

**GIB/MH/KONKAN LNG/24.05.2019/AAR-227**

**Advance Ruling Category :** Input Tax Credit

**State :** Maharashtra

**Order No.:** GIB/MH/KONKAN LNG/24.05.2019/AAR-227

**Name of Entry :**  
Konkan LNG pvt ltd

**Date :** 24-05-2019

**Breif Issue :**

**Issue & Fact of the Case:**

Whether the applicant is eligible to avail/utilize input tax credit in terms as per section 16 and 17 of the CGST/SGST/IGST paid to various contractors?

Whether services of the works contract by the contractor is covered under item (vii) of serial No.3 of Table of the N/N 11/2017-CT(Rate) dated 28.06.2017 as amended by N/N 31/2017-CT(Rate) dated 13.10.2017?

The applicant is providing the taxable services and on the taxable services it is collecting the CGST and SGST and paying the tax and filing the returns as required under the provision of GST law. He has the LNG regassification plant at Dabhol and hereby engaged in the regassification of the LNG.

The LNG, which is the raw material of the plant, reaches to plant through the jetty where it is unloaded from various cargoes.

The captive jetty is situated in sea and it is about 1.8 km from the tanks areas and is well within the plant area. Adjacent to the jetty, there is existing break water wall which was constructed by DPC, which prevents the high waves and tide to touch the jetty and cargo/ships of LMG and thus acts as a safety wall from the jetty as well as the ship from the danger of damage due to high waves. However, the existing break water wall was not complete and requires immediate reconstruction in order to keep the jetty and cargo safe during the LNG unloading process.

Due to the operational restriction, the jetty cannot work and therefore the existing break water wall, requires reconstruction and for this purpose, the applicant has invited the tender where the scope of work is defined. With the given scope of work and the award of the work to various contractors, the services of the contractor will be covered under the services of works contract as defined under section 2(119).

As per section 2(119). “works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

With the scope of the work the majority of the work can be covered as “Earth work” as it involves as it involves the dredging work, quaffing and placing the core material as well as secondary material and placing of different sizes of Acropods.

Applicant supplying the break water wall will raise their invoice as per section 31 of CGST/SGST/IGST Act. The issue here is analyzed under section 2(119),17(5)(d),16 of GST Act. Breakwater will be constructed, for which the tendering process would be done and the work of building such breakwater wall will be allotted to contractors.

Applicant has quoted that “the applicant is not covered under the exclusion clause of section 17(5)(d) of the Goods and Service Tax Act (CGST/MGST)”. Whereas section 17(5)(d) of the GST Act states that “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.” Here the applicant assumes that the proposed break water wall is plant and machinery,

As Section 17(6) of the GST Act explanation has been given for the expression Plant and Machinery as” Plant and Machinery means apparatus, equipments 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 support but excludes:

- i. Land, Building or any other Civil Structure
- ii. Telecommunication Towers
- iii. Pipelines laid outside the factory premises

From the above explanation it is clear that the dealer is covered under this section. And the proposed breakwater wall’ is a civil structure.

#### **Decision of Advance Ruling Authority :**

##### **Decision:**

The applicant is not eligible to claim input tax credit of the taxes paid in terms of section 16 read with 17 of the CGST/SGST. And the applicant is not covered under the above notification.

Second question is not within the purview of this authority.