions

as specified in the explanation is only related to "plant" and hence civil structures are considered to be excluded from the input tax credit.

20. Further, there is no doubt that the structure constructed by the applicant is a civil structure and is an immovable property. This structure is constructed by the applicant for the purpose of business on his own account. Section 17(5)(d) blocks the input tax credit on the above, and excludes only if it is a plant or machinery. Evidently, the structure is not machinery and the question is whether it is a plant?

21. The explanation needs to be analysed carefully, and it states that "plant and machinery" means apparatus, equipment and machinery fixed to earth by foundation or structural support. All attains the character of immovable property and if it is for all that machinery under this definition would be machinery which has attained the character of immovable property by it getting fixed to the earth. Plant in this context would now be in the sense of apparatus and equipments other than machinery which are fixed to the earth by foundation or structural support. It is very clear from the nature of the construction done by the applicant that, this is neither equipment nor apparatus and hence would not be termed as plant. Further, the exclusion clauses makes it very clear that civil structures are not plants.

22. The analysis of the exclusions i.e. land, buildings or any other civil structures, telecommunication towers and pipelines would definitely not form part of machineries and would definitely fall under the category of "fixed assets" in the form of "plant". Hence when these are excluded, definitely they are excluded from the claim of input tax credit even if they are plant in the general sense of business. The applicant has explained that the structure is covered under "plant" and this may be acceptable in the general sense, but in case of the present law, civil structures are not "plant" for the purpose of Chapter related to Input tax credit and Chapter VI. The case laws referred by the learned Advocate are all used to claim that the structure is a "plant" and that is acceptable in the general sense, but for the specific purpose of Chapters V and VI of the GST Act, they would be kept out of the category of "plant".

23. On the next question, whether the pit is a civil structure or not. It is very clear that the applicant has used materials like steel, cement, bricks and claims that they are not used for the land filling pit. The learned Advocate has categorically stated that the land filling pit is not constructed using cement concrete, bricks, cement, steel etc. Hence, the applicant is purchasing the construction materials for other than the construction of land filling pits. If they are used for construction of other structures, they would have been done on his own account and the input tax credit would not be available on those input tax credit related to those materials as per section 17(5)(d) as they would still be civil structures (other than pits). Since those civil structures are not being used directly in relation to the main business activity, they would not be covered under the definition of "plant" even generally (other than for the purpose of GST). Furthermore, civil structures are excluded even if they are generally covered under plants, for the purpose of GST.

24. 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 and since the appeal against the High Court order supra is pending before the Hon'ble Supreme Court, we do not find any reason to go beyond the Statutory Provisions.

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

R U L I N G

The Landfilling pit is a civil structure not a ***plant or machinery for the purpose of Chapter V and Chapter VI of the GST Act***.

(Dr. M.P. Ravi Prasad)
Member
MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

(Mashhood Ur Rehman Farooqui)
Member
MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

Place : Bengaluru.
Date : 30.07.2021

To,
The Applicant

Copy to :
1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

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

4. The Asst. Commissioner, LGSTO- 155, Ramanagara.

5. Office Folder.

Authority For Advance Ruling Karnataka, Bangalore