

o/c

AUTHORITY FOR ADVANCE RULING – CHHATTISGARH
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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 admissibility of input tax credit of GST paid on goods and services used for laying of cross-country pipeline nearby river till the boundary wall of the factory and admissibility of input tax credit on Operation and Maintenance Services ('O & M Services') obtained by the Applicant for the maintenance of the above facility.

Read:- Application dated 13/12/2019 from M/s National Mineral Development Corporation Limited, Nagarnar, Bastar, Chhattisgarh (hereinafter referred to as NMDC or the applicant), (GSTIN- 22AAACN7325A3Z3).

PROCEEDINGS

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

No.STC/AAR/09/2019

Raipur Dated ..12../3/2020

M/s NMDC Ltd. [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 the admissibility of input tax credit of GST paid on goods and services used for laying of cross-country pipeline nearby river till the boundary wall of the factory and admissibility of input tax credit on Operation and Maintenance Services ('O & M Services') obtained by the Applicant for the maintenance of the above facility.



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2. Facts of the case:-

- i. NMDC Limited (hereinafter referred to as 'the Applicant' or 'NMDC') is a state-controlled mineral producer of the Government of India. It is owned by the Government of India and is under administrative control of the Ministry of Steel.
- ii. NMDC, as part of its diversification, value addition and forward integration programme is setting up a 3 MTPA capacity Greenfield Integrated Steel Plant based on HiSmelt technology in Nagarnar, located 16 km from Jagdalpur in Chhattisgarh state with an estimated outlay of Rs. 20,000 Crore.
- iii. As part of the above plan, NMDC is setting up Intake Well & Pump House and Cross Country Pipeline System at 3.0 MTPA Integrated Steel Plant at Nagarnar, Chhattisgarh. NISP has been awarded contract for setting up of Intake well and Pump House and for laying of Cross Country Pipeline System, including operation and maintenance for five years for NISP to a consortium lead by M/s Megha Engineering and Infrastructure Limited.
- iv. The scope of work is categorized into 3 categories which are as under:
(a) Construction of intake well and pump house along with supply of associated motors and electrical equipment's
(b) Construction of pipeline, erection, installation and commissioning
(c) Operation and Maintenance Service for five years
- v. The Applicant believes that the restriction laid down in Section 17(5) of CGST Act, 2017 is applicable only to pipeline laid outside the factory premises and hence the question of availment of credit on intake well, pump house, machinery, mechanical equipment, DG set is not raised.

3. Contentions of the Applicant:-

- i. The Applicant seeks clarifications on their admissibility to take credit of taxes paid on pipelines supplied by the contractors, M/s Megha Engineering and Infrastructure Ltd, Jagdalpur, Chhattisgarh (GSTIN-22AAECM7627A1ZX) and M/s Koya and Company Construction Ltd, Jagdalpur, Chhattisgarh (GSTIN-22AACCK3240R1ZH) as part of the contract with the Applicant.



ii. There is an express restriction under section 17 of the CGST Act, 2017 on taking credit of taxes paid only in respect of "pipelines laid outside the factory premises". The applicant is of the opinion that it is eligible to take credit of taxes paid in respect of mechanical/electrical equipment (other than the pipelines supplied by the contractors) and refrains from seeking an advance ruling in this regard.

iii. Consequently, the Applicant expressly restricts the scope of the advance ruling to the Applicant's eligibility to take credit of taxes paid on inputs and input services used in laying the pipeline outside the factory premises and the operation and maintenance services supplied under the contract.

iv. As per Section 17(5) of CGST Act,

"(a).....
(b)....."

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for **construction of an immovable property (other than plant or machinery)** on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

-----"

v. Further, as per Explanation to Sec 17,

*"For the purposes of this Chapter and Chapter VI, the expression "**plant and machinery**" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural **supports but excludes—***

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) **pipelines laid outside the factory premises"**



vi. that, as on the date of filing of the advance ruling application, about 95% of the contract is executed.

4. The jurisdictional Assistant Commissioner, Central GST and Central Exice, Divison-IV, Raipur under his letter F.No. IV(16) 30-02/Advance Ruling/D-IV/RPR/2019-20/5576 Dated-05.02.2020 in reference to the ruling sought by the applicant was of the opinion that neither the pipeline laid outside the factory premises of the applicant nor the tax paid on Operation and maintenance service of the said pipe line is eligible for Input tax credit.

5. 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. Shri Ananthanarayanan S, C.A., and Shri Salamat Ali, Manager (Finance), M/s NMDC Ltd., Jagdalpur and Shri Sanjay Kumar Padhy, Manager (Finance), M/s NMDC Ltd., Hyderabad appeared before the authority for hearing on 13/02/2020 and reiterated their contention. They also furnished a written submission dated 13/02/2020 which has been taken on record.

On question 1, they submitted that the restriction apply only to long distance cross country pipelines. In their case, the pipeline is laid for short distance of less than 50 kms. from the factory.

On question 2, they submitted that there is no restriction to take credit of input tax credit on annual operation and maintenance services for the pipeline as such services are eligible for input credit even on any immovable property.

They clarified that they do not intend to capitalize the O&M cost and hence the restriction specified in explanation to Section 17(5)(d) applies only if repair and maintenance costs are capitalized. They further drew reference to table 7B/1 in page 15 of 17 of the contract to substantiate that the work does not involve any major repair or renovation and it is only routine maintenance.

6. The legal position, Analysis and Discussion:-

At the very outset, we would like to make it clear that the provisions for implementing the CGST Act and the Chhattisgarh GST Act, 2017 [hereinafter referred to as "the CGST Act and the CGGST Act"] are similar and thus, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the CGGST Act, 2017. Now we sequentially proceed to discuss the issues involved in the instant ruling so sought by the applicant and are applicable in the present case.

The applicant sought advance ruling to the points as under:-

- i. Whether input tax credit of GST paid on goods and services used for laying of cross-country pipeline nearby river till the boundary wall of the Factory can be taken by the Applicant?



- ii. Whether input tax credit can be availed on Operation and Maintenance Services ('O & M Services') obtained by the Applicant for the maintenance of the facility?

6.1 The Applicant has awarded the contract for laying of Cross Country Pipeline System, including operation and maintenance for five years for NMDC to a consortium led by M/s Megha Engineering and Infrastructure Limited ("the contractor"). It has been the contention of the applicant that pipelines are ideally suited to transport the liquid and gases from distant locations to the factory at very low energy consumption and that pipelines are the most convenient, efficient and economical mode of transporting liquids like petroleum, petroleum products, natural gas, water, milk, etc. and further that even solids can also be transported through pipelines after converting them into slurry. The Applicant uses pipelines to transport water from the nearest water source to its factory. The applicant also submitted that the project was initiated in the pre-GST regime, under which pipes were exempt from Excise duty and that plant and equipment, to the extent it qualifies as 'capital goods' were eligible even if the same were installed outside the factory as the definition of 'capital goods' under CENVAT Credit Rules, 2004, specifically included capital goods used outside the factory for pumping of water for captive use in the factory.

6.2 The Applicant NMDC Limited is a state-controlled mineral producer of the Government of India. It is owned by the Government of India and is under administrative control of the Ministry of Steel. It is India's largest iron ore producer and exporter producing about 30 million tons of iron ore from 3 fully mechanized mines in Chhattisgarh. NMDC, as part of its diversification, value addition and forward integration programme is setting up a 3 MTPA capacity greenfield Integrated Steel Plant based on HiSmelt technology in Nagarnar, located 16 km from Jagdalpur in the State of Chhattisgarh with an estimated outlay of Rs. 20,000 Crore. As part of the above plan, NMDC is setting up Intake Well & Pump House and Cross Country Pipeline System at 3.0 MTPA Integrated Steel Plant at Nagarnar, Chhattisgarh. NISP has been awarded contract for setting up of Intake well and Pump House and for laying of Cross Country Pipeline System, including operation and maintenance for five years for NISP to a consortium lead by M/s Megha Engineering and Infrastructure Limited. The scope of work is categorized into 3 categories which are as under

- i. Construction of intake well and pump house along with supply of associated motors and electrical equipment's
- ii. Construction of pipeline, erection, installation and commissioning
- iii. Operation and Maintenance Service for five years



6.3 Section 16(1) of CGST Act stipulates that:

"Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

As per "Section 2(59) "Input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;

As per Section 2(19)"capital goods" means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;

6.4 Section 17(5) of CGST Act, 2017 stipulates restrictions on availment of input tax credit. Clause (c) and (d) of section 17(5) provides for restriction of input tax credit in respect of goods and services used for construction of immovable property (other than plant and machinery).

6.5 "Works contract" has been defined under section 2(119) of the CGST Act, 2017 as a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract. The above definition thus stipulates only certain works performed on immovable property as works contract. Further, it is only when there is involvement of transfer of property in goods that would make the contract as works contract i.e. there must be a supply of goods along with supply of service by the supplier (contractor).

6.6 "Construction" is defined under explanation to section 17(5)(c) and (d) for the purpose of these provisions to include re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property.

6.7 The relevant sub clause under Section 17(5) of CGST Act, 2017 reads as under:

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

.....



(c) Works contract services when supplied for construction of an **immovable property** (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) Goods or services or both received by a taxable person for construction of an **immovable property** (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.— For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but **excludes**—

- (i) land, building or any other civil structures;
- (ii) Telecommunication towers; and
- (iii) **Pipelines laid outside the factory premises.**

6.8 Thus in very unambiguous terms the aforesaid explanation to section 17(5) of CGST Act, 2017 excludes pipelines laid outside the factory premises from the scope of plant and machinery. Further, the provisions restrict credit of works contract services for works to be performed on immovable property and also restrict the credit of construction related activity of immovable property even when construction activity do not fall into the scope of works contract. However, works contract and construction activity is eligible for Input Tax Credit if done in respect of plant and machinery. Plant and machinery has been specifically defined as any equipment, apparatus attached to earth by foundation or structural support used for supply of goods or services. It further stipulates that Plant and machinery to specifically exclude land, building or any other civil structures, telecom towers and pipelines laid outside the factory premises. As per the definition of works contract, the works contract *inter-alia* include construction of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract. On the other hand Construction has been defined under explanation to section 17(5) (c) and (d) as reconstruction, repairs, renovation, additions etc. to an immovable property the cost of such work is capitalised. Thus, Construction activity will not qualify as works contract if there is no transfer of property in goods involved i.e. the contractor is supplying service only without any supply of goods. Works contract may or may not be a construction.

6.9 The applicant has also submitted that the proposed pipeline is laid for short distance of less than 50 km. from their factory, establishing therein that the location of the proposed pipe line being outside the factory premises of the applicant.



6.10 For the sake of lucidity the aspect relating to immovable property is also discussed herewith. Immovable property has not been defined under the provisions of G.S.T. However Immovable property stands defined under Section 3(26) of the General Clauses Act, 1897 to include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth. As per Section 3(36) of General Clauses Act, 1897, "movable property" shall mean property of every description, except immovable property. Section 3 of the Transfer of Property Act, 1882 stipulates that unless there is something repugnant in the subject or context "immovable property" does not include standing timber, growing crops or grass. The Section however, defines the term "attached to the earth" to mean (a) rooted in the earth, as in the case of trees and shrubs. (b) embedded to earth, as in the case of walls or buildings and (c) attached to what is so embedded for permanent beneficial enjoyment of that to which it is attached. Thus the essential character of "immovable property", as emerges from the above discussion, relevant to the present context is that it is attached to the earth, or permanently fastened to anything attached to the earth, or forming part of the land and not agreed to be severed before supply or under a contract of supply. The project of laying pipe lines covers a large area, tailored specifically to fit the dimensions and orientation of the needs of the project. In no case it appears to be prudent or for that matter viable to move these items from one place to the other. Thus, besides pipelines laid outside the factory premises being outside the scope of plant and machinery as discussed above also fulfills the conditions of it being an immoveable property.

6.11 In the aforesaid context, Hon'ble Supreme Court Judgment in the case of *M/s. T.T.G. Industries Ltd. v. Collector of Central Excise*, [decided] on 7 May, 2004 (167) E.L.T. 501 (S.C.) in Appeal (civil) 10911 of 1996, wherein the contract was for the design, supply, supervision of erection and commissioning of four sets of Hydraulic Mudguns and Tap Hole Drilling Machines required for blast furnace and the issue was whether the same is immoveable property observed as under: -

" Keeping in view the principles laid down in the judgments noticed above, and having regard to the facts of this case, we have no doubt in our mind that the mudguns and the drilling machines erected at site by the appellant on a specially made concrete platform at a level of 25 feet above the ground on a base plate secured to the concrete platform, brought into existence not excisable goods but immovable property which could not be shifted without first dismantling it and then re-erecting it at another site. We have earlier noticed the processes involved and the manner in which the equipments were assembled and erected. We have also noticed the volume of the machines concerned and their weight. Taking all these facts into consideration and having regard to the nature of structure erected for basing these machines, we are satisfied that the judicial member of the CEGAT was right in reaching the conclusion that what ultimately emerged as a result of processes undertaken and erections done cannot be described as "goods" within the meaning of the Excise Act and exigible to excise duty."



6.12 The court also referred to its own judgments in the case of *Quality Steel Tubes (P) Ltd.* 1995 (75) E.L.T. 17 (S.C.) and *Mittal Engineering Works (P) Ltd.* 1996 (88) E.L.T. 622 (S.C.). In the case of *Quality Steel Tubes (P) Ltd.* 1995 (75) E.L.T. 17 (S.C.), Hon'ble Supreme court held that goods which are attached to earth and thus become immovable did not satisfy the test of being goods within the meaning of the Act. It held that tube mill or welding head is immovable property. In the case of *Mittal Engineering Works (P) Ltd.* 1996 (88) E.L.T. 622 (S.C.), the issue was whether mono vertical crystallisers is goods (in which case it would be excisable or immovable property). The mono vertical crystallisers is fixed on solid RCC Slab. It consists of bottom plates, tanks, coils, drive frames, supports etc. It is a tall structure rather like a tower with a platform. It was decided by the Court that the said product has to be assembled, erected and attached to the earth by a foundation and therefore not goods but immovable property. In the case of *Duncans Industries Ltd. v. State of U.P. & Ors* on 3 December, 1999 Hon'ble Supreme Court had to decide whether the 'plant and machinery' is 'goods' or 'immoveable property'. Hon'ble Apex Court held that the same is immoveable property and observing as under:-

"The question whether a machinery which is embedded in the earth is movable property or an immovable property, depends upon the facts and circumstances of each case. Primarily, the court will have to take into consideration the intention of the parties when it decided to embed the machinery whether such embedment was intended to be temporary or permanent. A careful perusal of the agreement of sale and the conveyance deed along with the attendant circumstances and taking into consideration the nature of machineries involved clearly shows that the machineries which have been embedded in the earth to constitute a fertiliser plant in the instant case, are definitely embedded permanently with a view to utilise the same as a fertiliser plant. The description of the machines as seen in the Schedule attached to the deed of conveyance also shows without any doubt that they were set up permanently in the land in question with a view to operate a fertilizer plant and the same was not embedded to dismantle and remove the same for the purpose of sale as machinery at any point of time. The facts as could be found also show that the purpose for which these machines were embedded was to use the plant as a factory for the manufacture of fertiliser at various stages of its production. Hence, the contention that these machines should be treated as movables cannot be accepted."

6.13 In view of the discussions supra and as no visible intention to dismantle the said project of laying of pipe lines, these being intended to be used for a fairly long period of time and on the basis of the scope of work itself as forthcoming from the documents supra issued by M/s NMDC, we come to the considered conclusion that the said project of laying pipe lines besides not being plant and machinery, are also immovable in nature. Further these pipelines are also embedded to earth. As already discussed express provisions restrict Input Tax credit on pipelines laid outside the factory premises which are not treated as plant and machinery by virtue of explanation to sec 17(5) (c) and (d).



6.14 On dissection of the definition supra, it can be seen that "Plant and Machinery" means

- (i) apparatus, equipment, and machinery, which is
- (ii) fixed to earth by foundation or structural support, that are
- (iii) used for making outward supply of goods or services or both and includes such foundation and structural supports
- (iv) but excludes—
 - a) land, building or any other civil structures;
 - b) telecommunication towers; and
 - c) pipelines laid outside the factory premises.

6.15 Further the said project for laying cross country pipelines outside the factory premises of the applicant can in no way be directly related to the outward supply of goods. As per Section 2(83) of CGST Act, 2017 "*outward supply*" in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business. Not acceding, but if assuming for the sake of discussion then too it would be far-fetched to imagine that these pipelines laid outside the factory premises to transport water from a water source to its factory are used for making any "outward supply". To apply the term "used for" in the definition for plant and machinery, there should be a nexus between the impugned items on which ITC is being claimed and "outward supply".

6.16 It is also worth mentioning here that the provisions facilitating availment of Input Tax credit does not extend any blanket or unconditional permission for availment of credit on all items irrespective of its use, place of use and its role in making outward supply of goods or services or both, as appears to have been misconstrued by the Applicant.

6.17 The Applicant in their defense have cited reference to the case law of Vikram Cements Vs. CCE , Jaypee Rewa Cement Vs. CCE MP, Union of India Vs. Hindustan Zinc Ltd, India Cements Ltd vs CCE Hyderabad etc. The aforesaid case laws cited pertain to the erstwhile Rule 57Q of the earlier Central Excise Rules, 1944 as was in vogue, stipulating therein the provisions for availment of credit of Capital goods under cenvat credit regime when the chapter heading/ subheading of the items which qualified being termed as "capital goods", were specifically covered under the definition of capital goods mention in the statute viz items falling under chapter 84, 85 etc. of CETA, 1985. Further in almost all the case laws cited by the appellant, the credit of duty was claimed on items used within the factory premises of the claimant, which is not the case here in as much as in the instant case pipe lines laid outside the factory premises stands excluded from the scope of plant and machinery as discussed in the preceeding para. Thus the said case laws cited by the applicant are distinct and distinguishable to the facts and circumstances in hand.



7. Now we come to the second point on which the applicant have sought ruling viz. regarding eligibility of input tax credit on taxes paid on annual operation and maintenance services for the aforesaid pipeline laid outside the factory premises.

7.1 It has been the contention of the Applicant that the contractor (supplier) is required to even maintain the facility for about five year from the commencement of the facility. For the operation and maintenance services (O & M services) of the supplier, the applicant pays a considerable sum and is, therefore, required to pay a considerable sum of taxes under the GST law. Input tax credit of taxes paid on the operation and maintenance should be available as input tax credit. Under section 17(5) of the CGST Act, 2017, there is no restriction on credit availment in as much as O & M services of any immovable property (like the restriction of credit of taxes paid for pipeline laid outside the factory premises) are concerned.

7.2 In the aforesaid context, for the sake of brevity the provisions of Section 17(5) of CGST Act, 2017 are once again re-produced here as under:

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

.....

(c) Works contract services when supplied for construction of an **immovable property** (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) Goods or services or both received by a taxable person for construction of an **immovable property** (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.— For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but **excludes**—

- (i) land, building or any other civil structures;
- (ii) Telecommunication towers; and
- (iii) **Pipelines laid outside the factory premises.**

7.3 In the preceeding paras we have already arrived at the considered conclusion that the pipe lines laid outside the factory premises of the applicant are not plant and machinery in view of the above exclusion clause as also that the said pipe lines merit



treatment as immovable property. Thus there exist no grounds for availment of Input tax credit on the taxes paid on annual operation and maintenance services of the aforesaid pipeline laid outside the factory premises.

8. Having regard to the facts and circumstances of the case 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/09/2019

Raipur Dated ...12.../3/2020

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

M/s NMDC, the applicant is not eligible to Input tax credit of GST paid on goods and services used for laying of cross-country pipe line outside the factory premises of the applicant.

The applicant is also not eligible to Input tax credit of GST paid on Operation and Maintenance Services (O&M services) for the maintenance of the said cross-country pipe line laid outside the factory premises of the applicant.

Place: - Raipur

Date: - 12/03/2020

Seal: -



Sonal K. Mishra
12/3/20
Sonal K. Mishra
(Member)

Rajesh Kumar Singh
12/3/2020
Rajesh Kumar Singh
(Member)

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ADVANCE RULING AUTHORITY
CHHATTISGARH, RAIPUR**

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ADVANCE RULING AUTHORITY
CHHATTISGARH, RAIPUR**

Copy to:-

1. Applicant,
2. The Commissioner, (CGST)
3. The Principal Commissioner, (CGST)
4. The jurisdictional officer, Jagdalpur Circle-2
5. The Central jurisdictional officer, Division-IV, Raipur