

(AAAR-GUJ) :2022) 53 TLC(GST) 081

IN. RE, SWAN LNG PVT. LTD.

IN THE APPELLATE AUTHORITY FOR ADVANCE RULING, GUJARAT

MILIND TORAWANE AND SEEMA ARORA, MEMBER

GUJ/GAAAR/APPEAL/2022/06

Dated - 09-05-2022

Subject - Classification of service

Under Section 17

Case referred to -

CCE, Visakhapatnam Versus Sai Sahmita Storages (P) Ltd. – [2011 (270) ELT 33 (A.P.)]

Assistant Collector of C.Ex. Versus Ramdev Tobacco Company – 1991 (51) E.L.T. 631 (SC)

Counsel -

Paresh Dave, Advocate for the Applicant.

JUDGMENT

1. M/s. Swan LNG Pvt. Ltd., Ahmedabad ('the appellant' for short) has entered into a Concession Agreement dated 18th October, 2017 with the Gujarat Maritime Board and Government of Gujarat for development, construction, operation and maintenance of Liquefied Natural Gas ('LNG') Port with a Floating Storage and Regasification Unit ('FSRU') facility near Jafrabad, Gujarat, on Build, Own, Operate and Transfer basis. As a part of developing the LNG Port and FSRU facility, **the appellant is developing an Import Terminal** for FSRU near the village Bhankodar, near Jafrabad, Gujarat. After development of the said Import Terminal, the appellant intends to provide **LNG re-gasification service** to prospective customers.

2. The applicant had raised following questions before the Gujarat Authority for Advance Ruling ['GAAR'], Goods and Service Tax:

(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 on inputs, input services as well as capital goods procured for the purpose of building the LNG jetties?

3. Before starting discussion, we reproduce extracts of **Section 16** and **17** of the CGST Act, 2017, which are relevant to this appeal:

SECTION 16. Eligibility and conditions for taking input tax credit. - (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in **section 49**, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are **used or intended to be used in the course or furtherance of his business** and the said amount shall be credited to the electronic credit ledger of such person.

... ..

SECTION 17. Apportionment of credit and blocked credits. -

... ..

(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 :-

... ..

(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;

(6)

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)

4. It was the claim of the appellant before GAAR that LNG Jetty being constructed by them is 'foundation' of the 'plant and machinery' to be installed on it for making outward supply; therefore, such foundation is included in the expression "plant and machinery", as defined in the Explanation to **Section 17** of the CGST Act, 2017. In their application dated 14.06.2019 for Advance Ruling, the applicant has submitted a layout of plant & machinery installed or to be installed on the said foundation as under:



The applicant had mentioned names of plant & machinery mentioned in upper side of the above picture (from left to right):

- Fire monitor tower
- Gangway towers (2 nos)
- Fire monitor tower
- Nitrogen buffer vessels (2 nos)

Names of plant & machinery mentioned in lower side of the above picture (from left to right):

- Fire monitor tower
- LNG/FSRU loading unloading arms (4 nos on both sides)

- Fire monitor tower

5. The **Gujarat Authority for Advance Ruling [‘GAAR’] in its Ruling No. GUJ/GAAR/R/46/2020 dated 30.07.2020** [‘Ruling’ for short] gave the following findings:

a) 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. [Para 10.1 of Ruling refers]

b) The GAAR referred the dictionary meanings of the term ‘foundation’ and observed that foundations are structures which are located below the ground and support the structures/buildings built above it. 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. The GAAR found 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 GAAR is of the view that the jetty, in itself, being civil structure and immovable property, cannot be considered or covered under the definition of ‘foundation’. [Para 10.3 of Ruling refers]

c) After going through the aforementioned ‘Explanation’ to **Section 17**, the GAAR found 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. As observed by the GAAR, it also means to say that ‘plant and machinery’ should necessarily be located within the factory premises. Thus, the GAAR found 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.

[Para 11.1 of Ruling refers]

d) The GAAR observed 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 appeared to be covered under the definition of apparatus, equipment or machinery. [Para 11.3 of Ruling refers]

e) The GAAR inter alia observed that the apparatus, equipment and machinery are not fixed to the earth by foundation or structural support; that they are to be fixed to the jetties which by themselves do not fall under the definition of ‘foundation’ or structural support. [Para 11.4 of Ruling refers].

f) In absence of any submission of the applicant regarding use for making outward supply, the GAAR concluded that the aforementioned apparatus, equipment and machinery are not involved in the outward supply of goods or services. [Para 11.5 of Ruling refers].

g) The GAAR further observed the apparatus, equipment and machinery are to be installed on the jetties, which do not appear to be covered under the definition of ‘factory premises’. [Para 11.6 of Ruling refers].

h) Thus, GAAR concluded that the apparatus, equipment and machinery proposed to be installed by the applicant are not covered under the definition of ‘plant and machinery’ in terms of the Explanation to **Section 17** [Para 11.7 of Ruling refers].

6. In view of the above discussion, the GAAR held that the Jetties proposed to be constructed by applicant is civil structure and cannot be treated as ‘foundation’; and not covered under definition of ‘plant and machinery’ as defined in the Explanation to **Section 17**. [Para 12 of Ruling refers]. Thus, the Gujarat Advance Ruling Authority has answered the questions raised by applicant, as under:

Answer to Question 1: 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.

Answer to Question 2: 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.

7. M/s. Swan LNG Pvt. Ltd. has filed an **appeal** with us against the aforesaid Ruling under the provisions of **Section 100** of the CGST and GGST Act, 2017. The appellant has quoted the text of **Section 16(1)** and contended that it entitles every registered person to take input tax credit ('ITC') of tax charged on supply of goods or services or both, which are used or intended to be used in course or furtherance of business. They have also quoted the provisions of **Section 17(5)(c) & (d)**, under which restrictions on availment of input tax credit have been prescribed. The appellant further submitted that as per the Explanation to **Rule 17(5)**, any foundation built for installation of plant and machinery on it, also get covered under the expression "plant and machinery"; and accordingly 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. Thus, the appellant contended that ITC of LNG jetties, which are actually foundation to the plant and machinery, should be available.

8. On searching the internet, we find following information dated September 01, 2017 and pictures on the website of Mitsui OSK Lines, <https://www.mol.co.jp/en/pr/2017/17060.htm> class="testClickl":

"TOKYO-Mitsui O.S.K. Lines, Ltd. (MOL; President & CEO: Junichiro Ikeda) today announced the signing of agreements with Swan LNG Private Limited (Swan LNG) for the long-term operation / maintenance of a floating, storage and regasification unit (FSRU)."

The images of LNG receiving terminal, as given in the said website, are reproduced below for better understanding:



9. From the appellant's website, <http://swanlng.co.in/fsru.htm> class="testClickl, we find that the Floating Storage & Regasification Unit ['FSRU'] is a new vessel built by Hyundai Heavy Industries Co. Ltd. at its shipyard in Korea. The appellant would utilise the FSRU for receiving LNG from LNG Carriers, regasification of LNG and sending out the regasified LNG. Thus, we find that the main process of regasification of LNG is to be undertaken in FSRU, which is in nature of floating Vessel and so, no foundation is required for plant and machinery installed in the FSRU. However, following equipments/structures are installed / to be installed on Jetties, as stated by the Appellant and mentioned in the Order of GAAR:

LNGC unloading arms / FSRU loading arms / HP gas unloading arms

Gang way towers

Cold drain tanks

Nitrogen Buffer Vessel

Fire monitor tower / Ground monitor

Air receiver

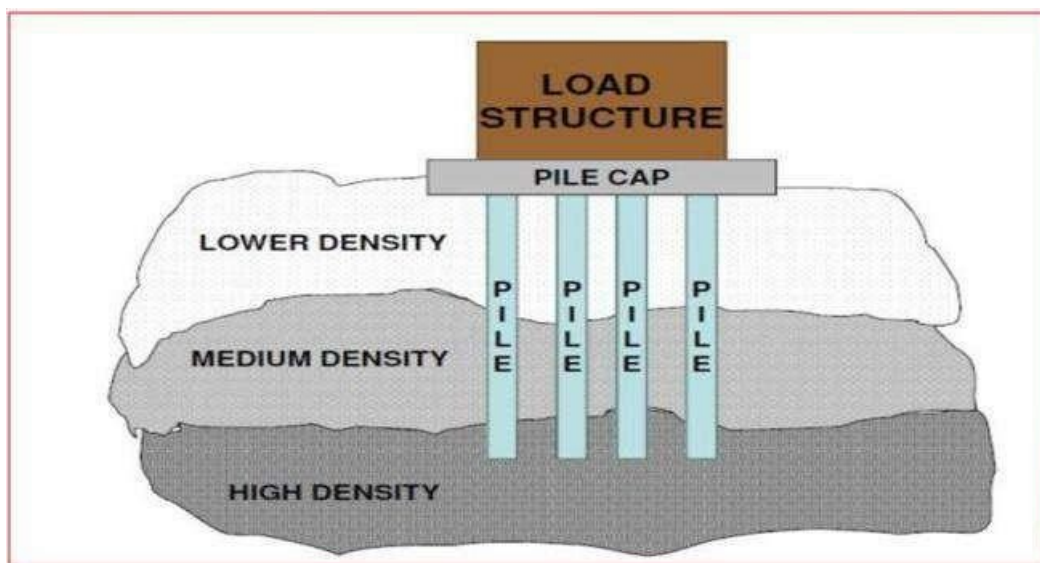
Dry Chemical Powder (DCP) Skid / AV / DV Skids

Jetty Substation / Instrument Rack Room ('IRR')

Positioning of some of the above equipments/structures has been shown in the layout/picture given in Para 4 hereinabove.

10. The appellant submitted that the Authority for Advance Ruling had compared such foundation jetty to foundations of building; and pointed out that a foundation is a structure which is located below the ground on which a civil structure i.e. Building, is built; and similarly in their case held that the jetty is the civil structure like a building built on a foundation. The appellant submitted that the Ld. Authority for Advance Ruling has erred in comparing the foundation of building to the appellants case because a building is a civil structure which has purposes different than that of a jetty; that a building may be used as commercial/residential premise however, the jetty in appellant's case has been built predominantly for installation of plant and machineries.

11. The appellant has described various types of Piles foundation with pictures and submitted that pile foundation consists of both piles (which are vertical and generally cylindrical) and pile cap (which is horizontal and sit on top of piles). The pictorial representation of pile foundation is as follows:



According to the appellant, the Ld. Authority in the impugned order has ruled that only the piles are the foundation, however the said foundation are not capable of providing a solid base for installation of plant and machinery all by itself, rather it needs a horizontal supporting structure as well to transfer the load from the plant and machineries installed above on to the multiple vertical piles and to deep seabed or ground below the sea.

12. The appellant has entered into an EPC contract with M/s. Afcons Infrastructure Ltd. ['Afcons' for short]. This EPC contract is for designing and construction of Jetty 1, Jetty 2 and Tug Berth. The appellant has entered into another EPC Contract with M/s. Black & Veach Pvt. Ltd. for Topside and Onshore facilities for this project. The appellant submitted that the plant and machinery for conversion of LNG into RLNG (Regasified LNG) were not capable of being used without they being commissioned and installed on the foundation and supporting structure in the nature of LNG jetties. They further submitted that the plant and machinery could not function and the desired result could not be achieved without installing and commissioning such plant and machinery by fixing them to earth by foundation and structural supports in the nature of LNG jetties.

13. The appellant has submitted a **Certificate** Ref. No. BB/SLPL/H-24/20/INST dated 04.09.2020 issued by Shri Bhaskar G. Bhatt, **Chartered Engineer**. After visiting and inspecting the project site situated near Village Bhankodar, Distt. Amreli, Gujarat, he certified that the LNG Jetties proposed to be built by the Company at that site are covered and fall within the expression as "Foundation" as well as structural support to equipment, apparatus, plant & machinery, to be installed on the Jetties.

14. In light of the submissions, the appellant claimed that input tax credit of GST on inputs, input services as well as capital goods procured for the purpose of building the LNG Jetties should be available since LNG jetty is a foundation for plant & machinery.

15.1 Personal Hearing in this matter was held on 22.12.2020 through video conferencing. Thereafter, the appellant submitted further written submission dated 28.12.2020 regarding queries raised during the personal hearing. Gist of the same is as under:

(i) Whether the LNG Jetty in question could be used for any other purpose like loading, unloading or handling of any other cargo, in case it was not used for regasification of LNG?

The answer is "No". The Jetty in question cannot be used for such other purpose mainly due to its design and layout.

(ii) Whether the Jetty in question is inevitable for regasification plant, or regasification could be done at shore also where foundation and supporting structures in nature of LNG Jetty may not be required?

Theoretically, a **re-gasification plant could be installed on landmass also, where foundation and structural supports in nature of jetty would not be required**. But, in the present case, the re-gasification equipment and plant being installed and commissioned by the appellant at a particular place, from where taxable supply of 're-gasification service' would be provided. For the re-gasification plant and machinery in question, the jetty in question is not only necessary but inevitable and indispensable.

(iii) Whether this project included machinery and equipment for unloading imported LNG also; and whether ITC was being claimed for such equipment and their foundation as well as supporting structures?

Yes.

(iv) Whether all and entire civil structures would be included under the ITC Scheme?

If such civil structure is in nature of foundational structural support for plant and machinery, and such civil structure was specifically erected for installation or commissioning of plant and machinery, such civil structure is not excluded by virtue of clause (i) under Explanation of **Section 17**.

(v) Denial of ITC even in respect of equipment and machinery for re-gasification. (Para 11.5 of Advance Ruling challenged)

The appellant would be incurring GST liability because of supply of service in nature of re-gasification. Therefore, there is a clear error in rejecting the claim for ITC on apparatus, equipment and machinery on a specious observation that the nature of outward tax liability was not clarified.

15.2 There has been change in one of the two Members of this authority consequent upon the transfer and posting of the Chief Commissioner, Gujarat Goods and Services Tax, after Personal Hearing has been held in this case. The appellant was therefore given fresh hearing on 22.03.2022. The advocate of the appellant appeared for the personal hearing, which was conducted online on 22.03.2022. He re-iterated the contents of the appeal and also the additional written submission made vide their letter dated 28.12.2020. He referred to various photographs of the LNG Jetty submitted alongwith the appeal and that the project is presently under construction. That GMB has given license for regasification purpose. That

ITC on foundations of equipment is allowed. That Jetty is only for plant & machinery and the same is not a civil structure falling under the exclusion clause. He stated that additional photographs of the jetty under constructions would be submitted. He concluded by requesting that all his submissions be considered and to allow his appeal. The appellant further vide their letter dated 07.04.2022 made additional submission wherein they stated the salient features of Swan Jetty at Jafarabad, submitted photographs of the Jetties being built and also relied upon the order of Hon'ble Gujarat High Court in the case of **Mundra Ports & Special Economic Zone Ltd Vs. CCE & Cus. [2015(39)STR 726 (Guj.)]; and Andhra Pradesh High Court in the case of CCE, Visakhapatnam Vs. Sai Sahmita Storages (P) Ltd., [2011 (270) ELT 33 (A.P.)]**.

FINDINGS:

16. We have carefully considered the written as well as oral submissions made by or on behalf of the appellant viz. M/s. Swan LNG Pvt. Ltd. We find that the issue is related to admissibility of input tax credit in respect of construction of LNG jetties with reference to clause (c) and (d) of Sub-section (5) of **Section 17**; as well as the definition of the expression "plant and machinery", as per the 'Explanation' of **Section 17** of the CGST / GGST Act, 2017. The said provisions, being crucial, are reproduced below at the cost of repetition (emphasis supplied):

SECTION 17. Apportionment of credit and blocked credits. -

.....

(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 :-

.....

(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;

(6)

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.

On the basis of the above-mentioned statutory provisions, with reference to the present appeal, we find that input tax credit in respect of construction of foundation and structural supports of plant and machinery is not deniable in terms of **Section 17(5)**; however, input tax credit in respect of construction of building or any other civil structure is not admissible.

17. We have perused the **Directors' Report** dated 28.06.2021, published in the Annual Report 2021 of the appellant viz. M/s. Swan LNG Pvt. Ltd. Following information has been reproduced from the said Directors' Report:

"On Project implementation work, Company has achieved an overall 58.77% progress on the construction of Port Project upto 31st March 2021. Below is the progress on various EPC packages awarded by the Company:

i. EPC for Jetties & Tug Berth by Afcons Infrastructure: progress is ~67.20%

ii. EPC for Topside & Utilities by Black & Veatch: progress is ~96.64%

iii. EPC for Breakwater and Shore Protection by Mantovani Dharti: progress is ~31.28%

iv. EPC for Dredging and Reclamation Works by Mantovani Dharti: Progress is ~77%

v. EPC for balance Onshore facilities work by Megha Engineering: Progress is~7.13% "

18. The appellant has submitted a copy of their EPC Contract dated 29.09.2018 with M/s. Afcons Infrastructure Ltd. [**'M/s. Afcons'** for short], which is relevant to the present appeal. The appellant has given the work of construction of jetties on EPC Contract basis to M/s. Afcons. In other words, the work of Engineering, Procurement, Construction and Commissioning is being done by M/s. Afcons. Under this situation, it appears that the material and services for construction are to be purchased/procured by M/s. Afcons and input tax credit on them, if admissible, would be available to M/s. Afcons, not to the appellant. The appellant is getting Works Contract service from M/s. Afcons, which is covered under clause (c) of Sub-section (5) of **Section 17**.

19. In the **Contract Agreement dated 29.09.2018** for Engineering, Procurement, Construction & Commissioning of Package I Works entered by and between M/s. Swan LNG Pvt. Ltd. ('Employer' or 'Appellant') and M/s. AFCONS Infrastructure Ltd. ('Contractor'), the Scope of Package I Works & Progress has been described as under:

"2.1 Scope of Package I Works & Progress

(i) Major scope of the Package I Works shall include but is not limited to the following:

(a) Design and Construction of Jetty 1 consists of Approach Trestle 390m long with Expansion Loops as per Topside Load Data, Unloading Platform of size 75m x 67.5m, 12 nos Mooring Dolphin & 10 nos of Breasting Dolphins;

(b) Design and Construction of Jetty 2 consists of Approach Trestle 95m long as per Topside Load Data, Unloading Platform of size 50m + 15m x 15m, 8 nos Mooring Dolphin & 5 nos of Breasting Dolphins;

(c) Design and Construction of One Tug Berth of size 116m x 10m

(d) Design, Supply and Installation of Jetty Fixtures, i.e."

20. The appellant has claimed that the entire jetties are foundation of plant & machinery to be installed on it. In this regard, Annexure-1, which forms a part of the Certificate dated 04.09.2020 issued by the Chartered Engineer and submitted by the appellant, is reproduced:

ANNEXURE - 1

(Forming the part of the Chartered engineer certificate of Swan LNG Pvt. Ltd.)

DETAILS OF VARIOUS TYPES OF FOUNDATIONS USED FOR INSTALLATION OF PLANT & MACHINERIES

Sr. No.	Description	Type of Foundation	Quantity		
			Nos / M ³		
1	Jetty Approach trestle, 390 M Length in the Arabian sea to be used for service vehicle / cranes / workers movement	Pile with RCC	86 nos		
2	Tug jetty 116 M Length in the Arabian sea to be used for service vehicle / cranes / workers movement	Pile with RCC	34 nos		
3	RCC Unloading Platform for installation of equipments, cranes, Tanks, Compressors, Pumps, having size 75M.X 67.5 M in the Arabian sea	Pile with RCC	82 nos		
4	Fire Water tanks 2 nos of total 11,000 Cum storage capacity On shore	RCC foundation	83.5 m ³ x 2 nos		
5	Pump room with shed	Brick Masonry with RCC pedestal and RCC Beams	Pedestals	Pump foundations	RCC
			18 nos	7 nos	261.79 m ³
6	Foundation for gas and water pipeline on jetty and on RCC platform and jetty in the Arabian sea	RCC foundation	Structural Support		
			68nos	12.24 Ton Structural Steel	
7	Foundation for gas and water pipeline on Shore	RCC foundation	1398 nos	1867.85 m ³	
8	Offices on shore	Brick Masonry with RCC pedestal and RCC Beams	Buildings	RCC - M ³	BW - M ³
			POB	237.50	103.00
			SS10	1,182.80	395.00
			SS20	221.58	50.11
			LAB	197.49	63.00
			WORKSHOP	604.00	296.00

21. We find that the title of the **Annexure-1** has been given by the Chartered Engineer as "DETAILS OF VARIOUS TYPES OF FOUNDATIONS USED FOR INSTALLATION OF PLANT & MACHINERY". On going through the second column of the Table given in the Annexure-1 showing 'Description', we find that the purpose / use of various items / works, has been mentioned therein. We observe that certain items of work, like Jetty Approach Trestle 90m long for Jetty 2, Breasting dolphins and Mooring dolphins have not been mentioned in the said Annexure-1; however, these items/works have been mentioned in other documents submitted by the appellant.

Hence the above claim cannot be accepted.

22. Jetty Approach Trestle (Sr.No.1 of Annexure-1)

We are of view that the Approach Trestle of Jetty-1 measuring to 390m, is meant for movement of service vehicles, cranes, workers etc., as mentioned at Sr.No.1

M. S. A. H.

of the Annexure-1 to the Chartered Engineer's Certificate dated 04.09.2020, which has been submitted by the appellant.

Though Approach Trestle measuring to 90m of Jetty-2 has not been mentioned in the Annexure-1 to the Certificate of Chartered Engineer, it would be of similar use.

The appellant, in their appeal dated 07.09.2020, inter alia mentioned that the LNG Jetties shall consist inter alia "Trestle to shore accommodating piping, cables and a roadway for personnel access and small vehicles."

In respect of Approach Trestle, in Annexure-4 to the Chartered Engineer's Certificate dated 04.09.2020, only following Superimposed Dead Loads have been shown:

"3.2 Approach Trestle

3.2.1. Dead Load

.....

3.2.2 Superimposed Dead Load

Cable Trays, Inspection and Maintenance walkways, Piping loading and Road furniture such as Kerb, Handrail etc. are assessed individually under the Superimposed Dead load."

Thus, we find that the Approach Trestles are being constructed to accommodate piping, cable and also to be used as a roadway for personnel access and small vehicles. There is no mention about installation of any plant and machinery on the Approach Trestles of Jetty-1 and Jetty-2. In view of the above, it is clear that no plant & machinery are to be installed or fixed on Jetty Approach Trestles.

When pipeline laid outside the factory premises is excluded from the definition of "plant and machinery" under the 'Explanation' **Section 17**, the Approach Trestle accommodating such pipeline cannot be termed as foundation to plant and machinery. So, we hold that RCC Pile foundation of the said Approach Trestles cannot be termed as foundation of plant and machinery.

[Mooring dolphins and Breasting dolphins \(Not mentioned separately in Annexure-1\)](#)

The EPC contract with AFCONS further includes design and construction of Mooring Dolphins and Breasting Dolphins on both jetties. The use of these two items has been described on a webpage viz. 'https://www.connect-Ing.com/articles/construction-of-anLng-jetty', which is as under:

Breasting and mooring dolphins

Dolphins are marine constructions that extends above water level. They are used to extend the berth of the ship by providing extra mooring points. Together with the jetty trestle and the jetty head, the dolphins typically make a T-shape. Breasting dolphins serve to take up some of the berthing loads and as mooring points to restrict motion in the longitudinal direction of the vessel. Mooring dolphins are used for mooring lines only, often to restrict the transverse movement of the berthing vessel. These dolphins are usually connected by walkways for easier mooring line handling.

No plant and machinery is claimed to be installed on these dolphins and their walkways. We are of the view that the foundation of Breasting Dolphins, Mooring Dolphins and connected Walkways cannot be termed as foundation of plant and machinery.

[Tug Jetty 116 M Length \(Sr.No.2 of Annexure-1\)](#)

'Tug' means small vessels designed to tow or push large ships or barges. As mentioned in Annexure-1 to the Certificate of Chartered Engineer, Tug Jetty is to be used for service vehicle, cranes and workers movement. In view of the above, the foundation of Tug Jetty cannot be termed as foundation of plant and machinery.

[RCC Unloading Platform \(Sr.No.3 of Annexure-1\)](#)

In respect of Unloading Platform, in Annexure-4 to the Chartered Engineer's Certificate dated 04.09.2020, following Superimposed Dead Loads have been shown:

"3.1 Unloading Platform

3.1.1. Dead Load

.....

3.2.2 Superimposed Dead Load

Fire Monitor tower, Unloading Arms, Gangway tower etc., load can be assessed individually and will be treated as Superimposed Dead load."

Hence not only piles, but the piles cap in form of unloading platform, is also to be treated as part of piles. The Unloading Platform and RCC Piles under it, cannot be termed as foundation of plant and machinery. When the same is specifically excluded under the expression "plant and machinery" in **Section 17**, we are of the view that Unloading Platform of Jetty in this case, can be treated as "land, building or any other civil structures", which are excluded from the scope of the expression "plant and machinery". Once a particular construction is cannot be treated as foundation or structural support of plant and machinery, such foundation and structural support is also to be treated as 'plant and machinery' by virtue of the statutory 'Explanation' to **Section 17** of the CGST Act, 2017.

[Fire Water Tanks 2 Nos. \(Sr.No.4 of Annexure-1\)](#)

These Fire Water Tanks of total 11,000 cubic meter storage capacity, are to be constructed to shore, not on LNG jetties. Hence the said foundation is not covered under the application for Advance Ruling.

[Pump room with shed \(Sr.No.5 of Annexure-1\)](#)

Pump room with shed does not appear to be constructed on LNG jetties. So, its foundation, as mentioned in the Annexure-1, is not covered under the application for Advance Ruling.

[Foundation of gas and water pipeline on jetty and on RCC platform and Jetty in the Arabian sea \(Sr.No.6 of Annexure-1\)](#)

Pipelines laid outside the factory premises are clearly excluded from the expression of 'plant and machinery'. So, its foundation also stands excluded.

[Foundation of gas and water pipeline on shore \(Sr.No.7 of Annexure-1\)](#)

Gas and water pipeline on shore is not being constructed on jetties. So, its foundation is not covered under the application for Advance Ruling.

[Offices on shore \(Sr.No.8 of Annexure-1\)](#)

Offices on shore are not being constructed on jetties. So, their foundation is not covered under the application for Advance Ruling.

23. The equipments like Gangway towers, Fire monitor towers and Jetty substations are civil structures and therefore not covered under 'plant and machinery'; whereas, the remaining equipment viz. LNGC unloading arms, FSRU loading arms, HP gas unloading arms, Cold drain tanks and Nitrogen buffer vessels appear to be covered under the definition of apparatus, equipment or machinery. When these are "plant and machinery", their foundation and structural supports are also covered under the expression "plant and machinery", as per the statutory provisions of **Section 17**. However these 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.

24. As regards the exclusion clause (i), "land, building or any other civil structures", appearing in the Explanation to **Section 17**, the appellant has relied upon the Judgment of Hon'ble Supreme Court in the case of **Assistant Collector of C.Ex. Vs. Ramdev Tobacco Company reported at 1991 (51) E.L.T. 631 (SC)** wherein the principle of interpretation called "ejusdem generis" has been explained. 'Ejusdem generis' is a Latin term, which means 'of the same kind or class'. By applying the ratio of the aforesaid Judgment and principles of 'ejusdem generis', the words "other civil structures" mentioned in clause (i) would take colour from the preceding words i.e. land or buildings. We hold that LNG Jetties constructed over sea, fall under the term 'other civil structure' like land and building. Jetties are civil structure and very well covered under the exclusion clause.

25. As regards the appellant's argument to the effect that entire Jetty is required for their operations, we observe that requirement/essentiality of anything for providing outward supply, does not ipso facto make the same entitled for input tax credit. For example, land, building, other civil structures like jetty and pipeline laid outside the factory premises may be required and essential for making outward supply; however, input tax credit of GST paid on construction of the same is not admissible under the provisions of **Section 17** of the CGST Act, 2017. Whereas, input tax credit in respect of immovable property, which is in nature of 'plant and machinery' including foundation and structural supports thereof, is admissible under the same provisions.

26. The appellant seeks a ruling as to whether LNG Jetties being built by them were in nature of 'plant and machinery' being foundation for equipment, apparatus, machinery for re-gasification to be installed thereon. We find that as per Explanation provided under **Section 17** of the CGST Act, 2017 '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. Here the **Section 17** of CGST Act, 2017 provides for allowing input tax credit in respect of goods or services both received by a taxable person for construction of plant and machinery fixed to earth by foundation or structural supports that are used for making outward supply of goods or services or both. The input tax credit on construction of foundation is allowed if the same is used for fixing on it the plant and machinery and further the said plant and machinery should be used for making outward supply of goods or services or both. The foundation or structural support needs to be exclusively for fixing the plant and machinery on it. The following three elements need to be fulfilled when input tax credit on goods and services is to be allowed for construction of any foundation:

- i) The foundation should be exclusively used for fixing of plant on machinery on it. If that wasn't the intention of the legislature then input tax credit on construction of immovable property wouldn't be disallowed under the provisions of **Section 17** of CGST Act, 2017.
- ii) Further items to be fixed on the foundation should be 'plant and machinery' means apparatus, equipment and machinery. Plant and Machinery includes items that are needed for doing something or does something.
- iii) The plant and machinery fixed to earth by foundation or structural supports should be used for making outward supply of goods or services or both.

27. We find that allowing input tax credit on construction of foundation cannot be decided in isolation without deciding as to whether items to be fixed on it falls within the definition of plant and machinery and further the same would be used for making outward supply of goods or services or both. The appellant is not before us seeking ruling on allowing input tax credit on any plant and machinery including its foundation that will be used for making outward supply of goods or services or both. The appellant has sought that the entire LNG Jetties that is being constructed to be treated as foundation for plant machineries that will be installed on it and to allow the input tax credit on inputs, input services and capital goods to be used in the construction of said LNG Jetties. We find that LNG Jetties are nothing but civil structures and civil structures are excluded from the definition of foundation and structural supports. The foundation that is allowed in the definition of plant and machinery is that which fixes the plant and machinery to the earth making it immovable. If certain portion of LNG jetties is used for directly fixing plant and machineries then it will not make jetties foundation for plant and machineries but they are only in the nature of civil structures. The appellant has also not produced any evidence to substantiate their claim that LNG jetties which according to them are foundation of plant and machineries will be used for outward supply of goods or services or both. We have also examined the case laws relied upon by the appellant in their submissions and find that the facts of the case are not similar to the present case before us.

28. In view of the above discussion, we find that the LNG Jetties being built by the appellant are not in the nature of 'plant and machinery' being foundation for equipment, apparatus, machinery for re-gasification to be installed thereon. Therefore input tax credit on inputs, input services and capital goods for the purpose of building these LNG Jetties are not admissible.

29. In view of the foregoing, we reject the appeal filed by M/s. Swan LNG Pvt. Ltd., and confirm the Advance Ruling No.

GUJ/GAAR/R/46/2020 dated 30.07.2020 by holding that (1) LNG Jetties being built by the appellant 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 and (2) the appellant cannot avail input tax credit of GST paid on inputs, input services and capital goods procured for the purpose of building the LNG Jetties in terms of **Section 16** of the CGST Act, 2017.

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1	http://www.taxationlibrary.com/uploads/gst/caselaws/SWAN.pdf