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ANDHRAPRADESH APPELLATE AUTHORITY FOR ADVANCE RULING
(Constituted under section 99 of ANDHRA PRADESH GOODS AND SERVICES ACT 2017 vide Government of ANDHRA PRADESH G.O.Ms.No.117 Dated 01-03-2018)

Present:

SHRI SANJAY RATHI, I.R.S., Chief Commissioner of Central Taxes, Appellate Authority for Advance Ruling–Andhra Pradesh...Member
&
SHRI BABU.A, I.A.S., Chief Commissioner of State Taxes, Appellate Authority for Advance Ruling – Andhra Pradesh...Member

ORDER NO.AP/AAAR/02/2025 dated02-12-2025

S.No.	Name and Address of The Appellant	M/s Kobelco Construction Equipment India Pvt Ltd,4100, Central Expressway, 355, Palmyra Road, Sri City, Tirupati, Andhra Pradesh, 517646
1	GSTN	37AACCK9469N1ZN
2	Advance ruling order against which appeal is filed	07/AP/GST/2025 dt:06.08.2025
3	Date of filing of appeal	06.09.2025
4	Represented by	Sri M.V.J.K. Kumar, Advocate
5	Jurisdictional Authority-State	Special Circle, Chittoor Division
6	Jurisdictional Authority-Centre	Sri City Range, TirupatiDivision
7	Particulars of Payment of Fees for filing appeal	Applicant paid through electronic Cash Ledger DRCNo. DC3709250008482 Date-06-09-2025.

PROCEEDINGS

(Under Section 101 of the Central Goods and Services Tax Act,2017 and the Andhra Pradesh Goods and Services Tax Act,2017)

1. At the outset, we would like to make it clear that the provisions of the APGST Act, 2017, and the CGST Act, 2017, are in parimateria and have the same provisions in like matter and differ from each

other only in specific provisions. Therefore,unless a mention is particularly made to such dissimilar provisions, a reference to the APGST Act would also mean reference to the corresponding similar provisions in the CGST Act.

2. The present appeal has been filed under Section 100 of the APGST Act, 2017 by M/s. Kobelco Construction Equipment India Pvt Ltd (GSTN: 37AACCK9469N1ZN)(hereinafter referred to as the Applicant or the Appellant as the case may be)against the Advance Ruling Order No. 07/AP/GST/2025 dt:06.08.2025passed by the Authority for Advance Ruling (AAR), Andhra Pradesh.

3. Brief Facts of the Case:

3.1 The appellant, M/s. Kobelco Construction Equipment India Pvt Ltd GSTN: 37AACCK9469N1ZN) engaged is a manufacturer of excavators that established its manufacturing unit in Sri City, Satyavedu and Varadaiahpalem Mandals, Chittoor District, Andhra Pradesh.

3.2 M/s Sri City Private Limited, acquired land for developing a mixed-use and integrated industrial park comprising commercial, residential, and recreational facilities, as well as Special Economic Zone ("SEZ"), Domestic Tariff Zone ("DTZ"), and Free Trade Warehousing Zone ("FTWZ") components (collectively referred to as "Sri City").

3.3 Out of the land acquired, a portion of the land ("Demised Premises") forming part of the DTZ, admeasuring 9.35 acres, was leased to Kobelco Cranes India Private Limited ("Initial Lessee") under a Lease Deed dated 29 May 2015, registered as Document No. 520/2015, Book 1 in the office of the Sub-Registrar, Satyavedu.

3.4 The Initial Lessee, having been in lawful possession of the Demised Premises pursuant to the Lease Deed, has, at its sole cost and expense and in accordance with the terms of the Lease Deed and applicable laws.

3.5 Pursuant to an order dated 18 September 2017, the National Company Law Tribunal, New Delhi (NCLT), sanctioned a Scheme of Amalgamation under Sections 230-232 of the Companies Act, 2013, whereby the Initial Lessee merged into Kobelco Construction Equipment India Private Limited (Transferor). By virtue of this, all rights, title, interest, duties, obligations, assets, and liabilities of the Initial Lessee, including leasehold rights in the Demised Premises and ownership of the Superstructure, legally vested in the

Transferor by operation of law.

3.6 Pursuant to Clause 4(z) of the Lease Deed executed in respect of the Demised Premises, the Transferor approached the Lessor on 6 June 2025 to exercise its first right of refusal concerning the leasehold rights. The Transferor expressed its intent to transfer the leasehold rights in favor of India Metal One Steel Plate Processing Private Limited (Transferee) if the Lessor elected not to reacquire the Demised Premises. Upon discussions, the Lessor, by its letter dated 7 June 2025, consented to the transfer of the leasehold rights in favor of the Transferee, waiving its first right of refusal and recommending the execution of an MOU to outline the preliminary terms and conditions governing such transfer.

3.7 The Transferor, desirous of divesting its leasehold rights, title, interest, and obligations in the Demised Premises, together with all rights, title, and interest in the Superstructure, agreed to transfer the same in favor of the Transferee, subject to the terms and conditions set forth in the MOU, and with the express consent and approval of the Lessor.

3.8 The Parties acknowledged and agreed that the proposed transfer of leasehold rights shall include the transfer of the Superstructure on an "As is where is basis," "as is what is basis," "whatever there is basis," and "no recourse basis," together with all attendant rights, obligations, liabilities, and interests associated therewith, subject to obtaining all necessary consents, approvals, and regulatory compliances as required under applicable law.

3.9 The Parties further acknowledged and agreed that the MOU is intended to record their mutual understanding of the principal terms and conditions governing the proposed transfer of leasehold rights along with the Superstructure and shall serve as the basis for negotiating and executing a definitive "Agreement for the Transfer of Leasehold Rights," upon completion of all necessary formalities.

3.10 The Lessor originally granted a lease of the Demised Premises to the Transferor for a period of ninety-nine (99) years, commencing from 29 May 2015 ("Original Lease Term"), under the Lease Deed executed between the Lessor and the Transferor. By virtue of the transfer, the Transferee shall be entitled to the remaining unexpired term of the lease, being a period of eighty-nine (89) years, subject to the same terms, conditions, covenants, and obligations as set forth in the Lease Deed and the Agreement for the Transfer of

Leasehold Rights, unless otherwise modified therein.

3.11 In consideration of the transfer of leasehold rights in the Demised Premises, together with the Superstructure and all improvements and appurtenances thereon, the Transferee agreed to pay a sum of Rs. 11,35,00,000 (Rupees Eleven Crores and Thirty-five Lakhs only) ("Property Transfer Value") and Rs. 4,03,00,000 (Rupees Four Crores and Three Lakhs only) (Recovery of Cost of Land Development) to the Transferor, subject to the terms and conditions set forth in the Agreement for the Transfer of Leasehold Rights.

3.12 The Transferee shall be entitled to transfer the leasehold rights for the remaining term of the lease in the entire Lease Land in favor of a third party, provided that the Transferee shall offer a 'right of first offer' ("ROFO") to the Lessor to take back the Lease Land at a value agreed between the Transferee and the third party. If the Lessor declines the offer, the Transferee shall be entitled to transfer the leasehold rights to any third party holding a valid letter of approval from the Development Commissioner, at a cost not less than the cost offered to the Lessor, with prior approval of the Lessor. In case of such transfer, the Transferee shall pay a transfer fee of 15% of the total consideration agreed with the third party for the Lease Land along with infrastructure (excluding building, machinery, equipment, and other infrastructure put up by the Transferee within the Lease Land).

4. Filing of AAR Applicationand passing of Order by the AAR:

4.1 The appellant filed Form GST ARA-01 on 08.05.2025 before the Advance Ruling Authority seeking clarification on the GST implications arising from its proposal to transfer the unexpired leasehold rights in industrial land located in Sri City. The applicant also sought clarity on the GST treatment of recovery of land development costs and the eligibility of Input Tax Credit (ITC) on the transfer fee payable to the developer.

4.2 The Authority after providing a personal hearing examined the submissions, documents, and relevant statutory provisions under the CGST/APGST Acts, and passed the AAR under appeal, answering the questions raised by the applicant, which reads asbelow:

1. Whether assignment of leasehold rights of leasehold land would be covered by the scope of supply for levy of Goods and Service tax

under Section 7 of Central Goods and Services Tax Act, 2017?

if so whether Goods and Service Tax is applicable on the consideration of Transfer of Leasehold land paid by India Metal One Steel Plate Processing Private Limited (Transferee) to Kobelco Construction Equipment India Pvt Ltd (Transferor)?

Ruling: **Yes.** Goods and Service Tax is applicable.

2. Whether Recovery of Cost of Land Development and related other cost is the supply of Service for levy of Goods and Service tax under definition of Section 7 of Goods and Service tax Act, 2017.

If so whether Goods and Service Tax is applicable on Recovery of cost of land Development paid India Metal One Steel Plate Processing Private Limited (Transferee) to Kobelco Construction Equipment India Pvt Ltd (Transferor)?

Ruling: **Yes.**

3. Whether Kobelco Construction Equipment India Pvt Ltd is entitled to Input Tax Credit of Goods and Service tax paid on the commission to be paid in relation of the transfer of leasehold land to Sri City Development Authority, under the provision of Goods and Service Tax Act 2017?

Ruling: **Yes.**

5. Filing of appeal against the AAR:

5.1 Aggrieved by the ruling of the AAR, the appellantfiled Form GST ARA-02 on 06.09.2025, contesting the ruling and seeking relief from the Appellate Authority for Advance Ruling (AAAR) on the following grounds.

Grounds of appeal:

1 . Whether the Advance Ruling Authority was right in rejecting the contention of the question of law raised before it on the ground that the assignment of leasehold rights of leasehold land would be covered by the scope of supply for levy of goods or service tax under section 7 of the CGST Act 2017? If so, whether goods and service tax is applicable on the consideration of transfer of leasehold land paid by Indian Metal One Steel Plate Processing Pvt Ltd. (Transferee) to Kobelco Construction Equipment India Pvt Ltd. (Transferor), though the judgment of Gujarat High Court in the case of Gujarat Industrial Development Corporation Vs. Union of India and Gujarat

Chamber of Commerce and Industry Vs. Union of India and Dhiraj Can Co. Pvt Ltd. Vs. Union of India and Others and the Supreme Court judgment in the case of Safari Treats would not be applicable as the Department has approached the Hon'ble Apex Court and filed a Special Leave Petition bearing No. 25536/2025 which is pending adjudication?

2. Whether the ruling of the Advance Ruling Authority is correct and justified in residing the ruling against the appellant as against the High Court judgment except has approached the Supreme Court by way of SLP No. 25536/2025 where no stay or suspension of the judgment was granted by the Hon'ble Apex Court?

3. Whether the Advance Ruling Authority is correct in following the Advance Ruling Authority's and circulars in:

i) Maharashtra Authority for Advance Ruling in the case of M/s General Motors India Private Limited vide Ref. No. GST-ARA-31/23-24/2024-25/B-111, Mumbai, dated 10.3.2025,

ii)Uttar Pradesh Authority for Advance Ruling in the case of M/s Remarkable Industries Private Limited, Noida vide Ref. No. UP ADRG 41/2023, dated 7.12.2023,

iii) West Bengal Authority for Advance Ruling in the case of M/s Enfield Apparels Private Limited vide 11/WBAAR/2020-21, dated 17.8.2020,

iv) CBIC Circular No. 44/18/2018-CGST, dated 2.5.2018.

4. Whether the receiving of cost of land development and related other costs would entitle the department to levy the GST to be considered as supply of service for levy of goods and service tax under the definition of section 7, and whether the GST is applicable on the recovery of cost of land development paid by Indian Metal One Steel Plate Processing Pvt Ltd. (Transferee) to Kobelco Construction Equipment India Pvt Ltd. (Transferor) as upheld by the advance ruling authority without considering the definition of supply of service for levy of goods and service tax?

6. Personal Hearing:

The Appellate Authority offered personal hearing on

26.11.2025. Sri M.V.J.K. Kumar, authorized representative and Advocate, appeared on behalf of the applicant and reiterated the submissions made in the grounds of appeal and also submitted written submissions during the hearing.

7. **Discussion and Findings:**

7 . 1 We have carefully considered the grounds of appeal raised by the appellant, examined the Advance Ruling issued by the AAR, scrutinized the documents placed on record, and heard the submissions made by the authorized representative during the personal hearing held on 26.11.2025.The main issues in appeal relate to the taxability of the assignment of leasehold rights and the GST treatment of recovery of land development costs, and the eligibility of ITC in relation to commission paid. The issues raised in the grounds of appeal are examined hereunder.

7.2 Whether the Advance Ruling Authority was right in rejecting the contention of the question of law raised before it on the ground that the assignment of leasehold rights of leasehold land would be covered by the scope of supply for levy of goods or service tax under section 7 of the CGST Act 2017? If so, whether goods and service tax is applicable on the consideration of transfer of leasehold land paid by Indian Metal One Steel Plate Processing Pvt Ltd. (Transferee) to Kobelco Construction Equipment India Pvt Ltd. (Transferor), though the judgment of Gujarat High Court in the case of Gujarat Industrial Development Corporation Vs. Union of India and Gujarat Chamber of Commerce and Industry Vs. Union of India and Dhiraj Can Co. Pvt Ltd. Vs. Union of India and Others and the Supreme Court judgment in the case of Safari Treats would not be applicable as the Department has approached the Hon'ble Apex Court and filed a Special Leave Petition bearing No. 25536/2025 which is pending adjudication?

The appellant has challenged the AAR's finding that the assignment of leasehold rights constitutes a supply under Section 7 of the CGST Act, 2017, contending that such transfer amounts to "sale of land" and is therefore excluded from GST under Entry 5 of Schedule III. The appellant further argued that the AAR refused to follow the judgments of the Hon'ble Gujarat High Court in Gujarat chamber of Commerce and Industry Vs Union of India reported in (2025) 170

taxman.com 251(Gujarat) and also in Dhiraj Can Co. (P) Ltd., Vs Union of India reported in 2025) 176 taxman.com 311 (Gujarat)., as well as the observations of the Hon'ble Supreme Court in *Safari Retreats*.

After examining the submissions made by the appellant and the ruling given by the Authority for Advance Ruling, we find no infirmity in the conclusion drawn by the Advance Ruling Authority. The AAR has rightly observed that Section 7 read with Paragraph 2(a) of Schedule II unequivocally classifies the *grant of right to use immovable property for consideration*, as a supply of service. The statutory deeming fiction clearly overrides any argument that such assignment should be equated with a transfer of title in land. As correctly held in the AAR's order, what is transferred in the present case is only the *right to use* the demised premises for the remaining period of the lease, and not ownership of the land itself.

Further, the AAR has correctly observed that the view taken by the Hon'ble Gujarat High Court—namely, that the assignment of leasehold rights in land allotted by the Gujarat Industrial Development Corporation (GIDC) constitutes a transfer of immovable property and is therefore outside the scope of GST—may not be consistent with the statutory framework or the underlying intent of the GST regime.

In view of the fact that the Departmental appeal against the said decision of Hon'ble Hight Court of Gujarat has been admitted by the Hon'ble Supreme Court, the said decision relied by the appellant has not attained any finality and therefore, the AAR was justified in applying the statutory provisions.

The AAR has correctly concluded, the intention of the GST law is to tax all transactions involving transfer of rights in immovable property that do not transfer title. The assignment of leasehold rights, even when long-term or for substantial consideration, does not change the nature of the transaction from a service to a sale of land.

Further, the appellant reliance on supreme court judgement in Safari Retreats misplaced. Because, SafariRetreats deals with input tax credit on construction of immovable building for leasing. It does not address the taxability of GST on assignment/transfer of leasehold land

rights (without construction). Therefore, the decision in the said case is not applicable to the facts of the present appeal.

In light of the clear statutory mandate, persuasive advance rulings from other States, and CBIC Circular No. 44/18/2018-CGST dated 02.05.2018—which confirms taxability of leasehold assignments—the AAR's conclusion that GST is applicable on the consideration payable by the transferee is legally sound and requires no interference.

Accordingly, we hold that the Advance Ruling Authority was right in concluding that the assignment of leasehold rights in the present case is a taxable supply of service, attracting GST on the consideration received by the Transferor from the Transferee.

7.3 Whether the ruling of the Advance Ruling Authority is correct and justified in residing the ruling against the appellant as against the High Court judgment except has approached the Supreme Court by way of SLP No. 25536/2025 where no stay or suspension of the judgment was granted by the Hon'ble Apex Court?

The appellant argues that the Advance Ruling Authority erred in not following the judgment of the Hon'ble High Court of Gujarat in the case of M/s Gujarat chamber of Commerce and Industry Vs Union of India [reported in (2025) 170 taxman.com 251(Gujarat)]; and also in the case of M/s Dhiraj Can Co. (P) Ltd., Vs Union of India [reported in (2025) 176 taxman.com 311 (Gujarat)] since the Hon'ble Supreme Court, while admitting SLP No. 25536/2025, has not granted a stay or suspension of the operation of the said judgment. The appellant therefore contends that the AAR should have treated the assignment of leasehold rights as a transfer of immovable property not liable to GST.

The AAR was obligated to interpret the CGST Act independently, applying the express statutory provisions. Since the issue is *sub judice* before the Hon'ble Supreme Court, the decision relied by the appellant is not final. Therefore,we hold that the AAR acted within the correct legal framework, and the appellant's contention regarding non-application of the Gujarat High Court judgment is untenable.

7.4 Whether the Advance Ruling Authority is correct in following the Advance Ruling Authority's and circulars in:

i) Maharashtra Authority for Advance Ruling in the case of M/s

General Motors India Private Limited vide Ref. No. GST-ARA-31/23-24/2024-25/B-111, Mumbai, dated 10.3.2025,

ii) Uttar Pradesh Authority for Advance Ruling in the case of M/s Remarkable Industries Private Limited, Noida vide Ref. No. UP ADRG 41/2023, dated 7.12.2023,

iii) West Bengal Authority for Advance Ruling in the case of M/s Enfield Apparels Private Limited vide 11/WBAAR/2020-21, dated 17.8.2020,

iv) CBIC Circular No. 44/18/2018-CGST, dated 2.5.2018.

According to the appellant, the authorities passing the AAR should not have been influenced by the decisions of the AARs in other States and CBIC circulars. The AAR did not treat these rulings as binding precedents but only as persuasive interpretative tools, which is both appropriate and permissible. When similar factual situations have been consistently interpreted across different jurisdictions—such as in the rulings of the Maharashtra AAR (*General Motors India Pvt. Ltd.*), the Uttar Pradesh AAR (*Remarkable Industries Pvt. Ltd.*), and the West Bengal AAR (*Enfield Apparels Pvt. Ltd.*)—it lends uniformity and clarity to the application of the law.

Further, CBIC circulars issued under Section 168 of the CGST Act are authorized to ensure uniform administration of the GST law across the country. Circular No. 44/18/2018-CGST expressly clarifies the treatment of long-term lease transactions and supports the AAR's interpretation. The AAR's reference to these authorities is therefore reasonable, and does not amount to any legal infirmity. We therefore uphold the reasoning adopted by the AAR, and this ground of appeal too lacks merit.

7.5 Whether the receiving of cost of land development and related other costs would entitle the department to levy the GST to be considered as supply of service for levy of goods and service tax under the definition of section 7, and whether the GST is applicable on the recovery of cost of land development paid by Indian Metal One Steel Plate Processing Pvt Ltd. (Transferee) to Kobelco Construction Equipment India Pvt Ltd. (Transferor) as upheld by the advance ruling authority without considering the definition of supply of service for levy of goods and service tax?

The appellant contends that the AAR erred in holding that the recovery of land development cost constitutes a taxable supply of service under GST. It is argued that the reimbursement pertains to improvements attached to the land, and therefore cannot be treated as a supply for the purpose of Section 7 of the CGST Act.

The AAR, after analysing the nature of the works, correctly concluded that the activities undertaken—formation of internal roads, drainage, levelling, compound wall, and other civil infrastructure—clearly fall within the domain of construction and development services. These works enhance the usability and value of the demised premises and are independent taxable services under the GST framework.

Moreover, the reimbursement of ₹4.03 crore by the transferee is separately identifiable, distinct from the consideration for leasehold rights, and represents consideration for services rendered by the appellant. The AAR rightly concluded that such recovery constitutes supply of services under Section 7 and attracts GST at the appropriate rate. Therefore, we find the reasoning of the AAR to be correct and in conformity with the law, and this ground of appeal is unsustainable.

8. After analyzing all the grounds of the appeal, and upon evaluating the statutory provisions, the factual matrix, the AAR order, and the legal submissions, we find no reason to interfere with the findings of the Advance Ruling Authority. The case relied by the appellant have not yet attained finality and are before the Hon'ble Apex Court. The AAR has correctly applied Section 7, Schedule II, and Section 16 of the CGST Act in holding that (i) assignment of leasehold rights is a supply of service liable to GST and (ii) reimbursement of land development cost is taxable as a supply of service. The arguments advanced in the appeal do not reveal any infirmity, misinterpretation, or perversity in the AAR's ruling. Accordingly, we pass the following order.

ORDER

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The Advance Ruling Order No. 07/AP/GST/2025 dated 06.08.2025 is upheld.

BABU A, I.A.S

Chief Commissioner (State Tax)
Member

Chief Commissioner (Central Tax)
Member

To
M/s. Kobelco Construction Equipment India Pvt Ltd, 4100, Central Expressway, 355, Palmyra Road, Sri City, Tirupati, Andhra Pradesh, 517646 **(By Registered Post and Mail)**

Copy to
1. The Deputy Commissioner (ST),Special Circle, Chittoor Division (through mail).

Copy submitted to
1. The Chief Commissioner of Customs & Central Tax, O/o Chief Commissioner of
   Central Tax & Customs, Visakhapatnam Zone, CGST Bhavan, Port area, Visakhapatnam-530035. A.P.

2. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Kunchanapalli, Guntur District, A.P., 522501.

Digitally signed by
BABU A
Date: 02-12-2025
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