THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX
(constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)
ORDER NO. MAH/AAAR/SS-RJ/01A/2019-20 **Date- 13.01.2020**

BEFORE THE BENCH OF

(1) Smt. Sungita Sharma, MEMBER

(2) Shri Rajiv Jalota, MEMBER

GSTIN Number	27AAACJ8109N1Z8
Legal Name of Applicant	M/s JSW Energy Limited
Registered Address/Address provided while obtaining user id	JSW Centre, Bandra Kurla Complex, Near MMRDA Ground, Bandra (East), Mumbai – 400 051
Details of appeal	Appeal No. MAH/AAAR/01/2018-19 dated 05.04.2018 against Advance Ruling No. GST-ARA-05/2017/B-04 dated 05.03.2018
Concerned officer	Asstt. Commissioner, Central GST, Division-V, Ratnagiri

PROCEEDINGS

(under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.

The present appeal had been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by M/s JSW Energy Limited, (herein after referred to as the "Appellant") who had preferred appeal against the Advance Ruling No. GST-ARA-05/2017/B-04 dated 05.03.2018.

The Maharashtra AAAR had, vide its Order No. MAH/AAAR/SS-RJ/01A/2019-20 dated 02.07.2018, disposed of the aforesaid appeal by holding as under:

The processing undertaken by a person on the goods belonging to another registered person qualifies as job work even if it amounts to manufacture provided all the requirements under the CGST/MGST Act in this behalf, are met with.

Further, under the facts and circumstances of the instant case, the transaction proposed to be carried out between the Appellant and M/s JSL does not qualify for Job Work envisaged under Section 2(68) read with Section 143 of the CGST Act, 2017.

The AAAR in the said ruling dated 02.07.2018 had observed as under:

(i) The condition stipulated in the definition of the "Job work" provided under section 2(68) of the CGST Act, 2017, which envisages the presence of the two persons only, viz. the Principal and the job worker, in any job work transaction, is not satisfied due to the inevitable presence of the 3rd Party i.e. MSEDCL, which happens to be the power regulator in the state of Maharashtra having the authority to formulate the norms and guidelines regarding the electricity distribution within the state, which are required to be complied with by the entities seeking to use the distribution facility of MSEDCL.

(ii) Further, the condition prescribed for the 'job work' procedure as envisaged under section 143 (1)(a) of the CGST Act, 2017, which provides that a registered person is required to bring back the inputs from the premises of the Job worker after completion of job work or otherwise, is also not fulfilled by the Appellant owing to the following two reasons:

(a) the inputs proposed to be sent by the Principal i.e. JSL to the Appellant i.e. JEL would get consumed to generate electricity, thus, in that case, the Principal i.e. JSL would not be in position to bring back the inputs that it proposes to send to JEL, as the same would get transformed into completely new commodity i.e. electricity;

(b)the presence of the above mentioned power regulator i.e. MSEDCL, which restricts the liberty and capability of M/s. JSL, the principal, in bringing back the inputs from the premises of the Job worker i.e. the Appellant, as the Principal is bound to follow the regulatory guidelines laid down by the Power regulator i.e. MSEDCL, which is subject to changes. Thus, the Appellant has no other option than to depend on the permissions granted by the regulator i.e. MSEDCL and the guidelines issued in this regard. Thus, the return of the inputs in the form of the electricity to the premises of the Principal is not guaranteed in the current circumstances, thereby, not satisfying the conditions of the job work procedure provided under section 143(1)(a) of the CGST Act, 2017.

(iii) It was, further, observed that since the Appellant, which claims itself to be the job worker in the proposed arrangement, will be adding air and water on its own account, which are of the considerable volume and cost, to the coal proposed to be supplied by JSL for the generation of the electricity, the Appellant will not be construed as job worker in light of

the Hon'ble Supreme Court Judgment in the case of the Prestige Engineering (India) Vs. Collector of C.Ex. Meerut [1994 (73) E.L.T. 497 (S.C.)], wherein the Apex Court held as under:

"Job work means goods produced out of materials supplied by customer and where the job workers contribute mainly their labor and skill though done with the help of their own tools, gadgets or machinery - But when the job worker contributes his own raw material to the article supplied by the customers and manufactures different goods it does not amount to job work however addition or application of minor items by job worker would not detract it being a job work - Like a tailor stitching a shirt or suit out of the cloth supplied by his customer, may use his own buttons, thread and lining cloth and such an activity would amount to job work."

Since, in the instant case, the other inputs,e.g. air, water etc., procured by the Appellant, i.e. JEL, which are essentially required for the generation of power, cannot be considered as the minor additions because of their volume and cost associated with them, the proposed arrangement/transaction will not have the essence or characteristics of the Job worker, as per the rulings of the aforesaid Supreme Court Judgment, which contemplates that only the minor additions of the inputs can be done by the Job worker on the inputs supplied by the principal in any job work activity.

Aggrieved by the above AAAR order, the Appellant had filed the writ petition before the Hon'ble Bombay High Court on the groundsthat the Appellate Authority had exceeded its jurisdiction by introducing or relying upon the 'new grounds', which were never raised by the Revenue before the Advance Ruling Authority, and that too without putting the Appellant to notice in respect thereof,while deciding the subject appeal , thereby, resulting in the violation of the principles of natural justice.

The Hon'ble Bombay High Court, taking cognizance of the aforesaid writ petition and grounds therein, filed by the Appellant, passed an order dated 07.06.2019, wherein the Hon'ble Court has directed to reconsider the appeal under question by taking into account the additional submissions including the additional documentary evidence, proposed to be filed by the Appellant with regard to the new grounds adopted by the Appellant Authority while issuing the impugned Appellate Order dated 02.07.2018,as well as all the earlier grounds relied upon by the Appellant in the Appeal memo as well as in the advance ruling application filed before the Advance Ruling Authority.

In pursuance to the above High Court Order, the subject appeal is being reconsidered in light of the Appellant's additional submissions dated 10.07.2019 as well as the earlier submissions made before the Appellate Authority. The Brief facts of the case and grounds put forth by the Appellant are being reproduced herein under.

FACTS OF THE CASE

A. JSW Energy Limited, (hereinafter referred to as "**the Appellant**") is engaged in the business of power generation and having Goods and Services Tax ('GST') Registration No.27AAACJ8109N1Z8.

B. JSW Steel Limited ("JSL"), having GST Registration No. 27AAACJ4323N1ZG is engaged in manufacture and supply of steel. The manufacturing activity undertaken by JSL requires power on a continuous and dedicated basis. For the said purpose, JSL and the Appellant (both being related party in terms of the Central Goods and Services Tax Act, 2017 ('CGST Act') propose to enter into an arrangement (hereinafter referred to as the 'Job Work Arrangement') for the purpose of supply of coal and processing of the same into power for captive use by JSL.

C. The Appellant's power plant is divided into four units and the said Job Work Arrangement is pertaining to Unit III and Unit IV of the power plant. These are in the nature of captive power units and by virtue of the arrangement, JSL would be construed as Principal and JEL would be working as Job Worker.

D. In terms of the proposed arrangement, JSL would procure coal or any other inputs (herein after collectively referred to as 'inputs') and supply the same to the Appellant for the purpose of carrying out the activity of generation of power. On receipt of the same, Appellant would undertake certain processes to convert the said inputs into power.The power generated from the aforesaid process on inputs will be supplied back to JSL for which the Appellant would be receiving job work charges as per the rate that would be agreed as per the Job Work Arrangement. During the whole process under the Job Work Agreement, the title in the inputs vest with JSL along with the power generated with the use of such inputs. In addition to power, fly ash and other resultantproducts generated at power plant using the inputs will also vest with JSL and the Appellant will have no ownership in such resultant products.

The Appellant had approached the Advance Ruling Authority (AAR) for seeking an advance ruling under Section 95(a) of the CGST Act, for determination of the applicability of GST on the following issues:

I. Supply of coal or any other inputs on a job work basis by JSL to JEL

II. Supply of power by JEL to JSL

III. Job work charges payable to JEL by JSL

ORDER PASSED BY AAR

E. The Order dated 05.03.2018has been passed by AAR holding that the proposed transaction amounts to manufacture and therefore it would not qualify as 'job work' under GST.

F. The Impugned Order has not responded on the GST implication in respect of the coal and other inputs supplied by the JSL to Appellant on the basis that the transaction pertains to GST liability of JSL and not of Appellant.

G. Being aggrieved by the Impugned Order, the Appellant has filed the appeal before this appellate authority making prayer to set aside the said impugned order passed by the Advance Ruling Authority and give further order in the facts and circumstances of the case on the following grounds--

Relevant Groundsof Appeal incorporated in the appeal memo dated 05.04.2018 in the context of reconsideration of the subject appeal

ELECTRICITY CAN BE GENERATED ON JOB WORK IS A SETTLED LAW

1. The Appellant submits that it is well settled *inter-alia* in terms of the below mentioned judgments of the Courts that electricity being intermediate goods used in the manufacture of final product, can be generated on job work basis:

- ***Commissioner of Central Excise, Nagpur vs Indorama Textiles Ltd.***[1]
- ***Haldia Petrochemicals Ltd vs CCE, Haldia***[2]
- ***Sanghi Industries Limited vs CCE, Rajkot***[3]
- ***Sanghi Industries Limited vs CCE, Rajkot***[4]

2. The above judgments cover instances where materials (such as naphtha, light diesel oil, furnace oil, etc.) were supplied to the job worker for carrying out a specified process for the purpose of generation of electricity. The relevant extract of the High Court decision in Indorama Textiles Ltd (supra) is reproduced below where the issues of generation of electricity under a job work model is not even disputed by the Authorities –

[1] 2010 (260) ELT 382 (Bom HC)
[2] 2006 (197) ELT 97 (Tri.- Delhi)
[3] 2006(206) ELT 575 (Tri.- Delhi)
[4] 2014(302) ELT 564 (Tri.- Ahmd.)

*"8. **The fact of electricity being intermediate goods used in manufacture of final product by Respondent No. 1 is not in dispute before us. It is nowhere contended that M/s. IRSL cannot be a job worker and generation of electricity cannot be outsourced. When it can be outsourced, it also follows that Respondent No. 1 need not have a captive power plant**. Only contention is fuel oil is not received in factory of production or/and is not being used or processed any time within factory of production. It is apparent that said issue stands concluded by the above-mentioned judgment of Hon'ble Apex Court and there is no change of law in this respect. It is also clear that inputs or raw material can be directly forwarded to job worker for production of intermediate goods. There is no challenge to understanding/agreement between Respondent No. 1 and M/s. IRSL. We do not find anything perverse in findings recorded in paragraph 6 of the order No. A/67/2007/EB-C-II, dated 31-1-2007 in Appeal No. E/3701/05-Mum. These reasons hold good even for second matter."*

3. Further the Supreme Court dismissed the appeal petition filed by the Commissioner of Central Excise Nagpur against the order of the Hon'ble Bombay High Court in the matter of Indorama Textiles Ltd (supra) – ***Commissioner of Central Excise, Nagpur vs Indorama Textiles Ltd***[5].

Additional Submissions made by the Appellant with regard to the new grounds taken up in the Appellate Order dated 02.07.2018, pursuant to the Hon'ble Bombay High Court dated 07.06.2019

COAL IS AN INPUT FOR THE PRINCIPAL

4. The Appellant submits that the Appellate Authority Order has entirely failed to appreciate the essence of the transactions in light of the provisions of law and erroneously concluded that coal and other inputs supplied to the Appellant do not constitute as inputs for the manufacture of steel for JSL. The Appellate Authority failed to appreciate that the definition of 'inputs' as defined under Section 2(59) of the CGST Act is very wide. The said definition is reproduced as follows:

5. 'input' means any goods other than capital goods used or intended to be used by a supplier **in the course or furtherance of business;**

(Emphasis supplied)

[5] 2010(260) E.L.T. A83(SC)

6. For the said purpose, reliance is also placed on the term 'business' which is defined under Section 2(17) of the CGST Act. For the said purpose:

Business includes -

(a)Any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit,

7. ***(b) Any activity or transaction in connection with or incidental or ancillary to sub-clause (a)***

.....

.....

8. Basis the above, it is humbly submitted that the Appellate Authority ought to have appreciated the fact that coal is an input used in the manufacture of power, which inter-alia is used for manufacture of steel. Further, the definition of 'inputs' is very wide under the GST regime. The Appellant re-iterates its submissions made before the Appellate Authority dated 22.06.2018 where extracts of the Memorandum of Association of JSL were made available. The relevant extracts of the same are reproduced as under:

B. THE OBJECTS INCIDENTAL OR ANCILLARY TO THE ATTAINMENT OF THE MAIN OBJECTS:

3. To carry on the business of mechanical engineers and to design, construct, fabricate and manufacture all kinds of machines, tools and implements, iron and brass founders, metal workers, machinists, iron and steel workers, smiths, metallurgist, ***producers of electric energy****, appliances: to carry out research and development for any activity ....*

(Emphasis supplied)

9. This being the case, it is submitted that it is squarely clear that generation of power is one of the business activities of JSL (i.e. the Principal) and coal used for such business qualifies as input. The Ld. Appellate Authority entirely bypassed this and has distinguished the same claiming that coal would not qualify as an input for the Principal. Even at the time of adopting the said rejection, the Ld. Appellate Authority failed to appreciate that the ambit of the term 'business', covers any trade, commerce, manufacture, profession, vocation, adventure or any similar activity as well as activities which are incidental or ancillary to the said activities. Thus, the activity of generation of power is clearly within the ambit of a business as per the Memorandum and accordingly coal would qualify as an input.

10. Additionally, the Appellant re-iterates that its power plant is a captive power plant of JSL. Thus, generation of power is an integral part of the business activities of JSL and such power generated at the captive plant is used for manufacture of steel. The coal required for generation of power thus qualifies as input.

11. Basis the above, it is humbly submitted that the ground adopted by the Ld. Appellate Authority on coal not being an input for JSL (i.e. the Principal) is not tenable under the applicable GST legislations for reasons cited above.

12. In addition to the above submissions, the Appellant seeks reference to Circular No. 79/53/2018-GST dated 31.12.2018 issued by the Central Board of Indirect Tax and Customs. Relevant portions of the paragraph 9 (b) of the aforesaid circular are reproduced as under:

Issue: A registered person uses coal for the captive generation of electricity which is further used for the manufacture of goods (say aluminum) which are exported under Bond/Letter of Undertaking without payment of duty. Refund claim is filed for accumulated Input Tax Credit of compensation cess paid on coal. Can the said refund claim be rejected on the ground that coal is used for the generation of electricity which is an intermediate product and not the final product which is exported and since electricity is exempt from GST, the ITC of the tax paid on coal for generation of electricity is not available?

13. *Clarification: There is no distinction between intermediate goods or services and final goods or services under GST.* ***Inputs have been clearly defined to include any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Since coal is an input used in the production of aluminum, albeit indirectly through the captive generation of electricity,*** *which is directly connected with the business of the registered person, input tax credit in relation to the same cannot be denied.*

(Emphasis Supplied)

14. The Appellant humbly submits that the transaction in question is squarely covered by the aforesaid example. As explained, the output i.e. aluminum is similar to steel and has a similar manufacturing process. Inputs (such as coal) are used for the manufacture of power, which is used for the manufacture of steel. Therefore, it would be incorrect to conclude that only those inputs which are directly consumed in the manufacturing process would qualify as inputs under the CGST Act. Contrary to the same, it has been clarified that as long as the subject inputs are used/ intended to be used for the assessee's business and

there are no specific restrictions under the GST legislation, the same would qualify as eligible inputs for the purpose of availment of credit under the said legislation.

15. Without prejudice to the above, the Appellant humbly submits that JSL has been regularly importing coal as an input, for the process of generation of power, which is used in the manufacture of steel. JSL has been availing credit of eligible duties and taxes under pre-GST as well as under GST regime. Eligibility of credit was under examination by the concerned tax authorities on the said imports based on the applicable provisions under Rule 3 of the CENVAT Credit Rules 2004. In the said context, reference is sought to the order issued by Commissioner of Central Excise and Customs - Belgum (010- No. BEL/ EXCUS/000/COM/B.HR/ 005/13-14/CX dated 30.06.2014), which allowed JSL CENVAT Credit of the Counter veiling Duty paid on the import of steam coal. The relevant portion of paragraph 25 is quoted as follows:

As the arguments and the contentions of the assessee found to be more appropriate and as such, I found no merits in the stand taken by the department to deny Cenvat credit of 1% / 2% CVD paid by the assessee on the imported steam coal. Hence, I incline to allow the Cenvat credit of Rs. 5,14,84,164/- and Rs 9,56,57,260/- availed during April 2012 to February 2013 and March 2013 to September 2013 respectively.

16. To the above, the Appellant seeks to point out that in the above referred matter, the Ld. Commissioner of Central Excise and Customs - Belgaum, took cognizance of the fact that steam coal was an input for JSL and accordingly allowed credit of the same. Further, no appeal has been filed by the Department against the aforesaid order thus it is clear that coal is always considered as an input for steel. To this, it is humbly submitted that if coal is not to be considered as an input then an anomaly is being created for the Principal whereby eligibility of inputs based on activities carried out on their own account (in the State of Karnataka) are being treated differently as compared to a Job Work activity (proposed in the State of Maharashtra). The Appellant humbly submits that the matter referred under the present appeal is governed under the GST legislations applicable to the State of Maharashtra and the same are identical to the GST legislations applicable to the State of Karnataka, where the assessee referred to in the aforesaid paragraph is located. Even under the GST legislation, JSL has been availing credit of GST paid on coal. A sample copy of the bill of entry for import of coal by JSL, on which credit has been availed, is enclosed herewith.

17. Furthermore, with reference to the provisions under the erstwhile CENVAT Credit Rules, 2004, the Hon'ble Supreme Court in the case of Maruti Suzuki Ltd. vs. CCE [2009 (240) ELT

641 (SC)] held that when power generation is a captive arrangement and the requirement s for carrying out the manufacturing activity, the power generation forms part of the manufacturing activity and 'Inputs' used in the powergeneration would be treated as inputs used in the manufacture of final product. The relevant extract of the said judgement is reproduced as follows:

> *The question which still remains to be answered is: whether an assessee would be entitled to claim CENVAT credit in cases where it sells electricity outside the factory to the joint ventures, vendors or gives it to the grid for distribution? In the case of Collector of Central Excise v. Rajasthan State Chemical Works reported in 1991 (55) E.L. T. 444 (S.C.) the test laid down by this Court is whether the process and the use are integrally connected. As stated above, electricity generation is more of a process having its own economics. Applying the said test, we hold that when* ***the electricity generation is a captive arrangement and the requirement is for carrying out the manufacturing activity, the electricity generation also forms part of the manufacturing activity and the "input" used in that electricity generation is an "input used in the manufacture" of final product. .....***
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> ***(Emphasis Supplied)***

18. Basis the above rulings, the Appellant humbly re-iterates that coal has been construed as an eligible input used for the manufacture of power which in turn is used for manufacturing/supply of taxable product and accordingly credit for the same has been allowed. These facts are akin to the Appellant's matter, who generates power from a captive power plant of the Principal (i.e. JSL). Therefore, given the facts of the present scenario, coal should be continued to be treated as an input in the hands of JSL.

INPUTS CAN BE BROUGHT BACK BY THE PRINCIPAL WITH THE HELP OF A THIRD PARTY

19. The Appellant reiterates that transaction undertaken by it fulfills all the conditions mentioned under Section 143 of the CGST Act to qualify as a Job Work transaction. The Appellant submits that inputs provided by JSL, are proposed to be sent back to the Principal in the form of power within the stipulated time and in accordance with the aforesaid section. Further, the Appellant humbly submits that the said section does not bar the involvement of a third party for transporting the goods from the premises of the Job Worker to the Principal. The Ld. Appellate Authority has erred in its order under paragraph

48 to hold that the job work arrangement requires only two persons. The Appellant humbly submits that movement of inputs from the Principal to the Job Worker and back to the Principal, subsequent to completion of the Job Work would require a medium or a carrier. As an illustrative example, inputs which are brought back to the Principal's premises and are tangible in nature could be transported through roadways/ railways etc. In such a case, the rail authorities would be a regulator for allocation of rakes/ carriages. A fee would be charged for transportation of inputs, loading unloading etc. In light of the said example, it would be absurd to conclude that since the railway authority is a regulator in said example, a Job Work model cannot be executed by a Principal and a Job Worker utilizing the services of the railways. Similarly, the amount paid to the Grid is akin to a transportation charge for goods sent from the Job Worker's premises. It would be equally absurd to conclude that when goods are transported back to the Principal's place by a transport service provider, the conditions for Job Work are not fulfilled since the same involved more than two persons. The fact that MSEDCL / regulator is involved in the transaction does not exclude the subject transaction from the ambit of a Job Work activity.

20. Reference can also be cited to the decision of the Hon'ble High Court of Bombay in the matter of CCE, Aurangabad vs. Endurance Technologies Pvt. Ltd. [2015-TIOL-1371-HC-MUM-ST] where credit on inputs and input services used by wind mills to generate energy which is made available to the manufacturer through power board under the barter system, has been allowed. The Tribunal at Chennai in the matter of DCW Ltd vs. Commissioner of C.Ex, Triunelveli [2016(332) ELT 142(Tri-Chennai) 5 2015-TIOL-(982-CESTAT-MAD)]and in the matter of The India Cements Ltd and Others vs CCE, Salem and Others"also followed the above principle. Relevant extract of the India Cement Ltd case is reproduced as follows:

Our view above is fortified from the judgment of the Hon'ble High Court of Bombay in Central excise appeal No. 14/2012 in the case of CCE, Aurangabad Vs. Endurance Technology Pvt. Ltd., disposed on 02.12.2014. The Hon'ble Court examining the meaning of the 'input' under Cenvat Credit Rules, 2004 and admissibility of credit of tax on suchinput held that there should not be inadmissibility of input credit on input or input services used by wind mills to generate energy which is made available through power board under barter system.

21. In the judgment of Endurance Technologies (supra), the High Court has concluded that input tax credit of the inputs used in generation of power under barter transaction, where

the power is supplied back against the inputs, would be available. Basis the above-mentioned judgments, which formed part of the submissions to the Advance Ruling Authority, it can be construed that transaction of processing the inputs supplied by JSL and supplying back the power generated to JSL would fulfill the condition of bringing back the inputs. The involvement or absence of a third- party regulator for transmitting the power to the Principal would not have any significance while determining the fulfilment of the aforesaid conditions.

22. In the present case, plants of JSL and JEL are situated at different geographical locations and power is brought back using the power grid of Maharashtra State Electricity Distribution Company Limited (MSEDCL). Since the same is in an intangible form, there are no alternative and commercially viable ways of bringing back the inputs to the Principal's premises. A role of a regulator, such as MSEDCL is required and mandated by the legislation. The Appellant further submits that merely because the power has come through the power grid of MSDECL, does not mean that JSL has failed to fulfill conditions of Section 143 of CGST Act. The power ultimately has been received by JSL only and the power grid of MSEDCL is only a medium to transfer the power. Accordingly, the Appellant submits that the conclusion drawn by the Appellate Authority on this basis is grossly erroneous and is liable to be set aside.

AIR AND WATER PROVIDED BY THE APPELLANT CONSTITUTE LESS THAN 0.5% OF THE COST OF GENERATING POWER WHEREAS COAL AS PROVIDED BY JSL CONSTITUTES MORE THAN 95% OF THE COST

23. The Appellant seeks reference to a certificate issued by their cost accountant - S.R.Bhargave& Co. which pertains to the Financial Year 2017-18. It is re-iterated that coal constitutes the major cost for manufacture of power, whereas air and water constitute a very negligible cost. The relevant extract to substantiate the above is as follows:

cost	Amount (INR in crores)	% of Total
Cost of Coal	1855	95.47%
Cost of Oil	3.83	0.2%
Direct Expenses- Consumables Stores and Spares Repair and Maintenance Other Production overheads	36.91	1.90%
Utility Costs		

Water	7.51	0.39%
Compressed Air	1.29	0.07%
Ash Handling System	13.66	0.70%
Circulating Water Intake	16.91	0.87%
Sea Water Intake	8.20	0.42%
Power generation cost	1943	100%

24. Basis the above, the Appellant submits that coal and other inputs constitutes a major cost i.e. more than 95% of the total cost of materials that are required for generation of power. These are supplied by the Principal (i.e. JSL). The cost towards water and air does not exceed 0.5% ofthe cost of inputs, which is made available by the Job Worker (i.e. the Appellant). These charges, along with other expenses that are required for generation of power from coal are in any case included under the ambit of Job Work charges, chargeable by the Appellant.

25. Seeing a reference to the above, the Appellant refers to the Appellate Authority's order, where, at paragraph 50, the decision of Prestige Engineering (India) Limited vs Collector of C. Excise, Meerut [1994 (73) E.LT. 497 (S.C)],has been referred. Further, the Ld. Appellate Authority has cited reference of a principle enumerated therein, which is reproduced as under:

> 17.....
>
> The Concise Oxford Dictionary assigns several meanings to the expression job' but the relevant meaning having regard to the present context is "a piece of work especially one done for hire or profit". The expression job work' is assigned the following meaning: "work done and paid for the job". The Notification, it is evident, was conceived in the interest of small manufacturers undertaking job-works. The idea behind the Notification was to help the job-workers - persons who contributed mainly their labor and skill, though done with the help of tools, gadgets or machinery, as the case may be. The Notification was not intended to benefit those who contributed their own material to the articles supplied by the customer and manufactured different goods. **We must hasten to add that addition or application of minor items by the job-worker would not detract from the nature and character of his work.....**

(Emphasis Supplied)

26. Seeking reference to the aforesaid paragraph, the Ld. Appellate Authority has emphasized that air and water constitute a major input for generation of power and accordingly supply of the same by the Appellant would exclude the underlying transaction from the category of a 'Job Work'. However, on referring the aforesaid cost analysis, the Appellant submits

that the conclusion drawn by the Appellate Authority is grossly erroneous and the coal to be provided by the Principal would in fact constitute more than 95% of the cost for generation of power. Further, the air and water to be provided by the job worker does not even constitute more than 0.5% of the overall cost as can be observed from the above. Accordingly, as per the principle laid down in the case of Prestige Engineering (India) Limited (supra) additions of minor materials by the Job Worker (such as air and water) would not alter the nature and character of the underlying transaction. It would still be considered as a job work transaction.

27. Further, reference can also be placed on the decision of the Hon'ble Orissa High Court in the case of Odisha Power Generation Corporation Ltd. vs. State of Odisha [(2015) 81 VST 138 (Ori.)], wherein based on the process of generation of power in a thermal power plant, the Hon'ble High Court held that coal is the primary raw material for generation of such power. The relevant paragraph of the said judgement is reproduced as follows:

28. The above process clearly demonstrates that coal is the primary raw-material for generation/production of electricity in thermal power plant and without coal, no electricity can be produced/ generated/ manufactured.

29. Basis the above, the Appellant humbly submits that the conclusion drawn by the Appellate on the grounds that air and water constitute a major input which is provided by the Job Worker is grossly erroneous and is liable to be set aside.

SUBMISSION OF OTHER DOCUMENTARY EVIDENCES/ DETAILS

30. The Appellant humbly submits that it was alleged by the Appellate Authority that certain documentary evidences/ details were not submitted to justify the Job Work activity. To the same, following are the Appellant's responses:

31. Agreement or Proposed Agreement to understand the quantity and value of inputs being supplied by the Principal and the amount and quantity of inputs/ materials being used by the job worker

To the above, the Appellant submits that the transaction is at a conceptualization stage and there is no proposed agreement. However, illustrative clauses of the proposed agreement between JEL and JSL were already provided in the Advance Ruling Application filed before the Advance Ruling Authority.

32. Further, the quantum of inputs to be sent to the Job Worker would be dependent on the power supply required by the Principal, which in turn is dependent on the estimated

production of steel. Hence it would be difficult to document the same, for the purpose of incorporating it in an agreement.

33. However, vide this additional submission, the Appellant has submitted a cost sheet which represents the per unit cost of power and accordingly the corresponding quantum of inputs that would be required by the Job Worker.

34. Details of manufacturing process of the Appellant mentioning the name, quantity and value of inputs:

To the above, the Appellant humbly submits that the details of the manufacturing process formed part of the appeal (at Page no. 45-40) submitted to the Appellate Authority. Further, vide the present submissions, the per unit cost has also been made available to the Appellate Authority, basis which the value of inputs can be determined.

35. Other inputs/materials, their quantity and value, being procured/purchased by the Job Worker Details of the above have been provided vide the cost sheet enclosed herewith.

SION Norms

36. The Appellant humbly submits that the Standard Input Output Norms (SION), as prescribed by the Director General of Foreign Trade are for guidance purpose to determine the standard inputs required for production of any product. It would be grossly erroneous to seek reference to the same at the time of examining the inputs that are used to manufacture a product. In this regard, the Appellant seeks reference to the decision of the Hon'ble Tribunal in Jakap Metind Pvt. Ltd. vs. CCE [2017 (356) ELT 279 (Tri-Mumbai)], wherein the Tribunal has held that:

..... As far as SION is concerned it provides with the theoretical input-output norms that too for the purpose of import and export of the goods. Even when the imports are allowed as per the SION norms the actual consumption of the input in the export goods is always variable as compared to the ratio provided under the SION norms. Therefore, there is always difference between the input-output norms given in SION and the actual input-output ratio in the physical manufacture of the goods. Therefore, the SION norms cannot be applied in the facts of the present case.

(Emphasis Supplied)

37. Basis the above, it is evident that SION are for guidance purposes and a sole reliance on SION cannot be placed to conclusively decide on the type of inputs. Additionally, there are a plethora of judgements wherein credit of inputs has been allowed, even though the same are not mentioned under the SION norms of the applicable products. These judgments are mentioned herein under:

Commissioner of Central Excise, Indore vs Grasim Industries Limited [2002 (147) E.L.T. 190 (Tri.-Del)]; Jaypee Rawa Cement vs Commissioner of Central Excise, MP [2001 (133) E.L.T. 3 (S.C.)]; Essar Steel Limited vs Commissioner of Central Excise, Surat-I [2001 (129) E.L.T. 213 (Tri.-Mum.)]; Vikram Cement vs Commissioner of Central Excise, Indore [2006(194) E.L.T. 3 (S.C.)]

38. In view of the various submissions made by the Appellant and the additional submissions made herein, it is submitted that-

39. (i) Coal constitutes an input for the Principal (i.e. JSL) in the process of generation of power;

(ii)Inputs sent to a Job Worker can be brought back with the involvement of a third party, who effectively plays the role akin to a transporter;

(iii) Air and water, provided by the Job Worker constitute a minimal cost (less than 0.5%) for generation of power, as compared to the cost of coal (more than 95%) provided by the Principal

40. In view of the foregoing, it was prayed as under:

(i) that the order passed by the Advance Ruling Authority be set aside, wherein it was held that the transaction between the Appellant and JSL does not qualify as 'Job Work'

(ii) that processing of goods belonging to another person qualifies as Job Work even if it amounts to manufacture.

Respondent's submissions with regard to the Additional submissions dated 10.07.2019 made by the Appellant

41. It is pertinent to note that the representative of M/s. JEL on being asked about the present system for supply of electricity to their manufacturing units and whether they had any captive coal-run power plant in their manufacturing units for generation and supply of electricity, had deposed before Hon'ble Appellate Authority For Advance Ruling, Maharashtra that they would be making further submissions in this case regarding the current power supply arrangement to M/s. JSL and whether M/s. JSL had any captive Coal fired power plant units in any of their manufacturing premises for generation of electricity or otherwise. This aspect is yet to be clarified by them. Also, when the Departmental representative argued that coal was not specified as import products for the export of Hot Rolled Non-Alloy Steel Plates/Sheets/Hoops & Strips under Export Code C508 as per SION specified by DGFT, the representative deposed that they were very much sure about the existence of coal in the import products list for the export of Hot Rolled Non Alloy

Steel/Plates/Sheets/Hoops & Strips under Export code C508 as per SION specified by DGFT and had committed before the appellate authority to submit the documents issued by DGFT which would testify their claim regarding coal as one of the import products for the export of the HR Steel manufactured by M/s. JSL, this aspect too has not been clarified as it does not find mention in their additional submission.

42. M/s. JEL are the manufacturer of electricity where coal is the raw material which is used as fuel in their coal fired power plant, whereas M/s. JSL are the manufacturer of steel. From the records it is observed that M/s JSW International Tradecorp Pte. Ltd situated at 9 Raffles Place, #14- 01 Republic Plaza, Singapore 048619 sources different types of Coal;

(a) Coking coal falling under Customs Tariff Heading 27011910 for Amba River Coke Ltd., Dolvi Village, P.O. Wadhkal. Tai-Pen, Dist. - Raigad, Maharashtra 402107,

(b) Coking coal falling under Customs Tariff Heading 27011910 for their unit M/s. Amba River Coke located at Geetapuram, Dolvi Pen, Raigad 402107.

(c) Coking coal falling under Customs Tariff Heading 27011910 for JSW Steel Ltd., Geetapuram Dolvi to Pen Dist.-Raigad, Maharashtra,

(d)PCI Coal falling under Customs Tariff Heading 27011910 for manufacture of Steel JSW Steel Limited located at Geetapuram, Dolvi Pen, Raigad 402107,

(e) Steam Coal falling under Customs Tariff Heading 27011920 for production of electricity by JSW Energy Limited Kunbiwadi, Nandiwade, Post Jaigad, Ratnagiri 415614,

43. From the above it can be observed that specifications for coal are set out by JSL for Coking Coal, PC, Coal and Steam coal and from the records it has been observed that steam coal has always been assigned to JSW Energy Ltd. and not Coking or PC Coal.

M/s. JSL have not clarified whether they are having 'in-house coal fired power plant' for production of electricity for captive consumption. The raw material of Job Worker M/s. JEL, is Steam Coal whereas the inputs for Principal, i.e., M/s. JSW Steel Limited (JSL) for their final product, i.e., Steel is Coking coal and not Steam Coal, consequentially Steam Coal cannot be considered as INPUT FOR THE PRINCIPAL. From the documents (a) to (e) mentioned above, it can be observed that different types of coal are imported. The Coal imported by M/s JSL is 'coking coal' and has different usages compared to 'steam coal', being used by power plant M/s JEL for generation of electricity, which is much cheaper (Coking coal is 25,838/ MT whereas, steam coal is 5,340/ MT) as can be observed from the documents above ,compared to the 'Coking Coal'. This shows that the inputs being utilized by M/s JSL for the manufacture of their final product i.e. Steel are not the same which they intend to send to M/s JEL for undertaking process. Rather, they are proposing to procure

the 'steam coal' which are inputs for the power plant of M/s JEL, and intend to avail the credit of duty on the same which is otherwise not available to M/s JEL as their final product, i.e. electricity, is exempted from GST under the GST law.

44. Further as per the procedure of the Job work under CGST Act, 2017, goods belonging to another registered person are subjected to some treatment or process and are required to be sent back to the 'Principal' within a specified time after the completion of the Job work or otherwise. Whereas in the instant case, the steam coal proposed to be supplied by the 'Principal' will be used by the job worker for the generation of electricity and the ultimate goods i.e. electricity will be supplied back to the 'Principal' and not the inputs which have been treated upon or processed upon by the Job worker. In other words, the 'Job worker' is receiving tangible goods in the form of coal and supplying 'intangible' goods in the form of electricity. Thus, the inputs which are proposed to be sent to JEL by JSL are being received in completely different form and character, i.e. the identity of coal i.e. the input has been completely lost. Coal would stand consumed in the process and would be irretrievable in the same form after the conclusion of job work, the condition under Section 143 of the CGST Act of bringing back the same inputs by the Principal would not stand fulfilled.

45. Steam Coal is not input for M/s. JSL, but it is input for M/s. JEL which generates the electricity using the said Steam coal as fuel for running the turbine, which in turn generates the electricity. 'Steam Coal' is not the input for M/s. JSL therefore; the goods sent to the job worker should be the Inputs of the Principal. Here, M/s. JSL are acting as the Principal, so the Inputs should belong to them. However, in the present case, the goods being proposed to be sent to M/s JEL, i.e. coal, are the Inputs for M/s JEL itself for their final product i.e. Electricity and not the Inputs for the Principal, i.e. M/s JSL as they are manufacturer of Steel and not power.

Hence Steam Coal does not constitute as an input for the Principal (i.e. JSL) in the process of generation of power.

46. **SECTION 2(68) defines job work as;**

"job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "iob worker" shall be construed accordingly;

SECTION 143 defines Job work procedure as;

(1) A registered person (hereafter in this section referred to as the "principa!") may under intimation and subject to such conditions as may be prescribed, send any inputs or capital

goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise, and shall, -

(a) bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;

RULE 45 stipulates the Conditions and restrictions in respect of inputs and capital goods sent to the job worker. -

(1) The inputs, semi-finished goods or capital goods shall be sent to the job worker under the cover of a challan issued by the principal, including where such goods are sent directly to a job worker, and where the goods are sent from one job worker to another job worker, the challan may be issued either by the principal or the job worker sending the goods to another job worker

From the above definitions, it is clear that job work involves (i) two persons, (ii) goods and (iii) process/treatment on the goods. Also, the procedure for job work is prescribed under Section 143 of CGST Act and Rule 45 of the CGST Rules.

47. On a harmonious reading of the definition of Job Work and the procedure for the same, it is construed that the Principal will send the inputs to the job worker for conducting any treatment/process(which may or may not amount to manufacture) and shall bring back the same after completion of job work or otherwise. Therefore, the goods sent to the job worker should be the Inputs of the Principal. Here M/s. JSL are acting as the Principal, so the Inputs should belong to them. However, in the present case, the goods being proposed to be sent to M/s JEL, i.e. coal, are inputs for M/s. JEL itself for their final product i.e. Electricity and not the inputs for the Principal, i.e. M/s. JSL as they are manufacturer of Steel and not power.

48. M/s JEL has not clarified whether they would be sending the generated electricity only to M/s JSL and nobody else on commercial basis as they have done in past. From the affidavit in support of petition filed before MERC by Maharashtra State Electricity Distribution Company Limited (MSEDCL), it can be seen that M/s JEL had entered into a Power Purchase Agreement (PPA) with MSEDCL.

49. Para 3.4.1 of the petition clarifies that the seller (M/s JEL) would supply power to the extent of contracted capacity to MSEDCL, where the seller (M/s JEL) shall not itself use any of the electricity generated by the unit, to the extent of its contracted capacity.

M/s JSL is engaged in manufacture of steel and M/s JEL is engaged in production of electricity which it appears would not solely be for its own consumption, the electricity

generated at M/s JEL is said to be transmitted through electrical grid of MSEDCL to the consuming Steel manufacturing unit of M/s JSL, however as there is no agreement between M/s JEL and MSEDCL available how would M/s JSL ensure that electricity transmitted would be sent to them and not be utilized somewhere else by MSEDCL.

50. As per the provision of Section 143(1)(a) of the CGST Act, 2017, there should be involvement of only two persons i.e. one principal and another job worker for any transaction to be falling under the ambit of job work, which is not the case here, as there is involvement of third entity which is in nature of the regulatory agency which would govern the supply of the final commodity, in this case, electricity, subject to certain terms and conditions. Thus, the 'principal' does not have control over the commodity processed upon by the 'job worker' even after the processing of the inputs, as the 'principal' cannot bring back the inputs on its own and is wholly dependent on this third party, in this case Maharashtra State Electricity Distribution Co. Ltd.(MSEDCL) for getting back the electricity to its plant. Thus, it is concluded that the entire process of sending the input in the form of coal and receiving back in the form of electricity does not constitute 'Job work' due to involvement of the third regulatory party which is beyond the control of the 'principal' as well as 'job worker' and this third party is not merely a mode of supply of goods between 'principal' and 'job worker'. There by affecting the supply of final goods from 'job worker' to the 'principal'. Thus, the return of inputs (even in changed form) as envisaged in Section 143(1) of CGST Act 2017 is not guaranteed at the hands of the 'Principal' due to the involvement of third party in the nature of regulatory body. As mentioned above the definition of job work, as cited above, covers only two parties i.e. 'Principal' and 'Job worker' for smooth movement of goods and does not leave any scope of a third party which can affect the movement of the goods between the 'Principal' and the 'Job worker'.

51. An example has been put forth by JEL that; inputs which ore brought back to the Principal's premises and are tangible in nature could be transported through roadways/ railways etc. In such a case, the rail authorities would be a regulator for allocation of rakes/ carriages. A fee would be charged for transportation of inputs, loading unloading etc and it would be absurd to conclude that since the railway authority is a regulator in said example, a Job Work model cannot be executed by a Principal and a Job Worker utilizing the services of the railways. Similarly, the amount paid to the Grid was akin to a transportation charge for goods sent from the Job Worker's premises.

Here it is pertinent to mention that MSEDCL's mandate includes distribution of electricity throughout the state by buying power from either MahaGenco, Captive Power Plants or from other State Electricity Boards and Private sector power generation companies.

Railways ferries passengers, parcel and freight services of various commodities and fuels in industrial, consumer and agricultural segments across the length and breadth of India. It is not into the business of buying commodities and fuels in Industrial, consumer and agricultural segments so the similarity ends at distribution, therefore the comparison between the rail authorities charging fee for transportation of inputs, ***were similar to the amount paid to the Grid is weak***. The Transporter or Railways cannot dictate terms, divert or send the consignment/ to somebody else which MSEDCL can. In the instant case, the manufacturer/principal cannot bring back their inputs, which is in the form of electricity, without getting due and prior approval from the competent authority. Hence Inputs proposed to be sent to a Job Worker cannot be brought back and the transaction undertaken would not fulfil all the conditions mentioned under Section 143 of the CGST Act to qualify as a Job Work transaction.

52. JEL have relied on the decision of the Hon'ble High Court of Bombay in the matter of CCE, Aurangabad vs. Endurance Technologies Pvt. Ltd.' And the Tribunal at Chennai in the matter of DCW Ltd vs. Commissioner of C.Ex., Triunelvelr and in the matter of The India Cements Ltd and Others vs CCE, Salem.

In the abovementioned decision, The Hon'ble Court had examined the meaning of the 'input' under Cenvat Credit Rules, 2004 and admissibility of credit of tax on such input.

Personal Hearing

53. The personal hearing in the matter was conducted on 20.11.2019, wherein Shri Rohit Jain, Advocate, appearing on behalf of the Appellant, re-iterated the written additional submissions filed on 10.07.2019 as well as the other relevant submissions filed earlier before us. Shri J.B. Shirsat, the jurisdictional officer in the present appeal matter, also attended the above said hearing, wherein he reiterated the written submissions filed in response to the subject additional submissions dated 10.07.2019 of the Appellant.

Discussions and Findings

54. Heard both the parties. We have also gone through the entire case records including all the written submissions and documentary evidences, placed before us. We have also gone through the Hon'ble Bombay High Court Order dated 07.06.2019, wherein it was directed to reconsider the subject appeal in light of the additional submissions to be filed by the

Appellant with regard to the 'new grounds' adopted by us while issuing the impugned AAAR Order dated 02.07.2019. The aforesaid two 'new grounds', observed by the Hon'ble High Court in the impugned AAAR order, are as under:

(i) That coal, which is used for manufacture of electricity and thereafter steel, is not covered as input under the Standard Input Output Norm for steel products under the Foreign Trade Policy;

(ii) That in the proposed arrangement, Coal would stand consumed and therefore, was irretrievable in the same form after the conclusion of the job work. Therefore, the proposed arrangement did not fulfil the conditions prescribed under section 143 of the CGST Act in relation to bringing back the same inputs by the principal.

55. As regards the above mentioned new ground enumerated at Sr. (i) above, the Appellant, vide their additional submissions dated 10.07.2019, have inter alia contended that the steam coal, proposed to be supplied to the Appellant i.e. JEL, constitutes one of the inputs for JSL, which manufactures the steel products, as the coal proposed to be sent by JSL to the Appellant will be supplied back in the form of electricity, which in turn are used by JSL to manufacture their final products i.e. steel. They, inter alia, have place their reliance on the definition of 'inputs' as defined under Section 2(59) of the CGST Act, which, they averred, is wide enough to cover the steam coal, proposed to be sent by JSL to JEL for conversion into electricity on the job work basis. The said definition of input is reproduced as follows:

'input' means any goods other than capital goods used or intended to be used by a supplier **in the course or furtherance of business;**

(**Emphasis supplied**)

For the said purpose, reliance was also placed on the term 'business' which is defined under Section 2(17) of the CGST Act. For the said purpose:

Business includes -

(a)Any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit,

(b) Any activity or transaction in connection with or incidental or ancillary to sub-clause (a)

.....

.....

56. Basis the above, it has been argued by the Appellant that coal is an input used in the manufacture of power, which in turn is used for manufacture of steel. The Appellant sought to placetheemphasison extracts of the Memorandum of Association of JSL, which was placed before the Appellant Authority earlier also on 22.06.2018 as a part of the additional submissions to the subject appeal. The relevant extracts of the same have been reproduced as under:

B. THE OBJECTS INCIDENTAL OR ANCILLARY TO THE ATTAINMENT OF THE MAIN OBJECTS:

3. To carry on the business of mechanical engineers and to design, construct, fabricate and manufacture all kinds of machines, tools and implements, iron and brass founders, metal workers, machinists, iron and steel workers, smiths, metallurgist, ***producers of electric energy****, appliances: to carry out research and development for any activity ....*

(Emphasis supplied)

Vide the above memorandum, they have sought to establish that the generation of power is one of the business activities of JSL (i.e. the Principal) and coal used for such business activities would be qualified as input for JSL.

57. The Appellant has further re-iterated that its power plant is a captive power plant of JSL. They also submitted that since generation of power is an integral part of the business activities of JSL and such power generated at the captive plant is used for manufacture of steel. The coal required for generation of power thus qualifies as input for JSL i.e. the Principal in this proposed arrangement.

58. In addition to the above submissions, the Appellant also referred to Circular No. 79/53/2018-GST dated 31.12.2018 issued by the Central Board of Indirect Tax and Customs. Relevant portions of the paragraph 9 (b) of the aforesaid circular are reproduced as under:

Issue: A registered person uses coal for the captive generation of electricity which is further used for the manufacture of goods (say aluminum) which are exported under Bond/Letter of Undertaking without payment of duty. Refund claim is filed for accumulated Input Tax Credit of compensation cess paid on coal. Can the said refund claim be rejected on the ground that coal is used for the generation of electricity which is an intermediate product and not the final product which is exported and since electricity is exempt from GST, the ITC of the tax paid on coal for generation of electricity is not available?

59. *Clarification: There is no distinction between intermediate goods or services and final goods or services under GST.* ***Inputs have been clearly defined to include any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Since coal is an input used in the production of aluminum, albeit indirectly through the captive generation of electricity,*** *which is directly connected with the business of the registered person, input tax credit in relation to the same cannot be denied.*

(Emphasis Supplied)

60. The Appellant, relying on the abovementioned circular issued by the CBIC, has drawn an analogy to the effect that that the transaction in question is squarely covered by the aforesaid example adopted in the above cited circular. They further elaborated that, the example considered in the aforesaid circular aluminum is similar to steel and has a similar manufacturing process. Further, Inputs (such as coal) are used for the manufacture of power, which in turn is used for the manufacture of steel. Therefore, the coal would qualify as eligible inputs for the business activities of JSL.

61. The Appellant, so as to substantiate their contention with regard to the eligibility of steam coal as input for JSL, the principal in the subject transaction, also cited the Hon'ble Supreme Court Judgment in the case of Maruti Suzuki Ltd. vs. CCE [2009 (240) ELT 641 (SC)] reproduced hereinabove in para 17, wherein it was held that when power generation is a captive arrangement and the requirements for carrying out the manufacturing activity, the power generation forms part of the manufacturing activity and 'Inputs' used in the power generation would be treated as inputs used in the manufacture of final product.

62. In view of the above submissions and contention put forth by the Appellant in respect of the relevant legal provisions, CBIC Circular, and the Supreme Court Judgment, we are inclined to revise our earlier opinion, where we had denied the eligibility of the coal as an input for JSL. Thus, in light of the above submissions, it is adequately clear that coal is an input for JSL, as the same is used for the generation of electricity, which in turn is used for the manufacture of the final product i.e. steel.

63. Now, we will examine the contention put forth by the Appellant with regard to the 'new ground' enumerated at sr. (ii) above, which is whether the proposed arrangement would fulfil the conditions prescribed under section 143 of the CGST Act in relation to bringing back the inputs, from the job worker's premises, as the coal, proposed to be sent by JSL, the principal, to JEL, the Appellant/job worker, would stand consumed and therefore, would be irretrievable in the same form after the conclusion of the proposed job work .

64. In this regard, the Appellant had contended vide their additional submissions filed on 22.06.2018 that resultant intermediate goods may be different from the inputs sent by the Principal. To substantiate this contention, they had cited following court judgments where job work has been accepted even when the identity of the inputs has been lost, when the intermediary goods are received back from the job worker.

(a) Prestige Engineering (India) Ltd. V/s. Collector of C.Ex. Meerut, [1994 (73) E.L.T. 497 (S.C.)]

(b) Appellate Collector of C.Ex. V/s. Wadpack Pvt. Ltd. [1997 (89) E.L.T. 24 (S.C.)]

(c) Emcee Crown Corks (P) Ltd. V/s. Commissioner of C.Ex. Bangalore [2002(149) E.L.T. 639(Tri.- Bang.)

(d) Bharat Commerce and Industries Ltd. V/s. Collector [1997 (94) E.L.T. A136]

65. They have further contended that electricity can be generated on a job work basis. They had also cited the following judicial pronouncement in order to support this contention:

Commissioner of Central Excise, Nagpur vs Indorama Textiles Ltd 2010 (260) ELT 382 (Bom HC)

Haldia Petrochemicals Ltd vs CCE, Haldia 2006 (197) ELT 97 (Tri.- Delhi)

Sanghi Industries Limited vs CCE, Rajkot 2006(206) ELT 575 (Tri.- Delhi)

Sanghi Industries Limited vs CCE, Rajkot2014(302) ELT 564 (Tri.- Ahmd.)

On perusal of the above cited Bombay High Court Judgment in the case of *Commissioner of Central Excise, Nagpur vs Indorama Textiles Ltd,which* was subsequently upheld by the Supreme Court vide its Judgment [2010 (260) E.L.T. A83 (S.C.)], it is established that electricity can be generated on the Job work basis. It is further inferred that when electricity can be generated on job work basis, it is bound to happen that any inputs sent to the premises for the generation of electricity would not be sent back in the same original form. Instead, the same is destined to be consumed for the generation of electricity, which was actually the facts of the cited case law discussed herein above, wherein the Respondent i.e. Indorama Textiles Ltd. was vying to claim the input tax credit in respect of the furnace oil, which was getting consumed in the premises of their job worker. The Bombay High Court, in this case, decided in the favor of the Respondent, holding that the Respondent was justified in claiming input credit in respect of the furnace oil, being used at the job worker's premises for the generation of electricity, which was the intermediate goods, being received by the Respondent, in that case the principal.

By applying the above case law in the instant case, it is opined that coal, despite being consumed in the process of the generation of electricity, thereby becoming irretrievable, will not preclude the proposed arrangement from being the job work transaction, as understood by the Appellant. Thus, we rescind our earlier observation, wherein it was

opined that the proposed arrangement did not fulfil the conditions prescribed under section 143 of the CGST Act in relation to bringing back the same inputs by the principal attributable to the reason that the coal, proposed to be sent by JSL, the principal, to JEL, the Job worker, would stand consumed and therefore, would be irretrievable in the same form after the conclusion of the proposed job work.

66. As regards our observation encapsulated in the impugned order dated 02.07.2018, wherein it was held that since the Appellant i.e. JEL would be adding considerable amount of other inputs in terms of volume and cost in the form of water and air besides the steam coal to be supplied by JSL, the activities carried out by the Appellant in the proposed arrangement would not be qualified for job work in accordance with the Hon'ble Supreme Court Judgment in the case of Prestige Engineering (India) Ltd. V/s. Collector of C.Ex. Meerut, [1994 (73) E.L.T. 497 (S.C.)], wherein it was observed by the Apex Court that for any activity or transaction to be construed as the job work, the job worker is allowed to add only minor inputs or raw materials to the inputs supplied the principal. However, in the subject arrangement, the proposed job worker i.e. JEL/Appellant would be adding considerable and sizeable amount of inputs in terms of volume and cost in the form of air and water to the input supplied by the proposed principal i.e. JSL in this case, and the activities carried out by the Appellant would not qualify for the Job work in terms of the above observation of the Apex Court.

In this regard, the Appellant has furnished the certificate of the Cost Accountant pertaining to F.Y. 2017-18, wherein it has been testified that coal and other inputs constitutes a major cost i.e. more than 95% of the total cost of materials that are required for generation of power, whereas the cost towards water and air does not exceed 0.5% of the cost of inputs. Referring to this certificate issued by the Cost Accountant, the Appellant have further contendedthat coal constitutes the major cost for manufacture of power, whereas air and water constitute a very negligible cost. Accordingly, as per the principle laid down in the case of Prestige Engineering (India) Limited (supra) additions of minor materials by the Job Worker (such as air and water) would not alter the nature and character of the underlying transaction. It would still be considered as a job work transaction.

67. Now, in view of the above submissions and the certificates issued by the Cost Accountant, it is opined that the Appellant is squarely satisfying the stipulations laid down by the Apex Court in the case of Prestige Engineering (India) Ltd. (supra). Hence, we are inclined to repeal our earlier observations in this regard. Furthermore, it is reasonably concluded that

addition of the air and water by the Appellant to the coal proposed to be supplied by JSL will not detract the proposed transaction from being qualified as Job work.

68. We had expressed our reservation in respect of the presence of, and dependency on the third- party regulator i.e. MSEDCL during the transmission of the electricity generated in the proposed job worker's premises i.e. JEL after processing of the coal sent by JSL, the proposed principal will detract the proposed arrangement from being the Job work, because the bringing back of inputs sent by JSL to the premises of the proposed job worker after the same has been processed to generate electricity is not guaranteed because of the presence of this third-party regulator i.e. MSEDCL, which is the competent body to grant any transmission and distribution related permissions, and formulate any guidelines, which are needed to be adhered by the entities using the transmissions and distribution facility of MSEDCL. Thus, we had opined that the principal will not be in position to independently bring back the inputs from the premises of the job worker, thereby not satisfying the conditions laid out in section 143 (1)(a) of the CGST Act, 2017.

69. With regard to the above observation made in the impugned in impugned AAAR order dated 02.07.2018, the Appellant has contended that there is no bar on the involvement of the third person in the transportation of the inputs from the principal to the job worker, and from the job worker to the principal. They elaborated this with one illustration, wherein some tangible goods are sought to transported between the premises of the principal and that of job workerby availing the facility of railway. In this case, the railways will be acting in the capacity of the regulatory authority for the purpose of the transportation of the said goods, as they will be allocating the rakes and carriages for the subject goods, similar to the power regulator in the case of the transmission of electricity from one place to another. They further contended that transportation of the goods between the principal and the job worker by the railways/roadways has never been disputed in the context of the fulfillment of the condition prescribed for the job work transaction/activity.

They also cited the decision of the Hon'ble High Court of Bombay in the matter of CCE, Aurangabad vs. Endurance Technologies Pvt. Ltd. [2015-TIOL-1371-HC-MUM-ST] where credit on inputs and input services used by wind mills to generate energy which is made available to the manufacturer through power board under the barter system, has been allowed.

70. On perusal of the above submissions including the illustration and the case law cited herein above, it is opined that proposed arrangement under consideration is satisfying the

condition laid down under section 143(1)(a) of the CGST Act, 2017 in respect of bringing back of the inputs by the principal i.e. JSLfrom the job worker's premises i.e. JEL, after the completion of the job work. Thus, the earlier observation in this regard is sought be revised.

71. Thus, in view of the above deliberation, all the observations made in the impugned AAAR Order dated 02.07.2018 are repealed and the following ruling in respect of the questions raised by the Appellant is passed:

ORDER

We, hereby, hold that the proposed arrangement of supply of coal or any other inputs by the principal i.e. JSL to the Appellant i.e. JEL for generation of electricity will be construed as job work. Accordingly, no GST will be leviable on this supply. Finally, the job work charges payable to JEL by JSL will be subjected to GST in terms of the provisions laid out in Notification No.11/2017-C.T. (Rate) dated 28.06.2017 as amended by various subsequent notifications.

(RAJIV JALOTA)
MEMBER

(SUNGITA SHARMA)
MEMBER