

GUJARAT AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.



ADVANCE RULING NO. GUJ/GAAR/R/46/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/38)

Date: 30.07.2020

Name and address of the applicant	:	M/s. Swan LNG Pvt. Ltd., Flat No.301, Ground floor, 9 th Avenue, Behind Rajpath Club, S.G.Highway road, Ahmedabad-380054.
GSTIN of the applicant	:	24AASCS9155R1Z7
Date of application	:	14.06.2019.
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(d) Admissibility of input tax credit of tax paid or deemed to have been paid.
Date of Personal Hearing	:	09.07.2020(Through Video Conferencing)
Present for the applicant	:	Shri. Nirali Gada, Shri Komal Sampat

BRIEF FACTS

The applicant M/s. Swan LNG Pvt. Ltd., has submitted that they are a private limited company incorporated in India and a subsidiary of Swan Energy Limited. They have submitted that they have entered into a Concession Agreement dated 18th October, 2017 with the Gujarat Maritime Board ('GMB') to, inter-alia, implement the development, construction, operation and maintenance of Liquefied Natural Gas ('LNG') Port with a Floating Storage and Regasification Unit ('FSRU') facility in Jafrabad, Gujarat under the Build, own, Operate and transfer ('BOOT') basis. As part of developing the LNG Port and FSRU facility, the applicant would be developing an Import Terminal for FSRU near the village Bhankodar near Jafrabad, Gujarat for an output of 10 MMTPA. After development of the said Import Terminal, it would be providing LNG regasification services to prospective customers.

2. The applicant has submitted that as per the Concession Agreement, the applicant is required to develop the LNG infrastructure for the purpose of regasification of LNG, and FSRU, which would be installed in Harbor Area of the Port facility; that presently, as on the date of filing of this Application, the Port infrastructure and the FSRU is under development stage and has not yet been commissioned/operationalized and is expected that this facility would be commissioned/operationalized by mid 2020; that the proposed LNG Port Infrastructure consists of building two Jetties (referred to as 'Jetty 1' & 'Jetty 2'), as per the development plan and these LNG Jetties which are proposed to be developed are completely unique in terms of their purpose and use as compared to the purpose and use of 'Jetty' as understood in a commercial parlance and shipping industry parlance; that these Jetties are essentially and primarily proposed to be used as foundation for the plant and machinery, that is, loading and unloading equipment and other related equipment which will be used for the purpose of loading, unloading, and transporting LNG; that the LNG Jetties proposed to be built as foundation of plant and machinery shall consist of the following:

- Unloading platform with a concrete deck providing support for piping and equipment;

- Loading and Unloading arms;
- Breasting and mooring dolphins fitted with fenders and quick release hooks and accessible by catwalks;
- Trestle to shore accommodating piping, cables and a roadway for personnel access and small vehicles;
- Mooring load monitoring system, a berthing aid system and an environmental monitoring system;
- Control room areas.

3. The LNG Jetties proposed to be developed are designed and built as per the highly particular specifications of the Plant and Machinery which would be installed on it in order to make sure that such Jetties acts as a stable and strong foundation for the same; that these jetties would be a custom built based on the tonnage load to be handled on it; that these jetties would also have pathways for vehicles to enter during time of repairs and maintenance occasionally; that apart from the above, it will also have control rooms built on it for operating the machinery and equipment installed; that the proposed LNG jetties are unique as compared to normal jetty in terms of its purpose and use. While the nomenclature of the said foundation is generally referred as ‘Jetty’, but in substance it is actually a foundation for mounting and installing the plant and machinery for LNG operations, that is regasification of LNG; loading, unloading, connecting to pipeline etc. The applicant has stated that the layout and construct of the LNG Jetties, that is, foundation and the equipment to be installed on it, broadly, includes the following:

- LNGC unloading arms.
- FSRU loading arms.
- HP Gas unloading arms.
- Gang way towers, cold drain tanks.
- Jetty substation and Instrument Rack Room (IRR).
- Nitrogen bugger vessels, fire monitor and analyzer shelter.

4. The applicant has stated that they would like to draw reference to Section 16 of the Central Goods and Services Tax Act, 2017 (‘CGST Act, 2017’) read with the Gujarat Goods and Services Tax Act, 2017 (‘SGST Act, 2017’) with respect to admissibility of ‘input tax credit’ which states that subject to such conditions and restrictions as may be prescribed and in the manner as prescribed in Rule 49, every registered person shall be entitled to take input tax credit on any supply of goods or services or both which are intended to be used in the course or furtherance of his business; that as far as conditions and restriction in availing input tax credit is concerned, the Applicant would like to draw reference to the ‘Explanation’ to Section 17 of the CGST Act to examine whether the LNG Jetties proposed to be built by the applicant can be said to be a foundation to ‘Plant and machinery’. The relevant extract of the provisions is as 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) telecommunications towers; and
- (iii) pipelines laid outside the factory premises.”

4.1 The applicant has further submitted that as per the said explanation, any foundation built for installation of plant and machinery on it should also get covered under the expression ‘plant and machinery’ and given this, the restriction on availing input tax credit as prescribed under Section 17(5)(c) and

17(5)(d) should not be applicable to such foundation for plant and machinery which can be in the nature of moveable and immovable property; that in view of the legal provisions, it is pertinent to examine if the LNG Jetties which are specifically built for installation of equipment can be considered as 'foundation' for such plant and machinery so as to get covered under the expression 'Plant and machinery'; that in this context, the applicant hereby lists down the following tests:

- a. The equipment proposed to be installed are 'Plant and machinery'.
- b. If answer to (a) is in affirmative, the LNG Jetties on which such equipment is proposed to be installed qualifies as 'foundation' for such plant and machinery.

4.2 The applicant has also submitted that as far as the test with respect to equipment qualifying as 'Plant and machinery' is concerned, explanation as provided for 'Plant and Machinery' under Section 17 of the CGST Act, 2017 means **'apparatus, equipment and machinery'**; that in view of the said explanation, the applicant hereby lists down the various equipment with their description, use and purpose which are installed on the LNG jetties:

- LNGC unloading arms.
- FSRU loading arms.
- HP Gas unloading arms.
- Gang way towers, cold drain tanks.
- Jetty substation and Instrument Rack Room(IRR).
- Nitrogen bugger vessels, fire monitor and analyzer shelter.

4.3 The applicant has detailed the purpose and use of the aforementioned equipment/machineries as under:

- I. LNGC unloading arms/FSRU loading arms/HP gas unloading arms: Loading/unloading arms permit the transfer of liquefied natural gas from one tank/vessel to another tank/vessel/FSRU through an articulated pipe system consisting of rigid piping and swivel joints to obtain flexibility.
- II. Gangway towers: Gangway towers help in accessing the vessel's deck which due to variation in sea levels and tidal levels moves up and down . Gangway positioning needs to be adjusted to suit ship's deck level and each tower tier.
- III. Cold drain tanks: LNG is stored at low temperatures to reduce vaporization of LNG. Cold drain tanks are used to store LNG gas. The tanks are provided with protection against high pressure to avoid any damage and with robust controls to keep the pressure within limits. Generally, LNG cryogenic pumps are also installed inside the tanks, which pump out LNG from the tanks at intermediate pressure.
- IV. Jetty Substation/IRR: Substation-20: This substation feeds all the LV electrical equipment/loads located in the Jetty Topside facility. Based on the hazardous area classification, this substation is pressurised to avoid any ingress. Blast walls are provided wherever required as per codes and standards. This substation shall receive 415V power from Substation No.10.(located onshore). Major loads fed from this Substation are the Loading arms, UPS loads, Lighting. Substation-20 comprises of the following key equipments:
 1. UPS and Batteries.
 2. Switch gears.
 3. Transformers.
 4. Instrument Rack Room(IRR)-consist of Distribution Control System(DCS). Emergency Shutdown Systems (ESD), Fire Spill Gas Direction System (FSGDS) cabinets.

- V. Nitrogen Buffer Vessel; Two Nitrogen buffer vessels are located on Jetty-1. These buffer vessels store and supply nitrogen to the equipment installed on foundation i.e. jetty. Each buffer vessel is sized for at least 30 minutes holdup time. This ensures safe and uninterrupted operation of the plant in the event of any failure of the Nitrogen generation unit. Initial operating pressure of the vessel is the normal operating pressure 7 barg, while the final pressure should not be less than 5 barg.
- VI. Fire monitor tower: Tower mounted firewater monitors are provided for the protection of jetty loading and unloading arms as per codes and standards. Firewater tower monitors have a minimum capacity of 1000gpm and it can be remotely operated from the control room. Based on the hazardous area classification, these monitors are designed to use in hazardous area. Remote controls for a fire monitor are located at a minimum distance of 15 m from the protected equipment.

4.4 The applicant has drawn reference to the definitions of the terms Apparatus, equipments and machineries as described in various dictionaries:

Mac-Millan dictionary:

‘Apparatus: the machines, tools, and equipment needed for doing something, especially something technical or scientific.

Equipment: the tools, machines, or other things that you need for a particular job or activity.

Machinery: a piece of equipment that does a particular job by using electricity, steam, gas etc.

Mc-Graw dictionary:

‘Apparatus: It is a collection or set of materials, instruments, appliances or machinery designed for a particular use.

Equipment: One or more assemblies capable of performing a complete function.

Machinery: A group of parts or machines arranged to perform a useful function.

5. The applicant has submitted that considering the nature and purpose of various equipment in Paragraph 5, LNGC unloading arms, FSRU loading arms, HP Gas unloading arms, Gangway towers, cold drain tanks should be considered as ‘equipment’ or ‘machinery’ since they are used for the purpose of mechanically performing a particular activity, therefore such equipment qualify to be covered under the expression ‘plant and machinery’; that as far as the test with respect to qualification of LNG jetties as ‘foundation’ for such plant and machinery is concerned, the term ‘foundation’ has not been defined in the CGST Act, 2017 or GGST Act, 2017 and therefore, as per the settled judicial principles of interpretation, reference is drawn to the dictionaries for the meaning of the term ‘foundation’. Relevant extract from dictionaries is as below:

<https://www.collinsdictionary.com/dictionary/english/foundation>

‘The foundations of a building or other structure are the layer of bricks or concrete below the ground that it is built on.’

<https://en.oxforddictionaries.com/definition/foundation>

‘The lowest load-bearing part of a building, typically below ground level.’

<https://www.businessdictionary.com/definition/foundation.html>

‘Part of a building or structure that transmits structural loads to the earth and supports the superstructure.’

5.1 The applicant has submitted that in technical and commercial parlance, typically ‘foundation can be categorised as: (a) shallow foundations and; (b) deep foundations; that the term ‘shallow’ and ‘deep’ refer to the depth of soil in which the foundation has been made. Generally, shallow foundations can be made in depths of as little as 3ft (1 metre), while deep foundations can be made at depths of 60-200 ft.(20-65 metres). The various kinds of foundations are mentioned hereunder:

Foundation	Shallow foundation	Isolet Spred footing
		Wall footing
		Combined footing
		Cantilever or strap footing
		Raft or mat footing
	Deep foundation	Pile foundation
		Pier foundation
		Caisson foundation

5.2 The applicant further submitted that in the present case, the foundation type is being built to support the plant and machinery and other equipment which is to be installed on it is ‘deep foundation’ and which can be further sub-categorized as ‘pile foundation’; that in this context, they have submitted the characteristics of the pile foundation as detailed below:

- Pile foundation is a slender column or long cylinder made of materials such as concrete or steel which are used to support the structure and transfer the load at desired depth.
- Pile foundation is meant only to give stability to the plant and machineries to be installed on it and keep it’s operation fibration free.
- This foundation is designed considering the load of the plant and machineries to be installed on it and to minimize the effect of shocks and vibrations (dynamic forces) resulting from operation of these machines.
- The main components of the pile foundation are the ‘pile cap’ and the ‘piles’. This can be demonstrated by way of pictorial representation. The pile cap is an area of the pile foundation on which the equipment will be fastened and installed. The purpose of pile is to attach and support the pile cap to the earth as part of the overall pile foundation.

5.3 The applicant has submitted that pile foundations are generally adopted in the following situations:

- The sub-soil water table is very high which can easily affect other foundations.
- Heavy and uniform load is coming to the soil from the structure.
- Where raft or grillage foundations are either very costly or cannot be adopted due to local difficulties.
- When timbering of the excavation trenches is not possible.
- When it is impossible to maintain the foundation trenches in dry condition by pumping due to heavy inflow of seepage or capillary water.

- When the underneath soil is waterlogged and compressive. Hard firm strata are situated at a deeper depth.
- When the structure is situated on or near sea-shore or river bed and foundations are liable to be scoured due to the action of water.

5.4. The applicant has further stated that in the present case, given the nature, characteristics as well as meanings of ‘foundation’ and ‘pile foundation’, the characteristics, feature, layout and purpose of the LNG jetties to be built for it to qualify as foundation/pile foundation and also rationale as to why this Jetties are different from normal jetty.

- LNG jetties are being built in the harbour area are in the nature /akin to pile foundation.
- These jetties are custom designed for the purpose of installation of plant and machinery and are built considering the load of the plant and machineries to be installed on it and to minimize the effect of shocks and vibrations (dynamic forces) resulting from operation of these equipment.
- Further, these jetties are meant to give stability to the plant and machinery installed on it and keep its operation vibration free.
- In normal terms, jetty is generally being built considering the same to be used as landing stage or a small pier where the vessels/boats are docked or moored or it is built to be used as breakwater to protect or defend the harbour. However, in the present case LNG jetties so built are specifically for loading, unloading of LNG and loading LNG to FSRU for which the loading and unloading arms(equipment) are installed on the jetty. This is the main purpose of LNG jetties so that these equipment can be installed for LNG operations and capable of handling double banking operations.

5.5 The applicant has stated that fastening the plant and machinery to foundation, it is not necessary to contend that the said plant and machinery results into an immovable property; that reference is drawn to circular issued in excise era Circular No.13/90.1-CX dated 18.04.1990 wherein discussion with excisability respect to plant and machinery assembled at site and fixed to the ground has been elaborated, the relevant extract of the said circular is as under:

“It has been decided by the board that machinery, which is superficially attached or bolted to a prepared foundation on the ground, in order that its operation is vibration free, does not, by the reason, become immovable property, because it can be easily be unbolted and bought and sold (example: diesel engine, generating set, power-loom etc.).”

5.6 The applicant therefore categorically submits that in the present case given the nature, characteristics as well as meanings of ‘foundation’ and ‘pile foundation’, the characteristics, feature, layout and purpose of the LNG jetties qualifies as ‘foundation’ for the plant and machinery to be installed in it. The applicant has also submitted that the input tax credit of GST charged by its registered suppliers on procurement of inputs, input services or capital goods for building the LNG jetty is a foundation for plant and equipment and therefore there are no restrictions in availing credit as per Section 16 read with Section 17 of the relevant Acts. The applicant has put forward the following questions seeking Advance Ruling on the same:

- (1) *Whether in terms of Section 17 of the CGST Act, 2017 read with GGST Act, 2017, the LNG jetties proposed to be built by the applicant can be said to be covered within expression ‘plant and machinery’ as foundation to equipment, apparatus, machinery to be installed on it?*

(2) Whether as per Section 16 read with Section 17 of the said Acts, the applicant can accordingly avail 'input tax credit' of GST paid in inputs, input services as well as capital goods procured for the purpose of building the LNG jetties?

DISCUSSION & FINDINGS:

6. We have considered the submissions made by the applicant in their application for advance ruling as well as the arguments/discussions made by their representative Ms.Nirali Gada at the time of personal hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

7. At the outset, we would like to state that the provisions of both the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax 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 similar provisions of the GGST Act.

8. As per the submission of the applicant, they have entered into a Concession Agreement with the Gujarat Maritime Board ('GMB') to, inter-alia, implement the development, construction, operation and maintenance of Liquefied Natural Gas ('LNG') Port with a Floating Storage and Regasification Unit ('FSRU') facility in Jafrabad, Gujarat under the Build, own, Operate and transfer ('BOOT') basis; that as per the Concession Agreement, the applicant is required to develop the LNG infrastructure for the purpose of regasification of LNG, and FSRU, which would be installed in Harbor Area of the Port facility; that presently, the Port infrastructure and the FSRU is under development stage and would be commissioned/operationalized by mid 2020; that the proposed LNG Port Infrastructure consists of building two Jetties (referred to as 'Jetty 1' & 'Jetty 2'), as per the development plan; that these Jetties are essentially and primarily proposed to be used as foundation for the plant and machinery, that is, loading and unloading equipment and other related equipment which will be used for the purpose of loading, unloading, and transporting LNG only. The applicant has referred to Section 16 of the Central Goods and Services Tax Act, 2017 ('CGST Act, 2017') read with the Gujarat Goods and Services Tax Act, 2017 ('GGST Act, 2017') with respect to admissibility of 'input tax credit' which states that subject to such conditions and restrictions as may be prescribed and in the manner as prescribed in Rule 49, every registered person shall be entitled to take input tax credit on any supply of goods or services or both which are intended to be used in the course or furtherance of his business. The applicant has also made a reference to the 'Explanation' to Section 17 of the CGST Act to examine whether the LNG Jetties proposed to be built by the applicant can be said to be a foundation to 'Plant and machinery'. The applicant has put forward the following questions seeking Advance Ruling on the same:

(1) Whether in terms of Section 17 of the CGST Act, 2017 read with GGST Act, 2017, the LNG jetties proposed to be built by the applicant can be said to be covered within expression 'plant and machinery' as foundation to equipment, apparatus, machinery to be installed on it?

(2) Whether as per Section 16 read with Section 17 of the said Acts, the applicant can accordingly avail 'input tax credit' of GST paid in inputs, input services as well as capital goods procured for the purpose of building the LNG jetties?

9. During the course of personal hearing held on 09.07.2020, the representative of the applicant was asked to submit the photocopy of the agreement of the applicant made with Gujarat Maritime Board as well as photos of the jetties they proposed to build. Since it was not clear from the submission as to whether the applicant was involved in the supply of goods or services or both in the instant case, the representative was directed to make an additional submission clarifying the above facts along with the aforementioned documents. However, neither any additional submission nor any documents as called for during personal hearing have been received so far. In view of the above, we are left with no option but to decide the case on the basis of the records available as well as on the merits of the case.

10. From the submission of the applicant, we find that they have entered into a Concession Agreement with the Gujarat Maritime Board ('GMB') to, inter-alia, implement the development, construction, operation and maintenance of Liquefied Natural Gas ('LNG') Port with a Floating Storage and Regasification Unit ('FSRU') facility in Jafrabad, Gujarat under the Build, own, Operate and transfer ('BOOT') basis and the purpose of the construction of the 2 jetties is for the installation of plant and machinery on it. It, therefore, appears that it is a service contract between GMB and the applicant for: (i) construction of the jetty (ii) Erection, commissioning and installation of plant and machinery on the said jetties for the purpose of regasification of LNG and (iii) operation and maintenance of the said infrastructure including plant and machinery. However, since the copy of the agreement entered into by the applicant with GMB has not been submitted, it is not clear as to whether the contract includes supply of materials also.

10.1 Further, we find that the main issue to be decided is as to whether the jetties proposed to be built by the applicant can be covered within the expression 'plant and machinery' (as mentioned in the Explanation in Section 17 of the CGST Act, 2017) as 'foundation' to the equipment, apparatus, machinery to be installed on it. For this purpose, we first of all need to find out what a 'jetty' is. As per data available online, a jetty, in brief, is a structure generally constructed on plinths or pillars that projects from land out into water. It can also be described as a narrow structure projecting from the shore into the deep water as a landing place for ships i.e. the place where ships or boats stop to let people get on or off, or to load or unload goods. Jetty structure is used to berth the vessels alongside and affords them a working platform and can also be called a landing stage at which boats can dock or be moored. However, as discussed in the para above, in the instant case, the 2 jetties proposed to be constructed by the applicant as per the agreement with GMB is not for the aforementioned purpose but solely for installation of plant and machinery on it for the purpose of regasification of LNG. In short, the construction of the above jetties is nothing but a civil structure or an immovable property constructed on pillars or plinths extending from the sea shore to the deep sea.

10.2 Next, we need to find out the definition of 'foundation'. Since the term 'foundation' is not defined in the CGST Act, 2017, reference is being drawn to the dictionaries for the meaning of the said term. The definition of 'foundation' as per various dictionaries is mentioned hereunder:

- (a) As per Merriam Webster dictionary: a usually stone or concrete structure that supports a building from underneath.
- (b) As per Collins dictionary: the foundation of a building or other structures are the layers of bricks or concrete below the ground that it is built on.
- (c) As per Macmillan dictionary: the parts of a structure that is below the ground and supports the rest of it.
- (d) As per Cambridge dictionary: the structures below the surface of the ground that support a building.

10.3 On going through the aforementioned definitions of ‘foundation’, the one thing that we find strikingly common in all of them is that foundations are structures which are located below the ground and support the structures/buildings built above it. Thus, the primary condition for a structure to be a ‘foundation’ is that it is required to be a concrete structure made of stones, bricks, cements etc., which should be located below the ground and give support to the structure/building constructed above it. However, on going through the definitions as well as the details of jetties proposed to be built by the applicant as per their agreement with GMB and comparing the same, we find that the jetties are just civil structures or immovable property, which are akin to a building wherein the only difference being that buildings are located on foundations below the surface of the ground whereas a jetty is a civil structure which is constructed high above the sea shore and extending into the deep sea, stationed on pillars or plinths. Thus, the jetties, in itself, being civil structures and immovable property constructed above the sea shore and extended into the sea, stationed on pillars and plinths above the earth, cannot be considered or covered under the definition of ‘foundation’. Hence, on this ground itself, we conclude that the said jetties proposed to be built by the applicant cannot, by any stretch of imagination, be called or defined as a ‘foundation’.

11. Next, we need to examine as to whether the ‘plant and machinery’ proposed to be installed by the applicant on the aforementioned jetties would be covered under the definition of ‘plant and machinery’ as defined in Explanation to Section 17 of the CGST Act, 2017. For this, we will be required to refer to the Explanation given in Section 17 of the CGST Act, 2017, which 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) telecommunications towers; and*
- (iii) pipelines laid outside the factory premises.”*

11.1 On going through the aforementioned ‘Explanation’, we find that **it excludes:** (i) land, building or any other civil structures. (ii) telecommunications towers; and (iii) pipelines laid outside the factory premises. Condition (iii) specifically states that pipelines laid outside the factory premises shall be excluded from the definition of ‘plant and machinery’, which means that ‘pipelines laid inside the factory premises shall be included in plant and machinery. It also means to say that ‘plant and machinery’ should necessarily be located within the ‘factory premises. Now, in view of the aforementioned discussions in terms of the explanation mentioned above, we find that all the following conditions are invariably required to be fulfilled in order to be eligible to be covered under the definition of ‘plant and machinery’:

- (i) They have to be apparatus, equipment and machinery.
- (ii) They have to be fixed to earth by foundation or structural support.
- (iii) They should be used for making outward supply of goods or services or both.
- (iv) They should be located in a factory premises.

11.2 Therefore, we need to find out whether the applicant fulfils all the aforementioned conditions or otherwise, which shall be discussed one by one as under:

- (i) We find that the applicant in his submission has defined the terms apparatus, equipment and machinery as per Mac-millan dictionary and Mc-Graw dictionary as under:

(a) Mac-Millan dictionary:

Apparatus: the machines, tools, and equipment needed for doing something, especially something technical or scientific.

Equipment: the tools, machines, or other things that you need for a particular job or activity.

Machinery: a piece of equipment that does a particular job by using electricity, steam, gas etc.

(b) Mc-Graw dictionary:

Apparatus: It is a collection or set of materials, instruments, appliances or machinery designed for a particular use.

Equipment: One or more assemblies capable of performing a complete function.

Machinery: A group of parts or machines arranged to perform a useful function.

11.3 The applicant has also submitted the list of equipment and machinery that he proposes to install on the jetties i.e. LNGC unloading arms, FSRU loading arms, HP Gas unloading arms, Gang way towers, cold drain tanks, Jetty substation and Instrument Rack Room(IRR), Nitrogen bugger vessels, fire monitor towers and analyzer shelter. Although the applicant has given the uses of the above items, they have not submitted any description and photos of the above mentioned items, which would have been helpful in determining their eligibility to be covered under 'plant and machinery' or otherwise. We, therefore, proceed to decide the issue on the available records as well as available data. On going through the details of their uses as well as the images available online, it appears that gangway towers, fire monitor towers and jetty substations are civil structures and are therefore not covered under 'plant and machinery', whereas the remaining equipment appear to be covered under the definition of apparatus, equipment or machinery. Therefore, this condition is only partially fulfilled.

11.4 The apparatus, equipment and machinery are not fixed to the earth by foundation or structural support. The same are to be fixed to the jetties which by themselves do not fall under the definition of 'foundation' or structural support as discussed earlier. Hence this condition is not fulfilled.

11.5 On going through the submission of the applicant, it is not clear as to whether the aforementioned apparatus, equipment and machinery are involved in the outward supply of goods or services (or both) or otherwise. Although, the representative of the applicant was asked to give a submission in this regard during the course of personal hearing, no submission has been received so far from the applicant. In absence of any submission in this regard, we are left with no option but to conclude that the aforementioned apparatus, equipment and machinery are not involved in the outward supply of goods or services. Hence, we conclude that this condition is also not fulfilled.

11.6 Further, the aforementioned apparatus, equipment and machinery are to be installed on the jetties, which do not appear to be covered under the definition of 'factory premises'.

11.7 In view of the above, since the apparatus, equipment and machinery proposed to be installed by the applicant do not satisfy the conditions required to be defined as 'plant and machinery', we conclude that the same are not covered under the definition of 'plant and machinery' in terms of the Explanation to Section 17 of the CGST Act, 2017.

12. The next issue to be discussed is whether as per Section 16 read with Section 17 of the said Acts, the applicant can avail 'input tax credit' of GST paid in inputs, input services as well as capital goods procured for the purpose of building the LNG jetties. In this regard, we would like to draw attention to the earlier paras, wherein it has been discussed and proved that the apparatus, equipment and machinery (as referred to by the applicant) proposed to be installed by the applicant on the jetties are not covered under the definition of 'plant and machinery' as defined in the Explanation to Section 17 of the CGST Act, 2017 and that the jetties are not covered under the definition of 'foundation' as defined in the said explanation. Also as discussed earlier, jetties proposed to be constructed by the applicant are civil structures (immovable property) which are to be constructed as per their agreement with Gujarat Maritime Board(GMB). In this context, we would like to draw attention to the fact that ITC in respect of inputs as well as input services used in the construction of civil structures or immovable property are not available to the applicant as per the provisions laid down in Rule 17(5)(c) and 17(5)(d) of the CGST Act, 2017. Rule 17(5) of the CGST Act, 2017 reads, as under:

"Section 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:—

(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:-----

(b) the following supply of goods or services or both-----

(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 capitalisation, to the said immovable property;"

13. In light of the foregoing, we rule as under –

R U L I N G

Question-1: Whether in terms of Section 17 of the CGST Act, 2017 read with GGST Act, 2017, the LNG jetties proposed to be built by the applicant can be said to be covered within expression 'plant and machinery' as foundation to equipment, apparatus, machinery to be installed on it?

Answer: The LNG jetties proposed to be built by the applicant are not covered within the expression 'plant and machinery' as foundation to equipment, apparatus, machinery to be installed on it in terms of Section 17 of the CGST Act, 2017 read with GGST Act, 2017 for the reasons discussed hereinabove.

Question-2: Whether as per Section 16 read with Section 17 of the said Acts, the applicant can accordingly avail 'input tax credit' of GST paid on inputs, input services as well as capital goods procured for the purpose of building the LNG jetties?

Answer: The applicant cannot avail 'input tax credit' of GST paid on inputs, input services as well as capital goods procured for the purpose of building the LNG jetties in terms of Section 16 read with Section 17 of the CGST Act, 2017 read with GGST Act, 2017 for the reasons discussed hereinabove.

(SANJAY SAXENA)
MEMBER

(MOHIT AGRAWAL)
MEMBER

Place: Ahmedabad

Date: 30.07.2020.