



SPEED POST

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|  | ODISHA APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICE TAX C.R. BUILDING (GST BHAWAN), RAJASWA VIHAR, BHUBANESWAR-751 010, ODISHA Ph: 0674-258 9935, 258 8672. Fax: 0674-258 9938, <u>E-mail. ccu-cexbbr@nic.in</u> |  |
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(CONSTITUTED UNDER SECTION 99 OF THE ODISHA GOODS AND SERVICES TAX ACT, 2017)

ORDER NO. 01/ODISHA-AAAR/Appeal/2025-26/

DATE: 22-09-2025

BEFORE THE BENCH OF

- (1) **Shri P.R.Lakra, Member (Chief Commissioner, GST, Central
Excise and Customs, Bhubaneswar Zone)**
- (2) **Smt. Yamini Sarangi, Member (Commissioner, Commercial Taxes
& GST, Odisha)**

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| Legal Name and address of the Applicant | M/s. Essel Mining & Industries Limited At- Plot No. 7/43, Khata No. 244/122, Basantapur Talasashi, Dabuna, Kendujhar-758086 |
| Address for communication/ mailing | Plot No. 7/43, Khata No. 244/122, Basantapur Talasashi, Dabuna, Kendujhar-758086. <i>Email-Id- Bijay.swain@adityabirla.com</i> <i>Contact No.:- 9437063049</i> |
| GSTIN Number | 21AAACE6607L1ZU |
| Details of appeal | Appeal against the Advance Ruling order. No.01/ODISHA-AAR/2024-25 dated 27.08.2024 |
| Date of personal hearing | 19.08.2025 |



Amr

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| Present for the Applicant | Shri Narendra Kumar Dash, Advocate |
| Jurisdictional Officer | (JURISDICTION-CENTRE) <ul style="list-style-type: none"> • Commissionerate - ROURKELA • Division - KEONJHAR DIVISION • Range - BARBIL-I RANGE State- Odisha. |

At the outset, we would like to make it clear that the provisions of both the Central GST Act, 2017 and of Odisha GST Act, 2017 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 provision under the OGST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service tax Act, 2017 and Orissa Goods & Services Tax Act 2017 [hereinafter referred to as the CGST Act and OGST Act] by M/s. Essel Mining & Industries Limited, Plot No. 7/43, Khata No. 244/122, Basantapur Talasahi, Dabuna, Kendujhar-758086 bearing GSTIN 21AAACE6607L1ZU (herein after referred to as the 'Appellant') against the Advance Ruling order No. 01/ODISHA-AAR/2024-25 dated 27.08.2024 pronounced by the Odisha Authority for Advance Ruling (AAR). The date of receipt of the appeal application is 05.05.2025.

3. BRIEF FACTS OF THE CASE:

3.1 The Appellant, M/s Essel Mining Industries Limited (GSTIN-21AAACE6607L1ZU), having principal place of business at Plot No. 7/43, Khata No. 244/122, Basantapur Talasahi, Dabuna, Kendujhar-758086, is engaged in the business of "Mining and Supply" of Iron and Manganese situated at Joda Mining sector of Kendujhar. The period of lease was from 01.10.1984 to 31.03.2020 (extended). After cessation of the lease on 31.03.2020, Govt. of Odisha awarded lease of the said mines to Odisha



Mining Corporation or OMC in short, a State PSU, for mining.

3.2 After allocation of mines, OMC approached the appellant for acquiring capital assets including machineries & equipments, building infrastructure and the railway siding by way of purchases, which were developed by the appellant for their convenience of doing their business. The deed for handing over and taking over the building and civil structure and plant & machinery was made on 28.06.2023.

3.3 As per the deed, it was mutually agreed to hand over the possession of Building and Civil Structure for a consideration of Rs. 18,10,51,928/- and for Plant & Machinery the consideration value was at Rs. 39,84,736/- by the appellant on 'as is where is basis'. The appellant considering handing over the capital assets comprising the Plant & Machinery as supply of goods attracting levy of GST, admitted and discharged the leviable GST on them.

3.4 As regards the sale/supply of the scheduled immovable properties comprising the buildings, the appellant considered the same to be sale of immovable property classifiable 'neither a supply of goods nor a supply of service' as per Para-5 of Schedule-III of the Act, read with clause (a) of sub-Section (2) of Section 7 of the Act.

3.5 The appellant approached Authority for Advance Ruling, Odisha and has sought ruling on the following question:

"Whether handover of Building and Civil Structure, including railway siding, by the applicant to OMCL tantamount to sale of building and covered under clause no. 5 to Schedule III of the CGST Act, 2017"

3.6 The Authority for Advance Ruling pronounced its ruling vide order No. 01/ODISHA-AAR/2024-25 dated 27.08.2024 stating that the contractual agreement of handing over of building and civil structure including railway siding, by the appellant against receipt of consideration; effectively a contractual agreement to refrain from removing the erected structures against receipt of consideration, is



treated as supply of service as per Clause 5(e) of Schedule-II of the CGST Act, 2017 and is a service classifiable under other miscellaneous service (SAC 999792) and taxable @ 18% under Sl.No. 35 of Notification No. 11/2017-CT (Rate) dated 28.06.2017.

3.7 Aggrieved by the above ruling of the AAR, the appellant has filed the present appeal application manually on 05.05.2025, before Appellate Authority of Advance Ruling under section 100 of CGST Act, 2017 and prayed before the Appellate Authority to:-

- (i) Set aside/modify the Impugned advance ruling passed by the Authority for Advance Ruling as prayed above;
- (ii) Grant a personal hearing;
- (iii) Pass any such further or other order (s) as may be deemed fit and proper in facts and circumstances of the case.

3.8 The proviso of sub section (2) of section 100 of the CGST Act, 2017 provides that *"the appeal against the order passed by the Authority for Advance Ruling is to be filed within a period of 30 days from the date on which the ruling sought to be appealed against is communicated to the applicant; provided that the appellate authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days."*

The order of AAR was communicated to the appellant on 28.08.2024 and the appeal was filed on 05.05.2025, i.e. after a lapse of 250 days of the communication of the AAR order. Therefore, it transpires that the appeal has not been filed within the prescribed time limit (and the extended time limit).

4. Personal Hearing:

4.1 The Odisha Appellate Authority for Advance Ruling provided personal hearing to the Applicant for representing their case through Video Conference on 19.08.2025. The Applicant attended the personal hearing through their



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authorized representative, Shri Narandra Kumar Dash, Advocate. During the personal hearing, the authorized representative submitted the following:

- attention was drawn to clause 5 & 6 of Part X of lease deed dated 30.03.1998, as discussed in Para 4 of the AAR order dated 28.08.2024, which stated that the lessee (the appellant in this scenario) will take down and remove any plant, machinery etc. for their own benefit which the lessee is not bound to deliver to the state and which the state Govt. shall not desire to purchase. Further, if after the end of six calendar months after the expiration or sooner determination of the said term if not removed by the lessee, may be sold or disposed of in such manner as the state Govt. shall deem fit without liability to pay any compensation or to account to the lessees in respect thereof.
- That on 11.01.2021, Govt. of Odisha granted the mining lease to Odisha Mining Corporation Limited in which they expressed their intention to acquire the building and infrastructure.
- The deed for handing over and taking over the building and civil structure and plant machinery was finalized through deed dated 28.06.2023, on as is where is basis, on consideration.
- The main contention of the Authorized Representative was that the building and civil structures were constructed on the land of Govt. of Odisha. After expiration of lease deed, the Govt. decided to hand over the same to the new lessee i.e., Odisha Mining Corporation Limited.
- Since this is a transaction of immovable property, the activity shall be treated neither as supply of service nor a supply of services under the provisions of Sl.No. 5 of Schedule-III of the Act.
- As ruled by AAR, the transaction should not fall under the provisions of Para 5(e) of Schedule-II, this is not a case of refrain from or tolerate an act.
- The appellant has also requested for condonation of delay in filing the appeal before the AAAR.



5.0 DISCUSSION & FINDINGS:

5.1 We have carefully gone through records of the case, the ruling given pronounced by the Authority for Advance Ruling, Odisha and submission made by the Appellant in their application as well as the arguments advanced by Shri Narendra Kumar Dash, Authorized Representative during the personal hearing.

5.2 We have also gone through the proviso of sub section (2) of section 100 of the CGST Act, 2017 which provides that *"the appeal against the order passed by the Authority for Advance Ruling is to be filed within a period of 30 days from the date on which the ruling sought to be appealed against is communicated to the applicant; provided that the appellate authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days."*

In the instant case, the order of AAR was communicated to the appellant on 28.08.2024. The date of communication 28.08.2024 was declared by the appellant in application form and the same was also not disputed by the appellant. The appeal was filed on 05.05.2025, i.e. after a lapse of 250 days of the communication of the AAR order. Therefore, it transpires that the appeal has not been filed within the prescribed time limit and also within the extended time limit. However, the appellant has prayed for condonation of delay in filing appeal citing the following reasons:

- (i) That since the impugned order of AAR has been passed and communicated to the petitioner Company on 28.08.2024, the same had been forwarded to the Odisha Mining Corporation, a State PSU for taking necessary steps for release of GST amount for payment to Govt. exchequer. However, on receipt of the above order, OMC, being a public section undertaking of the State Government of Odisha, referred the matter for legal opinion from their panel counsel, which had taken several months to address the matter to the higher forum and in the process, the present appeal has been filed late on



05.05.2025 causing thereby a delay of almost 250 days.

- (ii) That besides, the Order impugned in this Appeal has not been uploaded in the Portal, for which the petitioner was also in doubt, whether to file for Appeal electronically or manually for which the petitioner waited for the uploaded order in Portal and since the order was not uploaded in the portal; without having any alternative filed the present appeal manually.

As per the provisions of CGST Act, 2017, the Appellate Authority can only condone the delay up to a period of 30 days beyond the normal period of 30 days of communication of AAR order to the appellant, provided that sufficient cause is presented by the appellant for such delay. In the instant case, there is a delay of 220 days from the last date of filing of appeal in normal course, which is beyond the power vested on Appellate Authority for condonation of the delay, not examining as to whether sufficient cause for the delay was submitted or not.

We find that the proviso of Section 100(2) of the Act, states "*provided that the Appellate Authority may allow it to be presented within a further period not exceeding thirty days*". This clearly conveys that the Appellate Authority has a discretion and limitation of allowing the delay in filling appeal for a further period of 30 days beyond the normal period of 30 days.

5.3 The appellant has contended that AAR Order has not been uploaded in the Portal, for which the petitioner was in doubt, whether to file electronically or manually, for which the petitioner waited for uploading of the AAR order in the Portal and since the order was not uploaded in the portal without having any alternative filed the present appeal manually.

In this regard, the provisions of Rule 107A of the CGST Rules, 2017 is re-produced below:

"Rule 107A. Manual filing and processing. - Notwithstanding anything



contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules."

From above, it is seen that statute allows manual filing of an application, intimation, reply, declaration, statement, in respect of any process or procedure where reference to electronic filing has been prescribed. Accordingly, the appellant's claim that as the impugned order in this Appeal has not been uploaded in the Portal, they were in doubt, whether the order passed as such would have been filed Appeal Electronically or manually, is not tenable in view of the provisions of Rule as discussed above.

5.4 We also find that the appellant has placed reliance on the following decisions of the Hon'ble Supreme Court:

- (i) In the case of N.Balakrishnan Vs. M. Krishnamurthy reported in (1998) 7 SCC 123, wherein the Hon'ble Supreme Court while deciding a matter relating to condonation of delay in reference to the Limitation Act, 1963 held in the following terms -
"Condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be un-condonable due to want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. In every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough



to turn down his pleas and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delays in approaching the court is always deliberate”.

- (ii) In the judgement of Hon'ble Apex Court in the case of Mool Chandra Vs. Union of India, reported in 2024 SCC online 1878/2024 INSC 577 (LiveLaw) wherein the Hon'ble Apex Court while examining the plea for condonation of delay held that it is the cause for delay which has been propounded will have to be examined. If the cause for delay would fall within the four corners of “sufficient cause”, irrespective of the length of delay, same deserves to be condoned.

In this regard, reference is invited to the findings of the Apex Court in the Civil Appeal case No. 5949 of 2007 in M/s. Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur. The relevant extract is reproduced below:

“The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963, can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by



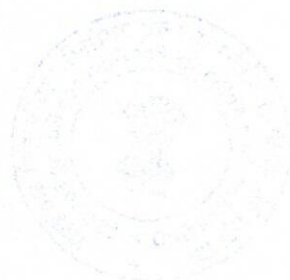
sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."

From the above, we find that the findings of the above case are squarely applicable to the instant case. It is a fact that this Appellate Authority is created by a statute and is empowered under the provisions of CGST/SGST Act, 2017. The condonation of delay up to a period of 30 days in filing the appeal, is empowered to this Authority are prescribed in Section 100 of the CGST Act, 2017. The proviso of sub-Section (2) of Section 100 of CGST Act, 2017 makes it clear that the Authority has no power to allow the appeal beyond 30 days after a normal period of 30 days of communication of the AAR Order.

Accordingly, since the filing of the appeal in the instant case, falls beyond the scope of powers conferred under proviso to Section 100(2) of the CGST Act, 2017, we hold that the appeal cannot be allowed to proceed on account of time limitation, and as a result, the question of discussing the merits of the issue in this case in appeal does not arise.

6. In view of the facts and circumstances of the case, and based on the discussions held above, we are of the considered view that we are not





empowered to condone the delay beyond the statutory period in filing this appeal. Accordingly, we pass the following order:

ORDER

We dismiss the appeal filed by the Appellant, M/s. Essel Mining & Industries Ltd., on the grounds of limitation of time, without going into the merits of the case.


(Yamini Sarangi)
Member


(P.R. Lakra)
Member

C.No.V(31)01/CC/ODISHA-AAAR/BBSR/2025/

Date:- 22.09.2025

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To,

M/s. Essel Mining & Industries Ltd.

Plot No. 7/43, Khata No. 244/122,

Basantapur Talasash, Dabuna

Kendujhar-758086

Copy to:

1. The Chief Commissioner, CGST, Central Excise and Customs Bhubaneswar Zone.
2. The Commissioner, Commercial Taxes & GST, Govt. of Odisha, Cuttack.
3. The Pr. Commissioner/Commissioner, CGST & Central Tax, Bhubaneswar/Rourkela
4. The Jurisdictional CGST Assistant/Deputy Commissioner of Central Tax & State Tax.
- ✓ 5. The Web Manager, www.gstcouncil.gov.in for uploading of Order in Portal.
6. Office Copy.



