

AUTHORITY FOR ADVANCE RULING – CHHATTISGARH
3rd & 4th Floor, VanijyikKar GST Bhawan, North Block Sector-19,
Atal Nagar, District-Raipur (C.G.) 492002
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PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING
U/s. 98 OF THE CHHATTISGARH GOODS AND SERVICES TAX ACT, 2017

Members Present are

Smt. Sonal K. Mishra
Joint Commissioner
O/o Commissioner, State Tax
(CGGST), Raipur, Chhattisgarh.

Shri Rajesh Kumar Singh,
Additional Commissioner,
O/o Principal Commissioner,
CGST & Central Excise, Raipur(C.G)

- Sub:-** Chhattisgarh GST Act, 2017 – Advance Ruling U/s 98 – Regarding the applicability of Cess on sale of coal reject by a power plant.
- Read:-** Application dated 03/12/2019 from M/s Akaltara Minerals, L-2, Vidya Nagar, Khemka House, Bilaspur, Chhattisgarh (hereinafter referred to as the applicant), (GSTIN- 22AARFA0901D2Z4).

PROCEEDINGS

[U/s 98 of the Chhattisgarh Goods & Services Tax Act, 2017 (herein- after referred to as CGGST Act, 2017)]

No.STC/AAR/08/2019

Raipur Dated .02/03/2020

The applicant M/s Akaltara Minerals [herein after also referred to as the applicant] has filed an application U/s 97 of the Chhattisgarh Goods & Services Tax Act, 2017 requesting an advance ruling (on applicability of GST Notification No. 02/2018- Compensation Cess (Rate) dated 26/07/2018 on sale of coal reject by a power plant of Chhattisgarh State Power Generation Company Limited (CSPGCL)) to the applicant and as to whether the said Power Plant selling coal reject to them is liable to collect compensation cess even though the applicant don't get ITC on coal, resulting in increase in cost of coal waste.

2. Facts of the case:-

- i. The applicant M/s Akaltara Minerals is a partnership firm engaged in the whole sale and retail business of lime stone, dolomite, marble etc. registered under Bilaspur circle-1 with GSTIN- 22AARFA0901D2Z4.

3. Contentions of the Applicant :-

The applicant has furnished following details regarding the issue for which they are seeking advance ruling:-

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- i. The applicant is a purchaser of coal rejects from power plant of Chhattisgarh State Power Generation Company Limited (CSPGCL). The applicant wants to avail the exemption of coal cess as per GST Notification No. 02/2018-Compensation Cess (Rate) dated 26.07.2018, on the purchase of coal rejects from the Korba Power Plant of CSPGCL.
- ii. In applicants view, the literal interpretation of GST Notification No. 02/2018-Compensation Cess (Rate) should not apply, instead golden rule (logical interpretation) of interpretation should apply as the word used in notification is coal washery but it should be seen as anyone dealing in the same process resulting in the same output or product.
- iii. Thus, in applicants' view the coal waste sold by Power Plant should also be not liable to compensation cess.
- iv. If cess is applicable on rejected coal again then it tantamount to double taxation, as the coal on which cess has already been paid is only segregated as coal reject, hence government exempts washery. On this ground, it is clear that the applicants cess is similar to that and coal reject as a product shall be exempt from cess, as coal being sold by power plant has already suffered cess and form part of cost of the product. And if they pay cess again, it is double taxation, which is against the very base on which the GST law was framed i.e. to avoid double taxation on goods.

4. Personal Hearing:-

Keeping with the established principles of natural justice, personal hearing in the matter was extended to the applicant and accordingly their authorized representative Mr. Ankit Gupta, CA and Shri Ashutosh Shrivastava, CA appeared before the authority for hearing on 26.12.2019 and reiterated their contention. They also furnished a written submission dated 26.12.2019 which has been taken on record.

The applicant reiterated that as per GST law, power plants can not avail credit of input tax and cess, also GST is paid by them during coal purchase. And as per GST Notification No. 02/2018-Compensation Cess (Rate) dated 26/07/2018, "Coal rejects supplied by a coal washery, arising out of coal on which compensation cess has been paid and no input tax credit thereof has not been availed by any person" and thus, the applicant is seeking clarification on their view that cess will not be applicable on reject coal sold by power plant as cess has already been paid on total cost during purchase of coal from coal company. They have also submitted that if Government's intention is only to give benefit of cess to coal washery and not to rejected coal generated by others then it is a discrimination, as similar product will be taxed by two different rates. It was also their contention that Hon'ble Chhattisgarh high court in the case of M/s Pasa Associates Pvt. Ltd vs. State of Chhattisgarh and others (2015)27STJ 440(CG) had held that if there is no rational for differentiating criteria for a class of dealers it violates the constitutional guarantee for equality under Article-14 and the notification is to be struck down on that ground also.

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5. The legal position, Analysis and Discussion:-

The provisions for implementing the CGST Act and CGGST Act, 2017 are similar. Now we sequentially discuss the provisions that are applicable in the present case.

The applicant sought advance ruling on:-

- (A) Whether Notification No-2/2018-compensation cess (Rate) will apply to power plant or not?
- (B) Whether power plant selling coal reject is liable to collect compensation cess even though they don't get Input Tax Credit on coal resulting in increase in cost of coal waste?

5.1 The jurisdictional Assistant Commissioner, CGGST circle 1 Bilaspur under his letter क्रमांक राक. स.आ./अविप्रा./01/2019/3310 बिलासपुर दिनांक-26.12.2019 in reference to the ruling sought by the applicant was of the opinion that the benefit of Notification No-2/2018-compensation cess (Rate) will not be applicable to power plant and that a power plant selling coal reject is liable to collect compensation cess.

5.2 Section 96 of CGGST Act, 2017: Authority for advance ruling, stipulates as under:-

Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory.

Section 97(2) of CGGST Act, 2017 stipulates that:-

The question, on which the advance ruling is sought under this Act, shall be in respect of—

- (a) classification of any goods or services or both;
- (b) applicability of a notification issued under the provisions of this Act;
- (c) determination of time and value of supply of goods or services or both;
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;
- (e) determination of the liability to pay tax on any goods or services or both;
- (f) whether applicant is required to be registered;
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Further 103 of CGGST Act, 2017 on Applicability of advance ruling stipulates that : – The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only –

- a. On the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;
- b. On the concerned officer or the jurisdictional officer in respect of the applicant.

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5.3 Before we delve into the issue involved on merits, it is observed that the points on which ruling has been sought by the applicant in the instant case, directly relates to liability by the supplier of goods in as much as clarification has been sought by the applicant as regards applicability of Notification No.2/2018-compensation cess (Rate) on the power plant from whom the applicant is procuring coal rejects. Thus in view of the above, it would not be out of place to mention here that in terms of section 103 of CGGST Act, 2017, the ruling so sought by the applicant would be binding only on the applicant and on the concerned officer or the jurisdictional officer as above.

5.4 Now coming to the merits of the case, it is seen that the relevant Notification No. 02/2018-Compensation Cess (Rate) dated 26/07/2018 reads as under:-

[TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION (i) OF THE GAZETTE OF INDIA, EXTRAORDINARY]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)
Notification No. 2/2018-Compensation Cess (Rate)

New Delhi, the 26th July, 2018

G.S.R. (E).- In exercise of the powers conferred by sub-section (2) of section 8 of the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 1/2017-Compensation Cess (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 720 (E), dated the 28th June, 2017, namely:-

In the said notification, in the Schedule, -

(i) after S. No. 41 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely:-

"41A	27	Coal rejects supplied by a coal washery, arising out of coal on which compensation cess has been paid and no input tax credit thereof has not been availed by any person.	NIL";
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(ii) after S. No. 42 A and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely:-

"42B	87	Fuel Cell Motor Vehicles	NIL".
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2. This notification shall come into force on the 27th July, 2018.

[F. No. 354/255/2018-TRU]
(Gunjan Kumar Verma)

Under Secretary to the Government of India

Note: The principal notification No.1/2017-Compensation Cess (Rate) dated the 28th June, 2017 was published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R. 720(E), dated the 28th June, 2017 and last amended vide notification No. 1/2018-Compensation Cess (Rate) dated the 25th January, 2018, published vide number G.S.R.93(E), dated the 25th January, 2018.

5.5 Thus the above notification prescribes nil compensation cess on coal rejects supplied by a coal washery, arising out of coal on which compensation cess has been paid and no input tax credit thereof has been availed by any person. In the applicant's case, it receives coal rejects from the power plant and not from the coal washery.

5.6 In a case where there is no ambiguity in the stipulated provisions, there apparently exists no scope of any interpretation whatsoever. In other words, if the provision is unambiguous and if from the provision the legislative intent is clear, there exists no need for any interpretation. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the purposive interpretation etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute.

5.7 Hon'ble Supreme Court in the case of *Swedish Match AB vs. Securities and Exchange Board, India*, AIR 2004 SC 4219 held that Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation. As held in *Prakash Nath Khanna vs. C.I.T.* 2004 (9) SCC 686, the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency, vide *Delhi Financial Corporation vs. Rajiv Anand* 2004 (11) SCC

5.8 Hon'ble Supreme Court in *CIT vs. Keshab Chandra Mandal*, AIR 1950 SC 265 held that "Hardship or inconvenience cannot alter the meaning of the language employed by the Legislature if such meaning is clear on the face of the statute".

Where the words are unequivocal, there is no scope for importing any rule of interpretation vide *Pandian Chemicals Ltd. vs. C.I.T.* 2003(5) SCC 590.

It is for the legislature to amend the law and not the Court vide *State of Jharkhand & Anr. vs. Govind Singh JT* 2004(10) SC 349.

In *Jinia Keotin vs. K.S. Manjhi*, 2003 (1) SCC 730, this Court observed:

"The Court cannot legislate.....under the garb of interpretation.....".

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In Shiv Shakti Co-operative Housing Society vs. Swaraj Developers AIR.2003 SC 2434, Hon'ble Supreme Court observed: "It is a well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent."

In Union of India and another vs. Hansoli Devi and others 2002(7)SCC (vide para 9), Hon'ble Apex Court observed: "It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the grounds that such construction is more consistent with the alleged object and policy of the Act."

In Gurudevdatla VKSSS Maryadit vs. State of Maharashtra AIR 2001 SC 1980, Apex Court observed: "It is a cardinal principle of interpretation of CIVIL APPEAL NO. 2684 OF 2007 statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The Courts are adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute".

In Excon Bldg., Material Mfg. Co., Pvt Ltd-2005 (186) ELT 263 (S.C) Hon'ble Supreme Court held that "where the wordings of notification are clear, then the plain language of the Notification must be given effect to. An interpretation which is not borne out by the plain wordings of the Notification cannot be given")

Southern Petrochemical Industries Co. Ltd-(2007(5)SCC 447)- Hon'ble Supreme Court held that "the principle of construction of a statute that the exemption provisions would be attracted only when requisite conditions therefore are satisfied, would also apply in a case of constitutional interpretation";

RANBAXY LABORATORIES LTD - 2011 (273) E.L.T. 3 (S.C.)-The Hon'ble Supreme Court vide Para-10 held that "10. It is a well settled proposition of law that a fiscal legislation has to be construed strictly and one has to look merely at what is said in the relevant provision; there is nothing to be read in; nothing to be implied and there is no room for any intendment.

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5.9 The aforementioned judgments of Hon'ble Apex Court, confirms that a notification has to be understood from the plain language of the said notification as also that there is no scope of interpretation in such a case.

6. In view of the deliberations and discussions as above, we pass the following order:-

ORDER

(Under section 98 of the Chhattisgarh Goods and Services Tax Act, 2017)

No.STC/AAR/08/2019

Raipur Dated 02/03/2020

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

GST Notification No. 02/2018-Compensation Cess (Rate) dated 26/07/2018 extending nil liability of compensation cess on coal rejects supplied by a coal washery, will not be applicable to coal rejects supplied by a power plant and further such power plant supplying coal rejects to the applicant is liable to collect compensation cess.

Place: - Raipur.

Date:- 02/03/2020

Seal: -



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Sonal K. Mishra
(Member)

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Sonal
2/3/20

MEMBER
ADVANCE RULING AUTHORITY
CHHATTISGARH, RAIPUR

-sd-
Rajesh Kumar Singh
(Member)

TRUE COPY

Rajesh
2/3/2020

MEMBER
ADVANCE RULING AUTHORITY
CHHATTISGARH, RAIPUR

Copy to:-

1. Applicant,
2. The Commissioner, (CGG), Raipur
3. The Principal Commissioner, (CGST), Raipur
4. The jurisdictional officer, Bilaspur Circle-I

