

	KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM	KERALA  State Goods & Services Tax
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BEFORE THE AUTHORITY OF: Dr. S.L. Sreeparvathy, IRS &
: Shri. K. Abdul Latheef

Legal Name of the applicant	M/s. Kannur International Airport Ltd
GSTIN	32AADCK8494N1ZX
AKN	AD320520001395R
Address	20F, Kara Peravoor, Mattanur, Kannur – 670702
Advance Ruling sought for	Whether on the facts and circumstances of the transactions of the applicant, and the provisions of the GST Law relating to input tax credit, are there any ineligible credits that the applicant has taken in respect of certain supplies specifically listed in the statement of relevant facts in Annexure-1, which needs to be reversed.
Date of Personal Hearing	19.04.2023
Authorized Representative	Shri. Soman.N.L, Chartered Accountant

ADVANCE RULING No. KER/25/2023 Dated 27/06/2023

1. Kannur International Airport Limited (herein after referred to as “the applicant”) is a company promoted by Government of Kerala, engaged in providing airport and related services. The company started its commercial operations from 9th December 2018.

2. At the outset it is clarified that the provisions of the Central Goods and Services Tax Act, 2017 (herein after referred to as CGST Act) and the Kerala State Goods and Services Tax Act, 2017 (herein after referred to as KSGST Act) are same except for certain provisions. Accordingly, a reference herein



after to the provisions of the CGST Act, Rules and Notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the Notifications issued there under.

3. The applicant requested advance ruling on the following:

3.1. Whether on the facts and circumstances of the transactions of the applicant, and the provisions of the GST Law relating to input tax credit, are there any ineligible credits that the applicant has taken in respect of certain supplies specifically listed in the statement of relevant facts in Annexure-1, which needs to be reversed.

4. Contentions of the Applicant:

4.1. The applicant submits that they had entered into two major contracts with Larson and Toubro Limited (L&T), ie, one is an EPC contract for constructing runway and another is a BOQ based contract for constructing a Passenger Terminal Building [PTB] in the airport. The construction had started during the pre-GST period and was in progress in to the GST period. The issue is related to the admissibility of input tax credit on services received from the supplier, Larson and Toubro Ltd (L&T) in connection with the construction of the said runway and passenger terminal.

4.2. The service provider L & T was raising running account bills along with applicable GST amount in connection with the works carried out under the above contracts. Other suppliers such as design engineers, project management consultants and similar service providers had also raised invoices in respect of connected services and activities in relation to the construction of runway and passenger terminal building.

4.3. The applicant has been registered under GST Act and availed input tax credit on the basis of the said invoices issued by the suppliers on certain specific services, listed below:



1. Earth work in relation to runway and PTB
2. Airfield lighting and control systems
3. Runway earthwork
4. Runway road side pipe drain with chamber
5. Topographic survey for natural drain
6. Pipe culvert on runway
7. Runway electrical and lighting fittings & works
8. Signages on the runway, pavement markings & bird hazard reduction system
9. Signages on the PTB
10. Flooring work of PTB
11. Ceiling work/system of PTB
12. Partition work of PTB
13. Electrical equipments and fittings on PTB
14. Engineering consultancy fees on signages
15. Engineering consultancy fees office block
16. Consultancy fee interior design - PTB
17. Water supply system - PTB
18. Finishing & plumbing works - PTB
19. Consultancy Fee – KITCO
20. Testing, certification, defect removal
21. Consultancy fees for project management consultancy
22. Plantation and landscaping
23. Site clearance

4.4. Section 2(119) of the CGST Act, 2017 defines "Works Contract" as follows; Works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.



4.5. The blocking of credit on works contract services supplied for construction of immovable property is as per Section 17(5) (c) and (d) of the CGST Act which is extracted below;

Section 17(5)(c): works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service.

Section 17(5)(d): goods or service 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 clause (c) & (d) the expression construction includes reconstruction, renovation, additions or alterations or repairs to the extent of capitalization to the said immovable property.

Explanation: 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. pipe lines laid outside the factory premises

4.6. The applicant submits that a perusal of Section 2(119) of the CGST Act shows that works contract contains 14 different types of activities in relation to an immovable property where there is a transfer of property in goods involved in the execution of works contracts. They are,

- 1. Building
- 2. Construction
- 3. Fabrication
- 4. Completion
- 5. Erection



6. Installation
7. Fitting out
8. Improvement
9. Modification
10. Repair
11. Maintenance
12. Renovation
13. Alteration
14. Commissioning

Therefore the activity of construction is only one of the 14 different activities included in Section 2(119) of the Act.

4.7. Section 17(5) (c) blocks credit in respect of works contract services when supplied for construction of an immovable property. Similarly section 17(5) (d) blocks credit in respect of goods or services received by a person for construction of immovable property. It means blocking of credit under clauses (c) and (d) will happen only in cases where the works contract services or other services and goods are received for construction of immovable property. Consequently, (a) If the works contract service is for any activity other than construction like fabrication, completion, erection, modification etc; blocking of credit as provided in the above clauses will not apply,

(b) if the works contract service is not for construction but in relation to construction, means indirectly used to the construction of the immovable property, the credit will not get blocked under section 17(5) (c).

4.8. The word construction when used in the context of works contract can only mean one of the 14 activities included in the definition. In other words Section 17(5) (c) will not encompass the other 13 different activities specified in Section 2(119). The applicant relied on the observations of the Supreme Court in *RBI Vs Peerless General Finance and Investment Company* in AIR 1987, SC 1023-



“Interpretation must depend on the text and context as they are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is the best interpreted when the object and purpose of its enactment is known”.

4.9. When applying above principle in the context of Section 17(5) (c), the word “**construction**” used the said clause takes its colour from the definition of works contract under Section 2(119). Since the context is supply of works contract, the term construction for which the works contract services are supplied shall be deduced from the definition provided for works contract in section 2(119). This definition specifically mentioned 14 activities, in which “construction” is one among them, which means it has a different meaning and connotation than other 13 activities. In other words the word construction is used in section 17 (5) (c), which cover only the activity of construction as is used in section 2(119) and not cover the other 13 activities specifically mentioned. These different activities mention in Section 2(119) cannot be considered as synonyms and each activity specified is different from other activities.

4.10. Accordingly, the applicant submits that, ITC in respect of the following activities are not covered by blocked credits under Section 17(5) (c).

- (a) Signage on the passenger terminal building (PTB) (completion activity).
- (b) Flooring work of PTB (completion activity).
- (c) Ceiling work /system of PTB (fabrication).
- (d) Partition work of PTB (fabrication).
- (e) Electrical equipment and fittings on PTB (fitting out).
- (f) Water supply system PTB (fitting out).
- (g) Finishing and plumping works PTB (completion).

4.11. Section 17(5) (c) includes in its ambit works contract services when supplied for construction of immovable property. The specific term used is



'for construction'. The term 'for construction' has a different meaning from the term "in relation to construction". The former term covers the activity of construction only, since the word "for" is more specific and restricted than the latter word 'in relation to' which has a much wider sweep and ambit and may include even activities indirectly connected to construction. Therefore works contract service supplied indirectly for construction activity will not be covered under section 17(5) (c). Hence services such as engineering consultancy services, interior design consultancy service, topographic surveys, landscaping etc are not covered under section 17(5)(c), since they are services received in relation to construction and not for construction. Therefore, the following items are not to be covered under Section 17(5) (c) credit blockage.

- (a) Testing, certification, defect removal.
- (b) Engineering consultancy fees on signage.
- (c) Engineering consultancy fees office block.
- (d) Consultancy fees interior design -PTB.
- (e) Topographic survey for natural drain.

4.12. The Explanation to Section 17 defines plant and machinery as any apparatus, equipment or machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural support. Here it is clear that the apparatus, equipment or machinery when fixed to earth through a foundation or structural support only will fall under the definition. It means any apparatus, equipment or machinery that is fixed to a building or to something that is embedded to earth will not fall under this definition. Therefore, any apparatus, equipment or machinery fixed to earth will come under the definition plant and machinery and hence the ITC related to installation to the following items come under the term plant and machinery as per the explanation to Section 17 and is eligible for credit.

- (a) Airfield lighting and control system.



- (b) Runway road side pipe drain with champer.
- (c) Pipe culvert of runway.
- (d) Runway electrical and lighting fittings and works.
- (e) Signages on the runway, pavement markings and bird hazard reduction system.

4.13. Finally, the applicant concluded that one of the fundamental principles of the goods and services tax is the uninterrupted flow of input tax credit throughout the supply chain, from the supplier to the point of consumption across the country. The entire input tax expenses associated with construction on equipment and machinery are utilized against outward supplies in airport operations. Restricting the applicability and blocking the availability of credit would impede the input tax credit claim process and disrupt the seamless flow of ITC which is not envisaged by the provisions of the law. Therefore an interpretation of section 17(5)(c) has to be made keeping in mind the objective of the GST legislation. The applicant also referred to the Hon'ble High Court of Orissa in the case of Safari Retreats Pvt Limited reported in 2019-TIOL-1088-Orissa High Court wherein the Court ruled that ITC would be available for GST paid during the construction of immovable property for the purpose of renting.

5. Comments of the Jurisdictional Officer:

The application was forwarded to the jurisdictional officer as per provisions of Section 98(1) of the CGST Act. The Additional Director General of GST Intelligence, Central Excise Kochi Zonal Unit submitted Incident Report No.01/2022-23 [GST] dated 04.04.2022 to the Additional Commissioner -1, State GST, Thiruvananthapuram in respect of the ineligible availment of Input Tax Credit on GST paid on the works contract services received by the applicant from Larsen and Toubro Limited for the construction of the Airport at Kannur which is an immovable property. It is stated that the applicant is liable to reverse the same as the credit availed by them is of tax paid on works contract services for construction of immovable



property (other than plant and machinery) and they are not engaged in supplying works contract service. The ineligible ITC availed by them during the period from 01.07.2017 to 31.03.2021 works out to 15 Crores approximately.

6. Personal Hearing:

The applicant was granted opportunity for personal hearing on 19.04.2023 through Virtual Mode. Shri. Soman.N.L, Chartered Accountant represented the applicant. The applicant filed detailed statement of facts along with the application. He requested to issue the ruling on the basis of the submissions made by them in the application and during the personal hearing.

7. Discussion and Conclusion:

7.1. We have carefully examined the statement of facts and the oral submissions made during virtual hearing. The issue to be decided is the admissibility of input tax credit on services supplied by Larsen and Toubro Ltd in connection with the construction of runway and passenger terminal building of the applicant.

7.2. The questions on which advance ruling is sought by the applicant falls within the purview of clause (d) of sub-section (2) of Section 97 of the CGST Act, 2017; i.e; "admissibility of input tax credit of tax paid or deemed to have been paid". Further there were no proceedings on the issue pending against the applicant as on the date of filing the application; i.e; 25.05.2020 and the Incident Report of the Directorate of GST Intelligence is issued on 04.04.2022 after the filing of the application. Therefore, the application is admitted.

7.3. The applicant is a company promoted by Government of Kerala under the Public – Private Partnership mode and engaged in providing airport and related services. The applicant started commercial operations on 09.12.2018. The applicant had entered in to two contracts with Larson & Toubro Ltd (L&T), one is an EPC (Engineering, Procurement and Construction) contract



for constructing runway and another one is BOQ (Bill of Quantities) contract for constructing a Passenger Terminal Building (PTB).

7.4. The service provider L&T collected applicable GST through running account bills in connection with the works carried out under the above contracts. The applicant contends that some connected service providers like design engineers, project management consultants etc had also raised tax invoices in relation to the construction of runway and passenger terminal building.

7.5. The contention of the applicant is that they are eligible for some portion of this credit, since it involves certain services like fabrication, completion, erection, modification etc which are outside the purview of blocked credit under Section 17 (5) (c) and (d) of the CGST Act. Further, it is submitted that some other input tax credit is eligible as it is received on account of inward supply in connection with the installation or the construction of plant and machinery and hence the same comes under the exclusion clause in Section 17 (5) (c) of the CGST Act.

7.6. The applicant on interpretation of the term "construction" included in the definition of the "works contract" under Section 2 (119) and in the explanation to Section 17 (5) (c) contends that they are eligible for ITC of tax paid on the following activities which are not covered by the expression "for construction of an immovable property" in Section 17 (5) (c) and hence outside the purview of credit blocked under the said clause. The activities listed are;

- (a) Signage on the passenger terminal building (PTB) (completion activity).
- (b) Flooring work of PTB (completion activity).
- (c) Ceiling work /system of PTB (fabrication).
- (d) Partition work of PTB (fabrication).
- (e) Electrical equipment and fittings on PTB (fitting out).
- (f) Water supply system PTB (fitting out).



- (g) Finishing and plumbing works PTB (completion).
- (h) Testing, certification, defect removal.
- (i) Engineering consultancy fees on signage.
- (j) Engineering consultancy fees office block.
- (k) Consultancy fees interior design -PTB.
- (l) Topographic survey for natural drain.

7.7. The applicant further contends that ITC of tax paid on the following goods / services are eligible as they are in respect of plant and machinery and hence excluded from the credit blocked under Section 17(5) (c) and (d) of the CGST Act. The goods / services listed are;

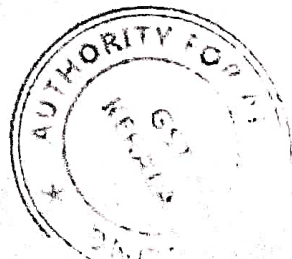
- (a) Airfield lighting and control system.
- (b) Runway road side pipe drain with champer.
- (c) Pipe culvert of runway.
- (d) Runway electrical and lighting fittings and works.
- (e) Signages on the runway, pavement markings and bird hazard reduction system.

7.8. The provisions of Section 17(5)(c) and 17(5)(d) of the CGST Act relate to blocking of ITC in relation to goods or services or both used for construction of immovable property. The provisions of both the said sub-sections are to be read along with the explanations given after section 17(5) (d) and section 17(6). The provisions of both clauses (c) and (d) are inter-linked to each other and are to be read conjointly.

7.9. The relevant provisions are reproduced below;

Section 17(5)(c): works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service.

Section 17(5)(d): goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on



his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation: For the purposes of clause (c) & (d) the expression construction includes reconstruction, renovation, additions or alterations or repairs to the extent of capitalization to the said immovable property.

Explanation: 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.

7.10. The applicant has entered into two common contracts with L & T; the first one being EPC contract for construction of Runway with Basic Strip, Turning Pads, Taxiways, Apron, Access Roads, Drainage System, Related Retaining Structures, Formation of Platforms for Landslide Facilities, and installation of Airfield Ground Lighting System, Visual Aids for Navigation and Bird Hazard Reduction System etc and the other being for construction of Passenger Terminal Building [PTB] with ATC, substations, installation of HVAC system, Plumbing, Fire Alarm, Fire Fighting System, CCTV, PA system, Flight Information Display system, Interior Design, internal and external finishing, Building internal access control system, Hydro pneumatic pumping system for buildings, STP, and rain water harvesting system etc. Thus both the contracts are in the nature of composite supply of works contract services for construction of immovable property and the billing is done by L&T as Running Account Bills on completion of specific milestones in the construction work. Therefore, the predominant and principal supply involved in both the contracts is construction of immovable property and hence the contract cannot be artificially vivisected to consider it a contract



for supply of various goods / services as contended by the applicant and the eligibility of input tax credit determined accordingly.

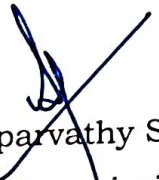
7.11. Therefore, the supply of goods / services in respect of the 12 activities listed at Para 7.6 above and the 5 activities listed at Para 7.7 above are integral part of the overall contract for supply of works contract services for construction of immovable property and hence the entire input tax credit of tax paid on the works contract services as per the Running Bills of L & T are not eligible being blocked credit in terms of provisions of Section 17 (5) (c) of the CGST Act, 2017.

In the light of the discussion as above, the following ruling is issued:

RULING

Question: Whether on the facts and circumstances of the transactions of the applicant, and the provisions of the GST Law relating to input tax credit, are there any ineligible credits that the applicant has taken in respect of certain supplies specifically listed in the statement of relevant facts in Annexure-1, which needs to be reversed.

Answer: The applicant is not eligible for the input tax credit in respect of the tax paid on the supplies of goods / services received by them that are specifically listed in the Statement of Relevant Facts in Annexure -I to the application for the reasons as discussed above.


Sreeparvathy S.L.
Addl Commissioner of Central Tax
Member


Abdul Latheef K
Joint Commissioner of State Tax
Member

To,

M/s. Kannur International Airport Limited,
20F, Kara Peravoor, Mattanur, Kannur- 670702.



Copy to,

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2. The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram – 695002.
3. The Assistant Commissioner of Central Tax, Kannur Division, Kannur. [E-mail ID: gstkannurdiv.kkd@gov.in]
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