#### MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010. (Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

#### BEFORE THE BENCH OF

- (1) Ms. P. Vinitha Sekhar, Additional Commissioner of Central Tax, (Member)
- (2) Mr. A. A. Chahure, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	22AAECK 0826HIZO
Legal Name of Applicant	Kolhapur Foundry and Engineering Cluster
Registered Address/Address	Ground Floor, Plot No P-62, MIDC Shiroli,
provided while obtaining user id	Kolhapur - 4116122
Details of application	GST-ARA, Application No. 55 Dated 14.10.2019
Concerned officer	KOL-VAT-C-041, Kolhapur division, Kolhapur
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Factory / Manufacturing, Service Provision
B Description (in brief)	SAND RECLAMATION PLANT
Issue/s on which advance ruling	(iii) Determination of time and value of supply of goods or services or both
Question(s) of which advance ruling is required	As reproduced in para 01 of the Proceedings below.

#### **PROCEEDINGS**

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 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" respectively ] by **Kolhapur Foundry and Engineering Cluster,** the applicant, seeking an advance ruling in respect of the following questions.

- 1. Whether the activity of Applicant is Supply of Goods or Supply of Job Work Services?
- 2. The used waste sand which is of the value 'Nil' (Refer separate Valuation Certificate by Engineer) will have any impact on valuation?

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 any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

#### FACTS AND CONTENTION - AS PER THE APPLICANT 2.

- The submissions made by the Ms. Kolhapur Foundry & Engineering Cluster, the applicant 2.1 is as under:-
- Applicant, is involved in promotion of commercial activities relating to Foundry Industry 2.2 & preservation of environment through its Sand Reclamation Plants.
- various other set of small procedures and sand is thus reclaimed and mode.

  2.4 following are the main steps:
  - - aste Sand is received at applicant's KFEC plants from various Foundries. As there is no commercial use of this used/waste sand, the value is treated as Zero.
  - The used sand received from various foundry units are stored together at one location without segregation before it is used for production activity.
    - (iii) The sand is processed and approximately 80% of the Input (Waste Sand) is recovered as finished material (Fresh Sand). The 20% loss includes the layer of chemicals which was affixed on the surface of the Sand during Foundry operations & clay, rubber/wooden/metal partials mixed with sand during foundry operation & other sand clots etc.
    - (iv) During this process the chemical properties of Sand are changed in such a manner due to heat and other processes, that the quality of the reclaimed sand is better for foundry use as compared to freshly mined sand.
  - The following are the applicable rate of Tax considering the HSN /SAC Codes: 2.5

HSN/SAC code & Category	Rate of Tax (CGST=SGST)	
2505: Natural sands of all kinds, whether or not coloured, other than metal-bearing sands of chapter 26	5%	
250510: Silica sands and quartz sands	5%	
25051020: Quartz sands	5%	
9988: Manufacturing Services on Physical Inputs (goods) owned by <b>others</b>	18%	

- 2.6 The definition of 'job work' under the GST as under:
  - Section2 (68): "job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly.
- 2.6.1 From a combined reading of, the definition of job work as aforesaid and the procedure of job work as prescribed u/s 143 of the CGST Act and Rule 45 of GST Rules, it is the principal who will send inputs to the job work for undertaking any treatment or process that may or may not amount to manufacture and will bring back same after the completion of job work. Thus the person, who sends goods to the job worker, is a principal and the person who undertakes treatment/ processing is a job worker.
  - 2.6.2 Applicant receives used sand, from various foundry units under the cover of Rule 55 Challan, which is processed to get fresh sand which is unique and available in various categories (based on its size) after normal loss of quantity at about 20%. It is not possible to identify whether output sand is recovered from the used sand of any particular foundry.
    - 2.6.3 The product i.e. Sand is then handed over to the recipient on completion of the production.
    - 2.6.4 In order to appreciate whether the activity undertaken by the applicant is job work GST Flyers have been referred to, as under:-
      - It includes outsourced activities that may or may not culminate into manufacture. The term Job-work itself explains the meaning. It is processing of goods supplied by the principal. The concept of job work already exists in Central Excise, wherein a principal manufacturer can send inputs or semi-finished goods to a job worker for further processing. Many facilities, procedural concessions have been given to the job workers as well as the principal supplier who sends goods for job work. The whole idea is to make principal responsible for meeting compliances on behalf of the job worker on the goods processed

by him (job worker), considering the fact that typically the job-workers are small persons who are unable to comply with the discrete provisions of the law. The GST Act makes special provisions with regard to removal of goods for job-work and receiving back the goods after processing from the job worker without payment of GST. The benefit of these provisions shall be available both to the principal and the job-worker.

There is no direct correlation between the exact amount of Sand supplied by the Foundry 2.7 Units and then taken up by the said units after processing. This basically goes against the basic principle of job work which is 'process is undertaken on materials belonging to another registered person'. To understand this contention let's take a hypothetical example: There is opening stock of 50 Tons of Waste Sand at the plant on 01.10.2019, Foundry Unit A dumped 10 Tons of Waste Sana on 01.10.2019, and Foundry Unit B dumped 30 Tons of Sand on the same day. On the same day on a continuous basis, a complete lot of Foundry A: 8 Tons & Foundry B: 24 tons.

Now in this example it is impossible as to which 50+10+30=90 Tons was processed. Considering the normal loss of processing let's say 90\*80%= 72 Tons of fresh sand was processed. The freshly processed sand was given to

Now in this example it is impossible to segregate the quantities and understand and identify which sand was given to who as the processing is done for a complete lot. Also running plant separately for each lot received separately is not feasible commercially.

In the matter of M/s. Prestige Engineering (India) vs Colly, of Central Excise, Merut (1994 (73) E.L.T.497 (SC)], the Hon'ble Supreme Court has considered various examples of job work and observed that the real spirit of job work is that where the principal sends minor input to the job worker and all other inputs and goods utilized in the final products belongs to the job worker then the said process cannot be considered as a job work.

In the subject case as a matter of fact the value of final product only consists of Plant & Machinery, Operation Cost and Other overheads since the value of inputs received from customer i.e. used waste sand, is having Nil valuation in the costing of final product. The value of the material used, skills used, set up cost of plant and labor applied by the applicant is the value of final product. The value of input supplied by the customer i.e. Sand, is nowhere considered at the time of final product valuation.

Further, there are differences in the quantities of waste sand dumped by the foundry units 2.9 and quantity of fresh sand picked up by them. To qualify the activity as job work, out of the quantities dumped by the foundries of waste sand after normal losses of about 20%, remaining 80% quantities should be picked up by the foundry units. But the arrangement in the case of applicant is operating more or less on convenience basis, meaning, as the waste sand is to be dumped in the specified areas only not anywhere else, the foundries may dump whatever sand is available with them at any given point in time with applicant, whereas only those quantities which are required by them at any given point in time only will be picked up which may be more or less than actually dumped waste sand after deducting normal loss. So it gives this transaction the color of supply of goods.

Hence, the said transaction based on its nature, characteristics and unique attribute does not satisfy the criteria to qualify it as Job Work and should be construed as Supply of

2.10 Coveriment of India, Ministry of Commerce & Industry, Department of Industrial Policy & Promotion approved a project for Kolhapur District viz Vall.

Engineering Chaster for Tr ned under Recast Industrial Infrastructure Up-gradation Scheme (IIUS). The said app. app. approved project has been funded as shown in below table:

Funding Source	Percentage	
IIUS Grant : Central Government	73%	
Maharashtra State Govt. Contribution	10%	
Industry Contribution	17%	
Total	- 100%	

- Industry Contribution of 17% is done by the way of contribution from 5 Trade Associations 2.11 in the Kolhapur District. Also, the Board & Managing Committee constituted for applicant hereunder have the all of members of these associations who are involved in management and decision making on both sides.
- Considering that, waste sand is supplied by the foundries, Section 15(4) of CGST Act 2.12 becomes appropriate for determining the value of supply of fresh sand, which further talks about valuation is to be determined as per the Rules of CGST Act.
- 2.12.1 As per Rule 27 of CGST Rules,

Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall,

- (a) be the open market value of such supply;
- (b) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;
- (c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;
- (d) if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.
- 2.12. In normal scenario as explained above, the value of used waste Sand is not considered anywhere in the valuation of final product fresh sand. The reason being the value as certified by the engineer is Nil (Annexure: Used Sand Valuation Certificate). Waste sand usually discarded and has no value attached to it. So clause (a) becomes irrelevant.
- 2.12.3 Similarly based on above grounds clauses (b) & (c) also become redundant in this manner and valuation needs to be done as per the provision of Rule 30 or Rule 31 in that order.
- 2.12.4 As per Rule 30 of CGST Rules,

Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

Even this rule does not become applicable since waste sand is not usually produced/manufactured but it is just a by-product of Foundry operations, hence there is no Cost of Production attached directly to his waste used sand.

2.12.5 Also taking into consideration point no 1, 2 & 3 above, as per Rule 28 of CGST Rules,

The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall

- (a) be the open market value of such supply;
- (b) if the open market value is not available, be the value of strpply of goods or services of like kind and quality;
- (c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that, where the recipient is eligible for full input tax credit, the value declared in the invoice, shall be deemed to be the open morket value of the goods or services.

- 2.12.6 In above scenario also similar to points 6 & 7 clause (a) & (b) become not applicable or But in this scenario means when the fresh sand is supplied to related person, provise 2 becomes crucial which talks about value declared in the invoice will be deemed be the value of goods/ services supplied, which is Nil.
- e seek to know whether, this will have any impact on valuation and whether our unden appropriate. understanding to consider the 'Nil' value of the used waste sand in valuation (no impact) is

#### **Background: Sand Reclamation Plant** 2.13

Major manufacturing industries in Kolhapur are foundries & Machine shops; producing ferrous & non-ferrous components for well-known OEM3 throughout the country. Considering the same, Government of India, Ministry of Commerce & Industry, Department of Industrial Policy & Promotion approved the IIUS project, mentioned above.

## 2.13.1 Constitution of project:

Applicant Company, formed by 5 industrial associations from Kolhapur district, is registered under Section 25 of the Companies Act 1956, on the basis of NO PROFIT NO LOSS. Availability of required sand, which is the basic production factor for foundry industry is crucial for sustenance of foundry industry. The subject reclamation plant will serve all foundry and sand related industry in Kolhapur district. The said project will be a common facility coupled with social reason to cater foundry industry as well as for the benefit of common people in this region by avoiding pollution.

**2.13.2** Funding of Project: The funding is already mentioned in 2.10 above.

## 2.13.3 Purpose - Best from Waste:

The major component of cluster is Sand Reclamation Plant, established for reclamation of used & disposable sand by the foundries for reuse. Under this project two sand reclamation plants are established, at Shiroli MIDC and at Gokul Shirgaon MIDC, Kolhapur.

## 2.13.4 Waste disposable sand:

Waste disposable sand are of mainly two types; Black sand (disposable green sand) and core sand. Disposable black sand is non reusable sand generated in foundry molding process. Core is a solid block of sand used in molding process. Such core becomes obsolete once it is used in molding process. This core sand also is to be used for reclamation. This disposable black sand and core sand generation process is continuous in foundry process and it is necessary to dispose this generated sand. This disposable sand do not have any commercial value.

# .13.5 Environment Impact:

Considering the present and future use of sand by foundries there may be chances of facing problems regarding availability of fresh sand as well as disposition of used waste sand. Waste sand cannot be dumped anywhere in open as it may lead to water pollution and contamination of farming land. Sand reclamation is the answer for such problems. Further, waste generated during reclamation process will be used for bricks making. Thus this plant will ensure 100% conversion of waste to reusable material.

## 2.13.6 Conservation of Natural Resource:

The reclamation plant will enable foundries to reuse reclaimed sand in their process which will result in reduction in the demand for fresh mining sand. This will lead to minimize excavation of land in want of foundry sand.

#### 2.13.7 Plant Operations:

In the Sand Reclamation Plant, waste sand will be received for treatment, from the foundry units as well as from sand related manufacturing units and reclaimed sand will be given for reuse. In the treatment of waste sand there are chances of process loss. Such process loss cannot be co-related with a particular supplier of waste and disposable sand as the

sand reclamation process is continues process. Hence, there will not be a fixed ratio of received sand and sand given to a particular supplier/party because a party may supply more quantity of waste or disposable sand and may take or may not take treated sand due to their technical reasons. Also there will be some units which will not be able to provide any waste or disposable sand for treatment but may be interested to use treated sand. In some cases foundry units and other sand related business units fail to provide waste or disposable sand for treatment then the plant has to procure the sand wherever it is available from waste sand storages.

- 2.14 A detail of process is as given below.
- A) Waste sand storage: Sand reclamation plant receives waste from foundry and stores it in, Waste Core sand storage and waste raw black sand storage.
- B) Process flow: With the reference of schematic diagram following is the description and working of plant.

### 4 M.T. Hopper

There are two hoppers each of 4 MT, used to feed waste material to plant. One hopper is used for crushed core sand and another one is used for waste raw black sand. Flow of sand is maintained with mechanical sliding dampers and VFD driven trolley under the hopper. This also helps to attain proper mixing of waste crushed core sand and waste raw black sand. Screens are given to hoppers for separation of big size of wastages from material e.g. plastic, glass and paper waste.

# 2. Belt Conveyor No 1

Is used to transfer mixed waste material from 4 MT hoppers to Bucket elevator No 1

# 3. Magnetic separator

This unit is used to separate out iron metal particles from waste sand.

#### 4. Bucket Elevator No 1

Bucket elevator is a machine which is only used to transfer sand from lov/er height to upper height. It transfer waste mixed sand from conveyor no 1 to dryer.

#### 5. Dryer

As name suggests the dryer does drying of mixed waste material. Removing moisture from waste material will help to reduce fuel consumption. For drying purpose hot air blower (ID

fan) extract fumes and hot air from furnace top to dryer. This is very energy efficient process in which excess energy in the form of hot air and fumes reused.

#### 6. Bucket Elevator No 2

It is used to transfer material from dryer to crusher.

#### 7. Crusher

The crusher ensures that the sand obtained is of homogeneous size and smooth surface. The binder on the sand surface is also removed by crushing. A mesh of crusher separates metal waste, paper waste, plastic waste and wooden waste.

#### 8. Reject belt conveyor

It's a part of crusher which removes foreign waste and unwanted material from processed crushed sand. In specified frequency reject belt conveyor goes inside of the crusher, collects waste and come to its discharge position.

# Belt Conveyor No 2

It is used to convey crushed waste sand from crusher to bucket elevator No 3.

#### 10. Bucket Elevator No 3

It is used to ransfer material from belt conveyor no 2 to waste sand storage hopper.

#### Waste sand storage hopper

Waste sand storage hopper capacity is 160 M.T. which is required to neutralize any surge from incoming waste sand flow. Below the hopper there are two outlets to control the flow of sand.

#### 12. Metering conveyor

This belt conveyor is driven by VFD, VFD helps to control the speed of sand flow towards furnace through metering conveyor which decides the per hour MT flow.

#### 13. Bucket Elevator No 4

It is used to transfer material from metering conveyor to augur conveyor.

#### 14. Augur conveyor

It's a screw conveyor. The shaft of the rotating spiral rotates in the material tube to drive the material along. This type of conveyor is used for carry weste mixed sand in horizontal way up to furnace top.

#### 15. Furnace

This furnace is a type of energy-saving mobile furnace which is specially designed for foundry sand reclamation process. The main target of foundry sand reclamation process is to get rid of combustible substances such as clay. In terms of thermal energy consumption, most of heat is utilized for heating of sand. The outer coatings of waste sand particles are burned in the furnace and loosen too. Loss on ignition value and acid demand value get controlled here. Root blower is used to fluidize the sand bed inside the furnace. After burning of sand, fluidization effect separate out unburned clay from sand particles.

It can fully recycle and utilize substantial accumulation of heat left in the heated sand, using it as the heat source for the newly input sand. Moreover, it also improves the quality of the reclaimed sand through all kinds of optimization. Compared with the traditional furnaces, saving effects, but also maintain the sand's high quality and in operation, etc. After furnace we get thermally reclaimed sand.

Vibrating Conveyor this furnace not only reduce half of its fuel consumption, demonstrating obvious energysaying effects, but also maintain the sand's high quality and its own reliable and excellent

This machine is working on the basis of forward and reverse vibration. Output of furnace e. thermally reclaimed sand gets sieved on vibrating conveyor. Clay gets separated from sand. Also spraying water helps to reduce temperature of sand.

# RESEGUTRA STAT Chain bucket elevator

It is used to transfer thermally reclaimed sand from vibrating conveyor to Fluid bed cooler.

#### 18. Fluid bed cooler

Fluid bed cooler is used for cooling and dust cleaning. Fluid bed cooler is composed of base, perforated plate, blower system and cooling system, etc. The hot sand fall into the perforated plate from chain bucket elevator. The blower system blows in cool air to take down temperature of heated sand. Then the cooling system strays water to perform heatexchange cooling. The air fully contacts with hot sands to take away the moisture of the hot sands. Newly-processed sands collide and rub with each other to bring forward reproducing function. During the movement, the rubbing effects between sand particles peel off the stuck micro coating and discharge them through the dust collector system. Thus, the hot sand gets cooled and de-dusted. The sand mc re towards the outlet by the fluidized bed and air strike, and the cooled sand is discharged through the sand outlet.

#### 19. Bucket clevator No 5

It is used to transfer thermally reclaimed sand from fluid bed cooler to MMR machines (Granulators).

#### 20. Surge Arrestor Tank No 1

Sand flow is not constant every time so that to achieve exact output surge arrestor tank is used. When tank get full then only its pneumatic valve allow sand to flow towards MMR.

#### 21. MMR 1 to 12 (Granulators)

It's a granulator machine used for mechanical reclamation of thermally reclaimed sand. MMR centrifuge is composed of shell, base, motor, belt wheels and other devices. It raises the sands through the high-speed rotation of the shaft. Then the sands collide and rub with each other. Only particles with certain diameter can fall into the sand outlet through the gap and can be discharged, thus realizing the aim of granulation. Multiple machines are used together to obtain better result. As per requirement machines can be on/off.

# Bucket elevator No 6

It is used to transfer thermally reclaimed sand from MMR machines 1 to 12 (Granulators) MMR machines 13 to 24 (Granulators).

## 23. MMR 13 to 24 (Granulators)

Same operation and principle used from MMR 1 to 12 mechines. As per requirement machines can be on or kept off.

#### 24. Fluid bed de-duster

This machine is used for de-dusting i.e. dust removing process. During mechanical reclamation sharp corners of sand gets break and came to circular shape which is good result, but it's also generate dust and it needs to be removed from sand. Principle of operation is same as fluid bed cooler except only cooling system not used. Forced air creates fluidization of sand and air flow conveys dust from sand to dust collector point. It also removes clay particles which reduces sand total clay percentage.

#### 25. Bucket elevator No 7

It is used to transfer reclaimed sand from Fluid bed de-duster to Surge arrestor tank.

#### 26. Surge Arrestor Tank No 3

This tank absorb surge of sand flow and maintain constant flow **towards sieve shaker** machines with 2 no's of outlets.

#### 27. Sieve shaker machine

Sieve Shaker is composed of screen mesh, frame, base, eccentric shaft, motor and other parts. The motor rotates the eccentric shaft through belt and belt wheels. The frame rotates cyclonically a circle around the fixed point driven by the eccentric sleeve. The movement direction of the frame is vertical to the central line of the eccentric shaft. Due to the cyclical rotation of the frame, the material on the screening surface move towards the discharge end at a fixed speed. Material of different sizes goes through the screen mesh so as to be sieved and separated. Selection of sieves depends upon needs and requirements of finished reclaimed sand. There are total 2 no's of sieve shaker machines.

#### Bucket elevator No 8 & 9 28.

It is used to transfer reclaimed sand from sieve shaker 1 and 2 to reclaimed sand hopper 1 & 2 respectively.

#### 29. Reclaimed sand hopper

Finished reclaimed sand product stored in the 2 hoppers of 100 MT each for different grades of sand. Reclaimed sand is ready to transfer from hopper to transportation vehicle.

# A ADVANCE Dust collectors

There are 2 no's of dust collector which are back filter type use: for dust collection process.

#### Additional Submission By Applicant made on 26.12.2019:

On the date of personal hearing 12.12.2019, we have received a written

- In the said submission, the learned authority has mentioned that "The facts involved in this case lead to conclude that, it is not Job Work Service', but 'Outward Supply of Goods' and hence may be taxed @ 18% under the HSN Code No 3824.
- We agree with the authority regarding first part of the sentence that 'The facts involved in 3. this case lead to conclude that, it is not 'Job Work Service', but Outward Supply of Goods'.
- Regarding the remaining part of the sentence that 'hence it may be taxed @18% under the 4. HSN Code No 3824' we have a different opinion as follows:
- In our submission on October 09, 2019 In Annexure No 5: AAR Application (Statement of a. Relevant Facts), on Page No 3 of the Annexure we have given a table of applicable HSN/SAC Category with Applicable Rates. Hence we are of the opinion that the best fitment for our final product, would be 250510: Silica Sands and Quartz Sands taxable at 5%.

- Also HSN Code mentioned by authorities in their submission is 3824: b. PREPARED BINDERS FOR FOUNDRY MOULDS OR CORES; CHEMICAL PRODUCTS AND PREPARATIONS OF THE CHEMICAL OR ALLIED THOSE CONSISTING OF OF INDUSTRIES (INCLUDING NATURAL PRODUCTS), NOT ELSEWHERE SPECIFI OR INCLUDED.
- In our opinion this above entry sounds unfit for the type of our finished goods, also c. the manufacturing procedure is not based on chemical processing but is mainly thermal (Heat Treatment) based. So the output which is coming out of the said manufacturing process should be treated as Silica Sand, which is completely different product than the input i.e. waste sand which has zerc valuation

#### CONTENTION – AS PER THE JURISDICTIONAL OFFICER:

3.1 As regards the first question raised by the and Work Service. As regards the first question raised by the applicant, subject activity may constitute Job Work services only if reclaimed sand is returned back to the owner, by merely charging he cost on process activities. However, in the subject case, value of inward supply is these facts, the invoice obtained from the applicant, bearing no. 19-20/SH/DEC/37 dated 7-Dec-2019 shows the rate of sand is at Rs.2.50 per kg. The market rate of fresh sand is at Rs.3.00 per kg. When compared these two prices, it appears that both prices are nearly one and the same. Therefore, there is reason to believe, that, this is not merely job work, but supply of goods.

- As regards the second question, value of inward supply does not have direct bearing on the 3.2 outward value, in this case, as the applicant has admitted, the inward supply of the waste sand is at Rs. Nil. As such, there is no impact of inward value on the outward supply.
- Socio-Ecological parameters in the said case is already taken into account by the 3.3 system, as 83% of setting cost is born by Central and State governments together and hence, may not cause any impact on taxation.

- 3.4 Facts involved in this case lead to the conclusion that, i is not 'Job Work Service' but 'Outward Supply of Goods' and hence may be taxed @ 12% under the HSN Code No 3824.
- 3.5 Further submissions are made by the jurisdictional officer as under:-
- 3.5.1 The material value of the inward of waste foundry sand is nil.
- 3.5.2 The assesse has claimed set-off of ITC during April-19 to Dec-19.
- 3.5.3 Expenses as per the balance sheet produced by the applicant for 2018-19

Direct expenses Rs.29596448/-.

Indirect expenses Rs.3035850/-.

Purchases

: 18130598/-.

These expenses are against the total Receipts of Rs.71166825...

The outward supply value includes Transportation changes and applicant has paid the GST 12% on this (Invoice no: 19-20/SH/DEC/37 dt: 07.12.2015).

- Natural foundry sand can be used for casting work only after spating with certain adhesive chemicals and called as resin coating. After first use this coating gets burnt and makes the sand waste. This sand is the inward supply to the applicant who, merely removes these impurities and by again coating it, this sand becomes reusable. Such addition of adhesive material behaves as a binder and therefore, classification of this product under HSN code no. 3824 is correct and hence outward supply of reclaimed sand shall be taxed @18%.
- 3.5.6 Hence, it is not 'Job Work Service' but 'Outward Supply of Goods' and taxable @ 18% under HSN Code No 3824.

#### 04. HEARING

Preliminary hearing in the matter was held on 12.12.2019. She Girish Kurkarni, C.A., Shri Raviraj Gajageshwar, Representative Appeared, and requested for admission of the application. Jurisdictional Officer Shri Kirankumar Salokhe, Assistant Commissioner of State Tax, Kolhapur Division also appeared.

The application was admitted and called for final hearing on 11.02.2020. Shri Girish Kulkarni, C.A., Authorized Representative, appeared made oral and written submissions.

Jurisdictional Officer Shri Kirankumar Salokhe, Assistant Commissioner of State Tax, Kolhapur Division appeared and made submissions. We hear? both the sides.

#### 05. DISCUSSIONS AND FINDINGS:

- 5.1 We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the departmental officer.
- 5.2 The applicant receives waste sand which is processed with heat treatment (Thermal Plant)& various other set of small procedures and is reclaimed and made re-usable.
- 5.3 The first question raised by the applicant is whether the activity of Applicant is Supply of Goods or Supply of Job Work Services. To answer this question, we need to examine whether the subject activity undertaken by the applicant is covered under supply of goods or Job work, for which we will examine the definition of "Coods", "Manufacture" and "Job work" under the provisions of CGST ACT.
- 5.3.1 Section 2(52) of the GST Act defines 'goods' as:
  - (52) goods means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.
  - Section 2(72) of the GST Act defines 'manufacture' as:
  - (72) "Manufacture" means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly
- 5.3.3 Section 2(68) of the GST Act defines 'jobwork' as:

  Section 2 (68): "job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly.
- 5.3.4 From a combined reading of the definition of "job work" and the procedure of job work as prescribed u/s 143 of the CGST Act and Rule 45 of GST Rule3, it is the principal who will send inputs to the job worker for undertaking any treatment of process that may or may not amount to manufacture and will bring back same after the completion of job work. Thus the person who send goods to the job worker is a principal and the person who undertakes treatment/ processing is a job worker.

- 5.3.5 In the present case we find that applicants have received waste sand, having no commercial and market value, at their plants from the different foundries under the cover of Rule 55 Challans. Further, there is no commercial use of this waste sand. We find that the used waste sand is stored at common pool Storage Location for preduction activity and it is not possible to segregate the sand as per the receipt from foundries. The finished reclaimed sand is obtained by applying different processing steps which is narrated by the applicant in their written contention.
- 5.3.6 It is submitted that the quantity of finished product i.e. usable sand is approximately 80% of the input waste sand. The remaining 20% loss includes the layer of chemicals which was affixed on the surface of the Sand during Foundry operations and clay, paper/rubber/wooden/metal particles etc.
- 5.3.7 The chemical properties of Sand are changed in such a manner due to heat and other processes that, the quality of the sand is good for foundry use and is ready for foundry where such a said fresh product.
- 5.3.8 It is found that, the applicant by applying different processes and treatments on the waste sand received and using its owns consumables to bring into existence, a fresh new finished usable product, which is a distinct commodity and has commodiate. Therefore, in our view, the activity undertaken by the applicant satisfies the conditions of term manufacture" u/s 2(72) of CGST Act. Hence such activity amounts to manufacture.
  - 5.3.9 We find, from the submission that, the finished product is different in character, name and use than the waste sand which is the input supplied. The emerged product has a commercial value, goods quality and is used by the specific foundry industry. The new product is manufactured from waste sand and has market value. The new product is kind of movable property. Considering the quality, composition, distinct character and use of the product emerges from the process and treatment undertaken, we find that the finished product satisfied the definition of the term 'Goods' mentioned u/s 2 (£2) of CGST Act. We do not hesitate to treat as this new product as "Goods".
  - 5.3.10 We further find from the documents and submissions made before us that the input received is waste material which is dumped at applicant's location due to environmental concerns. The foundries/Suppliers have supplied unusable and non-valuable material in the form of waste sand. The intention of the foundries/Suppliers is not to treat the waste sand as semi

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or finished goods for the purposes of further process. Actually waste sand is a raw material for the applicant and after the processing, usable sand is produced which is then sold to foundries as and when orders are received. The sand is not sold to the foundries in a fixed ratio to the waste sand received. No processing charges are collected by the applicant. In fact, the applicant, as reported by the jurisdictional officer, sells the final product to the foundries at Rs. 2.5 per kg. Whereas freshly mined sand is available at Rs. 3.00 per kg and the difference being very minor shows that the applicant is not a job worker in the subject case. It is clearly seen that the foundries have not supplied goods to the applicant for job work purpose. The supplied material is only waste of the foundry industry and not a byproduct or outcome of any manufacturing process.

5.3.11 The concept of job work already exists in Central Excise, wherein a principal manufacturer can send inputs or semi-finished goods to a job worker for fur her processing. In our view, applicant does not satisfy the conditions mentioned for the term "Job work" u/s 2(68) of NCE RUCCEST ACT. Hence the activity carried out by the applicant is not covered under 'Job work services' and is out of scope of supply of services.

Applicant has referred to the decision of the Hon'ble Supreme court in the matter of M/s. Prestige Engineering (India) vs Collr. of Central Excise, Meru: [1994 (73)E.L.T.497 (SC)] wherein the Court has considered various examples of job work. The Hon'ble Court has observed that addition of minor items by the job worker would not detract from the nature and character of his work. For example, a tailor entrusted with a cloth piece and asked to stitch a shirt, a pant or a suit piece may add his own thread, buttons and lining cloth. However, if the additions made are not minor additions i.e they are of a substantial nature and of considerable value, then in such a case the work done cannot be characterized as a job work.

- 5.3.13 From the observations made by the court we find that additional application of minor items is permissible in job work. In the subject case, the applicant has categorically stated that their activity is an activity of manufacture of a new commodity by using its own raw material and skill and labour as well as the input material supplied, value of which is NIL.
- 5.3.14 Finally, the jurisdictional officer has submitted that, invoice bearing No. 19-20/SH/DEC/37 dated 7-Dec-2019, obtained from the applicant, shows the rate of sand is at Rs.2.50 per kg., while the market rate of fresh sand is at Rs.3.00 per kg and hence when compared, it appears

- that both prices are nearly one and the same. Hence the jurisdictional officer has opined that, subject activity is not merely job work, but supply of goods
- 5.3.14 We find that, the applicant cannot be considered as a job worker within the meaning of Section 2(68) and Section 143 of the GST Act and corresponding rules. The real spirit of job work as explained by the court is that where the principal sends minor input to the job worker and all other inputs and goods utilized in the final products belongs to the job worker then the said process cannot be considered as a job work. In the case at hand applicant has accepted as a matter of fact that, the value is only of the material used/skill and labour applied by them and the value of input supplied by the customer is nil. Therefore in our opinion, the subject transaction undertaken is a supply of goods, i. e. sale of ready to use sand for the foundry industry and not supply of job work services.

The second question raised by the applicant is "The used was: sand which is of the value (Refer separate Valuation Certificate by Engineer) will have any impact on valuation?."

The jurisdictional officer has submitted that, as regards the second question, value of inward supply does not have direct bearing on the outward value in this case, since the applicant has admitted that the inward supply of the waste sand is at Rs. Nil. As such, there is no impact of inward value on the outward supply. The jurisdictional officer has also submitted that Socio-Ecological parameters in the said case is already taken into account by the system, as 83% of setting cost is born by Central and State governments together and hence, may not cause any impact on taxation.

5.4.2 The applicant seeks to know whether the consideration of "IIL' value for the input i.e. used sand, will have any impact on valuation and whether their understanding to consider the 'Nil' value of the used waste sand in valuation (no impach) is appropriate. It appears, from the submissions made by the applicant that, the value of input is considered by the applicant to be Nil is probably because they are not paying consideration for receipt of such used sand. We are of the opinion that in cases like in the subject matter, the value of inward supply will always have a bearing on the value of on ward supply. In the subject case, the applicant has themselves admitted that the value of input used sand is "NIL" and the same has been accepted by the jurisdictional office also and not disputed.

- To surmise, it appears from the applicant's submissions that their rate of Rs. 2.50 per kg. 5.4.3 on output supply of sand has taken into account the valuation of input sand at 'NIL' value. In normal situations, in the subject case, if there is a price attached to the input supply of used sand, then it may have a proportionate impact on the rate of outward supply of sand.
- 06. In view of the discussions held above, we pass an order as follows:

#### ORDER

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

NO.GST-ARA- 55/2019-20/B- 47 Mumbai, dt. 26.08. 2020

For reasons as discussed in the body of the order, the questions are answered thus –

Whether the activity of KFEC is Supply of Goods or Supply of Job Work services? Question 1.

The activity of KFEC, the applicant, is a Supply of Goods. Answer: -

The used waste sand which is of the value 'Nil' (Refer separate Valuation Question 2. Certificate by Engineer) will have any impact on valuation?

Answered in the affirmative.

A. A. CHAHURE (MEMBER)

P. VINITHA SEKHAR (MEMBER)

CERTIFIED TRUE

#### Copy to:-

1. The applicant

2. The concerned Central / State officer

3. The Commissioner of State Tax, Maherashtra State, Mumbai

4. The Chief Commissioner of Central Tax, Churchgate, Mundal/ANCE RULING AUTHORITY

5. Joint Commissioner of State Tax, Mahavikas for Website. MAHARASHTRA STATE, MUMBAL

Note: An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 5th floor, Air India building, Nariman Point, Mumbai – 400021.