

**KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD,
GANDHINAGAR, BANGALORE – 560009**

**(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide
Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018)**

BEFORE THE BENCH OF

SMT. RANJANA JHA, MEMBER

SMT. SHIKHA C, MEMBER

ORDER NO.KAR/AAAR/10/2021-22

DATE:13-12-2021

Sl. No	Name and address of the appellant	M/s Mother Earth Environ Tech Pvt Ltd, #2542, 28 th Cross, 17 th Main, Banashankari 2 nd Stage, Bengaluru 560070
1	GSTIN or User ID	29AAHCM2560M1Z1
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 46.1/2020 Dated: 30 th July 2021
3	Date of filing appeal	16-09-2021
4	Represented by	Shri. K.J Kamath and Ms Veena J Kamath Advocates & Authorised representatives
5	Jurisdictional Authority- Centre	The Principal Commissioner of Central Tax, Bangalore West Commissionerate.
6	Jurisdictional Authority- State	LGSTO 155, Ramanagara
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Rs 20,000 /- paid vide Challan CPIN No 21092900124631 and No 21092900138032 both dated 16-09-2021.

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, Act 2017 are in *parimateria* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly



made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by M/s Mother Earth Environ Tech Pvt Ltd, No. 2542, 28th Cross, 17th Main, Banashankari 2nd Stage, Bangalore 560070 (herein after referred to as Appellant) against the Advance Ruling order No. KAR ADRG 46.1/2020 dated 30th July 2021.

Brief Facts of the case:

3. The Appellant is engaged in the business of solid waste management. They provide services for treatment, storage and disposal of hazardous waste. They collect hazardous waste 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). For processing and disposal of the solid waste, they have taken land on lease from the Government and constructed a land filling pit into which the solid waste is filled and closed and sealed for 30 years. The land fill pit has been capitalised in their books of accounts as an asset and they have claimed depreciation under Income Tax.

4. In order to obtain a ruling on the classification of the service provided by them, the Appellant approached the Authority for Advance Ruling (AAR) seeking a ruling on the following question:

“Whether the land filling pit can be considered as ‘Plant and machinery’ and therefore eligible for input tax credit or; whether the landfilling pit is to be considered as ‘civil structure’ and therefore become ineligible for input tax credit.”

5. The AAR received an opinion from the jurisdictional office of the Principal Commissioner of Central Tax, West Commissionerate, Bangalore wherein it was stated that the landfill pit is an immovable civil structure which is constructed by the applicant on his own account and does not fit into the definition of plant and machinery. Based on the above opinion, the AAR



vide its order KAR ADRG No 46/2020 dated 11th September 2020 held as under:

"The land filling pit is not a plant and machinery but a civil structure."

6. On receipt of the advance ruling order dated 11th Sept 2020, the Appellant approached the High Court of Karnataka with a Writ Petition No 2140/2021 on the grounds that the AAR had, before passing the order, referred the matter to the Principal Commissioner of Central Tax, Bangalore West Commissionerate who had given his opinion that the structure constructed by the Appellant is a civil structure; that based on the said report of Bangalore West Commissionerate, the AAR passed a ruling on 11-09-2020. However, the Appellant was not given a copy of the report at any point of time and hence the order passed by the AAR on 11-09-2020 is violative of the principals of natural justice. The Hon'ble High Court of Karnataka vide its order dated 7th April 2021 set aside the AAR order dated 11-09-2020 and remanded the matter back to the AAR for fresh consideration

7. After following the directions of the Hon'ble High Court of Karnataka, the AAR passed the denovo advance ruling order No KAR ADRG 46.1/2020 dated 30-07-2020 and held as follows:

"The land filling pit is a civil structure, not a plant or machinery for the purpose of Chapter V and Chapter VI of the CGST Act".

8. Aggrieved by the same ruling given by the AAR in the denovo proceedings, the Appellant has filed this appeal on the following grounds.

8.1. The Appellant submitted that he AAR has verbatim reproduced, at several places, the same content from the earlier order dated 11-09-2020 which was set aside by the Hon'able High Court in W.P No 2140/2020; that the impugned order does not provide any discussion and reasons on the judicial precedents submitted by the Appellant; that the Hon'ble High Court had given a specific direction that the AAR pass fresh order without being influenced by its earlier order but this was not done which amounts to violation of principles of natural justice and hence is liable to be set aside.

8.2. The Appellant submitted that they had given case laws which lay down the principle that if a building or structure constitutes an apparatus or a tool of the taxpayer by means of which business activities were carried on, it amounts to a 'plant'; that the case laws given by them also lay down the principle that the word plant should be given a wide meaning and not



a restrictive meaning; that they had relied on a Supreme Court decision to support the contention that plant need not be used for mechanical operations; that the land filling pit satisfies the 'functionality test' and can be considered as a plant even though it was embedded in the earth. They submitted that the lower authority has not made any reference or discussion to any of the judicial precedents relied upon by them; that the AAR has only made a plain observation that these cases are not applicable for the specific purpose of Chapter V and VI but made no attempt to discuss or distinguish the cases submitted by the Appellants.

8.3. The Appellant submitted that on the land leased from the Government for purposes of solid waste management, the following structures are proposed to be constructed viz: Land filling pit, Temporary water Storage Tank, Utility / Parking, Green Belt Area, Office and laboratory area, Labour shed and Compound wall; that other than the land filling pit, all other structures involve the use of concrete, bricks or cement; that construction materials like steel, cement and bricks will be sourced from local manufacturers for the purpose of other structures only and not for land filing pit; that no cement, steel or bricks are used in the land filing pit at any time and hence the same cannot be termed as a civil structure. Even assuming that the use of cement is a relevant factor, they submitted that it is an established principal of law that merely because steel, cement or bricks are used for construction of a structure, it does not cease to be plant or machinery. They relied on the following High Court decisions to substantiate their stand that even if cement is used, the land filing pit will qualify to be a plant and not a civil structure.

a) J.K. Cement Works vs The State of Karnataka – 2017 (7) G.S.T.L 408

b) State of Kerala vs Ambuja Cements Ltd – 2020 (1) KHC 884

8.4. The Appellant claimed that the land filling pit is an apparatus without which they cannot carry out his business and hence it qualifies to be a plant or machinery. They submitted that once they receive waste from industries, it is tested to decide the type of treatment required for it; that depending on the type of waste, the various processing action would be determined to avoid any emission from the hazardous waste; that in the course of processing of the hazardous waste, they use lime or fly ash or other neutralising agents for stabilizing it as per the protocols of the CPCB; that 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. Therefore, the land filling pit is plant or machinery under Section 17(5)(d) of the CGST Act. They relied on the Allahabad High Court decision in the



case of S.K. Tulsi and Sons vs CIT (1991 (187) ITR 685 All) in this regard. They also submitted that various High Courts and the Supreme Court have held in the following judgements that the term 'Plant' must be given a wide meaning

a) Scientific Engineering House (P) Ltd vs Commissioner of Income Tax, Andhra Pradesh – AIR 1986 SC 338

b) J.K. Cement Works vs The State of Karnataka 2017 (7) G.S.T.L 408

In view of the above decisions, they submitted that in their case, the land filling pit is a plant; that the entire process of disposal takes place in the land filling pit and it is not a mere storage mechanism; that the processing of content in the land filling pit and its monitoring is continuous as per the standards prescribed by the concerned statutory authorities to ensure that land and water are not contaminated.

8.5. They also submitted that the observation that the process carried out in a plant must be a controlled/mechanised 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 cited supra; that the Hon'ble Supreme Court made it clear that the term plant need not be used for mechanical operations. They also submitted that the land filling pit satisfies the 'functionality test' which was explained by Lord Guest in IRC vs Barclay Curle and Co and referred to by the Karnataka High Court in the case of Santosh Enterprises vs Commissioner of Income Tax (MANU/KA/0052/1988); that the services provided by the Appellant include not only disposal of waste but also ensuring that during the period of disposal, any leachate from the waste does not escape; that all precipitation that falls onto an open landfill is absorbed into the waste; that as precipitation leaches through the waste, it picks up contaminants such as metals, nitrogen, silt, salts, volatile organic compounds and oxygen demanding wastes known as leachate; that 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 Appellant has constructed a land filling pit; that the two most important aspects of land filling pit design include Liner Installation and Leachate Management.

8.6. They submitted that the base of each land filling pit is composed of many layers of liner material; the liners are constructed of high-density polyethylene (HDPE) plastic; that the first layer is composed of an over-lapping geo synthetic layer (GCL) which 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, thereby halting any leaks. The middle layer consists of the primary and secondary liners. These impermeable HDPE liners are the main defence against leachate leakage. The final layer is comprised of another geotextile 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. 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 waste water treatment plant. They submitted that the land filling pit is a toll for the Appellant's trade and hence satisfied the functionality test in as much as without the land filling pit, neither the hazardous waste can be decomposed nor can the leachate be managed.

8.7. They also submitted that the fact that the land filling pit is embedded in the earth does not preclude it from being a plant; that the Supreme Court in the case of Scientific Engineering House (P) Ltd vs Commissioner of Income Tax, Andhra Pradesh has 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; that in several instances the Courts have held that a structure is a 'plant' even though it was embedded in the earth. Some of the decisions relied upon by them in this regard is as follows:

- a) Commissioner of Income Tax vs Oil India Ltd – (1992) 105 CTR (Cal) 356
- b) Tribeni Tissues Ltd vs Commissioner of Income Tax – (1991) 190 ITR 487 (Cal)

Therefore, in their case, the land filling pit qualifies to be a plant or machinery as provided under Section 17(5)(d) of the CGST Act.

8.8. The Appellant submitted that the term used in the Second Explanation to Section 17 and the term used in Section 17(5)(d) is not the same; that the Second Explanation to Section 17 explains the term "plant and machinery" whereas the term referred to in Section 17(5)(d), which is applicable in their case, is "plant or machinery"; that the explanation contained in clause (i) to Second Explanation under Section 17 of the CGST Act is applicable only to the



term 'plant and machinery' which is mentioned in Section 17(5)(c); that their case is covered under Section 17(5)(d) and not Section 17(5)(c); that the exclusion as contained in the Second Explanation is not applicable to their case as it is respect of the expression "plant and machinery" and not "plant or machinery". Therefore, the 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, as the law does not exclude a civil structure from being a plant or machinery. They submitted that the AAR has failed to apply the statutory provision as it exists with reference to the phrase 'plant or machinery' and thus traversed beyond its jurisdiction; that the AAR has erred in concluding that the land filling pit constructed by the Appellant is a civil structure and is therefore covered by the exclusion contained in the Second Explanation to Section 17; that although the statute has clearly provided exclusions to the term 'plant and machinery', the AAR has proceeded to observe that the exclusions are applicable only to plant and not machinery and thus attempted at a purposive interpretation of the term 'plant and machinery'; that purposive interpretation of statutes is the mandate of constitutional courts and cannot be undertaken by statutory quasi-judicial authority like the AAR. They also contended that the AAR has concluded that the landfilling pit is a civil structure without attributing any reasons for arriving at such a conclusion; that the AAR has not provided any reasoning apart from stating that the land filling pit involves engineering work both above and below the ground; that the observation in the impugned order that the other structures are constructed using cement and steel and hence would qualify as civil structures, does not have any relevance to the issue at hand which is whether the land filling pit is eligible for ITC in terms of Section 17(5)(d). In view of the foregoing, the Appellant prayed that the impugned order of the AAR be set aside.

PERSONAL HEARING

9. The appellant was granted a virtual hearing on 27th October 2021. The hearing was conducted on the Webex platform following the guidelines issued by the CBIC vide Instruction F.No 390/Misc/3/2019-JC dated 21st August 2020. The Appellant was represented by Shri. K.J Kamath and Ms Veena J Kamath, Advocates and authorised representatives.

9.1. The Advocate explained the facts of the case and the circumstances leading to the present appeal. He submitted that the Appellant is engaged in the business of solid waste management which involves not only collection of the waste but also effective disposal of the waste; that for this purpose, the Appellant has constructed a land filling pit. A query was



posed before the lower Authority whether the land filling pit is restricted for input tax credit by virtue of the 2nd explanation to Section 17(5) of the CGST Act which excludes 'civil structures' from the definition of 'plant and machinery'. The lower Authority had given a ruling that the land filling pit is a civil structure by considering the opinion received from the jurisdictional officer which was not shared with the Appellant and hence amounted to violation of the principals of natural justice; that the Appellant approached the Hon'ble High Court of Karnataka who vide its order dated 7-4-2021 remanded the matter to the lower Authority to pass an order afresh without being influenced by its earlier order. The Advocate submitted that the lower Authority in its denovo order has virtually reproduced its original order and given the same ruling and has failed to take into consideration the fresh submissions made by the Appellant during the denovo proceedings; that the lower Authority has violated the specific direction of the Hon'ble High Court to take a fresh decision and hence the order of the lower Authority is liable to be set aside.

9.2. The Advocate submitted that the activity of the Appellant is in the nature of a public service which has not been appreciated by the lower Authority; that without the land filling pit the activity of waste management and disposal cannot be undertaken. He argued that the land filling pit is an apparatus used in solid waste disposal and management; that this apparatus falls within the ambit of the term 'plant' as held by several judicial decisions; that the lower Authority has failed to take note of these decisions and has brushed them aside in a casual manner. He submitted that they had submitted 8 judicial decisions to substantiate their claim that the land filling pit qualifies as a 'plant'. He submitted that the case of the Appellant is covered under clause (d) of Section 17(d) whereas the definition of 'plant and machinery' as given in the 2nd Explanation to Section 17(5) does not apply to clause (d) of Section 17(5); that the term 'plant' or 'machinery' has not been defined in the GST law but several judicial decisions have analysed the terms and given a clear decision as to what constitutes a 'plant' and what is a 'machinery'; that the lower Authority has not appreciated any of those decisions.

9.3. The Advocate made it clear that the Appellant has not used any cement in the construction of the land filling pit and hence the same cannot be considered as a civil structure; that the lower Authority in Para 23 of the impugned order has discussed about the use of cement in other civil structures which is not the case of the Appellant. The Advocate summarised their case that the land filling pit is an apparatus used in carrying out the solid



waste management activity and is not a civil structure. It qualifies to be considered as a 'plant' and hence is covered under the exception given in clause (d) of Section 17(5) and therefore not hit by the restriction to avail input tax credit. The Advocate undertook to furnish additional written submissions for consideration as well as a written summary of the submissions made today.

9.4. A written summary of their oral submissions was submitted by the Appellant on 10th November 2021 and the same is taken on record.

DISCUSSIONS AND FINDINGS

10. We have gone through the entire case records and considered the submissions made by the Appellant in their grounds of appeal, as well as the submissions made at the time of personal hearing and in the additional submissions.

11. Briefly stated the facts are, the Appellant is engaged in providing service of treatment, storage and disposal of hazardous waste which is done as per the guidelines of the Central Pollution Control Board and Karnataka State Pollution Control Board. For the purpose of carrying out this activity, they have obtained land on lease from the Government on which they have constructed facilities such as :a) Land filling pit, b) Temporary waste storage area, c) Utility/Parking, d) Green Belt Area, e) Office & Laboratory area, f) Labour shed and g) Compound wall.

12. The Appellant approached the lower Authority for a ruling on whether the 'land filling pit' which is capitalized in their books of account as a capital asset and used for providing their output service of treatment, storage and disposal of hazardous waste, is entitled for input tax credit or is blocked by virtue of Section 17(5) of the CGST Act. According to Section 17(5)(d) of the CGST Act, *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 will not be eligible for input tax credit.* The lower Authority, after considering the manner of construction of the land filling pit and relying on the opinion given by the jurisdictional officer (Bangalore West CGST Commissionerate), passed a ruling on 11-09-2020 holding that the 'land filling pit' is not a plant but a civil structure and therefore,



input tax credit for construction of the land filling pit is blocked in terms of Section 17(5)(d) of the CGST Act. The Appellant assailed the ruling by filing a Writ Petition before the Karnataka High Court on the grounds of violation of principles of natural justice since the opinion given by the jurisdictional officer was not made available by the AAR to the applicant. The Hon'ble High Court while affirming that the principles of natural justice and fair play have been violated, passed an order dated 7th April 2021 remanding the matter to the AAR for a fresh decision. The petitioner was given an opportunity to argue the matter afresh before the lower Authority by considering the opinion of the jurisdictional officer and the lower Authority was directed to pass appropriate orders without being influenced by its own earlier order. In this background the impugned order dated 30th July 2021 came to be passed by the lower Authority wherein it was once again held that the 'land filling pit' is not a plant or machinery but is a civil structure. Hence the present appeal before us.

13. The Appellant's main grievance in this appeal is that the lower Authority has failed to follow the directions of the Hon'ble High Court in passing fresh orders but has merely reproduced their earlier order. The Appellant has demonstrated before us how several paras of the impugned order are identical to the earlier order. The Appellant is also aggrieved by the fact that the submissions made by them before the lower Authority during the denovo proceedings along with the 8 case laws relied upon, were not considered by the lower Authority in the impugned order. We propose to address these concerns in our findings here below.

14. The issue for determination by us is whether the Appellant is entitled to avail input tax credit on the construction of land filling pit or is it hit by the restriction laid down in clause (d) of Section 17(5) of the CGST Act. Before we analyze the provisions of law, let us understand what a land filling pit is and how it is constructed. Contrary to common understanding, a land fill for disposal of hazardous waste is not an open dump. It is an engineered pit in which layers of solid waste are filled, compacted and covered for final disposal. Land filling is the term used to describe the process by which solid waste is placed in the landfill. The purpose of land filling is to bury/alter the chemical composition of the waste so that they do not pose any threat to environment / public health. Landfills are built to concentrate the waste in compacted layers to reduce the volume and monitored for the control of liquid and gaseous effluent in order to protect the environment and human health. It is lined at the bottom to prevent groundwater pollution. Each layer of solid waste is covered



with a layer of compacted soil until the capacity of the landfill is reached. It is then covered and sealed. The life span of a landfill ranges from 12 to 40 years.

15. In the Appellant's case, the landfill in question is an engineered pit wherein the base of the landfill is lined with many layers of HDPE plastic. The first layer is composed of an over-lapping geo-synthetic clay layer (GCL). This layer offers the last defence against leakage of leachate to the groundwater. The middle layer consists of the primary and secondary liners. These impermeable HDPE liners are the main defence against leachate leakage. A geo-textile composite drainage layer separates the primary and secondary liners. The geo-net allows any leakage from the primary liner to flow by gravity, along the top of the secondary liner, to a sump to be pumped out for treatment. 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. The HDPE liners are welded together to cover the entire surface of the landfill. The landfill design also includes a leachate collection and treatment system, which collects and extracts leachate from within and from the base of the landfill and then treats the leachate to meet standards notified under the Environment Protection Act, 1986. The leachate collection system is designed at the base of the landfill and comprises of a drainage layer, perforated pipe collection system through which the leachate flows, sump collection area and a removal system where the leachate is removed by pumps and sent for further treatment to the waste water treatment plant.

16. Having understood the manner of construction of a land filling pit, let us analyse the provisions of law governing input tax credit. Section 16(1) of the CGST Act, 2017 entitles a taxpayer to avail credit of input tax charged on any supply of goods and/or services made to him and used by him in furtherance of his business. However, this is subject to the conditions and restrictions as specified in Section 16(2) and Section 17 (5) of the said Act. Section 17(5) of the CGST Act stipulates the situations wherein input tax credit shall not be available notwithstanding anything contained in Section 16(1) of the said Act. We are concerned with the provisions of clause (d) of Section 17(5) of the said Act which reads as follows:

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (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.*

17. From a reading of the above clause (d) of Section 17(5), it emerges that goods and services received by a taxpayer for construction of immovable property on his own account are not eligible for input tax credit. The exception however, is when the immovable property is in the nature of plant or machinery, then the goods and services received for construction of plant or machinery will be eligible for credit and will not be hit by the restriction under clause (d). The term immovable property has not been defined under GST Acts, therefore reference needs to be taken from General Clauses Act, 1897. Section 3(26) of the General Clauses Act, 1897, reads: "*immovable property*" shall include land, benefits to arise 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) imbedded 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. The manner of construction of the land filling pit as detailed above, leaves no room for doubt that the land filling pit is an immovable property being imbedded to the earth. It is also not in doubt that the construction of the landfill is done by the Appellant on his own account in order to render the service of disposal of hazardous waste.

18. It remains to be seen whether this immovable property i.e the land filling pit, qualifies to be termed as a 'plant'. It is the case of the Appellant, that the land filling pit is a 'plant' and hence escapes the restriction placed in Section 17(5)(d). The term 'plant' has not been defined in GST law. However, the expression 'plant and machinery' has been defined in the Second Explanation to Section 17(5) and the same reads as under:

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 -

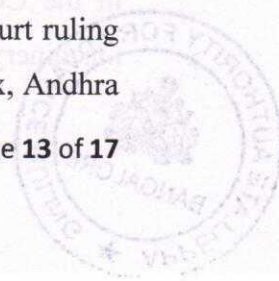
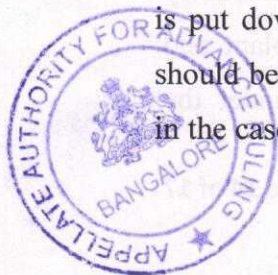
- (i) *land, building or any other civil structures;*
- (ii) *telecommunication towers; and*



(iii) *pipelines laid outside the factory premises.*

The Appellant has vehemently argued that the explanation as given above cannot be applied to their case as the clause (d) to Section 17(5) (to which their case pertains) does not use the expression “plant **and** machinery” but uses the expression “plant **or** machinery”. It is their contention that the Second explanation given in Section 17 is applicable only to clause (c) of Section 17(5), which clause they are not covered under. We find this argument to be unacceptable and devoid of merit. No doubt the words ‘plant’ and ‘machinery’ have not been individually defined in GST law. However, by defining the expression ‘plant and machinery’, the legislature has intended to define a particular genus or class or category. Defining the expression by the usage of the words plant and machinery in conjunction with each other implies that the meaning of one word takes its colour from the whole. In other words, the meaning of the individual words ‘plant’ and ‘machinery’ will have to be derived from the definition of the expression “plant and machinery”. Therefore, the terms ‘plant’ or ‘machinery’ will have to be understood 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 would include foundation and structural supports but would exclude (i)land, building or any other civil structures; (ii)telecommunication towers; and (iii)pipelines laid outside the factory premises.*”. We, therefore, dismiss this argument of the Appellant.

19. Having said this, we observe that the definition of the expression “plant and machinery” as given in the Second Explanation to Section 17(5) uses the term ‘means’. As per the principles of interpretation of law laid down by higher judicial forums, a definition which uses the term ‘means’ has to be strictly construed to mean only what is stated therein and nothing more, nothing less. For the land filling pit to be considered a ‘plant’, it has to be either an ‘apparatus’, ‘equipment’ or ‘machinery’ which is fixed to the earth. Foundations and structural supports used to fix such apparatus, equipment and machinery to the earth are also covered within the ambit of the definition of ‘plant and machinery’. The definition also has certain exclusions to make it clear that even if they are fixed to the earth, they will not be considered as ‘plant and machinery’. The use of the word ‘means’ indicates that the definition is hard and fast and no other meaning can be assigned to the expression than what is put down in the definition. The Appellant however, has contended that the term ‘plant’ should be given a wide meaning and has placed great emphasis on the Supreme Court ruling in the case of Scientific Engineering House (P) Ltd vs Commissioner of Income Tax, Andhra



Pradesh to drive home this point. In the said case, the Apex Court has held that technical know-how in the shape of drawings, design charts, plans, processing data and other literature will fall within the definition of 'plant'. We have gone through the said decision of the Supreme Court. We find that in the cited case, the Apex Court was concerned with the question whether the expenditure incurred for purchase of technical know-how, which is a capital asset, will bring into existence a depreciable asset? Under Section 32 of the Income Tax Act, depreciation allowance is permissible only in respect of certain assets specified therein, namely, buildings, machinery, plant and furniture owned by the assessee and used for the purpose of business. Section 43(3) of the Income Act defines 'plant' as follows:

"plant includes ships, vehicles, books, scientific apparatus and surgical equipments used for the purpose of the business".

Therefore, the question before the Supreme Court was whether technical know-how in the shape of drawings, designs, charts, plans, processing data and other literature falls within the definition of 'plant'. It is in this context that the Hon'ble Supreme Court, after having taken into consideration the definition of 'plant' as given in the Income Tax Act, held that the capital asset acquired by the assessee, namely, the technical know-how in the shape of drawings, designs charts, plans, processing data and other literature falls within the definition of 'plant' and therefore a depreciable asset.

20. We are unable to appreciate the precedential value of this case to the facts of the case before us. The context in which the term 'plant' has been defined in the Income Tax Act is not relevant for interpreting the said term under the CGST Act. The Supreme Court in the case of Kohinoor Elastics Pvt Ltd vs Commissioner of Central Excise [2005 (188) ELT 3 (SC)] has settled the principle that a statute has to be interpreted in the context in which the words are used in that particular context. The Hon'ble Supreme Court has pointed out that it is not permissible to bring in the meaning in another Act for interpretation of certain terms in the Central Excise Act. Applying the ratio of this decision, we hold that when the CGST Act has a clear definition of 'plant and machinery', there is no necessity of relying on the definition of the word 'plant' as given in the Income Tax Act. Further, the Income Tax Act and the CGST Act are not parimateria and hence the Doctrine of Parimateria in interpretation of statutes will not apply here. Moreover, the explanation which defines plant and machinery in the CGST Act is exhaustive as illustrated by the term 'means' used after plant and machinery vis-à-vis the use of the term 'includes' occurring in the definition under the



Income Tax Act. Therefore, the decision of the Supreme Court given in the case of Scientific Engineering House (P) Ltd does not help the case of the Appellant before us.

21. Coming back to the definition of 'plant and machinery' as given in the Second Explanation to Section 17, it is the Appellant's alternate claim that the land filling pit is an apparatus without which they cannot carry out their business. The Hon'ble Supreme Court in the case of *Commissioner of Customs, New Delhi vs. C – Net Communications (I) (P) Ltd.* [2007 (216) E.L.T. 337] in Para 17, held that the word 'apparatus' would certainly mean the compound instrument or chain of series of instrument designed to carry out specific function or for a particular use. It follows that "apparatus" are normally instruments or equipment enhancing, reducing or controlling certain function of a principal system and does specific function or serve specific purpose. In this case, although the land filling pit is designed to serve a particular purpose, it is not designed as a chain of instruments which is fixed to the earth for carrying out the activity of hazardous waste disposal. The pit is constructed by excavating the land area to form a pit and the excavated area is lined with liners to prevent leakage of the leachate in the soil and groundwater. The pit is more in the nature of a structure which is constructed for a specific purpose. The construction of the pit is carried out by applying the scientific principles of geotechnical engineering where the environmental factors relating to the soil and water is taken into consideration for excavating the pit and designing the landfill. Such a structure, in our opinion cannot be termed as an apparatus or equipment or machinery. Rather, it is more appropriate to refer to this landfill as a civil structure.

22. The Appellant has been very vehement in their submission that the land filling pit is not a civil structure in as much as they have not used any cement or steel in the construction of the land filling pit. The term 'civil structure' has also not been defined in the GST law. A general understanding of the term can be derived from the definition of 'civil engineering' given in Britannica.com as: "*The profession of designing and executing structural works that serve the general public, such as dams, bridges, aqueducts, canals, highways, power plants, sewerage systems and other infrastructure*". Further, a 'structure' in the context of civil engineering refers to anything that is constructed or built from different inter-related parts with a fixed location on the ground. Accordingly, a civil structure would be any man-made structure which is built by applying the science of civil engineering. The materials used for construction of structures is irrelevant. A civil structure can be built with cement and steel or



by means of other materials depending on the purpose of the structure and its feasibility. In the case of a landfill, the purpose is to dispose of hazardous waste and manage the leachate in order to avoid serious damage to the environment. Hence, the landfill is constructed using geo synthetic materials which serve to protect the soil and groundwater. This however, will not disqualify a landfill from being a civil structure. We are therefore of the opinion that the lower Authority was right in construing that the land filling pit is a civil structure. The definition of 'plant and machinery' as given in the Second Explanation to Section 17 clearly excludes a civil structure from being considered as a plant. By virtue of this exclusion, we hold that the Appellants are not eligible for input tax credit on the goods and services used for construction of the land filling pit.

23. At this juncture we would like to traverse back to the Supreme Court decision in the case of Scientific Engineering House (P) Ltd cited supra. The Honorable Supreme Court in the said case relied upon certain foreign decisions while dealing with the explanation 'Plant' and gave it a wide meaning under the provisions of Income Tax law. It was held that, 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. We would like to make it clear that there is no hesitation in concluding that the land filling pit is used by the Appellant for carrying out his business. At the same time, we are examining whether such land filling pit will be eligible for input tax credit. For this we find that goods and services received for construction of immovable property on own account has been specifically put under the blocked credit list under Section 17(5)(d) with the rider that it shall not apply to plant or machinery. Accordingly, in the second explanation given in Section 17, while providing the meaning of the term plant and machinery, it has been clearly stated that Buildings and Civil Structures shall not be covered under the term Plant. However, while so clarifying, it has been accepted and understood that plant and machinery many a times requires support structure and/or foundation for installation and cannot work otherwise. Thus, civil structures such as foundation and supporting structure for fastening of plant and machinery to earth has been included as part of plant and machinery. However, any other civil structure has clearly been excluded from the definition of 'plant and machinery'. The land filling pit comes within the ambit of the exclusion and hence is not eligible for input tax credit.



24. In view of the foregoing, we pass the following order.

ORDER

We uphold the order No.KAR ADRG 46.1/2020 dated 30/07/2021 passed by the Advance Ruling Authority and the appeal filed by the Appellant M/s. Mother Earth Environ Tech Pvt Ltd, stands dismissed on all accounts.



(RANJANA JHA)

Member

Karnataka Appellate Authority
for Advance Ruling

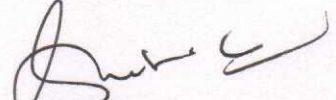
Member

To, Appellate Authority for Advance Ruling

The Appellant

Copy to

1. The Member (Central), Advance Ruling Authority, Karnataka.
2. The Member (State), Advance Ruling Authority, Karnataka
3. The Principal Commissioner of Central Tax, Bangalore West Commissionerate
4. The Assistant Commissioner, LGSTO-155, Ramanagara
5. Office folder



(SHIKHA C.)

Member

Karnataka Appellate Authority
for Advance Ruling

Member

Appellate Authority for Advance Ruling

