

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



ADVANCE RULING(APPEAL) NO. GUJ/GAAAR/APPEAL/2025/14
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2025/AR/02)

Date 31.07.2025

Name and address of the appellant	:	M/s. KEI Industries Ltd., 209, 212/3, 217/1, NH No. 8, Jetalpur, Dascroi, Ahmedabad, Gujarat 382426.
GSTIN of the appellant	:	24AAACK0251C1ZD
Jurisdiction Office	:	Center Commissionerate- Ahmedabad South, Range- IV, Divison-IV
Advance Ruling No. and Date	:	GUJ/GAAR/R/2025/06, dated 21.3.2025
Date of appeal	:	25.04.2025
Date of Personal Hearing	:	25.06.2025
Present for the appellant	:	Shri Jigar Shah, Advocate, Ms. Priyanka Kalwani, Advocate, Ms. Devanshi Sharma, Advocate, and Shri Adarsh Kumar Jain, VP (Finance) for the appellant. Shri Balachandran Pillai, Assistant Commissioner, and Shri D.V.Thakkar, Superintendent, CGST, Ahmedabad-South Commissionerate for the Revenue.

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (for short - 'CGST Act, 2017' and the 'GGST Act, 2017') are *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. The present appeal has been filed under Section 100 of the CGST Act, 2017 and the GGST Act, 2017 by M/s. KEI Industries Ltd (for short - 'appellant') against the Advance Ruling No. GUJ/GAAR/R/2025/06, dated 21.3.2025.



3. Briefly, the appellant is engaged in the manufacture & supply of extra high voltage [EHV], medium voltage [MV] and low voltage [LV] cables upto 400 KV. Presently, they manufacture EHV cable using the continuous catenary vulcanization [CCV] process. However, the appellant has collaborated with M/s. Brugg Kabel AG, a Swizz company, to upgrade its technology to manufacture EHV cables upto 400 KV by setting up a new manufacturing plant in Gujarat for manufacturing HV/EHV cables using the vertical continuous vulcanization [VCV] process.

4. The appellant, before the GAAR¹, further stated as under:

- a) that in VCV, the process of insulation of cable cores is done in vertical tubes;
- b) that the VCV manufacturing line is required to be supported by concrete structure in square form on all sides;
- c) that the total height of VCV line from ground floor is approximately 152 mtrs; that each floor inside VCV tower will be 12 mtrs in height upto initial 60-70 mtrs and, thereafter, the height of each floor will be upto 6 mtrs as per the requirements of the line;
- d) that there will be passenger lifts and material handling lifts installed in this VCV tower;
- e) that there will be staircase with emergency exit and fire hydrants on each floor;
- f) that this VCV tower will be used exclusively for the purpose of manufacturing HV/EVV cables;
- g) that the total load on different floors will be transferred through tower columns to the VCV tower footings;
- h) the applicant is procuring various input & input services to construct the outer square structure with concrete columns & concrete foundation to support the erection of the VCV line;
- i) that the VCV line will qualify as 'apparatus' and 'machinery' in terms of explanation to section 17 of the CGST Act, 2017;
- j) that the input and input service received for the construction of concrete structure is used for structural and foundation support of the VCV line & hence, is a P&M in terms of explanation to section 17, *ibid*;
- k) that, in sum and substance, the concrete structure in a VCV tower plays a fundamental role in maintaining stability, precision & overall efficiency throughout the manufacturing process of insulated cables;
- l) that all the components of the VCV line are capable of being dismantled & sold without being destroyed and are embedded to earth only for operational efficiency & are not an immovable property.

5. The appellant posed the below mentioned question before the GAAR, viz.

*Whether the applicant is eligible to avail ITC on inputs and input services **used for construction of concrete tower** to support and erect the VCV lines at the*

¹ Gujarat Authority for Advance Ruling



factory of the applicant, for manufacture of EHV cables, in terms of Section 17(5)(c) and (d) of the CGST Act, 2017?

6. GAAR, post admittance & personal hearing, pronounced its impugned ruling vide Advance Ruling No. GUJ/GAAR/R/2025/06 dated 21.3.2025, wherein it was held as under:

*The applicant is **not eligible** to avail ITC on inputs and input services used for construction of concrete tower to support and erect the VCV lines at the factory of the applicant, for manufacture of EHV cables, in terms of Section 17(5)(c) and (d) of the CGST Act, 2017.*

7. The below mentioned findings, led the GAAR to arrive at the aforementioned ruling, viz

a. that the Hon'ble Supreme Court, in the case of *Safari Retreats P Ltd*² held that:-

- (i) u/s 17(5)(c), *ibid*, for works contract, ITC is not available in respect of services supplied for the construction of immovable property, subject to two exceptions [a] when the goods, services, or both, are received for construction of 'plant and machinery'; and [b] where the WCS supplied for the construction of immovable property, is an input service for further supply of the works contract;
- (ii) that section 17(5)(d), *ibid* seeks to exclude from the ambit of sub-sections 16(1) & 18(1), *ibid*, services received by a taxable person to construct an immovable property on his own account, subject again to two exceptions, viz [a] construct an immovable property consisting of a "plant or machinery"; and [b] for the construction of an immovable property made not on his own account;
- (iii) that 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, further stating that 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.
- (iv) The Hon'ble Court, also laid down a functionality test, concluding that if a building qualifies to be a plant, ITC can be availed against the supply of services in the form of renting or leasing the building or premises, provided the other terms and conditions of the CGST Act and Rules framed thereunder are fulfilled.

- b. that in light of the above, the ITC on inputs and input services used for construction of concrete tower to support and erect EHV cables, is hit by section 17(5)(d), *ibid* and therefore ITC is not eligible;
- c. the appellant has not been in a position to prove that it is not on his own account;
- d. that the Circular dated 26.6.2024, which clarifies about ITC on ducts and manholes used in network of optical fibre cables (OFCs) in terms of section

² 2024 INSC 756



17(5) of the CGST Act, 2017, is not applicable to this matter since the clarification provided is specifically on ducts and manholes.

8. Aggrieved, the appellant is before the GAAAR³, against the impugned ruling dated 21.3.2025, raising the following averments, *viz*.

- a) that consequent to the judgment of *Safari Retreats, supra*, Legislature amended section 17(5)(d), retrospectively *wef* 1.7.2017 vide section 124 of the Finance Act, 2024; that the term 'plant & machinery' defined in the explanation to section 17 is applicable to both its clauses (c) & (d);
- b) that the inward supplies provided by M/s. Suraj Buildcon are in the nature of works contract;
- c) that the inputs & input services procured by the appellant for construction of concrete tower to support & erect VCV lines at the factory of the appellant is in the course or furtherance of business;
- d) ITC is not restricted where the supply involves construction of plant & machinery; that in order to qualify as plant and machinery [u/s 17], the requirements are [a]it is an apparatus, equipment or machinery fixed to earth by foundation or structural support; and [b] it is used for making an outward supply of goods or services or both;
- e) that VCV lines which are to be set up for manufacturing EHV cables will qualify as 'apparatus' and hence can be said to be a machinery;
- f) that the second condition that P&M should be used for making outward supply of goods/services also stands satisfied since they will be making outward supply of EHV cables manufactured using VCV lines;
- g) that since VCV lines qualify as plant and machinery & hence construction of concrete columns & foundation for VCV lines are also P&M in terms of the explanation;
- h) that though construction of VCV towers is on own account it qualifies as plant and machinery & therefore ITC is available;
- i) that ITC is available even in terms of CBIC Circular No. 219/13/2024-GST, dated 26.6.2024.

9. Personal hearing in the matter was held on 25.6.2025, wherein Shri Jigar Shah, Advocate along with Ms. Priyanka Kalwani, Advocate, Ms. Devanshi Sharma, Advocate and Shri Adarsh Kumar Jain, VP (Finance) appeared on behalf of the appellant and reiterated the submissions made in the appeal. Shri Jigar Shah also submitted a compilation consisting of the relevant legal provisions and the below mentioned case laws *viz*

- (i) Municipal Corporation of Greater Bombay & Ors. - [AIR 1991 SC 686];
- (ii) Bharti Airtel Ltd. - [2024 (11) TMI 1042-SC]
- (iii) Bharti Airtel Ltd. - [2024 (12) TMI 998-SC]
- (iv) Re: Atriwal Amusement Park - [2020 (7) TMI 477-AAR MP]
- (v) Re: Tarun Realtors P Ltd. - [2020 (3) TMI 981-AAR Karnataka]
- (vi) Safari Retreats P Ltd. - [2024 (10) TMI 286-SC]
- (vii) British Columbia Forest Products Ltd.- [1971 CanLII 156 SCC]

³ Gujarat Appellate Authority for Advance Ruling



Shri Balachandran Pillai, Assistant Commissioner and Shri D V Thakkar, Superintendent, CGST, Ahmedabad-South, appeared on behalf of the Revenue.

FINDINGS

10. We have carefully gone through and considered the appeal papers, written submissions filed by the appellant, submissions made at the time of personal hearing, the Advance Ruling given by the GAAR and other materials available on record.

11. Before moving on to the averments raised by the appellant, it would be prudent to reproduce paragraph 1.12 and 1.13 of the facts of the case, viz

1.12 *The process inside the VCV tower undertaken at each floor is summarized below for reference:*

Sr. No.	Equipment	Function
1	Gravity Feed Room	<i>This room is used to provide the XLPE as well as semi-conducting compound through steel pipe, directly from the box in the extruders by gravity force in closed and super clean environment.</i>
2	Capstan	<i>The capstan is used to pull the conductor from the accumulator up to X head. It also maintains the core in the center of the tube between the exit caterpillar and the capstan.</i>
3	Extruder floor	<i>On this floor, there are three extruders and the X head, to insulate three layers of semi-conductor and XLPE over the bare/taped conductor.</i>
4	CV Heating Tube	<i>The CV heating tube is used to cure the insulated core with Tube the help of nitrogen and tube heating under maximum 10 kgs. pressure.</i>
5	Accumulator	<i>The accumulator is used to keep the line continuously running during payoff change time by accumulating sufficient conductor.</i>
6	Cooling tube	<i>The cooling tube is used to cool down the cured core with the help of water/nitrogen.</i>
7	Pressure vessel	<i>The pressure vessel is used to turn the core under water pressure from vertical to horizontal tube,</i>
8	End seal	<i>This is the end of the tube and it is used to maintain water pressure inside the cooling tube.</i>
9	Exit Caterpillar	<i>The exit caterpillar is used to pull the insulated core from X head and maintain the core in the center of the tube.</i>
10	Dancer	<i>It is used to control the takeup speed so as to maintain the cable tension.</i>



11	Takeup	The insulated core is rewinded in drums at the takeup units.
12	Pay off	The conductor drums which need to be insulated are loaded at payoff units.

1.13 The weight of the significantly heavy components to be placed on each floor to run VCV line is enumerated below:

Sr. No.	Item Quantity	Description of machinery	Weight
1	1	Capstan CA	13000 kg
2	1	Meter counter	20 kg
3	1	Conductor clamp pneumatic	50 kg
4	1	Air compressor	100 kg
5	1	Conductor preheater	50 Kw
6	2	Cleanroom	15280 kg
7	3	Okabin feeding station	200 kg
8	1	Buffer hopper 400 litres	100 kg
9	2	Buffer hopper 100 litres	55 kg
10	4	Hopper loader	10 kg
11	2	Drying bin	180 kg
12.	1	Dry air generator	140 kg
13	1	Extruder (movable)	1200 kg
14	1	Extruder (movable)	12000 kg
15	1	Extruder (movable)	2000 kg
16	1	Hydraulic unit 3 functions	100 kg
17	1	Heating cooling unit	900 kg
18	1	Crosshead	1310 kg
19	1	Crosshead stand	470 kg
20	1	Wall thickness measuring device	250 kg
21	1	Conductor postheater	1500 kg
22	1	Nitrogen valve station	130 kg
23	1	Turn-around pressure vessel	26500 kg
24	1	Line PC	200 kg
25	1	Cabinet extruder drives	300 kg
26	1	Cabinet extruder drives	300 kg
27	1	Cabinet sub distribution	450 kg
28	1	Cabinet for temperature control	300 kg
29	1	Cabinet for temperature control	300 kg
30	1	Cabinet plc	150 kg
31	1	Cabinet CV-tube (heating part)	750 kg
32	1	Cabinet main distribution	750 kg
33	1	Cabinet CV-tube (cooling part)	450 kg
34	1	Cabinet caterpillar AGP	200 kg
35	1	Cabinet measuring system	150 kg
36	1	Cabinet extruder drive	200kg

12. To recapitulate, the appellant upgraded their technology to manufacture HV/EHV cables, by using VCV process. For the same, the VCV



manufacturing line is required to be supported by concrete structure and, hence, the primary issue is about the eligibility of ITC on inputs and input services used in the construction of concrete tower.

13. The gist of the averments raised is that the contract for construction of VCV tower was awarded to M/s. Suraj Buildcon, which was in the nature of the works contract; that the inputs and input services received for the construction of the concrete structure are used for foundational & structural support of the VCV line; that the VCV line will qualify as apparatus & hence is a plant and machinery and, therefore, the construction of concrete columns and foundation of VCV lines are also plant and machinery in terms of explanation to section 17(5) and that even if it is on their own account, it qualifies for plant and machinery.

14. Since the issue revolves around the interpretation of section 17, *ibid*, the relevant extracts are quoted hereinbelow for ease of reference *viz*

Section 17. Apportionment of credit and blocked credits-

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

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

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation. - *For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;*

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.*



15. On going through the impugned ruling, we find that the GAAR has not given a finding on whether the concrete structure, claimed by the appellant to be necessary to support and erect the VCV lines, forms a part of plant and machinery. Irrespective of the fact that whether it is a works contract or otherwise, in terms of section 17(5) (c) and (d), plant **and** machinery stand excluded from the apportionment of credit and blocked credits. We are also mindful of the fact that section 17(5)(d) uses plant **or** machinery. However, vide section 124 of the Finance Act, 2025, the word '**or**' has been changed to '**and**', though the same is yet to be notified.

16. On going through the layout of the VCV line which is reproduced in the impugned ruling, the process inside VCV tower undertaken at each floor and the weight of the significantly heavy components to be placed on each floor [reproduced supra], we are in agreement with the appellant's averment that the concrete structure is essential to support and erect the VCV lines. It is more so since the appellant has stated that the concrete structure in the form of VCV tower serves as a critical foundation and support system for the manufacturing process; that it provides stable base for tower components; that it absorbs vibrations & ensures accurate positioning of extruder, cross head and other elements. Given these facts, we find that plant and machinery in terms of the second explanation, placed beneath section 17, *ibid*, specifically includes foundation and structural support. The exclusions from plant and machinery are also listed *viz* (i) land, building or any other civil structures; (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises. Further, 'other civil structures' means civil structures other than foundation and structural support to plant and machinery.

17. Thus, the moment it is held that the ITC sought is on construction of foundation and structural support relating to plant and machinery, it moves out of the ambit of section 17(5)(c) and (d) even if it is on their own account. This being the case, we find that the applicant is eligible for availing the ITC on inputs and input services used for construction of concrete tower to support and erect the VCV lines at the factory of the appellant for manufacture of EHV cables.

18. The appellant, has also relied upon the clarification issued by CBIC vide its Circular No. 219/13/2024-GST, dated 26.6.2024, viz.

Issue	Clarification
Whether the input tax credit on the ducts and manholes used in network of optical fiber cables (OFCs) for providing telecommunication services is barred in terms of clauses (c) and (d) of sub-section (5) of section 17 of the CGST Act, read with Explanation to section 17 of CGST Act ?	<p>1.Sub-section (5) to Section 17 of the CGST Act provides that input tax credit shall not be available, inter alia, in respect of the following:</p> <p>i. 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; or</p> <p>ii. 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.</p> <p>2.Explanation in section 17 of CGST Act provides that 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 land, building or any other civil structures; telecommunication towers; and pipelines laid outside the factory premises.</p> <p>3.Ducts and manholes are basic components for the optical fiber cable (OFC) network used in providing telecommunication services. The OFC network is generally laid with the use of PVC ducts/sheaths in which OFCs are housed and service/connectivity manholes, which serve as nodes of the network, and are necessary for not only laying of optical fiber cable but also their upkeep and maintenance. In view of the Explanation in section 17 of the CGST Act, it appears that ducts and manholes are covered under the definition of "plant and machinery" as they are used as part of the OFC network for making outward supply of transmission of telecommunication signals from one point to another. Moreover, ducts and manholes used in network of optical fiber cables (OFCs) have not been specifically excluded from the definition of "plant and machinery" in the Explanation to section 17 of CGST Act, as they are neither in nature of land, building or civil structures nor are in nature of telecommunication towers or pipelines laid outside the factory premises.</p>



4. Accordingly, it is clarified that availment of input tax credit is not restricted in respect of such ducts and manhole used in network of optical fiber cables (OFCs), either under clause (c) or under clause (d) of sub-section (5) of section 17 of CGST Act.

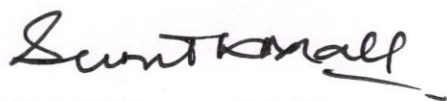
Drawing the analogy from the aforementioned clarification, we find that when ITC is not restricted even in respect of *ducts* and *manhole* used in OFCs under section 17(5) of the CGST Act, 2017, the ITC, on inputs and input services used for construction of concrete tower to support and erect the VCV lines, for manufacture of EHV cables also, similarly, cannot be restricted.

19. For the reasons mentioned above, we are unable to agree with the findings of the GAAR vide the impugned ruling dated 21.3.2025, and set the same aside. Since the impugned ruling, dated 21.3.2025 is set aside in favour of the appellant, we find that the discussion about the cases relied upon by the appellant, would at best only be an academic exercise.

20. In view of the above findings, we hereby set aside the ruling of the GAAR vide Advance Ruling No. GUJ/GAAR/R/2025/06, dated 21.3.2025 in the case of M/s. KEI Industries Ltd. and hold that M/s. KEI Industries Ltd. is **eligible** to avail ITC on inputs and input services used for construction of concrete tower to support and erect the VCV lines at the factory of the applicant, for manufacture of EHV cables, in terms of the explanation to section 17 (5)(d) of the CGST Act, 2017.


(Rajeev Topno)
Member (SGST)




(Sunil Kumar Mall)
Member (CGST)

Place: Ahmedabad
Date: 31.07.2025