



RAJASTHAN AUTHORITY FOR ADVANCE RULING  
GOODS AND SERVICES TAX, KAR BHAWAN, AMBEDKAR  
CIRCLE, NEAR RAJASTHAN HIGHCOURT  
JAIPUR – 302005 (RAJASTHAN)



**ADVANCE RULING NO. RAJ/AAR/2024-25/24**

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|---|--|
| Mahipal Singh<br>Additional Commissioner  | : Member (Central Tax)   |
| Mahesh Kumar Gowla<br>Additional Commissioner   | : Member (State Tax)   |
| Name and address of the<br>applicant  | : M/s HINDUSTAN ZINC LIMITED,<br>YASHAD BHAWAN, 2 <sup>nd</sup> Floor, UDAIPUR-<br>313004, Rajasthan |
| GSTIN of the applicant  | : 08AAACH7354K1ZB  |
| Clause(s) of Section 97(2) of<br>CGST/SGST Act, 2017, under<br>which the question(s) raised | : (d) Admissibility of input tax credit of tax<br>paid or deemed to have been paid                   |
| Date of Personal Hearing  | : 23.12.2024   |
| Present for the applicant   | : Ms. Tejus Pathak, C.A. and Mr. Saurabh Dugar,<br>Advocate  |
| Date of Ruling  | : 03.01.2025   |

**Note 1:** Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling, constituted under Section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

**Note 2:** At the outset, we would like to make it clear that the provisions of both the CGST Act and the SGST Act 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 the same provision under the SGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / SGST Act would be mentioned as being under the "GST Act".

The issue raised by M/s HINDUSTAN ZINC LIMITED, YASHAD BHAWAN, 2<sup>nd</sup> Floor, UDAIPUR-313004, Rajasthan (hereinafter "*the applicant*") is fit to pronounce advance ruling as they have deposited prescribed Fee under CGST Act and it falls under the ambit of the Section 97(2) given as under:

(d) Admissibility of input tax credit of tax paid or deemed to have been paid

**A. SUBMISSION OF THE APPLICANT (in brief):-**

Brief facts of the case:

1. Hindustan Zinc Ltd. ('Applicant' / 'HZL' / 'Company'), a subsidiary of Vedanta Ltd., is one of the world's largest and India's only integrated Zinc-Lead-Silver producer. The Applicant is engaged in the business of extracting & processing minerals and manufacturing of metals such as zinc, lead, silver etc. It has captive zinc mines located in the state of Rajasthan, including at Rampura Agucha, Sindesar Khurd, Rajpura Dariba, Bamnia Kalan, Kayadand Zawar. It is registered under the Rajasthan Goods and Service Tax Act, 2017 ('RGST Act') having GSTIN 08AAACH7354K1ZB.

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2. The process undertaken by the Company of converting mineral ores into metals largely involves three stages viz. (a) extracting ore from mines, (b) converting ores into concentrates at milling plants, and (c) processing concentrates at smelting plants to manufacture metal in different forms of ingots, sheets, etc. During the second phase of conversion of ore into concentrates at milling plants, hazardous waste, known as 'tailings', is generated at the tail end of this beneficiation process. In other words, tailings are the materials left over after the minerals have been extracted from the ore. These tailings consist of crushed rock, water, and chemicals left over after the extraction of minerals.
3. The tailings are toxic materials and pose significant environmental risks if released into nearby ecosystems and communities. Accordingly, in terms of the mandate of law, these tailings are either used to backfill the ore extracted portion of underground mines itself, or the remaining quantity is dumped into the 'Tailing Dam', which contain these waste materials and prevent them from contaminating the surrounding environment. Accordingly, Tailing Dam is created for safe disposal, treatment, and management of hazardous waste of mining operations. Such waste management is undertaken in terms of the applicable laws viz. Mines and Minerals (Development and Regulation) Act, 1957 ('**MMDR Act**') read with Mineral Conservation and Development Rules, 2017 ('**MCD Rules**').
4. Tailings dams are large storage sites, stretching for kilometers, resting on a foundation of natural soil or rock. They are made using materials like earth fill, or rock fill to ensure structural strength. To contain hazardous waste effectively, these dams are equipped with protective barriers such as geomembranes or clay liners, which safeguard the foundation and surrounding land from leakage. Additionally, the dams feature a range of internal and external drainage systems designed to manage excess water, control water pressure, and prevent accumulation. Tailings are transported into the dam through various pipeline openings. The pipelines and drainage systems in different zones within the dam are activated at different times as per precise planning such that tailings are equally spread. Surrounding the dam are garland drains that help manage overflow and prevent tailings leakage.
5. The sole function of a tailing dam is to process the tailings generated during the beneficiation process. This process starts when tailings, transported in slurry form through pipelines to the dam, enter through active pipelines designated for specific zones. The slurry typically comprises of 55% water and 45% tailing. While in the dam, the tailings are positioned such that the water separates. The separated water is drained into a reservoir through a syphoning system for reuse at the nearby milling plant. The dry tailings remaining after separation of water are then moved to an area near the tailing dam specially demarcated for dry stacking, and are covered with liners to minimize the environmental, social, and economic risks. The emptied area within the tailing dam is then again used for further tailings in slurry form, processing water separation, and drying before removal for dry stacking.
6. Tailings are continuously generated and transported to the tailings dam throughout the beneficiation process. As the volume of tailings in the dam grows, its height needs to be incrementally increased. The height of the dam is increased with the use of materials such as rocks, mud, sand, HDPE sheets, etc., a majority of which is waste material from the mining process itself.
7. To raise the height of the tailing dam, the Applicant employs a contractor, who charges GST along with their service consideration. Also, the Applicant procures goods such as HDPE sheets, etc. as may be required for height raising purposes.



The expenses incurred toward such goods and services are capitalized by the Applicant in its books of account. In this regard, given the operational and legal requirement of establishing and maintaining a tailing dam for processing of mining waste, the Applicant is of the opinion that the tailing dam is nothing but an integral part of the milling plant and covered under the term "plant and machinery". Hence, input tax credit of such GST is not blocked in terms of Section 17(5)(c) and 17(5)(d) of the Central Goods and Service Tax Act, 2017 ('CGST Act').

8. In light of the above factual background and the detailed legal rationale provided in Annexure III, the Applicant respectfully requests this authority to rule in favor of the Applicant by confirming that the input tax credit of GST paid on goods and services received for increasing the height of the Tailing Dam is available and not restricted under Sections 17(5)(c) and 17(5)(d) of the Central Goods and Services Tax Act, 2017.

**B. INTERPRETATION AND UNDERSTANDING OF APPLICANT ON QUESTION RAISED (IN BRIEF)**

• **TAILING DAM IS COVERED UNDER THE TERM "PLANT AND MACHINERY"**

1. At the outset, the Applicant submits that Section 16(1) of the CGST Act entitles a taxpayer to avail credit of input tax charged on any supply of goods and/or services made to him and used by him in furtherance of his business. However, this is subject to the conditions and restrictions as specified in Section 16(2) and Section 17(5) of the said Act. Section 17(5) of the CGST Act stipulates the situations wherein ITC shall not be available notwithstanding anything contained in Section 16(1) of the said Act. In terms of Section 17(5)(c) and 17(5)(d) of CGST Act, ITC cannot be availed on works contract, goods and services utilized for construction of immovable property (other than plant or machinery) including when such goods or services is used in course or furtherance of business. In this regard, the relevant portion of Section 17(5)(c) and 17(5)(d) is extracted hereunder:

*"17. Apportionment of credit and blocked credits.*

...  
(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:-

...  
(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."

2. The perusal of the above provision clarifies that GST paid on works contract, goods and services received by a taxpayer for construction of immovable property is not eligible for ITC. The exception, however, is when the immovable

property is in the nature of plant or machinery, then the works contract, goods and services received for construction of plant or machinery will be eligible for ITC and will not be hit by the restriction under the said clause (c) or (d).

3. Further, the scope of the term 'plant and machinery' for the purposes of interpretation of the said provision has been explained to mean as follows:

*"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."*

4. The Applicant submits that the tailing dam is nothing but an integral part of milling plant and thus covered under the term "plant and machinery" as defined above. More specifically, it is in the nature of an 'apparatus' fixed to earth that is used for making outward supply of services, and covered under the above definition of plant and machinery.
5. The Applicant submits that the term 'apparatus' has not been defined under the GST Laws. Therefore, reliance is placed on the dictionary meanings of the term 'apparatus'. In this regard, reliance is placed on the decision of *Modern Malleable Ltd. v. CCE*[2008 (225) ELT 460 (Tri.-Kol.)], wherein the definition of 'apparatus' in different dictionaries have been referred to as under:

*"Apparatus- things prepared or provided for a specific use; any complex machine, device, or system. [L ad, to, paratus (parare), prepare.]*

*Apparatus - It is a collection or set of materials, instruments, appliances or machinery designed for a particular use (Mav. Web. Dic). A compound instrument designed to carry out a specific function. (Mc Graw Hill Dic. of Sc. & Tech. Terms).*

*ap.pa.rat.us (ap'arat'as.-ra'tas).n, pl.-tus, -tus.as.*

*1. a group or aggregate of instruments, machinery, tools, materials etc., having a particular function or intended for a specific use. 2. any complex instrument or machine for a particular purpose. 3. any system or systematic organization of activities, functions, processes, etc., directed toward a specific goal; the apparatus of government; espionage apparatus. 4. Physiol, a group of structurally different organs working together in the performance of a particular function: the digestive apparatus."*

6. A perusal of the above definitions clarify that an 'apparatus' is a combination of equipment, tools, or machines having a particular function or intended for a specific use. In the present case, the Tailing Dam qualifies to be an 'apparatus' as it (a) is a combination of equipment, tools, or machines; and (b) has a particular function or intended for a specific use.



7. The Applicant submits that a tailing dam constitutes more than just an earthen embankment or a simple containment structure. It is, in fact, a complex system that integrates various specialized components and technologies to ensure the safe and efficient management of mining waste. The tailing dam incorporates several critical elements, including

- **Automated Pipelines:** These pipelines are essential for the continuous transport of tailings from the milling plant to the dam. They are often equipped with advanced automation systems to regulate flow rates, pressure, and ensure the controlled deposition of tailings, which is crucial for maintaining the stability and safety of the dam.
- **Drainage Systems:** Effective water management is a key aspect of tailing dam safety. The dam includes an intricate network of drainage systems designed to remove excess water that separates from the tailings. These systems typically involve pumps, filters, and other mechanical components that prevent water buildup, reduce hydrostatic pressure, and minimize the risk of dam failure.
- **Geomembranes or Clay Liners:** To protect the environment from contamination, tailing dams are often lined with geomembranes, clay liners, or other impermeable barriers. These liners prevent the leakage of hazardous chemicals, heavy metals, and other pollutants from the tailings into the surrounding soil and groundwater.

Given these integrated systems—automated pipelines, drainage networks, and protective liners—the tailing dam can be considered more than just a static structure. It operates as a combination of equipment, tools, and machines working together to fulfill its function. Once waste is transported to the tailing dam, the tailing is separated from the water. The separated water is drained into a reservoir through a syphoning system for reuse in the milling plants and the dry tailing is moved to a specially demarcated area to minimize the environmental, social, and economic risks. This combination not only supports the primary purpose of the dam but also ensures its long-term stability, environmental compliance, and operational efficiency.

8. Therefore, it is clear that the tailing dam should be recognized as a composite assembly of various functional components, each of which plays a vital role in its overall operation. Thus, it has a particular function or intended for a very specific use. In view of the above, the Applicant humbly submits that tailing dam is an “apparatus”.
9. At this stage, the Applicant submits that the term ‘apparatus’ is required to be read in its functional sense rather than being read in a strict mechanical sense. In this regard, reliance is placed on the decision of the Hon’ble Supreme Court, in *ACIT v. Acqa Farm Ltd.*[2015 (9) TMI 758], wherein the Court upheld the ‘functional test’ in relation to ponds which were being used by the assessee to grow produce. The same analogy would be applicable to the facts of the present case. The relevant portion of the decision is extracted hereunder:

*“We find that the judgment dated 14.10.2004 rightly rests this case on ‘functional test’ and since the ponds were specially designed for rearing/breeding of the prawns, they have to be treated as tools of the business of the assessee and the depreciation was admissible on these ponds. We, thus, decide the question in favour of the assessee and as a consequence, appeals of the Revenue are dismissed and that of the assessee are allowed.”*

10. Being mindful of the aforesaid position, it is to be noted that the activities undertaken inside the tailing dam do not remotely qualify as a building having a

structure with walls, roof, etc. in its natural meaning. In *DG Gouse & Co. v. State of Kerala [AIR 1980 SC 271]*, the Hon'ble Apex Court, in the context of interpreting the Kerala Building Tax Act, 1975, observed that the word 'building' must receive its natural and ordinary meaning as "including the fabric or which it is composed, the ground upon which its walls stand and the ground embraced within those walls" and that is the correct meaning of the word 'building'. Further, the phrase "any other civil structures" should be read ejusdem generis to be restricted to immovable property in the nature of land and building, that is, property which is as such only a "place or property where the business is carried on" and "not a place or property with which business is carried on". In other words, "civil structures" should be restricted to structures which are the "location of production" and not "means of production".

11. Without prejudice, the Appellant submits that in terms of the decision in *S.K. Tulsani and Sons v. CIT [(1991) 187 ITR 685 (All)]* wherein the Hon'ble Allahabad High Court held that a building or structure which constitutes an apparatus by means of which business activities were carried on, is a "plant". Relevant portion of the decision is extracted hereunder:

*"If it was found that the building or structure constituted an apparatus or a tool of the taxpayer by means of which business activities were carried on, it amounted to a "plant"; but where the structure played no part in the carrying on of those activities but merely constituted a place wherein they were carried on, the building could not be regarded as a plant".*

12. It is also pertinent to note that a "structure" would mean a completed structure and not an incomplete structure. Reliance in this regard may be placed on *CCE v. Reliance Industries Ltd. [2016 (45) STR 341 (Tri.-Mumbai)]*.
13. In view of the above, the ITC of GST paid for goods and services received in relation to raising height of tailing dam should be considered as available and not blocked under Sections 17(5)(c) and 17(5)(d) of the CGST Act.

• **TAILING DAM IS AN INTEGRAL PART OF THE MINING FACILITY**

14. The Applicant further submits that the tailing dam is an essential and integral part of the mining and milling process. Its presence is critical not only from an operational standpoint but also from a legal perspective. The safe and effective disposal of tailings is a mandatory requirement for continued mining activities. Without a properly constructed and maintained tailing dam to manage the by products of the extraction process, the Applicant would be unable to proceed with ongoing or future mining operations. This makes the tailing dam indispensable to mining and milling operations for both compliance with regulatory obligations and the sustained operation of the mine.
15. As explained in the facts of the case, the process of conversion of mined ore into concentrate broadly entails (a) extraction of ore; (b) beneficiation for obtaining concentrate; and (c) removal of tailings.
16. The disposal of tailings is essential to the ongoing mining process, as each cycle of extraction and beneficiation generates substantial volumes of tailings. If these tailings are not properly managed and disposed of, they can accumulate, leading to space constraints that impede further ore processing and mining activities. Moreover, inadequate management of tailings can cause blockages, equipment failures, and inefficiencies within the processing plant, ultimately reducing the overall productivity of the mining operation. Therefore, without effective tailings



disposal, a mining facility cannot maintain continuous operations. Thus, disposal of tailings is end or tail of one beneficiation cycle and hence it is clear that the tailing dam is an integral part of the mining and milling plant.

17. Further, construction of a tailing dam is mandated by law for conducting mining operations. The Mines and Minerals (Development and Regulation) Act, 1957 provides the laws in relation to development and regulation of mines and minerals in India. In terms of Section 18 of the Act, the Central Government is obligated to implement measures necessary for the conservation and systematic development of minerals in India, as well as for environmental protection. This includes preventing or controlling pollution resulting from prospecting or mining activities. To address these concerns, the Central Government has the authority to establish rules governing the disposal or discharge of waste slime or tailings produced by mining or metallurgical operations. The relevant provision in this regard is extracted hereunder:

***“18. Mineral development.***

- (1) It shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by prospecting or mining operations] and 3 [for such purposes the Central Government may, by notification in the Official Gazette, make such rules as it thinks fit.*
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-*

...  
*(k) the disposal or discharge of waste slime or tailings arising from any mining or metallurgical operations carried out in a mine”*

18. In furtherance to the above, Mineral Conservation and Development Rules, 2017 have been formulated. These rules provide for procedures and guidelines to be followed for conducting mining operations. Few key provisions of the Rules are extracted hereunder:

***3. Definitions***

*(d) “beneficiation” means processing of minerals or ores for the purpose of upgrading the quality, purity or assay grade of the desired product by removing unwanted constituents like gangue minerals or tailings;*

***14. Separate stacking of non-saleable minerals.***

*(1) All the non-saleable or unusable minerals or ores above the threshold value of the mineral, as may be notified by Indian Bureau of Mines from time to time, or otherwise shall be stacked separately on the ground earmarked for the purpose: Provided that in case of beach sand mineral deposits comprising of Ilmenite, Rutile, Zircon, Monazite, Sillimanite, Garnet, Leucoxene, etc., sufficient precautions shall be taken to separate and stack the waste sand or tailings from the associated minerals in order to avoid mixing of waste sand with the associated minerals.*

***18. Beneficiation studies to be carried out.***

(3) In a mine having a beneficiation plant, feed products and tailings shall be regularly sampled and analysed at suitable intervals and records of the same maintained:

**28. Notice of temporary discontinuance of work in mines and obligations of lease holders.**

(3) During the temporary discontinuation of a mine or part thereof, it shall be the responsibility of the holder of a mining lease to—

(d) ensure that all rock piles, over burden piles and stock piles and tailings, and other water impoundment structure are maintained in stable and safe conditions.

**32. Types of plans and sections**

(1) The holder of a mining lease shall keep the following digitally prepared plans and sections, namely:—

(a) a surface plan showing location and number of the boundary pillars along with its latitude and longitude values, every surface feature within the mining lease boundaries, such as building, telephone, power transmission line, water pipeline, tramline, railway, road, river, water-course, reservoir, tank, bore-hole, shaft and incline opening, opencast working, dumps and dumping ground, the waste land, forest, sanctuaries, agricultural land and grazing land and subsidence on the surface beneficiation plants, tailing ponds and other workings within the lease;

**37. Storage of overburden, waste rock, etc.**

- (3) Every holder of a prospecting licence, prospecting licence cum mining lease or a mining lease shall take steps so that the overburden, waste rock, rejects and fines generated during prospecting and mining operations or tailings, slimes and fines produced during sizing, sorting and beneficiation or metallurgical operations shall be stored in separate dumps.
- (4) The dumps shall be properly secured to prevent escape of material therefrom in harmful quantities which may cause degradation of environment and to prevent causation of floods.
- (5) The site for dumps, tailings or slimes shall be selected as far as possible on impervious ground to ensure minimum leaching effects due to precipitations.
- (6) Wherever possible, materials such as waste rock and overburden shall be backfilled into the mine excavations with a view to restoring the land to its original use as far as possible.
- (7) Wherever back-filling of waste rock in the area excavated during mining operations is not feasible, the waste dumps shall be suitably terraced and stabilized through vegetation or otherwise.
- (8) The fines, rejects or tailings from mine, beneficiation or metallurgical plants shall be deposited and disposed in a specially prepared tailings disposal area such that they are not allowed to flow away and cause land degradation or damage to agricultural field, pollution of surface water bodies and ground water or cause floods.

**41. Discharge of toxic liquid**

(1) Every holder of prospecting licence, prospecting licence cum mining lease or a mining lease shall take all possible precautions to prevent or reduce the discharge of toxic and objectionable



*liquid effluents from mine, workshop, beneficiation or metallurgical plants, tailing ponds, into surface water bodies, ground water aquifer and useable lands, to a minimum.*

19. Further, reliance in this regard is placed on the Technical Bulletin No. 30 issued by the Ministry of Mines, the parent ministry in relation all mining related operations, which has noted that the management of tailing dams is critical as it is an integral part of many large-scale mining operations. The relevant portion of the technical bulletin is extracted here under:

*"The management of tailing dams has gained importance in the recent past as they are virtually an integral part of many large-scale mining operations"*

20. The above provisions clearly demonstrate that the mining laws mandate the mining lease holder to take adequate steps, including construction of a tailing pond / dam, for disposal of tailing waste generated in the process of mining and milling.
21. Proper disposal of tailings is also crucial for controlling environmental pollution. Tailings often contain hazardous chemicals used in the beneficiation process. Some of these hazardous chemicals, which when exposed to air and water, can create acid mine drainage that can lead to severe environmental damage if not properly contained. Therefore, effective disposal methods, such as secure tailings ponds or dry stacking, are essential to prevent these contaminants from entering the surrounding environment, including soil and water sources.
22. Hence, in view of its integral function for environmentally safe waste disposal, Tailing Dam should be seen as integral part of overall "manufacturing operations", and therefore be regarded as part of plant and machinery. That the meaning of "apparatus" should not be restricted to such apparatus which is actually used in manufacture of finished goods, instead it should be extended to such apparatus which are used to deposit, manage or treat the waste products/tailings generated during the manufacturing process.
23. Further, the development of tailing dam facilities is an extended plant facility to the Milling Plant run by the Applicant. In this regard reference is drawn to **Notification No. 12/2012-Central Excise** (S. Nos. 337 & 338) dated 17.03.2012 which provides exemption to machinery, instruments, apparatus and appliances etc. required for setting up of ultra-mega/mega power plants. The Explanation to said exemption entries include development of facilities such as ash disposal system including ash dyke storage facilities (say pond/dam/embankments etc.) as forming part of the power plants, even though such facilities are situated outside the main plant boundary. It thus granted exemption from payment of excise on goods required for development of such extended-plant facilities.
24. The Applicant submits that in the case of **CCE vs. Sai Samhita Storages [2011 (23) STR (341) APJ]** the appropriateness of availment of credit in relation to cement and TMT bars used in the construction of warehouses through which the storage and warehousing services were provided by the assessee were questioned. In the said case, the Court held that without use of these items, assessee could not provide storage and warehousing services, and hence allowed the credit. The relevant partition of the decision is extracted hereunder:

*"9. There is no dispute, in these cases, that the assessee used cement and TMT bar for providing storage facility without which storage and warehousing services could not have been provided.*

Therefore the finding of the original authority as well as the appellate authority are clearly erroneous, which was correctly rectified by the CESTAT”

25. In view of the above, the Applicant submits that the tailing dam is an essential and integral part of the mining process, both operationally as well as legally mandated by law. Hence, in view of the same, the ITCof GST paid for goods and services in relation to raising height of tailing dam is not hindered *vide* Sections 17(5)(c) and 17(5)(d) of the CGST Act.

• **TAILING DAM IS NOT A CIVIL STRUCTURE AS IT IS NOT MADE OF MATERIALS LIKE CEMENT**

26. The Applicant submits that that the tailing dam is made of materials like earth fill, or rock fill, sand, geomembranes or clay liners, etc. No cement, steel or bricks are used in increasing the height of tailing dam at any time and hence the same cannot be termed as a civil structure. In any event, assuming that the use of cement is a relevant factor, it is an established principle of law that merely because steel, cement or bricks are used for construction of a structure, it does not cease to be plant or machinery. Reliance in this regard is placed on the following decisions wherein Courts have held that even if cement is used in laying foundation and erection of manufacturing plant and machinery, it constitutes part and parcel of ‘plant’. Ref. *J.K. Cement Works v. State of Karnataka [2017 (7) G.S.T.L. 408 (Kar.)]*, *State of Kerala v. Ambuja Cements Ltd [2020 (1) KHC 884]*.
27. The Applicant submits that while a tailing dam is commonly referred to as “dam”, it is not a dam as normally understood. Tailings dams are typically an embankment built from earth and rock materials. They can be raised over time as more tailings are produced, using either the tailings themselves or additional earth materials for stability. Minor construction activities might happen in the course of development of embankment which is merely incidental to the main development of embankment. This can be demonstrated with the following break up of contract value towards Earth Work (excavation, loading, unloading, transportation, leveling, piling of tailings) and purely construction work:

| #  | Type of Activity   | Approx. % of Contract Value |
|----|--|-----------------------------|
| 1. | Excavation (Earth Works) and Dry Tailing   | 76%                         |
| 2. | Mine Waste   |                             |
| 3. | Lining (Geo Cell, Geo Grid, Dry Tailing, Soil, Stone Aggregate, HDPE, Sand, Supply of Geotextile and Labour Charges) | 15%                         |
| 4. | Construction of RCC Garland Drain  | 7%                          |
| 5. | Repair & Maintenance of Approach Ramp  | 2%                          |
|    | <b>Total</b>   | <b>100%</b>                 |

28. As is evident from the above, the activity of increasing height of tailing dam, is majorly Earth Works and not construction *per se*. The term “Earth Work” has not been defined under any GST provisions.
- The Webster Dictionary defines Earth Work as an embankment or construction made of earth specially one used as a field fortification.



- The Collins Dictionary defines Earth Work as “excavation of earth as in engineering construction; a fortification made of earth”.
- The Wikipedia defines Earth Work as “Earth work are engineering works through the processing of parts of earth surface involving quantities of soil or unformed rocks”.

After going through different definitions of earth work, one can conclude that Bulk earthworks include the removal, moving or adding of large quantities of soil or rock from a particular area to another. They are done in order to make an area of suitable height and level for a specific purpose, and not to construct any civil structure.

29. Thus, the activity of increasing height of tailing dam on a foundation of natural soil or rock to ensure structural integrity, involves Earth Works, rather than being constructed with cement, bricks, or steel as is common for land and buildings or other civil structure. Considering that major activity is of Earth Works along with functional role played by the tailing dam, it is evident that development of tailing dam does not lead to any construction, and it falls within the definition of plant and machinery.

• **CREDIT WAS AVAILABLE IN RELATION TO SERVICES AVAILED FOR RAISING THE HEIGHT OF TAILING DAM IN THE PRE GST ERA TO THE APPLICANT**

30. The Applicant submits that a dispute regarding availability of credit in relation to services availed for raising the height of tailing dam also arose in the pre-GST era for the Company. In identical facts, the Tribunal in applicant’s own case of *Hindustan Zinc Limited v. CCE, Jaipur-II [2017 (7) TMI 387 - CESTAT NEW DELHI]* held that the assessee cannot operate their business or manufacturing facility of dutiable / excisable goods without compliance with the directions given by State Pollution Control Board to minimize the pollution under the relevant Pollution Control laws. Compliance with the directions of the State Pollution Control Board if not done by the industry, may result in prosecution of the assessee and its key personnel under the various Pollution Control laws for violation. The CENVAT credit received on the services for raising the height of tailing dam and maintenance service for pipeline work of tailing dam, used for disposal of industrial waste and polluted water in compliance with Environmental laws is an input service within the meaning of Rule 2(1) of CENVAT Credit Rules, 2004 used by the manufacturer indirectly in or in relation to the manufacture of final products and clearance of final products from the place of removal. Hence, credit was allowed. This has also been followed by the Tribunal in the case of *CCE, Udaipur v. Hindustan Zinc Limited [2018 (7) TMI 682 - CESTAT NEW DELHI]*
31. Therefore, it is clear that the tailing dam has always been considered as an integral part of Applicant’s manufacturing operations. Thus, it is covered under the term “plant and machinery”, and consequently ITC is available for GST paid in relation to goods and services received for construction and increasing the height of such tailing dam in terms of Section 17(5)(c) and 17(5)(d) of the CGST Act.
32. In any event, it is pertinent to note that the purpose of allowing credit under GST is to avoid the cascading effect of input taxes so that the ultimate consumer bears a single output tax. If credit is disallowed at the earlier stages of a transaction before it reaches the consumer, the tax paid becomes an additional cost, which makes goods and services more expensive. It is to avoid this consequence that

the restriction of ITC is to be liberally interpreted. Thus, credit ought to be allowed in relation to goods and services received for increasing the height of such tailing dam in terms of Section 17(5)(c) and 17(5)(d) of the CGST Act.

**C. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT:**

Question : *Whether input tax credit is available in relation to goods and services received for increasing the height of Tailing Dam used to disposal and treatment of hazardous waste of mining operations, known as tailings in terms of Section 17(5)(c) and 17(5)(d) of the Central Goods and Service Tax Act, 2017?*

**D. COMMENTS OF THE JURISDICTIONAL OFFICER: -**

Comments received from the Assistant Commissioner, CGST Division-A, 142-B, Hiran Magri, Sector-11, Udaipur, Rajasthan vide Mail Dated: 11.12.2024 are as under:

**PARAWISE COMMENTS**  
**ON THE QUESTIONS ON WHICH ADVANCE RULING IS SOUGHT**

**QUESTION:-** Whether input tax credit is available in relation to goods and services received for increasing the height of Tailing Dam used to disposal and treatment of hazardous waste of mining operations, known as tailings in terms of Section 17(5)(c) and 17(5)(d) of the Central Goods and Service Tax Act, 2017 ?

**ANNEXURE - II**

**Para-1.** No Comments.

**Para-2.** No Comments.

**Para-3.** No Comments.

**Para-4.** No Comments.

**Para-5.** No Comments.

**Para-6.** No Comments.

**Para -7.** The taxpayer has applied for Advance Ruling on the main issue that the tailing dam is nothing but an integral part of "Plant and Machinery" and should not be classified as "Immovable Property" in terms of Section 17(5)(d) of the Central Goods and Services Tax Act, 2017. The process of constructing the tailing dam has been suitably defined by the taxpayer in para-5 of Annexure II. Tailing dams are constructed solely using the by-products generated during the second phase of conversion of ore into concentrates at the milling plant, as elaborated by the taxpayer in para- 2 of Annexure II. During this second phase of conversion of ore into concentrates at milling plant, hazardous waste, known as tailings, the form of slurry are generated at the tail end of the bifurcation process. These tailings in the form of slurry consist of crushed rock, water, and chemicals. It is binding upon the taxpayer to dispose these tailings in the form of slurry as per environment protection law as detailed in para- 3 of Annexure II. The transportation of the tailings in the slurry form from the plant to the tailing dam construction site is conducted through pipelines as mentioned in para 4 of Annexure II. These pipelines are not part of the main plant; instead, they serve the specific purpose of transporting tailings to the construction site of the tailing dam. Therefore, these pipelines do not fall under the definition of "Plant and Machinery." Additionally, the drainage system used for the construction and maintenance of the tailing dam cannot be



classified as "Plant and Machinery." The taxpayer has not provided a clear explanation of the tailing dam's construction process. When the water is separated from the tailings slurry, a powder-like substance remains that cannot be stored in open spaces due to its hazardous nature. To convert this powder into a concrete structure, cement is essential, which the taxpayer has not disclosed in their application. After mixing cement with the powder separated from the tailings slurry, the dam is constructed, which is clearly an **"Immovable Property."**

**Para-8.** No Comments.

### ANNEXURE – III

**Para-1.** No Comments.

**Para-2.** No Comments.

**Para-3.** No Comments.

**Para-4.** No Comments.

**Para-5.** No Comments.

**Para-6.** No Comments.

**Para-7.** The taxpayer has submitted that tailing dam is of the nature of 'apparatus' fixed to earth and is used for making outward supply of services and thus covered under the definition of plant and machinery. This submission is not tenable in the light of factual situation of the operation carried out for the construction of tailing dam and further enhancing the height of the same. Here the goods i.e., "tailings in the form of slurry" and the services provided by the taxpayer's contractor for the erection of the tailing dam do not fall under the definition of "Plant and Machinery" as it is "Immovable Property". In the entire process a dam comes into existence.

**Para-8 & 9.** The taxpayer has submitted that the term "apparatus" has not been defined under GST Laws and hence they relied upon the judgement wherein the definition of apparatus has been broadly discussed. But the Tailing Dam does not meet the criteria for being classified as an apparatus, instead falls under the definition of immovable property as outlined in the explanation provided in Section 17(6) of the CGST Act, 2017. The same is produced below:

*(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.*

**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.*

Thus, in the light of this express provision, the Tailing Dam is a civil structure and qualifies the definition of immovable property.

**Para- 10.** The taxpayer has submitted that the Tailing Dam consists of Automated Pipelines, Drainage System and Geomembranes or Clay Liners hence, Tailing Dam qualifies the definition of Plant and machinery. This argument cannot be acceptable as these three elements are being utilized almost in all the civil structure. Hence, mere availability of these three elements, does not qualify the definition of plant and machinery.

**Para-11.** As per reply to para 8 and 9.

**Para-12.** The judgement is not applicable in the instant case as it has been delivered on "functional test" and not on "Immovable property" and "furtherance of business".

**Para- 13.** This issue has nothing to deal with building but rather to deal with "Immovable property" and "furtherance of business". Hence, the judgment quoted by the taxpayer is not mutatis mutandis applicable in the instant case.

**Para- 14.** The taxpayer has relied upon the judgments' of Hon'ble Allahabad High Court in the case of S.K. Tulsi and Sons vs. CIT [(1991)187 ITR 685 (ALL)]. But in the said judgement, the second portion of the judgement produced below, is squarely applicable in the instant case as tailing dam, is the structure that plays no part in carrying out *furtherance of business* instead it is carrying out to fulfill the Environment Protection Act viz. Mines and Minerals (development and regulation) Act, 1957 and other environmental protection Act and regulation.

*"If it was found that the building or structure constituted an apparatus or a tool of the taxpayer by means of which business activities were carried on, it amounted to a "plant"; but where the structure played no part in the carrying on those activities but merely constituted a place wherein they were carried on, the building could not be regarded as a plant."*

The course of disposal of by-products mandated by Mines and Minerals (development and regulation) Act, 1957 does not qualify for availing Input Tax Credit. It is clear and binding upon the taxpayer by the recent incident such as amendment in the Section 17(5) of the CGST Act, 2017 by way of introducing sub-section 17(5)(fa) in the list of block credit, which is produced below:

*"(fa) goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013;"*

Also, Gujarat Authority on advance Ruling in the case of Adama India Private Limited pronounce that, CSR activities, as per Companies (CSR Policy) Rules, 2014 are those activities excluded from normal course of business of the applicant and therefore not eligible for ITC, as per Section 16(1) of the CGST Act. Hence, the activity of construction of tailing dam is not a part of furtherance of business therefore, it is also not available.

**Para-15.** The term structure is not relevant in this case as the admissibility of credit attracts the term "Immovable property" and "furtherance of business". Hence, the judgment quoted by the taxpayer is not mutatis mutandis applicable in the instant case.

**Para-16.** In view of the comments made in above para, ITC on the construction of tailing dam is blocked.

**Para-17 to 21.** The taxpayer has submitted that the construction of tailing dam is integral part of the milling and milling process on the basis of operational as well as legal perspective. In support they have quoted provisions of Mines and Minerals (development and regulation) Act, 1957 and Mineral Conservation and Development Rules, 2017. CSR Activity is also a legal perspective but it is now established that the ITC is blocked for CSR Activity. Hence, any legal perspective is not having binding effect on the CGST Act, 2017. Also, Mines and Minerals (development and regulation) Act, 1957 and Mineral Conservation and Development Rules, 2017 has not any inbuilt overriding effect on the CGST Act, 2017. On plain reading of the Sections and rules of Mines and Minerals (development and regulation) Act, 1957 and Mineral Conservation and Development Rules, 2017 respectively, it is only the obligation on the part of taxpayer to protect the environment and not an essential part of entire mining process.

**Para- 23 & 23.** The observation of any technical bulletin cannot override the statutory provisions of any law.



**Para -24 & 25.** The construction of tailing dam is neither "manufacturing operation" nor "apparatus" but is immovable property.

**Para-26.** The notification quoted by the taxpayer is not applicable in this case as the notification deals with the exemption of Excise duty for civil construction and in CGST Act, 2017 the provision for constructions of civil structure is quite different.

**Para- 27 & 28.** The use of the warehouse is not similar to tailing dam. Warehouse is used for the storage of goods which is integral part of any business activity and play important role in the furtherance of business whereas tailing dam is immovable property and having no use in any business activity or furtherance of business. The tailing dam is constructed for protecting environment. Moreover the 'tailings in the form of slurry' is goods, which is saleable. The taxpayer is not selling these goods as the transportation may be more as compared to constructing the tailing dam / raising the height of existing tailing dam. When water is separated from this 'tailings in the form of slurry' the remaining tailing can be sufficiently utilized for construction of civil structure such as road, buildings, highways, powerplant, water reservoirs, dam etc. Further, for the construction of any civil structure the value of cement constitutes huge portion of the expenditure and the rate of GST is 28 % on the cement. Hence, taking the credit of cement for the construction of tailing dam has a significant impact on the financial health of the Taxpayer. Hence, the taxpayer opted not to sell the tailing either in the form of slurry or in powder but to construct the tailing dam. Therefore, the judgement quoted by the taxpayer is not applicable in this case.

**Para 29:** The argument by the applicant that the construction of tailing dam is not correct in the light of the relevant parameter of structural engineering as no dam can be constructed without use of cement. The applicant has not submitted any evidence such as technical literature in respect of his argument that the cement, building material is not utilised in the construction of tailing dam. Any dust cannot be solidified without the mixing of cement on it.

**Para 30:** Same as 27 & 28.

The submission made in para-30 should be thoroughly assessed by an expert with substantial expertise in structural engineering, such as a chartered engineer. It is imperative that the claimant provides a corresponding certificate to support this assessment. The submission of claimant in respect of S. No 4 of the column attached to Para 30 that RCC Garland Drain comprises 7% of the volume of the dam. This 7% incorporates huge amount of ITC involved in it. As this RCC Garland Drain is a drain and not a plant machinery, it falls under the definition of immovable property.

**Para 31:**

**Considering the fact that majorly there is Earth work in construction of Tailing Dam / Increasing the height of Tailing Dam, the argument of Tax Payer that the same does not fall under the definition of construction of immovable property, is not acceptable in the terms of explanation to section 17(5)(d) where it is clearly explained that any "addition" in the form of Earth etc. would fall under immovable property.**

**Para 32:**

If the activity of increasing height of the tailing dam involves Earth Work then it also comes under definition of immovable property.

**Para 33:**

The judgment quoted in this para was pronounced in the light of provisions of Central Excise Salt Act,

1944. In the Central Excise Salt Act, 1944 there was no concept of block credit. In the pre-GST regime, the input tax credit (ITC) was allowed only when inputs were used in the manufacture of final products. Similarly, under the service tax regime, credit was permissible. However, in the GST regime, ITC can only be utilized for the furtherance of business. It is important to note that, even when inputs are used for business

purposes, there are provisions under Section 17 that can restrict the availability of credit under certain conditions. One such condition is that if the ITC is used for the construction of immovable property, the credit is blocked. Therefore, the judgment cited by the claimant is not mutatis mutandis applicable in this case.

**Para 34:**

In view of the clarification made above neither the tailing dam is an integral part of manufacturing operation nor it is a plant machinery.

**Para 35:**

When there is a clear cut and expressed provision in GST law of block credit under section 17, there is no scope for liberal interpretation. Hence, this submission can not be accepted that one has to abide by the clear cut provision of law.

**E. PERSONAL HEARING :**

In the matter, personal hearing was granted to the applicant on 23.12.2024. Ms. Tejus Pathak, C.A. and Mr. Saurabh Dugar, Advocate Authorized Representative appeared for personal hearing. At the time of hearing in addition to the earlier submission, the applicant submitted the additional submission as follows:-

- I. At the outset, it is submitted that the tailing dam is an essential and integral part of the mining operations carried out by the Applicant. In addition to the operational functions of the tailing dam, it enables the Applicant to comply with the mining laws to ensure environmentally safe storage and disposal of tailings generated during such operations. These activities make the tailing dam indispensable to ongoing and future mining business. Accordingly, input tax credit ("ITC") of GST paid on works contract services, as well as pure goods and services received towards setting up and developing the tailing dam ought not be denied as it inter-alia qualifies within the definitions of "plant and machinery" or "plant or machinery" under Section 17(5)(c) and Section 17(5)(d) of the Central Goods and Services Tax Act, 2017 respectively.
- II. The Applicant believes that it is entitled to ITC, but as a matter of caution, it has filed the present application to ascertain that Section 17(5)(c) and Section 17(5)(d) of the CGST Act will not bar the credit.
- III. In this regard, kind attention is invited to the recent judgment of the Hon'ble Supreme Court in Chief Commissioner of CGST vs. Safari Retreats Pvt. Ltd. [(2024) 131 GSTR 184], wherein in the context of availability of ITC in relation to buildings (in the nature of shopping mall), which were offered on lease (in furtherance of business), the Supreme Court analyzed the construct of Section 17(5)(c) and Section 17(5)(d), including the Explanation thereof. The Supreme Court inter-alia held as under:

"35. ...It is pertinent to note that clauses (c) and (d) do not altogether exclude every class of immovable property from the applicability of ITC. In the case of clause (c), if the construction is of "plant and machinery" as defined, the benefit of ITC will accrue. Similarly, under clause (d), if the construction is of a "plant or machinery", ITC will be available".

In Safari Retreats (supra), the Court, while testing the availability of ITC on a building functioning as a shopping mall, ruled the following:



- a) Clause (c) and (d) to Section 17 do not exclude every immovable property from eligibility of ITC. Clause (c) uses the expression “plant and machinery” which is specifically defined in the Explanation. If the construction is of plant and machinery, the benefit of ITC will accrue [at para 35]
- b) The philosophy of the GST regime is to incorporate a consumption and destination-based test. The emphasis is on taxing supplies of goods and services [at para 41].
- c) The expression “plant or machinery” used in Section 17(5)(d) cannot be construed in the same manner as the expression “plant and machinery” has been defined under Explanation to Section 17(5) [at para 65(b)].
- d) Under Section 17(5)(d), the word “plant” has not been defined under the CGST Act or the rules thereunder. It cannot be given a restricted meaning to exclude land, buildings or any other civil structures as excluded in the Explanation[at para 52].
- e) A building can also be treated as a “plant” if the subject has been so planned and constructed as to serve an assessee’s special requirements [at para 52].
- f) In order to determine whether a particular property or asset qualifies as “plant”, the “functionality test” will have to be applied keeping in mind the business of the taxpayer and the role the building plays in the said business. [at para 65(c)].

In addition, recently in the case of *Bharti Airtel Ltd. vs. Commissioner of Central Excise*[2024 SCC On Line SC 3374], the Hon’ble Supreme Court, while determining claim of CENVAT credit in context of telecommunication towers, has re-affirmed the use of functionality test [para 10.9.12].

- IV. The Applicant further refers to the following decisions wherein different immovable properties have been held to be a plant, basis the functionality test:

| #  | Held as a Plant                           | In the Context of                                      | Case Reference   |
|----|---|--|--|
| 1. | Nursing Home                              | Nursing home business run by a doctor                  | CIT vs. B. Venkata Rao [(2000) 243 ITR 81]             |
| 2. | Specialized Pond                          | Aquaculture business for breeding of prawns            | CIT vs. Victory Aqua Farm Ltd. [(2016) 16 SCC 553]     |
| 3. | Dry Dock                                  | Inspection and repair of ships                         | IRC vs. Barclay Curle & Co. Ltd. [(1969) 1 WLR 675]    |
| 4. | Swimming Pool                             | Running an amusement park facility                     | Cooke vs. Beach Station Caravans [1974 1 WLR 1398]     |
| 5. | Synthetic grass carpet on football fields | Provision of outdoor sports facility to football clubs | Anchor International Ltd. vs. CIR [(2004) Scot CS 281] |

- V. In the present case of the Applicant, the following undisputed facts qua the tailing dam ought to be noted:

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- a) Function 1: Serves as an integral part of the milling plant: The tailing dam is an integral part of the milling plant to manufacture metal concentrates. During the beneficiation process to extract metal concentrate from the metal ores at the milling plant, tailings are continuously generated and transported to tailing dam throughout the process. In its absence tailings generated in the process would lead to blockages, equipment failures, and inefficiencies within the milling plant, ultimately halting the mining operation.
  - b) Function 2: Towards processing of wet tailings: Another function of a tailing dam is to process the tailings generated during the beneficiation process of metal ores, which can be subsequently used to backfill the ore extracted portion of the underground mines. The tailing dam consists of a complex system of different components and technologies, including automated pipelines, drainage systems, geo membranes and clay liners, to process the wet tailing generated in the milling plant.
  - c) Function 3: Towards treatment and storage of waste tailings: Another critical function of the tailing dam is its contribution towards environmental protection, i.e., to contain the waste tailings and prevent them from contaminating the surrounding environment. A tailing dam is specially designed for safe disposal, treatment, and management of hazardous waste generated during mining operations.
  - d) Function 4: Towards ensuring mandatory compliance with mining laws: A tailing dam is necessary for the Applicant to run its business in compliance with mining laws viz. Mines and Minerals (Development and Regulation) Act, 1957 read with Mineral Conservation and Development Rules, 2017. The mining laws mandate the mining lease holder (Applicant) to take adequate steps, including construction of a tailing pond / dam, for disposal of tailings generated in the process of mining and milling.

It is evident from the above the tailing dam serves multiple equally important functions within the business for manufacturing the finished products. Absent the tailing dam, the Applicant cannot carry on its business of mining and manufacturing. Therefore, it undoubtedly qualifies as a "plant". Accordingly, on the application of the functionality test laid down by the Hon'ble Supreme Court, the Applicant is of firm belief that the tailing dam squarely finds coverage under the term "plant". Consequently, ITC ought to be available for GST paid on inputs and input services received for setting up and developing the tailing dam in terms Section 16 of the CGST Act.

#### **F. DISCUSSIONS AND FINDINGS:**

1. At the outset, we would like to state that the provisions of both the CGST Act and the RGST Act 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 the same provisions under the RGST Act.
2. The Applicant is engaged in the business of extracting & processing minerals and manufacturing of metals such as zinc, lead, silver, etc. It has captive zinc mines



located in the state of Rajasthan, including at Rampura Agucha, Sindesar Khurd, Rajpura Dariba, Bamnia Kalan, Kayad and Zawar.

3. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

4. Ongoing through the submissions of the taxpayer, we found that Tailing dams are constructed solely using the by-products generated during the second phase of conversion of ore into concentrates at the milling plant. During the second phase of conversion of ore into concentrates at milling plant, hazardous waste, known as tailings, a form of slurry is generated at the tail end of the beneficiation process. These tailings in the form of slurry consist of crushed rock, water, and chemicals left over after the extraction of minerals.

We also found that applicant submitted that it is binding upon them to dispose these tailings in the form of slurry as per environment protection law. We found that the taxpayer has increased the height of the tailing dam with the use of materials such as rocks, mud, sand, cement, HDPE sheets, etc.,. Further, Taxpayer submitted and believes that the tailing dam is an integral part of the milling plant and covered under the term "plant and machinery". Hence, input tax credit of such GST is not blocked in terms of Section 17(5)(c) and 17(5)(d) of the Central Goods and Service Tax Act, 2017 ('CGST Act').

5. Before proceeding, we find it imperative to go through the relevant portion of Section 17(5)(c) and 17(5)(d) of CGST Act, 2017 is extracted hereunder:

***"17. Apportionment of credit and blocked credits.***

...  
(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:-

...  
(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."

Above provision clarifies that GST paid on works contract, goods and services received by a taxpayer for construction of immovable property is not eligible for ITC. There are two exceptions in clause (d) to the exclusion from ITC provided in the first part of Clause (d). The first exception is where goods or services or both are received by a taxable person to construct an immovable property consisting of a "plant or machinery". The second exception is where goods and services or both are received by a taxable person for the construction of an immovable property made not on his own account. Construction is said to be on a taxable person's "own account" when (i) it is made for his personal use and not for service or (ii) it is to be used by the person

constructing as a setting in which business is carried out. However, construction cannot be said to be on a taxable person's "own account" if it is intended to be sold or given on lease or license.

In other words, when the immovable property is in the nature of plant and machinery, then the works contract, goods and services received for construction of plant and machinery will be eligible for ITC and will not be hit by the restriction under the said clause (c) or (d) of Section 17(5) of the CGST Act, 2017.

Further, the scope of the term 'plant and machinery' for the purposes of interpretation of the above provision has been explained to mean as follows:

*"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."*

6. We find that since tailing dams are resting on foundation of natural rock or soil with the help of cement and is stretch over several kilometers, it is clear that they are immovable and are thus covered under definition of "immovable property".

We find that the term 'civil structure' has also not been defined in the GST law. A general understanding of the term can be derived from the definition of 'civil engineering' given as: "*The profession of designing and executing structural works that serve the general public, such as dams, bridges, aqueducts, canals, highways, power plants, sewerage systems and other infrastructure*". Further, a 'structure' in the context of civil engineering refers to anything that is constructed or built from different inter-related parts with a fixed location on the ground. Accordingly, a civil structure would be any man-made structure which is built by applying the science of civil engineering. A civil structure can be built with cement and steel or by means of other materials depending on the purpose of the structure and its feasibility. The materials used for construction of structure does not play a vital role in defining it as a "civil structure" or otherwise.

In view of above discussion, we find that the tailing dam is a civil structure and qualifies in the definition of immovable property. Therefore, the submission of the applicant that it is covered under "Plant and Machinery" is not tenable.

7. The taxpayer has also submitted that the construction of tailing dam is integral part of the milling and milling process on the basis of operational as well as legal perspective. In support they have quoted provisions of Mines and Minerals (development and regulation) Act, 1957 and Mineral Conservation and Development Rules, 2017. CSR Activity is also a legal perspective but it is now established that the ITC is blocked for CSR Activity. Hence, any legal perspective is not having binding effect on the CGST Act, 2017. Also, Mines and Minerals (development and regulation) Act, 1957 and Mineral Conservation and Development Rules, 2017 has not any inbuilt overriding effect on the CGST Act, 2017. On plain reading of the Sections and rules of Mines and Minerals (development and regulation) Act, 1957 and Mineral Conservation



and Development Rules, 2017 respectively, it is only the obligation on the part of taxpayer to protect the environment and not an essential part of entire mining process.

8. Further, the applicant in their support of the argument that setting up and developing the tailing dam qualifies within the definitions of "plant and machinery" or "plant or machinery" under Section 17(5)(c) and Section 17(5)(d) of the Central Goods and Services Tax Act, 2017 made reference of catena of judgement including the recent judgment of the Hon'ble Supreme Court in the case of Safari Retreats Pvt. Ltd.

9. We found that the Hon'ble supreme court in its captioned judgement in Para 65 (b) has ordered that

*"The expression "plant or machinery" used in Section 17(5)(d) cannot be given the same meaning as the expression "plant and machinery" defined by the explanation of section 17".*

It is noted that section 17 deals with apportionment of credit and blocked credits. Section 17(5)(c) denies ITC in respect of 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. Thus, clearly, ITC is denied when works contract services are supplied for construction of an immovable property barring (i) when it is used as an input service for further supply of works contract service, or (ii) when the immovable property is in nature of plant & machinery. Further, Section 17(5)(d) denies ITC in respect of goods and 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. Thus, clearly the intent is to deny ITC when goods or services or both are used for construction of immovable property (other than plant or machinery), even in cases when they are used in the course or furtherance of business. The rationale behind this is due to the fact that GST cannot be imposed on immovable property.

It may be seen that in both section 17(5)(c) and 17(5)(d), the intent is same i.e. the denial of ITC when goods or services or both are used for construction of immovable property, as discussed above. However, an exception has been provided in respect of construction of immovable property, which is in nature of plant and/ or machinery. However, there is a minor difference in the wordings in clause (c) and clause (d) of section 17(5), due to the different words used, i.e. "plant and machinery" in clause (c) and "plant or machinery" in clause (d). It may be appreciated that to clear ambiguity regarding interpretation of the said wordings. Act has clearly defined the word "plant and machinery", for the purposes of Chapter V & VI of CGST Act. However, the word 'plant or machinery' have not been separately defined either in any of the above chapter or elsewhere in the CGST Act, that the intention of act was to deny the benefit of ITC in respect of construction of immovable property, other than when the immovable property was in nature or plant and/ or machinery. While defining 'plant and machinery' in the Explanation at the end of section 17(5) of CGST Act, and not separately defining 'plant or machinery', it is obvious that the legislature intended both 'plant and machinery' as well as 'plant or machinery' to be read from the said definition given in Explanation at the end of 17(5) of CGST Act as it would never have intended to define one word(viz. 'plant or machinery' ) open to varied interpretations, which may have caused confusion and legal disputes. This is obviously due to the fact that the legislature never wants to treat 'plant or machinery' differently from 'plant and machinery'. Further had the legislature intended to treat 'plant or machinery' differently from 'plant and machinery', then the legislature would have defined either the phrase

'plant or machinery' or the words 'plant and machinery' in Chapter V and VI or elsewhere in CGST Act. **We also observe that there is no such distinction of word 'and'/'or' in the expression used in clause (c) and (d) of sub-section 5 of section 17 of RGST, Act, 2017.** The relevant clauses of sub-section 5 of section 17 of RGST Act,2017 is reproduced as under-

**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 and machinery**) on his own account including when such goods or services or both are used in the course or furtherance of business;

It is pertinent to mention here that vide press release of Ministry of Finance, the GST council in their 55th meeting held on 21.12.2024 has recommended to align the provisions of section 17(5)(d) of CGST Act, 2017 with the intent of the said section, by amending section 17(5)(d) of CGST Act, 2017, to replace the phrase "plant or machinery" with "plant and machinery", retrospectively, with effect from 01.07.2017, so that the said phrase may be interpreted as per the Explanation at the end of section 17 of CGST Act, 2017.

10. We find that the core business activity of the taxpayer is extracting & processing minerals and manufacturing of metals such as zinc, lead, silver etc. Mineral processing is the process of separating commercially valuable minerals from their ores in the field of extractive metallurgy. Also the above process of beneficiation improves the economic value of the ore by removing the gangue minerals, which results in a higher grade product (ore concentrate) and a waste stream (tailings). These gangue minerals and waste stream (tailings) are the commercially worthless materials that surrounds, or is closely mixed with, a wanted mineral in an ore deposit. We also find that tailing dam is constructed for safe disposal, treatment, and management of hazardous waste of mining operations, in terms of the applicable laws viz. Mines and Minerals (Development and Regulation) Act, 1957 read with Mineral Conservation and Development Rules, 2017. We find that tailing dams can be simply termed as a structure providing storage facility for waste products of mining operations. These storage facilities does not play any role in the quantity as well as quality of the minerals extracted & processed and metals manufactured by the taxpayer. Thus, the tailing dams can not be qualified to be used for carrying on the core business activities.

11. In view of the foregoing facts, circumstances and provisions of the GST law, we pass the following order:

**RULING**

Question:- *Whether input tax credit is available in relation to goods and services received for increasing the height of Tailing Dam used to disposal and treatment of*



hazardous waste of mining operations, known as tailings in terms of Section 17(5)(c) and 17(5)(d) of the Central Goods and Service Tax Act, 2017?

Ans:- Answered in the negative in view of discussions made above.

03/01/2025

(Mahipal Singh)  
MEMBER  
CENTRAL TAX

03/01/2025

(Mahesh Kumar Gowla)  
MEMBER  
STATE TAX



F. No. AAR/SF/2024-25/210-218

Date: 03.01.2025

**SPEED POST**

07/01/2025

To,  
M/s HINDUSTAN ZINC LIMITED,  
YASHAD BHAWAN, 2<sup>nd</sup> Floor,  
UDAIPUR-313004, RAJASTHAN

Copy to: -

1. The Chief Commissioner, CGST and Central Excise (Jaipur Zone), NCRB, Statue Circle, Jaipur, Rajasthan-302005
2. The Chief Commissioner, State Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme, Jaipur-302005.
3. The Commissioner, CGST and Central Excise Commissionerate, Udaipur, Rajasthan.
4. The Assistant Commissioner, CGST Division-A, 142-B, Hiran Magri, Sector-11, UDAIPUR, Rajasthan.
5. The Deputy/Assistant Commissioner, State Tax Department, Circle -F, Zone UDAIPUR, Rajasthan.

o/c