

AUTHORITY FOR ADVANCE RULING — MADHYA PRADESH

Goods and Service Tax()

O/o THE COMMISSIONER, COMMERCIAL TAX,

MOTI BUNGALOW,

MAHATMA GANDHI MARG, INDORE (M.P.) - 452007

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PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING

U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017

Members Present

1. Sh.Virendra Kumar Jain

Joint Commissioner ,

Office of the Commissioner,CGST and Central Excise, Indore

2. Sh. Manoj Kumar Choubey

Joint Commissioner,

Office of the Commissioner of Commercial Tax, Indore Division-1

GSTIN Number. If any/User-id	23AACA8468K1ZF
Name and address of the applicant	AGARWAL COAL CORPORATION PVT. LTD. 2, Matrakripa, Chameli Park, Near Goyal Nagar, Ring Road, Indore, Madhya Pradesh (452016)
Point on which advance ruling sought	1. Whether the Applicant is liable to discharge tax liability @ 18% on coal handling and distribution charges wherever supply of such services is intended to be made expressly to a customer or will the Applicant be entitled to charge GST at the



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	rate of 5% as applicable on supply of coal?
	2. Will the applicant be entitled to utilize the input tax credit availed for discharging liability towards supply of coal and supply of coal handling and distribution charges?
Date of Personal hearing	13-Feb-2020
Present on behalf of applicant	Adv Dr. Arvind Singh Chawla, CA Pramod Shivastava (Group CFO)
Case Number	<u>01/2020</u>
Order dated	<u>08/06/2020</u>
Order No.	<u>11/2020</u>

PROCEEDINGS

1. BRIEF FACTS OF THE CASE:

- 1.1. M/s Agarwal Coal Corporation Private Limited ("Applicant" for brevity) is engaged in business of trading of coal in India and for the same Applicant undertakes purchase of coal from domestic markets as well as imports from overseas.
- 1.2. On purchase of coal, the Applicant has submitted that GST is paid @ 5% (on intra-state and inter-state supply as the case may be) and on import of coal from overseas market, IGST is paid @ 5%.
- 1.3. After coal is imported, the coal is stockpiled at port itself at the designated place for subsequent sale to customers. Various services are availed by Applicant at the port during process of procurement of coal and for fulfilling obligations towards supply of coal.



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1.4. The services so utilized by Applicant include the following but not limited to,

- a. Stevedoring services
- b. Unloading and Loading of coal
- c. Security of coal
- d. Insurance
- e. Renting of the premises

Appropriate rate of GST is charged by respective service providers on above services so provided.

1.5. Above services will be utilized by Applicant at the following stages:

- a. Procurement and keeping of coal at the port
- b. Services provided to customer at port towards handling the coal on behalf of / for the customer.

1.6. Customers from all over India including traders and manufacturers place order(s) on Applicant which can be broadly classified as:

- a. Supply of coal simpliciter:- Where the customer does not wish to avail any of the coal handling and distribution services and intends to purchase coal.
- b. Supply of coal and avilment of coal handling and distribution:- Where the customer not only wishes to purchase coal, but also intends to avail services of coal handling and distribution during the period of supply of coal.

1.7. Coal handling and distribution charges (per MT) includes a bouquet of services provided to customer towards handling the desired quantity of order placed by customer including but not limited to :

- a. Loading, unloading of material at site
- b. Storage charges of the quantity ordered
- c. Coal safety and security



- d. Adequate water sprinkling
 - e. Commitment charges towards fulfilling supply
 - f. Custom clearing services
 - g. Insurance
- 1.8. A customer is liable to pay coal handling and distribution charges for the full intended quantity of purchase even if the quantity lifted/ purchased under a purchase order falls short of the impugned purchase order.
However, a customer is charged only for the actual quantity of the coal lifted/ purchased and the amount is charged as and when a consignment is made.
- 1.9. In light of the above, separate purchase order / intent is to be placed on Applicant by the customers for:
- a. Purchase of coal
 - b. Coal handling and distribution charges,
as the case may be
- 1.10. As per the terms agreed with customer, on placing the order for desired quantity of coal, separate invoices to be raised by the Applicant on a customer for:
- a. Price of supply of coal
 - b. Coal handling and distribution charges
- 1.11. The Applicant intends to raise invoice on customer(s) for the following:
- a. Supply of coal with 5% GST in addition
 - b. Coal handling and distribution services with 18% GST in addition
- 1.12. The Applicant is presently availing input tax credit and will continue to avail the same as follows:
- a. 5% IGST on import of coal
 - b. 18% on various services availed at port
- 1.13. The input tax credit so availed is to be utilized for discharging liability of tax on sale of coal and coal and handling charges at the respective rates.



2. QUESTIONS RAISED BEFORE THE AUTHORITY

- 2.1. Whether the Applicant is liable to discharge tax liability @ 18% on coal handling and distribution charges wherever supply of such services is intended to be made expressly to a customer or will the Applicant be entitled to charge GST at the rate of 5% as applicable on supply of coal?
- 2.2. Will the applicant be entitled to utilize the input tax credit availed for discharging liability towards supply of coal and supply of coal handling and distribution charges?

3. DEPARTMENT'S VIEW POINT

The Joint Commissioner(In-situ), CGST & Central Excise, Division-IV, Indore, vide his letter IV(16)30-50/T/D-IV/Adj/18-19/10227 dated 06.06.2020 has furnished the opinion of the department and it has been categorically opined that

- A. The issue has been examined and found that the applicant activities are trading of coal and supply of coal and the same shall be taxable at 5% (CGST 2.5%+SGST2.5%) under heading 2701 of Notification no. 1/2017-Central Tax (Rate). They are also providing services named as coal handling and distribution services which shall be taxable at 18% (9% + 9%) under the heading 9997 of Notification no. 11/2017-Central Tax (Rate).



- B. As per the present scenario also the applicant is paying GST 18% with availing benefit of ITC as per applicable rate which is correct as per CGST Act, 2017.

RECORD OF PERSONAL HEARING

- 3.1. Adv. Dr. Arvind Singh Chawla and CA Pramod Shrivastava (Group CFO), appeared on behalf of the applicant and reiterated submissions already made in the application. They pleaded that pursuant to provisions of CGST Act, 2017 and Notification 1/2017- CT (Rate); Notification 11/2017-CT (Rate), supply of coal and coal handling & distribution services are taxable at 5% and 18% respectively. Further, input tax credit availed on inputs and input services are to be allowed for discharging aforesaid liability of tax.

4. DISCUSSIONS AND FINDINGS

- 4.1. We have carefully considered the submissions made by applicant in the application, pleadings on behalf of Applicant made during the course of personal hearing and Department's view provided by the Joint Commissioner, CGST & Central Excise, Division, Indore.

- 4.2. We find that the short question before us pertains to :

1. Taxability of supply of coal handling and distribution charges @ 18% in case of supply of such services is intended to be expressly made to a customer apart from sale of coal, and
2. Utilization of input tax credit availed for discharging liability towards supply of coal and supply of coal handling and distribution charges respectively.



It is necessary to examine the relevant provisions of CGST Act, 2017 and relevant notification.

4.3. Supply is defined u/s 7 (1) of the CGST Act,2017 as:

7. (1) For the purposes of this Act, the expression "supply" includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business and;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

4.4. In order to examine the issue regarding rate of tax to be charged on supply, it is necessary to examine; Notification no. 1/2017-Central Tax (Rate) dated 28-Jun-2017 which provides for CGST tax rate of 2.5% on supply of coal with similar rate in SGST, hereby effective rate being 5% (2.5%+2.5%)

Schedule-I		
SI No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	(2)	(3)



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158	2701	Coal; briquettes, ovoids and similar solid fuels manufactured from coal
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Notification No. 11/2017-Central Tax (Rate) dated 28-Jun-2018 provides for CGST rate of tax on intra-supply CGST rate with similar rate in SGST, thereby effective rate being 18% (9% + 9%).

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
30	Heading 9997	Other services (washing, cleaning and dyeing services; beauty and physical well-being services; and other miscellaneous services including services nowhere else classified).	9	-

4.5. Input Tax Credit definition is provided u/s 2 of CGST Act as under:

(62) "input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—



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- (a) the integrated goods and services tax charged on import of goods;
 - (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
 - (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
 - (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
 - (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,
- but does not include the tax paid under the composition levy;

(63) **“input tax credit”** means the credit of input tax;

- 4.6. U/s 16(1) of CGST Act, 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.

Sec 16 of CGST Act, 2017 provides for eligibility and conditions for taking input tax credit as under:

- (1) 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.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.



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(c) subject to the provisions of section 41 or section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the



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Income-tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.

- 4.7. U/s 49(4) of the Act, the amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.

Sec 49 of CGST Act, 2017 provides for payment of tax, interest, penalty and other amounts as under:



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(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41 or section 43A, to be maintained in such manner as may be prescribed.

(3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.

(5) to (8) – not reproduced as not relevant

4.8. Having regard to discussions and findings detailed in foregoing paras, we now give our ruling.

RULING

The Advance Ruling on questions posed before the authority is answered as under:

5.1 In respect of Question 1, we hold that coal handling and distribution charges will



be taxable @ 18% and not 5% wherever supply of such services only is intended to be expressly made to a customer.

5.2 In respect of Question No.2, we have carefully considered the plea of the Applicant and in light of the referred provisions we are of the opinion that input credit availed as per the conditions specified in section 16 shall be allowed for discharging the liability towards supply of coal and supply of coal handling and distribution charges respectively.

5.3 This ruling is valid subject to the provisions under section 103 (2) until and unless declared void under Section 104(1) of the GST Act.


Manoj Kumar Choubey
(MEMBER)


Virendra Kumar Jain
(MEMBER)

Copy to:- No. 01/2020/AAR/R-28/23

INDORE, dated, 08/06/2020


1. Applicant
2. The Principal Chief Commissioner, CGST & Central Excise,
Bhopal Zone, Bhopal
3. The Commissioner (SGST) Indore
4. The Commissioner, CGST & Central Excise, Indore
5. The Concerned Officer
6. The Jurisdictional Officer — State/Central

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