

No. STC/CG/AAAR/03/2022

**APPELLATE AUTHORITY FOR ADVANCE RULING,
CHHATTISGARH**

3RD & 4TH FLOOR, VANIJYIK KAR (GST) BHAWAN, SECTOR-19,
NAYA RAIPUR ATAL NAGAR, (C.G.) 492002

**PROCEEDINGS OF THE APPELLATE AUTHORITY FOR ADVANCE
RULING UNDER SECTION 101 OF THE CHHATTISGARH GOODS
AND SERVICES TAX ACT, 2017**

BEFORE THE BENCH OF

- (1) Shri Chandra Prakash Goyal, Member
(2) Shri Rajat Bansal, Member

Order No. /STC/CG/AAAR/03/2022 Dated 22/04/2024

Name & Address of the Appellant	M/s Chhattisgarh State Power Generation Co. Ltd. Raipur, Chhattisgarh
GSTIN	22AADCC5772F1ZW
Order of AAR under Appeal before AAAR	STC/AAR/01/2021 dated 22.06.2021

PROCEEDINGS

[Under Section 101 of the Central Goods & Services Tax Act, 2017 and
Chhattisgarh Goods & Services Tax Act, 2017]

1. At the outset, we would like to make it clear that the provisions of the Central Goods & Services Tax Act, 2017 (here-in-after referred to as the "CGST Act") & the Chhattisgarh Goods & Services Tax Act, 2017 (here-in-after referred to as the "SGST/CGGST Act") are mirror images of each other except for certain specific provisions. Therefore, unless a specific mention is made, a reference to the CGST Act would mean a reference to the similar provisions under the CGGST Act and vice versa. Further, the expression 'GST Act' would be a common reference to both CGST Act and CGGST Act.

2. This present appeal dated 04.09.2021 has been filed under Section 100 of the CGGST, 2017.



3. Brief Facts of the case:-

3.1 M/s Chhattisgarh State Power Generation Co. Ltd. Raipur, Chhattisgarh (here-in-after referred to as 'CSPGCL' or "appellant") is a fully owned state government undertaking engaged in the generation of electricity. They are having power generation plants at different locations in the State of Chhattisgarh. They have filed an appeal dated 04.09.2021 against the order dated 22.06.2021 passed by Advance Ruling Authority (here-in-after referred to as 'AAR'). The appellant is duly registered under GST holding GSTIN 22AADCC5772F1ZW. The main raw material for generation of power is coal. A coal mine was allotted to company by the Ministry of Coal, GOI for extraction of coal to be used in generation of power. The production from coal mine commenced from 01.12.2019. Coal mines are situated in a forest area, therefore, a levy of Rs. 15/- per ton is payable to the Forest Department (as per the Forest Act and a notification issued vide F. No. F06-02/2014/10-2 dated 30.06.2015 read with Chhattisgarh Abhivahan (Vanopaj) Niyam, 2001) for issuance of transit pass as clearance of the Coal which is called "Abhivahan Shulk." The amount payable to the Forest department is on 'per ton basis' and transit pass was issued on 'per vehicle basis'. A vehicle normally consists of 12 to 30 tonnes of coal, thus per vehicle charges i.e. Abhivahan Shulk is normally less than Rs. 500/- per transit pass. Considering the above, M/s CSPGCL is of the opinion that no GST is payable on the "Abhivahan Shulk" collected by the Government of Chhattisgarh, under the provision of RCM.

3.2 In this backdrop, M/s CSPGCL had applied for advance ruling on 21.01.2021 before the AAR, Chhattisgarh on the following issues:-

(i) Whether amount paid to the Forest department as Abhivahan permission shulk is liable to be taxed under GST or exempt as per the Sl. No. 4 and 5 of the Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 of being in the nature of pure service and same is used for specific purpose of "Urban forestry, protection of the environment and promotion of the ecological aspect" hence covered under the Article 243G and 243W of the Constitution being functions entrusted to the Municipality and Panchayat, hence not liable to tax under GST?

(ii) Whether as each transaction is separate transaction and Abhivahan Shulk charged is always less than Rs 5000/- per transactions and is not covered by the definition of continuous supply of service w/s 2(33) of the CGST Act 2017, hence exempt under Sl. No. 9 of the Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017?



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4. AAR Ruling :-

4.1 The Authority of Advance Ruling (AAR) vide Order No. STC/AAR/01/2021 dated 22.06.2021 held as under:-

(i) The amount paid by M/s Chhattisgarh State Power Generation Co. Ltd. Raipur, Chhattisgarh, the applicant to the Forest department of Chhattisgarh as "Abhivahan permission shulk" for obtaining permission for transit of coal from the Forest area, is liable for GST at the applicable rate and is not eligible to "Nil" rate of tax provided under sr. no. 4 and 5 of the Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017, being not covered under the functions envisaged under Article 243G and 243W of the Constitution of India.

(ii) The applicant is also not eligible for "Nil" rate of tax on the said "Abhivahan permission shulk", provided under Sl. No. 9 of afore-mentioned Notification No. 12/2017-Central Tax (Rate), dated 28.6.2017, for the reasons as delineated above.

(iii) The said "Abhivahan permission shulk" paid by the applicant to the Forest department for the permission granted by the Forest department of Chhattisgarh, merits classification under the residuary Heading 9997 for other services with the tax rate of CGST@ 9% + CGGST@ 9% and the applicant is liable for GST on the said "Abhivahan permission Shulk", under reverse charge basis in terms of Serial No. 5 of the Notification No. 13/2017-Central Tax (Rate), dated 28.06.2017 (as amended)

5. Ground of Appeal :-

5.1 Aggrieved by the rejection of the application for advance ruling, the appellant has filed this appeal dated 04.09.2021 under Section 100 of the CGGST Act, 2017, on the following grounds:-

(i) The Authority for Advance ruling erred in holding that the amount paid by them to the Forest department of Chhattisgarh as "Abhivahan Shulk" for obtaining permission for transit of coal from the forest area, is liable to GST at the applicable rate and is not liable to NIL rate of tax provided under Sl. No. 4 and 5 of the Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017, being not covered under the functions envisaged under Article 243G and 243W of the Constitution of India without appreciating the facts of the case.

(ii) The Authority for Advance ruling also erred in holding that the applicant is not eligible for NIL rate of tax on the said Abhivahan Shulk provided under Sl. No. 9 of the Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 unjustifiably.



6. Questions raised before the AAAR :-

(i) Whether amount paid to the Forest Department as Abhivahan Permission Shulk is liable to be taxed under GST or exempt as per the Sl. No. 4 and 5 of the Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 being in the nature of pure service and same is used for specific purpose of "Urban forestry, protection of the environment and promotion of the ecological aspect" hence covered under the Article 243G and 243W of the Constitution being functions entrusted to the Municipality and Panchayat, hence not liable to tax under GST?

(ii) Whether as each transaction is separate transaction and Abhivahan Shulk charged is always less than Rs 5000/- per transactions and is not covered by the definition of continuous supply of service u/s 2(33) of the CGST Act 2017, hence exempt under Sl. No. 9 of the Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017?

7. Personal Hearing:-

Keeping with the established principles of natural justice, a virtual personal hearing in the matter was granted to the appellant initially on 19.04.2023. Accordingly, Shri Ashutosh Shrivastava, F.C.A. & Shri Lalit Kumar Agrawal, F.C.A., the authorized representative of the appellant appeared virtually and reiterated their contention as submitted in their application dated 04.09.2021. However, the order could not be issued as both the earlier members of the AAAR got transferred and new members joined the offices. Hence, a personal hearing in the matter was again granted to the appellant on 21.02.2024, in virtual mode. Accordingly, Shri Ashutosh Shrivastava, F.C.A., the authorized representative of the appellant appeared virtually and reiterated their contention as submitted in their application dated 04.09.2021. During the personal hearing, following questions were asked in order to understand the case better.

Questions asked by members	Replies by appellant
When did the appellant started working?	In 2020
When did you applied for Advance Ruling?	On 21st Jan 2021
Are you paying GST taxes on Abhivahan Shulk at present?	No
Is there any SCN issued to appellant on this subject?	No
How is "Abhivahan Shulk" related to the	We will submit a



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functions envisaged under Article 243G and 243W of the Constitution of India	Notification to that effect.
What do the forest Department write on Abhivahan Shulk slip?	Will submit the slip in some time.
How invoice is being raised by the Forest Department in this regard ?	Will submit the invoice in some time.

8. Discussion and Findings: -

8.1 Accordingly, after careful consideration of the case, ruling of the AAR, relevant rules, regulations and notifications there-under, various statutory guidelines having bearing on the issue in hand and raised by the appellant, we proceed to decide the case in accordance with the law.

8.2 Further, during the hearings, the appellant was asked to submit the evidences such as Abhivahan Shulk slip, invoices raised in the matter and copy of any notification, available, if any. But despite giving a reasonable time they have failed to submit Abhivahan Shulk slip and invoice raised by the forest department. Now, therefore, we have carefully gone through the submissions made by the appellant in his application as well as the submissions made at the time of personal hearing. The appellant has requested for advance ruling on two different issues which are mentioned in Sr. No. (i) & (ii) of the Para No. 6 above and discussed as under

8.3 The appellant is a power generating company for which main raw material i.e., coal is extracted from a coal mine, situated in a forest area. The appellant is required to pay Rs. 15/- per ton to the Forest Department for issue of transit pass which is called 'Abhivahan Shulk'. The appellant contended that the amount paid to the Forest department as Abhivahan permission shulk is exempted under GST as per the Sl. No. 4 and 5 of the Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 being in the nature of pure service and same is used for specific purpose of "Urban forestry, protection of the environment and promotion of the ecological aspect" hence, covered under the Article 243G and 243W of the Constitution of India being functions entrusted to the Municipality and Panchayat.

8.4 In this regard, relevant provisions of the GST Act are reproduced below:

8.4.1 Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 reads as under:



G.S.R.....(E).-In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

Table:

Sl. No.	Service Code (Tariff)	Description of Services	Rate(per cent.)	Condition
4	Chapter 99	Services by Central Government, State Government, Union territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243 W of the Constitution	Nil	Nil
5	Chapter 99	Services by a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution.	Nil	Nil

8.4.2 The functions entrusted to the Panchayats under Article 243G of the Constitution of India in relation to the matters listed in the Eleventh Schedule are reproduced herein below:

“.....

.....

5. Fisheries.



6. Social forestry and farm forestry.

7. Minor forest produce.

8. Small scale industries, including food processing industries.

..... "

8.4.3 The functions entrusted to the municipality under Article 243W of the Constitution of India in relation to the matters listed in the Twelfth Schedule are reproduced herein below:

"

.....

7. Fire

8. Urban forestry, protection of the environment and promotion of ecological aspects.

9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally

..... "

8.5 We have also gone through the provisions of Chhattisgarh Abhivahan (Vanopaj) Niyam, 2001 and Indian Forest Act, 1927. As per Section 2 (4) & (6A) of the Indian Forest Act, 1927 as amended provides that all produces from the mines, if extracted from forest land or transported through forest area shall be called forest produce. As per Rule 3 of Chhattisgarh Transit (Forest Produce) Rules, 2001, a transit pass is mandatory for transportation of any forest produce from forest land and is issued by Forest Department after payment of prescribed transit fee.

8.6 We find that these rules grants the authority/power to forest department to demand transit fees or Abhivahan Shulk from individuals for removal of forest produce and from vehicles used for transporting such forest produce within reserved forests.

8.7 In view of above, we are of the opinion that Abhivahan Shulk as collected by the Chhattisgarh Forest Department from the appellant is in lieu of granting permission for movement of Forest produce viz. coal from the forest area of Chhattisgarh state. The permit charges collected by forest department is used by the forest officials keep a watch on the mining activity and also to assess the quantity and type of mineral being quarried to carry out survey and also keep



constant watch on the movement of the produce, and is not related to "Urban forestry, protection of the environment and promotion of the ecological aspect" or "Social forestry or farm forestry". Therefore, Abhivahan Shulk has neither any connection with "Urban forestry, protection of the environment and promotion of the ecological aspect" [functions entrusted and as specified under Sl. No. 8 to municipalities in the Eleventh Schedule read with Article 243W of the Constitution of India] nor with "Social forestry and farm forestry" [functions entrusted and as specified under Sl. No. 6 to Panchayats in the Twelfth Schedule read with Article 243G of the Constitution of India].

8.8 Therefore, the contention of the appellant that the services of permitting transit through the forests of Chhattisgarh by the Forest Department comes under the ambit of functions of "Urban forestry, protection of the environment and promotion of the ecological aspect" covered under the Article 243G and 243W of the Constitution being functions entrusted to the Municipality and Panchayat, is misplaced and devoid of merit. Accordingly, it is held that the said "Abhivahan permission shulk" paid by the appellant is not eligible for NIL rate of GST, as provided under Sl. No. 4 & 5 of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017.

8.9 Now coming to the second issue, we find that the applicant has contended that no GST is applicable upon them as each transaction is a separate transaction and Abhivahan Shulk charged is always less than Rs 5000/- per transactions and is not covered by the definition of continuous supply of service u/s 2(33) of the CGST Act 2017, hence exempt under Sl. No. 9 of the Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017.

8.10 In this regard, relevant provisions of the GST Act are reproduced below:

8.10.1 Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 reads as under:

G.S.R.....(E).-In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

Table:



Sl. No.	Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
9	Chapter 99	<p>Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed five thousand rupees. Provided that nothing contained in this entry shall apply to-</p> <p>(i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory,</p> <p>(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) transport of goods or passengers;</p> <p>Provided further that in case where continuous supply of service, as defined in sub-section (33) of section 2 of the Central Goods and Services Tax Act, 2017, is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service does not exceed five thousand rupees in a financial year.</p>	Nil	Nil



8.10.2 Further, the Section 2(33) of CGST Act, 2017 reads as under:

Section 2(33): "continuous supply of services" means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify;

8.11 As per Section 2(33) of the CGST Act, 2017, continuous service means a service that is provided or to be provided continuously or on a recurring basis under a contract for a period exceeding three months.

8.12 We find that the appellant is a power generating company. The main raw material for generation of power is coal. The coal mines are situated in a forest area, and the appellant is paying Transit Fees or Abhivahan Shulk **throughout the year on recurring basis** to the Forest Department for issuance of transit pass whenever the Coal is cleared from the forest area. This is not a single transaction rather it's a supply of the entire coal regularly to their power plants from the said coal block located in the forest and for which permission is granted by the Forest department. It is just for administrative convenience that vehicle wise Abhivahan Permission Shulk or Transit Fee is being paid by the applicant to the Forest Department. Therefore, the said service squarely falls under the category of "supply of continuous service" as per Section 2(33) of the CGST Act, 2017.

8.13 Thus in view of the above discussions, we come to the considered view that the applicant is not eligible for exemption as provided under Sl. No. 9 of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017, as the Abhivahan Permission Shulk paid to the forest department is *more than five thousand rupees in a financial year*.

Rulings

In view of the foregoing discussion and findings, we give the ruling as follows: -

- (1) The amount paid by M/s Chhattisgarh State Power Generation Co. Ltd, Raipur, Chhattisgarh, the appellant to the Forest Department of Chhattisgarh as "Abhivahan permission shulk" for obtaining permission for transit of coal from the Forest area, is liable for GST at the applicable rate and is not eligible to "Nil" rate of tax provided under Sl. No. 4 and 5 of the Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017, being not covered under the functions envisaged under Article 243G and 243W of the Constitution of India.



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(2) The appellant is also not eligible for "Nil" rate of tax on the said "Abhivahan permission shulk", provided under Sl. No. 9 of Notification No 12/2017-Central Tax (Rate), dated 28.06.2017.



Chandra Prakash Goyal
(Member)
Chhattisgarh Appellate Authority

Rajat Bansal
(Member)
Chhattisgarh Appellate Authority

Order No. /STC/CG/AAAR/03/2022

Dated - 26/04/2024

Copy to :-

- (1) The appellant
- (2) The AAR, Chhattisgarh
- (3) The Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
- (4) The Commissioner of State Tax, Chhattisgarh
- (5) Office copy.

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MEMBER
APPELLATE AUTHORITY FOR
ADVANCE RULING CHHATTISGARH