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**3rd & 4th Floor, Vanijyikar GST Bhawan, Sector-19, Atal Nagar,
Raipur (C.G.) 492002**

**PROCEEDING OF THE APPELLATE AUTHORITY FOR ADVANCE RULING
U/s. 101 OF THE CHHATTISGARH GOODS AND SERVICES TAX ACT, 2017**

Members Present are

Smt. Ranu Sahu,
Commissioner, State Tax,
Chhattisgarh, Raipur

Shri Vinod Kumar Saxena,
Chief Commissioner,
CGST & Central Excise, Bhopal Zone

Sub:- Chhattisgarh GST Act, 2017 – Advance Ruling U/s 101 :-

Regarding admissibility of input tax credit of taxes on the following question:-

- I. Whether input tax credit of GST paid on goods and services used for laying of cross-country pipeline nearby river till the boundary wall of the Factory can be taken by the Appellant?
- II. Whether input tax credit can be availed on Operation and Maintenance Services ('O & M Services') obtained by the Appellant for the maintenance of the facility?



Read:- Application dated 10-07-2020 M/s NMDC Iron & Steel Plant, Nagarnar, Dist- Bastar, Chhattisgarh- 494001.

PROCEEDINGS

[U/s 101 of the Chhattisgarh Goods & Services Tax Act, 2017 (herein- after referred to as CGGST Act, 2017)]

No.STC/AAAR/05/2020 60301

Raipur, Dated 15/10/2020

The appellant M/s NMDC Iron & Steel Plant, Nagarnar, Dist- Bastar, Chhattisgarh GSTIN 22AAACN7325A3Z3 has filed this appeal u/s 100 of the Chhattisgarh Goods & Services Tax Act, 2017 requesting advance ruling in respect of the following questions:-

- I. Whether input tax credit of GST paid on goods and services used for laying of cross-country pipeline nearby river till the boundary wall of the Factory can be taken by the Appellant?

- II. Whether input tax credit can be availed on Operation and Maintenance Services ('O & M Services') obtained by the Appellant for the maintenance of the facility?

2. Facts of the case:-

- I. NMDC Limited ("NMDC/the Appellant") is a state-controlled mineral producer of the Government of India. It is owned by the Government of India and is under the administrative control of the Ministry of Steel.
- II. It is India's largest iron ore producer and exporter producing about 30 million tons of iron ore from 3 fully mechanized mines in Chhattisgarh and Karnataka. It also operates the only mechanized diamond mine in the country at Panna in Madhya Pradesh.
- III. Since inception it is involved in the exploration of wide range of minerals including iron ore, copper, rock phosphate, lime stone, dolomite, gypsum, bentonite, magnesite, diamond, tin, tungsten, graphite, beach sands etc.
- IV. Operating Mines of NMDC includes the following –

- Bailadila Iron Ore Mine, Kirandul Complex, Distt. South Bastar, Dantewada (Chhattisgarh)
- Bailadila Iron Ore Mine, Bacheli Complex, Distt. South Bastar, Dantewada (Chhattisgarh)
- Donimalai Iron Ore Mine, Donimalai, Distt. Bellary (Karnataka)
- Diamond Mining Project, Majhgawan, Panna (Madhya Pradesh)

- V. NMDC, as part of its diversification, value addition and forward integration programme is setting up a 3 MTPA capacity greenfield Integrated Steel Plant based on HiSmelt technology in Nagarnar, located 16 km from Jagdalpur in Chhattisgarh state with an estimated outlay of Rs. 20,000 Crore.

- VI. As part of the above plan, NMDC is setting up Intake Well & Pump House and Cross Country Pipeline System at 3.0 MTPA Integrated Steel Plant at Nagarnar, Chhattisgarh. NISP has awarded contract for setting up of Intake well and Pump House and for laying of Cross Country Pipeline System, including operation and



maintenance for five years for NISP to a consortium lead by M/s Megha Engineering and Infrastructure Limited. The scope of work is categorized into 3 categories which is as under:

- Construction of intake well and pumphouse along with supply of associated motors and electricals equipment's
- Construction of pipeline, erection, installation and commissioning
- Operation and Maintenance Service for five years

VII. M/s NMDC has applied for advance ruling on the following issues:

1. Whether input tax credit of GST paid on goods and services used for laying of cross-country pipeline nearby river till the boundary wall of the Factory can be taken by the Appellant?
2. Whether input tax credit can be availed on Operation and Maintenance Services ('O & M Services') obtained by the Appellant for the maintenance of the facility?

On all of the above question, the AAR, Raipur Chhattisgarh vide order No. STC/AAR/09/2019 dtd. 12.03.2020 had ruled that "the Appellant is not eligible to input tax credit of the GST paid on goods and services used for laying of cross-country pipeline and also on Operation and Maintenance Services for the maintenance of the said cross-country pipeline laid outside the factory premise."

VIII. The Appellant preferred an appeal on the questions as mentioned in para V above, before the Appellate Authority for Advance Ruling in Chhattisgarh, Atal Nagar, Raipur.

IX. As per Section 100(1) of CGST Act, appeal against the advance ruling can be presented before the Appellate Authority.



3. Contention of the Appellant:

1. The Appellant has awarded contract for laying of Cross Country Pipeline System, including operation and maintenance for five years for NMDC to a consortium led by M/s Megha Engineering and Infrastructure Limited ("the contractor").

2. That, the Pipelines are ideally suited to transport the liquid and gases from distant locations to the factory at a very low energy consumption. Pipelines are the most convenient, efficient and economical mode of transporting liquids like petroleum, petroleum products, natural gas, water, milk, etc. Even solids can also be transported through pipelines after converting them into slurry. The Appellant uses pipelines to transport water from the nearest water source to its factory.

3. That, the project was initiated in the pre-GST regime, under which pipes were exempt from Excise duty. However, plant and equipment, to the extent it qualifies as 'capital goods' were eligible even if the same were installed outside the factory as the definition of 'capital goods' under CENVAT Credit Rules, 2004, specifically included capital goods used outside the factory for pumping of water for captive use in the factory.

4. That, as per Section 16(1) of CGST Act:

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



That, according to section 2(59), **"Input"** means any goods **other than capital goods** used or intended to be used by a supplier in the course or furtherance of business;

6. That, according to section 2(19), **"capital goods"**, means goods, the **value of which is capitalised in the books of account** of the person claiming the input tax credit and **which are used or intended to be used in the course or furtherance of business;**

7. That, reading all the above provisions together, the essential element for availing the credit of input taxes paid in respect of the inward supplies of goods and services is

that the said supplies shall be **used or intended to be used** in the **course or furtherance of business**.

8. The Appellant contended that the main objective and purpose of laying cross country pipeline is for transportation of water. Water is an essential ingredient in the process of manufacture of steel. The main application of water is its use as coolant, for dust suppression, for fire fighting, as drinking water and for other miscellaneous purposes.
9. That, it is clear from the above that laying of cross country pipeline constitutes an integral and inseparable part in the manufacturing process in as much as without the aforesaid activity of transportation of water for which pipelines are used, there cannot be manufacturing of Steel. Hence it is submitted that cross country pipelines are used in course of or furtherance of business.
10. That, the pipelines constitute an integral part of the manufacture carried out by the Appellant, credit of taxes paid by the Appellant should be eligible to the Appellant.
11. The Appellant relied upon the following case laws:-



a. In the case of ***Vikram Cements Vs. Commissioner of Central Excise [2006 (194) E.L.T. 3 (S.C.)]***, at para 25 it was held as below:-
Cenvat/Modvat - Inputs - Explosives for blasting mines to produce limestone for use in manufacture of cement/clinkers in factory situated at some distance away from mines - Cenvat credit on explosives could not be denied on the ground that they were not used as inputs within factory - Scheme of Cenvat Rules, 2000 did not prohibit this."

b. In the case of ***Jaypee Rewa Cement Vs Commissioner of Central Excise, M.P.[2001 (133) E.L.T. 3 (S.C.)]***, at para 10 it was held that

"Reading of Rule 57A clearly shows that the notification is to specify the goods used in or in relation to the manufacture of the final product whether directly or indirectly. In the present case, inputs which are used in relation to the manufacture even directly would be regarded as an input for the purpose of Rule 57A. Sub-rule (1) of Rule 57A does not, in any way, specify that the inputs have to be utilised within the factory premises. The explanation contained in Rule 57A is merely meant to enlarge the meaning of the word "input" and does not in any way restrict the use of the input within the factory premises nor does the said Rule 57A require the inputs to be brought into the factory premises at any point of time."

12. That, based on above, it can be concluded that pipelines are an integral part of the manufacturing process and therefore is rightly eligible for credit in terms of Section 16 of CGST Act, 2017. Pipelines need not be necessarily utilized within the factory premises. If the usage of inputs/input services is at some distance away from factory, credit cannot be denied on the ground that they were not used as inputs within the factory.

13. That, in the case of *Union of India v. Hindustan Zinc Ltd. [2002 (142) E.L.T. 289 (Raj.)]*, at para 10 it was held that



"Extraction of Zinc being an important and integrated process in manufacture of zinc concentrate, explosives used in mining operation to be treated as used in manufacture of zinc concentrates for the purpose of satisfying the conditions of Notification No. 191/87-C.E".

14. That, in the case of *India Cements Ltd v. Commissioner of Central Excise, Hyderabad 2002 (147) E.L.T. 393 (Tri. - Chennai)* at para 6 it was held that

"we allow the Modvat credit on explosives used as inputs on which duty has been paid and which are used in mining, in order to excavate lime stones which in turn is used as raw material in the manufacture of cement which is their final product."

15. Also, the case of **Commissioner of C. Excise, Chennai v. Pepsico India Holdings Ltd. 2001 (130) E.L.T. 193 (Tri. - Chennai)** at para 6 it was held that:

"We have considered the submissions made by both the sides and find that the pipeline can be considered in the factory in this case, it would be covered by the definition of the word 'factory' under Section 2(e) of the Central Excise Act, 1944. Therefore, we cannot find any other reason to uphold the Revenue appeal, since we find that the use of this subject pipeline is extension of the pipelines inside the factory to be used within the premises of the Respondent's factory"

16. Above principal was relied upon in the case of **Commissioner of C. Ex., Belgaum Vs Bellary Steel and Alloys Ltd. 2008 (226) E.L.T. 280 (Tri. - Bang)** and at para 4 it was held that:

"Water is essential ingredient for manufacturing of final product as held by the Tribunal's Larger Bench in 2001 (130) E.L.T. 193 (Tribunal). Pipes used for transporting water from outside the factory into factory for manufacture of final product. There is no merit in Revenue's appeal and same is rejected."

17. Above principal was also relied upon in the case of **Central Excise and Service Tax, Ahmedabad-III 2014-TIOL-2217-CESTAT-AHM**. It was held that credit on pipes used for laying of pipelines for bringing water to the factory and services used for laying and maintenance of pipeline is admissible in view of the decisions of Supreme Court and High Court.

18. That, based on above, it can be concluded that pipeline usage for the manufacturing process is an important element for determination of eligibility of credit. It is therefore, intended to be used in the course of furtherance of business of Appellant's mining activity.

19. Further contended that pipelines laid outside the factory for transporting water from outside the factory into factory for manufacture of final product is to be



considered as used within the factory. Activities for manufacturing of final products in the factory is for furtherance of business of Appellant's mining activity.

20. The Appellant contended that the expression used for the purpose of exclusion is "Pipeline laid outside the **factory premise**". Therefore, one can infer that pipeline laid anywhere other than outside factory should be eligible for credit. Also, credit of taxes paid can be allowed when pipeline is considered as a part of the Appellant's factory.

21. That, in the current case, the pipeline is not completely laid outside the factory of the Appellant. A part of the pipeline is well within the factory of the Appellant and therefore, the restriction contemplated in the section should not restrict the Appellant from claiming credit of taxes paid.

22. Therefore, emphasis has to be given to the word "factory" used in Section 17(5) and the exclusion shall be applied only to pipeline laid outside factory. By the above analogy, it can be said that Pipeline laid inside the factory or Pipeline laid place of business other than factory will not fall in exclusion of Plant and Machinery.

23. Importantly, the Appellant's pipeline is registered under the Factories Act, 1948 and this being so, the pipeline in the Appellant's case can never be said to be outside the factory of the Appellant.

24. That, Water is life for any industry which finds use either as a raw material, solvent, coolant, energy source or as transport agent and mostly it is carried through pipeline. Pipelines are unique mode of transportation inasmuch as they can move large quantities over long distance at low cost apart from its environment adaptability. Pipelines connected to a factory used for movement of various inputs and consumables are indispensable to the manufacturing process and it is unfair to impose restrictions on input tax credit availment on Pipelines.



25. That, based on the above submissions, pipelines laid for transport of water from a place outside factory, part of which is outside the factor is also part of the factory. Hence, Appellant believes that the Pipeline work is eligible for availing input tax credit.

26. That, in the case of **J.K. Udaipur Udyog Ltd. Vs Commissioner of C. Ex., Jaipur-II 2002 (147) E.L.T.996 (Tri. - Del)** held that ropeway used outside the factory for the purpose of transferring the crushed lime stones from the mines located away from factory (being part of ropeway inside the factory) is eligible capital goods and MODVAT credit is admissible. Similar principle was followed by the Honorable Supreme Court in the case of **M/s Birla Corporation Ltd Vs Commissioner Of Central Excise 2005-TIOL-99-SC-CX**

27. Similarly in the case of **Jaypee Bela Plant Vs Commissioner of C. Excise, Bhopal 2005 (180) E.L.T. 31 (Tri. - Del)** in Para 4 held that,

"Pipeline used for drawing water from reservoir situated 5-6 kms away from factory for manufacture of finished goods within factory is eligible for Modvat credit - Rule 57A of erstwhile Central Excise Rules, 1944 - Rule 4 of Cenvat Credit Rules, 2004"

Applying the ratio of above judgements to Appellant's case, it can be inferred that pipeline laid outside the factory (being part of pipeline inside the factory) is part of manufacture of final product. Distance is immaterial to determine whether pipeline is inside or outside the factory when one end of the pipeline is within the factory and the same being used for drawing water and transporting to the factory. Therefore, the portion of pipeline lying outside the factory is also to be considered as part of pipeline inside the factory and hence cannot be considered as pipeline laid outside the factory.

28. That, in the case of **Commissioner Vs GSPL India Transco Ltd [2016 (43) S.T.R. J23 (Guj.)]**, Hon'ble High Court held that:



"The Appellate Authority in its impugned order had held that transport of gas was not possible without pipeline, except with help of tankers which would be highly uneconomical. Further definition of input service under Rule 2(l) of Cenvat Credit Rules, 2004, does not exclude services in laying of pipeline for transport of gas as said service is different from construction of new building or civil structure as per erstwhile Section 65(25b) of Finance Act, 1994. This service is also not covered by other exclusion clause of said Rule regarding use in laying foundation or constructing support structure for capital goods. It was accordingly held that Appellant was eligible to avail Cenvat credit of Service Tax paid by service providers in laying gas transportation pipelines"

Based on above, it can be concluded that even in case of Appellant, transportation of water is not possible without laying of cross country pipeline for transport. Therefore, laying of pipelines is an integral part of Appellant's mining operations and hence used in course of furtherance of the business.

29. Further Authority of Advance Ruling of New Delhi, in the case of **GSPL India Transco Ltd [2015 (40) S.T.R. 393 (A.A.R)]**, held in Para 13, 14 and 15 that

"It has been correctly pointed out by the Appellant that service of laying of pipeline is different from construction of building or a civil structure, as under erstwhile Section 65(25b) of the Finance Act, 1994, "commercial and industrial service" meant (a) construction of a new building or a civil structure or a part thereof; or industrial construction service meant construction of a new building or civil structure or a part thereof; or (b) construction of pipeline or conduit; or it is clear from above that construction of a building or a civil structure are different than construction of laying of pipeline and would not come under the exclusion clause (a) above i.e. construction or execution of works contract of a building or civil structure.

14. The other exclusion clause is for service portion in execution of works contract and construction services insofar as they are used for laying of foundation or making



of structure for support of capital goods. It is noticed that this exclusion clause has 2 sub-parts, namely :

- (a) Service portion used for laying of foundation for support of capital goods; or
- (b) Service portion used for making of structure for support of capital goods.

15. Appellant has given a detailed description of process followed in laying pipelines, which includes site preparation, pipe transportation, pipe stringing, pipe welding, trenching, external coating, lowering in, back filling and land restoration. It is observed that both the above referred services to be excluded from the scope of "input service" are to be used for support of capital goods. There is no doubt that the subject goods i.e. pipes and valves, are capital goods but the input service to be rendered by the Appellant is not for support of pipes and valves i.e. "capital goods" but for laying of pipeline for transport of gas. As input service received by the Appellant from EPC contractors and others is not for laying of foundation or making of structure for support of capital goods, same does not fall under the exclusion clause, as above."



Based on above it can be concluded laying of pipeline for transport of water to factory is eligible for input tax credit under Section 17 of CGST Act, 2017.

30. That, the restriction under section 17(5) of the CGST Act, 2017 should be construed only to apply to pipelines laid outside the factory premises for provision of outward supply of goods and not pipelines laid outside the factory premises for inward supply of raw material necessary for manufacture of steel.

31. The relevant extract of Explanation under Section 17(5) of CGST Act is extracted below for reference:

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.***

32. That, the Procurement of raw material (water in this case) through pipelines is only a mode of procurement of material. When section 17 of the CGST Act, 2017 allows credit of taxes paid on motor vehicles purchased for transport of goods, the restriction under the law should not be understood to restrict credit in respect of taxes paid for laying of pipelines necessary for procurement of water.

33. Therefore, emphasis has to be given to the word “factory” used in Section 17(5) and the exclusion shall be applied only to pipeline laid outside factory. By the above analogy, it can be said that pipeline laid inside the factory or pipeline laid place of business other than factory will not fall in exclusion of Plant and Machinery.

34. That, the contract of the Appellant requires the contractor (supplier) to even maintain the facility for about five year from the commencement of the facility. For the operation and maintenance services (O & M services) of the supplier, the Appellant pays O&M charges on which GST is charged by the supplier.

35. That, input tax credit of taxes paid on the operation and maintenance should be available as input tax credit. Under section 17(5) of the CGST Act, 2017, there is no restriction on credit availment in as much as O & M services of any immovable property (like the restriction of credit of taxes paid for pipeline laid outside the factory premises) are concerned.



36. That, the AAR order in para 7 erred in holding that since the pipeline outside the factory is immovable property, input credit of maintenance services proposed to be paid to maintain the pipeline is not eligible.

37. That, the AAR failed to appreciate that even in terms of Sect 17(5)(c)/(d), the restriction of credit on goods and service is only with respect to original construction when capitalized in the books. Other than construction, all other ancillary activities like security, maintenance, repairs, insurance of the immovable property, there is no credit restriction.

38. That, the AAR erred in not appreciating the fact that the Appellant sought ruling on credit eligibility of input service (maintenance of pipeline) whereas the AAR has applied the explanation containing the restriction applicable for goods (pipeline) and held that credit on maintenance services is not eligible.

39. The Appellant further draws attention to Sec 17(5) wherein while denying the credit on motor vehicles u/s 17(5)(a), the provisions also specifically mention in 17(5)(a)/(b), the services of operating the motor vehicle are also denied for input tax credit as under:

"(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:—

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

(aa)

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

....."

40. The Appellant therefore submits that as given above for motor vehicles where even repairs and maintenance are not allowed for input tax credit, no specific restriction is



provided for insurance, repairs and maintenance for pipeline. Therefore, in the absence of such restriction u/s 17(5), the Appellant is eligible fore credit u/s 16(1) as the maintenance services are used in the furtherance of their business.

41. That, for the scope of supplies made as part of O & M supply in the current contract, one may refer to Table 7B of the contract.
42. Since O & M services are essential for the facility to be functional, section 17(5) does not place any restriction on availment of credit of taxes in so far as O & M supplies are concerned.

On the basis of above submissions, the Appellant should be eligible for the input tax credit on laying of Cross Country Pipeline System in terms of Section 17(5) of the said Act. Also, the Appellant submits that it is eligible for credit of taxes paid on O & M services obtained by it for the upkeep the pipeline equipment.

4) Personal hearing:-

In accordance with the established principles of natural justice, personal hearing in the matter was extended to the appellant on 17.09.2020. However, they requested for adjournment. Acceding to their request, another hearing in the case was given on 06.10.2020 and again on 08.10.2020, but which could not be held owing to some pressing exigency. The personal hearing in the matter was again extended to the appellant on 15.10.2020, through virtual mode, wherein Mr. S. Ananatnarayan and Mrs. Vinisha Mandula from M/s Price Waterhouse Coopers, Hyderabad, Mr. Ajay Dwivedi, DGM(Finance) M/s NMDC and authorized representative, Mr. Sanjay Kumar Padhy (Finance Manager) M/s NMDC, attended through virtual mode,. They reiterated their earlier submissions and also furnished an additional written submission dated 13.10.2020 which has been taken on record.



5) Legal position, Analysis and Discussion:-

The provisions for implementing the CGST Act and Chhattisgarh GST Act, 2017 [hereinafter referred to as "the CGST Act and CGGST Act"] are similar and unless a specific mention is made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the CGGST Act, 2017. The issues involved in the instant appeal filed are discussed hereunder:-

The appellant sought advance ruling to the points as under, before the Authority of Advance Ruling, Chhattisgarh:-

- i. Whether input tax credit of GST paid on goods and services used for laying of cross-country pipeline nearby river till the boundary wall of the Factory can be taken by the Applicant?
- ii. Whether input tax credit can be availed on Operation and Maintenance Services ('O & M Services') obtained by the Applicant for the maintenance of the facility?

5.1 The present appeal has been filed under Section 100(1) of the Central Goods and Services Tax Act, 2017 and the CGGST Act, 2017 by the Appellant M/s. NMDC Ltd, having their registered office at Khanij Bhavan, 10-3-311/A, Castle Hills, Masab Tank, Hyderabad, Telangana and works/ administrative office at ADMN Building Hilltop Road, Near CSD, 1st Floor, Bachel Complex, Dantewada (South Bastar) Chhattisgarh with GSTIN 22AAACN7325A3Z3, against the AAR (Authority of Advance Ruling) order No. STC/AAR/09/2019 dtd. 12.03.2020 passed by AAR, Raipur Chhattisgarh.

5.2 NMDC Limited (hereinafter 'the Appellant' or 'NMDC') is a state-controlled mineral producer of the Government of India. It is owned by the Government of India and is under administrative control of the Ministry of Steel. NMDC, as part of its diversification, value addition and forward integration programme is setting up a 3 MTPA capacity Greenfield Integrated Steel Plant based on HiSmelt technology in Nagarnar, located 16 km from Jagdalpur in Chhattisgarh state with an estimated outlay of Rs. 20,000 Crore. As part of the above plan, NMDC is setting up Intake Well & Pump House and Cross Country Pipeline System at 3.0 MTPA Integrated Steel Plant at Nagarnar, Chhattisgarh. NISP has been awarded contract for setting up of Intake well and Pump House and for laying of cross country pipeline system, including operation and maintenance for five years for NISP to a consortium led by M/s Megha Engineering and Infrastructure Limited. The scope of work is categorized into 3 categories which



viz. (i) Construction of intake well and pump house along with supply of associated motors and electrical equipment's. (ii) Construction of pipeline, erection, installation and commissioning (iii) Operation and Maintenance Service for five years. It is in this context, that the Appellant has awarded the contract for laying of Cross Country Pipeline System, including operation and maintenance for five years for NMDC to a consortium led by M/s Megha Engineering and Infrastructure Limited ("the contractor"). The Appellant submits that pipelines are ideally suited to transport the liquid and gases from distant locations to the factory at very low energy consumption and that pipelines are the most convenient, efficient and economical mode of transporting liquids like petroleum, petroleum products, natural gas, water, milk, etc. and further that even solids can also be transported through pipelines after converting them into slurry. The Appellant uses pipelines to transport water from the nearest water source to its factory.

It has been the contention of the Appellant that the project was initiated in the pre-GST regime, under which pipes were exempt from Excise duty and that plant and equipment, to the extent it qualifies as 'capital goods' were eligible even if the same were installed outside the factory as the definition of 'capital goods' under CENVAT Credit Rules, 2004, specifically included capital goods used outside the factory for pumping of water for captive use in the factory.

5.3 NMDC Limited, the Appellant as part of the above plan, NMDC is setting up Intake Well & Pump House and Cross Country Pipeline System at 3.0 MTPA Integrated Steel Plant at Nagarnar, Chhattisgarh. As discussed NISP has been awarded contract for setting up of Intake well and Pump House and for laying of Cross Country Pipeline System, including operation and maintenance for five years for NISP to a consortium lead by M/s Megha Engineering and Infrastructure Limited. The scope of work is categorized into 3 categories which are as under:

- i. Construction of intake well and pump house along with supply of associated motors and electrical equipment's
- ii. Construction of pipeline, erection, installation and commissioning
- iii. Operation and Maintenance Service for five years

5.4 Section 16(1) of CGST Act stipulates that:

"Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his



business and the said amount shall be credited to the electronic credit ledger of such person.

As per "Section 2(59) "Input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;

As per Section 2(19)"capital goods" means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;

- 5.5 Further Section 17(5) of CGST Act, 2017 stipulates the exclusions / restrictions on availment of input tax credit. Clause (c) and (d) of said section 17(5) provides for restriction of input tax credit in respect of goods and services used for construction of immovable property (other than plant and machinery).

"Construction" is defined under explanation to section 17(5)(c) and (d) for the purpose of these provisions to include re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property.

- 5.6 "Works contract" has been defined under section 2(119) of the CGST Act, 2017 as a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract. The above definition thus stipulates only certain works performed on immovable property as works contract. Further, it is only when there is involvement of transfer of property in goods that would make the contract as works contract i.e. there must be a supply of goods along with supply of service by the supplier (contractor).

- 5.7 For ease of reference, sub clause under Section 17(5) of CGST Act, 2017 is reproduced here under:

(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 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.

- 5.8 Aforesaid explanation to section 17(5) of CGST Act, 2017 categorically excludes pipelines laid outside the factory premises from the scope of plant and machinery, besides restricting credit of works contract services for works to be performed on immovable property and also restrict the credit of construction related activity of immovable property even when construction activity do not fall into the scope of works contract. However, works contract and construction activity is eligible for Input Tax Credit if done in respect of plant and machinery.

As already discussed supra, "plant and machinery" stand defined as any equipment, apparatus attached to earth by foundation or structural support used for supply of goods or services and at the same time specifically excluding therein land, building or any other civil structures, telecom towers and pipelines laid outside the factory premises.

Works contract *inter-alia* include construction of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract. Construction has been defined under explanation to section 17(5) (c) and (d) as reconstruction, repairs, renovation, additions etc. to an immovable property the cost of such work is capitalized. Thus, Construction activity will not qualify as works contract if there is no transfer of property in goods



involved i.e. in case where the contractor is supplying service only without any supply of goods. Works contract may or may not be a construction. From the facts of the case, the Appellants proposed pipeline is laid for short distance of less than 50 km from their factory pointing to the fact that the location of the proposed pipe line is outside their factory premises.

- 5.9 Immovable property has not been defined under the provisions of GST. However Immovable property stands defined under Section 3(26) of the General Clauses Act, 1897 to include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth. As per Section 3(36) of General Clauses Act, 1897, "movable property" shall mean property of every description, except immovable property. Section 3 of the Transfer of Property Act, 1882 stipulates that unless there is something repugnant in the subject or context "immovable property" does not include standing timber, growing crops or grass.

The Section however, defines the term "attached to the earth" to mean

- (a) rooted in the earth, as in the case of trees and shrubs.
- (b) embedded to earth, as in the case of walls or buildings and
- (c) attached to what is so embedded for permanent beneficial enjoyment of that to which it is attached.

Thus the essential character of "immovable property", relevant to the present context is that it is attached to the earth, or permanently fastened to anything attached to the earth, or forming part of the land and not agreed to be severed before supply or under a contract of supply. The project of laying pipe lines covers a large area, tailored specifically to fit the dimensions and orientation of the needs of the project. Dismantling and shifting the said pipeline project appears neither to be prudent nor a viable option. Thus, besides pipelines being laid outside the factory premises outside the scope of "plant and machinery" it also fulfills the conditions of being an immovable property.

- 5.10 We also find that the AAR in their impugned order appealed against, have also cited reference to Hon'ble Supreme Court judgment in the case of *M/s. T.T.G. Industries Ltd. v. Collector of Central Excise*, [decided] on 7 May, 2004 (167) E.L.T. 501 (S.C.) in Appeal (civil) 10911 of 1996, wherein the contract was for the design, supply, supervision of erection and commissioning of four sets of Hydraulic Mudguns and Tap Hole Drilling Machines required for blast furnace and the issue was whether the same is immovable property observed as under: -



"Keeping in view the principles laid down in the judgments noticed above, and having regard to the facts of this case, we have no doubt in our mind that the mudguns and the drilling machines erected at site by the appellant on a specially made concrete platform at a level of 25 feet above the ground on a base plate secured to the concrete platform, brought into existence not excisable goods but immovable property which could not be shifted without first dismantling it and then re-erecting it at another site. We have earlier noticed the processes involved and the manner in which the equipments were assembled and erected. We have also noticed the volume of the machines concerned and their weight. Taking all these facts into consideration and having regard to the nature of structure erected for basing these machines, we are satisfied that the judicial member of the CEGAT was right in reaching the conclusion that what ultimately emerged as a result of processes undertaken and erections done cannot be described as "goods" within the meaning of the Excise Act and exigible to excise duty."

The court also referred to its own judgments in the case of *Quality Steel Tubes (P) Ltd.* 1995 (75) E.L.T. 17 (S.C.) and *Mittal Engineering Works (P) Ltd.* 1996 (88) E.L.T. 622 (S.C.). In the case of *Quality Steel Tubes (P) Ltd.* 1995 (75) E.L.T. 17 (S.C.), Hon'ble Supreme court held that goods which are attached to earth and thus become immovable did not satisfy the test of being goods within the meaning of the Act. It held that tube mill or welding head is immovable property. In the case of *Mittal Engineering Works (P) Ltd.* 1996 (88) E.L.T. 622 (S.C.), the issue was whether mono vertical crystallisers is goods (in which case it would be excisable or immovable property). The mono vertical crystallisers is fixed on solid RCC Slab. It consists of bottom plates, tanks, coils, drive frames, supports etc. It is a tall structure rather like a tower with a platform. It was decided by the Court that the said product has to be assembled, erected and attached to the earth by a foundation and therefore not goods but immovable property. In the case of *Duncans Industries Ltd. v. State of U.P. & Ors* on 3 December, 1999 Hon'ble Supreme Court had to decide whether the 'plant and machinery' is 'goods' or 'immoveable property'. Hon'ble Apex Court held that the same is immoveable property observing as under:-

"The question whether a machinery which is embedded in the earth is movable property or an immovable property, depends upon the facts and circumstances of each case. Primarily, the court will have to take into consideration the intention of the parties when it decided to embed the machinery whether such embedment was intended to be temporary or permanent. A careful perusal of the agreement of sale and the conveyance deed along with the attendant circumstances and taking into consideration the nature of machineries involved



clearly shows that the machineries which have been embedded in the earth to constitute a fertiliser plant in the instant case, are definitely embedded permanently with a view to utilise the same as a fertiliser plant. The description of the machines as seen in the Schedule attached to the deed of conveyance also shows without any doubt that they were set up permanently in the land in question with a view to operate a fertilizer plant and the same was not embedded to dismantle and remove the same for the purpose of sale as machinery at any point of time. The facts as could be found also show that the purpose for which these machines were embedded was to use the plant as a factory for the manufacture of fertiliser at various stages of its production. Hence, the contention that these machines should be treated as movables cannot be accepted."

- 5.11 The inference drawn by the AAR that there being no visible intent on the part of Appellant to dismantle the said project of laying of pipe lines as these projects are being conceptualized for a fairly long period of time on the basis of the scope of work itself as forthcoming from the documents supra issued by M/s NMDC, the said project of laying pipe lines besides not being plant and machinery, are also immovable in nature is justified more so when these pipelines are also embedded to earth in view of explanation appended to sec 17(5) (c) and (d) supra.

"Plant and Machinery" by its very definition means

- (i) apparatus, equipment, and machinery, which is
- (ii) fixed to earth by foundation or structural support, that are
- (iii) used for making outward supply of goods or services or both and includes such foundation and structural supports
- (iv) but excludes—
 - a) land, building or any other civil structures;
 - b) telecommunication towers; and
 - c) pipelines laid outside the factory premises.

- 5.12 The Appellant in their defense have cited reference to the case law **J.K. Udaipur Udyog Ltd. Vs Commissioner of C. Ex., Jaipur-II 2002 (147) E.L.T.996 (Tri. - Del)** held that ropeway used outside the factory for the purpose of transferring the crushed lime stones from the mines located away from factory (being part of ropeway inside the factory) is eligible capital goods and MODVAT credit is admissible and that similar principle was followed by the Honorable Supreme Court in the case of **M/s Birla Corporation Ltd Vs Commissioner Of Central Excise 2005-TIOL-99-SC-CX**. They have cited reference to the case of **Jaypee Bela Plant Vs**



Commissioner of C. Excise, Bhopal 2005 (180) E.L.T. 31 (Tri. - Del) in Para 4 held that, "Pipeline used for drawing water from reservoir situated 5-6 kms away from factory for manufacture of finished goods within factory is eligible for Modvat credit - Rule 57A of erstwhile Central Excise Rules, 1944 - Rule 4 of Cenvat Credit Rules, 2004", to bring home their point that distance is immaterial to determine whether pipeline is inside or outside the factory when one end of the pipeline is within the factory and the same being used for drawing water and transporting to the factory. The Appellant have also cited reference to the case of **Commissioner Vs GSPL India Transco Ltd [2016 (43) S.T.R. J23 (Guj.)]**, Hon'ble High Court in their defense.

It is observed that the cited case laws either pertain to the erstwhile Cenvat / Modvat regime stipulating therein the provisions for availment of credit wherein the chapter heading/ subheading of the items which qualified being termed as "capital goods", were specifically covered under the definition viz. items falling under chapter 84, 85 etc. of CETA, 1985. In the case in hand, pipe lines laid outside the factory premises (that too as far as even 50Km away from the factory premises) stands excluded from the scope of plant and machinery as discussed in the preceeding para. Thus the said case laws cited by the appellant are distinct and distinguishable to the facts and circumstances in hand in as much the pipelines here are for transporting water from sources far away from the factory premises of Appellant.

- 5.13 Now coming to the second point on which the Appellant have sought ruling regarding eligibility of input tax credit on taxes paid on annual operation and maintenance services for the aforesaid pipeline laid outside the factory premises. It has been the contention of the Appellant that the contractor (supplier) is required to maintain the facility for about five year from the commencement of the facility and that for the operation and maintenance services (O & M services) of the supplier, the Appellant pays a considerable sum and is, therefore, required to pay a considerable sum of taxes under the GST law and that Input tax credit of taxes paid on the operation and maintenance should be available as input tax credit. It has been their point that under section 17(5) of the CGST Act, 2017, there is no restriction on credit availment in as much as O & M services of any immovable property (like the restriction of credit of taxes paid for pipeline laid outside the factory premises) are concerned.

In their additional submission, the appellant in their defense have cited reference to the case laws **Bharat Oman Refineries Ltd. Vs. CGST, C.E. & C.C., Bhopal [2019(2) TMI 746- CESTAT, NEW DELHI]** held that it is clear that the construction service



relating to modernization, renovation and repair of the factory continued to be within the meaning of 'input service' and accordingly, the service tax paid on such service is eligible to credit. They have cited reference to the case of **M/s. SANOFI INDIA LIMITED VERSUS COMMISSIONER OF CENTRAL EXCISE, BHARUCH [2018(10) TMI 1320- CESTAT AHMEDABAD]** held that as per rule 2(I) even though the 'Construction Service' was excluded but in the inclusion clause of definition, the services such as modernization, renovation and repair of the factory premises of manufacturer is still covered under the definition of Input Service. Service of repair and maintenance are eligible for Cenvat credit- appeal allowed- decided in favor of appellant. They have also cited reference to the case of **CADILA HEALTHCARE LTD VERSUS C.C.E. AND S.T.-VADODARA-I [2018(2) TMI 545- CESTAT AHMEDABAD]** held that service utilized in relation to modernization, renovation and repair of the factory are definitely within the meaning of 'input service' even though construction of a building or civil structure or part thereof has been placed under the exclusion of the said definition of 'input service'.

The cited case laws either pertain to the erstwhile Cenvat / Modvat regime stipulating therein the provisions for availment of credit wherein the chapter heading/ subheading of the items which qualified being termed as "capital goods", were specifically covered under the definition viz. items falling under chapter 84, 85 etc. of CETA, 1985. In the case in hand, pipe lines laid outside the factory premises (that too as far as even 50Km away from the factory premises) stands excluded from the scope of plant and machinery as discussed in the preceeding para. The case law cited by the appellant relates to cenvat credit on services used for modernization, renovation and repair of plant and machinery, which is definitely not the case here in as much as such pipelines laid outside the factory premises stand excluded from the definition of 'plant and machinery'. Here it is not the case that 'Pipelines laid outside the factory premises' are being used for providing any output service of transport of liquids/gases.

The appellant have also furnished a copy of certificate of licence to run a factory issued by the Government of Chhattisgarh to bring home their point of contention that these pipe lines (laid outside the factory) are 'factory' in itself. Perusal of the said certificate reveals that this licence has been granted by the Deputy chief Inspector of Factories, Government of Chhattisgarh for the very specific purpose of water treatment and pumping of water to the consumers by employing workers not more than nineteen on any one day during the year. This certificate in no way comes to their rescue for the claimed Input Tax Credit under the provisions of section 16(1) of CGST Act 2017, in as much as the said certificate is for treatment of water and its pumping from the said source of water whereas Section 16(1) of CGST Act



read with Section 17(5) of CGST Act, 2017 specifically provides for restriction of input tax credit and the explanation appended under Section 17 excludes pipelines laid outside the factory premises from the definition of 'plant and machinery' thereby denying the input tax credit on the same.

Thus the said case laws cited by the appellant are distinct and distinguishable to the facts and circumstances in hand in as much the pipelines here are for transporting water from sources far away from the factory premises of Appellant. We have already arrived at the conclusion that the pipe lines laid outside the factory premises of the Appellant are not plant and machinery in view of the above exclusion clause as also that the said pipe lines are nothing but immovable property. Thus there exist no grounds for availment of Input tax credit on the taxes paid on annual operation and maintenance services of the aforesaid pipeline laid far outside the factory premises of the Appellant. It would be in the fitness of scheme to mention here that Input Tax credit be it on goods or services, is not a blanket unconditional facility for availment of credit on all items irrespective of its use, place of use and its role in effecting outward supply of goods or services or both.

- 5.14 Thus under GST, Section 17(5) of CGST Act, 2017 provides for restriction of input tax credit and the explanation appended under Section 17 excludes telecommunication towers and pipelines laid outside the factory premises from the definition of 'plant and machinery' thereby denying the input tax credit. Besides this as discussed above and in view of the details furnished by the Appellant, there hardly remains any ambiguity that the pipelines in question are 'immovable property. Further it is worth mentioning here that the case in hand is not that the 'Pipelines laid outside the factory premises' are being used for providing any output service of transport of liquids/gases. Thus the conclusion arrived at by the AAR that the said project for laying cross country pipelines outside the factory premises of the Appellant can in no way be directly related to the outward supply of goods, is sustainable under law. In terms of Section 2(83) of CGST Act, 2017 *"outward supply" in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business.* No nexus whatsoever could be made of the "outward supply", with the pipe lines laid outside the factory premises of Appellant for water supply on which ITC is being claimed. We also agree with the findings of the AAR that the provisions facilitating availment of Input Tax credit does not extend any blanket or unconditional permission for availment of credit on all items



irrespective of its use, place of use and its role in making outward supply of goods or services or both, as appears to have been misconstrued by the Appellant. The Appeal filed by the Appellant is thus found to be devoid of any merits.

Having regard to the facts and circumstances of the case and discussions as above, we dispose of the instant appeal filed by M/s NMDC, the Appellant by passing the following order:-

ORDER

(Under Section 101(1) of the CGST Act, 2017 and Chhattisgarh Goods and Services Tax Act, 2017)

No.STC/AAAR/05/2020

Raipur, Dated 15/10/2020

The ruling so sought by the Appellant is accordingly answered as under:-

In view of the above, there is no merit in the appeal filed by the Appellant M/s NMDC having GSTIN 22AAACN7325A3Z3, against the Advance Ruling order No. STC/AAR/09/2019, dated 12th March 2020 passed by the AAR, Chhattisgarh and accordingly the said order is upheld.

Place: - Raipur

Date:-



TRUE COPY

Ranu Sahu
Commissioner
(Member)

MEMBER

Copy to:-

1. Appellant
APPELLATE AUTHORITY FOR
ADVANCE RULING, CHHATTISGARH

2. The Commissioner, (SGST)
3. The Chief Commissioner, (CGST)
4. The jurisdictional officer, Jagdalpur Circle-2.

TRUE COPY

Vinod Kumar Saxena
Chief Commissioner
(Member)
MEMBER

APPELLATE AUTHORITY FOR
ADVANCE RULING, CHHATTISGARH