

ODISHA AUTHORITY FOR ADVANCE RULING  
GOODS AND SERVICE TAX ( GST)  
RAJASWAVIHAR, BHUBANESWAR-751007(ODISHA)  
PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING  
U/S.98 OF THE GOODS AND SERVICE TAX ACT, 2017

Members Present :

1. Sri Gopal Krishna Pati, IRS, Additional Commissioner, Office of the Chief Commissioner, GST, Central Excise & Customs, Bhubaneswar
2. Sri Hrushikesh Mishra, OFS(SAG),Special Commissioner of CT&GST, Office of the Commissioner, CT&GST, Odisha Banijyakar Bhawan, Cantonment Road,Cuttack-753001-Odisha.

1	Name and Address of the Applicant	M/s IOCL, Admin Building, Paradeep Refinery, Via-Kujang, P.O.-Jhimani, Jagatsinghpur, Odisha, 754141.
2	GSTIN or User ID	21AAACI1681G1Z1
3	Date of Filing of Form GST ARA-01	04.02.2021
4	Present for the Applicant in personal hearing	Biswadipak Mohanty, SFM S Behera, GM (F), PDR of M/s IOCL, PDP
5	Date of Personal Hearing	08.10.2021

ORDER NO.03/ODISHA-AAR/2021-22/DATED 15/12/2021

Subject: M/s IOCL, Admin Building, Paradip Refinery, Via-Kujang, P.O.-Jhimani, Jagatsinghpur, Odisha, 754141 ( herein after referred to as the 'Applicant') having GSTIN : 21AAACI1681G1Z1, is a company filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and Section 97 of the OGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the SGST Act.



Note: The applicant or jurisdictional officer, if aggrieved by the ruling, may appeal to the Odisha State Appellate Authority for advance ruling under Section 100 of the CGST/OGST Act, 2017 within 30 days from the date of receipt of the advance ruling.

**1.0** The Applicant having assigned with GSTIN number 21AAACI1681G1Z1 sought advance ruling in respect of the following questions.

(a) Whether sending of Naphtha ,DM water, Power, Cooling water, service water and instrument air by the Applicant to Praxair and receiving back of Hydrogen gas, Nitrogen gas and HP steam under the contract will fall under 'job work' in terms of section 2(68) of Central Goods and Service Tax Act,2017 (CGST Act) and Odisha Goods and Service Tax Act,2017 (OGST Act).

(b) Whether all the payments under the contract will attract GST as applicable to Job Work?

**1.1** At the outset, we would like to make it clear that the provisions of both the CGST Act and the OGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the OGST Act.

## **2.0 Submission of the Applicant**

**2.1** That the Applicant is a Government of India undertaking having its registered office in Mumbai. The Applicant has obtained Goods and Service Tax (GST) registration in the state of Odisha bearing registration no 21AAACI1681G1Z1 for its Refinery business and 21AAACI1681G6ZW for its Petrochemical business. The Applicant is also registered in other States throughout India.

**2.2** That the Applicant owns and operates 15 MMTPA oil refinery in the state of Odisha located at Paradeep. The Applicant refines crude oil and produces several petroleum products at this location. The Applicant requires Hydrogen gas, Nitrogen gas and HP steam for its refining activity (collectively referred to as 'Industrial Gases'). Industrial Gases can be obtained from inputs such as Naphtha and other utilities such as Demineralised water ('DM water'), Power, Cooling water, service water, instrument air etc.

**2.3** That pursuant to a tender floated by Applicant, Praxair India Private Limited ("Praxair") was awarded with the contract for installation, lease, operation and maintenance of inter alia, a Hydrogen Reformer Plant ("H2 Plant") & Nitrogen Plant ("N2 Plant") inside the



premises of IOCL at Paradip, Orissa. Praxair had installed the Hydrogen and Nitrogen gas plant inside the Applicant premises at Paradip .

2.4 That under this agreement, all the inputs required for the manufacture of Industrial gases shall be supplied by the Applicant and the resultant producing Industrial gases will be sent back to the applicant by Praxair for the exclusive utilization in the refinery processes. All the input and output products received and processed by Praxair is transferred to the Applicant through Pipeline. The ownership of the input and output products shall always remain with the Applicant only.

2.5 That the activity under BOO contract between the Applicant and Praxair is squarely covered within the ambit of 'job work' under GST law. Job work is defined under section 2(68) of both the CGST Act and OGST Act. Further, Section 143 of CGST Act and OGST Act prescribes the procedure to be followed in case of job work transactions.

2.6 That the following conditions need to be satisfied for an activity to be 'Job work'

- a. There must be treatment or process
- b. Treatment or process is undertaken on goods
- c. Goods must be owned by principal
- d. Goods must be brought back within one year in case of input
- e. The Goods sent by the principal to the job worker qualifies as "inputs" .

2.7 That the ambit of job work included 'manufacture' in the earlier Central Excise Regime in terms of Notification Number 214/86-CE, dated 23 March 1986. The ambit has been further widened in the GST regime. Hence, it is evident that the scope of 'job work' includes 'manufacture' as well. Under the Central Excise regime, it was a settled position in law that job work activity could very well amount to manufacture. The decision of the Supreme Court in the case of Ujagar Prints & Ors. {1987/27/ ELT 567 (SC)} and that of the Mumbai Tribunal in the case of Eaton Fluid Power Ltd. {2014 (308) ELT 602 (Tri. — Mumbai)} are relevant from this perspective. The Mumbai Tribunal in the Eaton case (supra) specifically commented that a job work might amount to "manufacture" or might not amount to "manufacture". The proposed activity will be covered under the ambit of 'process' or 'treatment' even if such process amounts to manufacture.



2.8 That in the present instance, the Applicant sends Inputs to Praxair. All these items are not immovable in nature. Further, all these items are owned by the Applicant. Hence, Inputs would fall within the ambit of 'movable property' and consequently goods. Similarly, the Industrial Gases dispatched by Praxair possess all the attributes of moveable property and are hence covered in the ambit of 'goods'. Accordingly, the activity proposed to be carried out is in relation to 'goods'. Hence, condition (b) listed above is also satisfied.

2.9 That in the present activity, property in all goods (Inputs sent and Industrial Gases received back) always vest with the Applicant. Further, all risks and rewards of ownership always remains with the Applicant. Praxair is only obliged to undertake the job work processing on the goods. At no point in time does the ownership in goods vest with Praxair. Accordingly, condition (c) with respect to ownership of goods will also be satisfied in the proposed transaction.

2.10 That in the present activity, the goods are brought back within 1 year from the date of sending the Inputs. Accordingly, the condition under Section 143 with respect to bringing back the goods will be satisfied in the proposed arrangement.

2.11 That the phrase 'Inputs' as defined under the GST Law is wide enough to cover all goods directly or indirectly used in the business of the assessee. Hence, the Inputs sent by the Applicant to Praxair would squarely fall within the ambit to this definition. Consequently, even condition for a 'job work' activity is fulfilled by the proposed transaction.

2.12 That the applicant relies upon the judgment of the Gujarat Authority for Advance Ruling ('AAR') in the case of Inox Air Products Private Limited [2018(14) GSTL 147(AAR-GST)]. In that case, the applicant, Inox Air Products Private Limited ('Inox PAPL') was engaged in an activity that is identical to the activity undertaken by Praxair in the present case. Inox PAPL received electricity, water, etc. from the principal manufacturer, Essar Steel India Limited and supplied back industrial gases such as oxygen, nitrogen, argon, etc. Accordingly, the facts in the case of Inox PAPL are identical to the present case.

2.13 The applicant also relies upon the decision of Authority for Advance Ruling under GST, Kerala in the case of Bharat Petroleum Corporation Ltd [2018 (19) GSTL 119 (AAR-GST)] which is similar to present case under consideration. In that case Bharat Petroleum Corporation Ltd(BPCL) has allowed M/s Prodair Products Pvt Ltd to put up a facility for processing of Industrial Gases on Build Own Operate Basis. BPCL sends goods such as

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Re-gasified Liquified Natural Gas (RLNG), De-Mineralised Water (DM Water). Hydrogen Rich off Gas and Raw water to M/s Prodair Air Products Pvt Ltd and receives back Industrial Gases such as Hydrogen, Nitrogen and Steam. The Kerala AAR has held that the activity between BPCL and M/s Prodair Air Products Pvt Ltd amounts to 'Job work' under section 2(68) of CGST/KSGST Acts.

**2.14** That the activity by Praxair would fall under the ambit 'Job work' under section 2(68) of CGST Act and OGST Act and GST @ 12% under heading 9988 as per Sl. no. 26 (id) of Notification No. 11/2017-Central Tax (Rate) will be applicable.

### **3.0 Personal Hearing**

**3.1** The personal hearing was held on 08.10.2021. Sri Biswadipak Mohanty, SFM & Sri S Behera, GM(F) of M/s IOCL appeared hearing . During P.H., Sri Mohanty, SFM reiterated the submissions already furnished in the annexure to the application. He explained/submitted the activities being undertaken in its registered premises. He further submitted additional submissions in relation to the questions on hand. During P.H., Sri Mohanty, SFM has also discussed about the relevant clauses of the agreement made between applicant & M/s Praxair.

### **4.0 Discussions and Findings**

**4.1** We have considered the submissions made by the applicant in its application for advance ruling as well as the arguments advanced by the representatives of the applicant during the personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts. We find that the question before us essentially pertains to 'Determination of the liability to pay tax on any goods or services or both' and therefore, we observe that the issue before us is squarely covered under Section 97(2) of the CGST Act, 2017 . Therefore we admit the application for consideration.

**4.2** The main issue involved in this case is whether sending of Raw Materials (Naphtha, DM water, Power, Cooling water, service water and instrument air) for manufacture of Industrial Gas (i.e Hydrogen gas, Nitrogen gas and HP steam) by the Applicant to M/s Praxair and receiving back of the said Industrial Gas under the contract will fall under 'job work' in terms of section 2(68) of Central Goods and Service Tax Act,2017 (CGST Act) and Odisha Goods and Service Tax Act,2017 (OGST Act). In this regard, the

applicant submitted that following pre-requisites need to be satisfied for an activity to be 'Job work'.

- (a) There must be treatment or process
- (b) Treatment or process is undertaken on goods
- (c) Goods must be owned by principal
- (d) Goods must be brought back within one year in case of input
- (e) The Goods sent by the principal to the job worker qualifies as "inputs".

4.3 The applicant submits that '*treatment*' or '*process*' have not been defined under GST law. Accordingly, reference is made to the judicial precedent of Samodar Padmanath Rao (1968 (22) STC 187 (Bom)) wherein the Hon'ble Bombay High Court has held that to 'process' is to 'subject to a particular method or technique of preparation, handling or other treatment, designed to affect a particular result. In the present instance, Praxair subject the Inputs to a particular method so as to affect the result of obtaining Industrial Gases. Hence, the activity would fall within the ambit of 'process' by the yardstick established by the Hon'ble Bombay High Court. As regards goods, the applicant submits that all kinds of movable properties are covered in the *ambit* of goods. Although movable property is not defined under the GST Law, reference may be made to Section 3(36) of the General Clauses Act, 1897. Under this provision, all property other than immovable property is considered to be movable property. 'Property' refers to anything that is owned by a person. In the present instance, the Applicant sends Inputs to Praxair. All these items are not immovable in nature. Further, all these items are owned by the Applicant. Hence, Inputs would fall within the ambit of 'movable property' and consequently goods. Further, property in all goods (Inputs sent and Industrial Gases received back) always vest with the Applicant. Praxair is only obliged to undertake the job work processing on the goods. At no point in time does the ownership in goods vest with Praxair. The applicant further submits that the goods are brought back within 1 year from the date of sending the Inputs. It has also been submitted that the phrase 'Inputs' as defined under the GST Law is wide enough to cover all goods directly or indirectly used in the business of the assessee. Hence, the Inputs sent by the Applicant to Praxair would squarely fall



within the ambit to this definition. Consequently, even condition for a 'job work' activity is fulfilled by the proposed transaction.

4.4 The Jurisdictional officer, Asst Commissioner, GST & Central Excise, Bhubaneswar-II Division, Bhubaneswar vide letter C.No.IV(16)14/Advance Ruling/TECH/BBSR-II/2021/969-970 dated 26.08.2021 has offered comments, wherein it has been stated that sending of inputs to job worker and bringing back the processed/converted gas fulfils the term 'job work' defined under Section 2(68) read with Section 143 of the CGST & OGST Acts. Further, it has also been stated that since Praxair collects job work charges or processing charges, the principal would be liable to pay agreed job charges to the job worker along with GST @18% vide HSN 9988.

4.5 The authority ( AAR) has examined the issues scrupulously. During personal hearing, the applicant was asked to submit Lease Agreement for Hydrogen and Nitrogen Gas Plant, Operation and Maintenance for hydrogen and Nitrogen Plant and some sample invoices raised by M/s Praxair to the applicant. The Applicant vide its letter dated 21.09.2021 has submitted the same.

4.6 On perusal of the documents and submissions submitted by the applicant, it is seen that the applicant has entered into an agreement with M/s Praxair for construction of Hydrogen and Nitrogen Gas Plant inside the applicants premises at Paradip. Pursuant thereto, M/s Praxair had constructed, installed and successfully commissioned the Hydrogen and Nitrogen Gas Plant inside the applicants premises. M/s Praxair then leased the said plant for a period of 15 years to the applicant for the consideration reserved on the terms and conditions of the contract/ agreement. As per the contract/agreement, M/s Praxair is charging lease/rental charges and O & M charges for Nitrogen and Hydrogen Plant. Scrutiny of the sample invoices revealed that M/s Praxair is raising invoices for fixed lease charges for Nitrogen and Hydrogen plant under SAC code 997212 (GST Rate 18%), fixed operation and maintenance charges for Nitrogen and Hydrogen plant under SAC code 998717. (GST Rate 18%) and for Variable operation and maintenance charges for Nitrogen and Hydrogen plant under SAC code 998717. (GST Rate 18%).

4.7 It would be relevant to note that the production 'Plant' has been leased to the applicant (M/s IOCL, Paradip in the instant case) on a monthly rent basis. The physical and peaceful possession of the production plant has been handed over to the applicant and for

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that the applicant is paying Lease/Rental and O&M charges to M/s Praxair. The Plant is no more under the control and possession of M/s Praxair. Therefore, the applicant's claim that M/s Praxair uses its Plant to produce Hydrogen and Nitrogen Gas by using the inputs provided by the applicant may not be correct. Admittedly, M/s Praxair is manufacturing industrial gases out of the raw material supplied by the applicant and the gases so manufactured are exclusively used by the applicant. But, there is no specific job work agreement between the applicant and M/s Praxair. No job works charges or any processing/conversion charges of inputs has been claimed by M/s Praxair as evident from the invoices raised to the applicant. Further, the manufacturing of gases is not being done at M/s Praxair's 'production plant'. Therefore, the concept of 'Job Work' is not present in the entire transaction.

**4.8** The applicant in its original application as well as in its additional submission has cited the judgment of the Gujarat Authority of Advance Ruling in the case of Inox Air Products Private Limited [2018(14) GSTL 147(AAR-GST)] and the decision of Authority for Advance Ruling under GST, Kerala in the case of Bharat Petroleum Corporation Ltd [2018 (19) GSTL 119 (AAR-GST)] which are not applicable in the instant case, as the facts of the applicant's case are not exactly similar to the above cases.

**4.9** Based on the observations stated above, we rule as under :

(i) The activities being undertaken in the applicant's premises/production plant do not qualify for 'Job Work' under section 2(68) of Central Goods and Service Tax Act,2017 (CGST Act) and Odisha Goods and Service Tax Act,2017 (OGST Act) and Section 143 of the said Acts.

(ii) The applicant's next question "Whether all the payments under the contract will attract GST as applicable to Job Work?" is not maintainable on the ground already stated above [at clause '(i)'].

**5.0** 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.



(G K Pati)

Member, CGST



(Hrushikesh Mishra)

Member SGST

C. No. V (1) ARA/ODISHA/BBSR/2021/01

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Dated: 21/2/22

To

M/s IOCL, Admin Building, Paradeep Refinery, Via-Kujang, P.O.-Jhimani, Jagatsinghpur, Odisha, 754141..

Copy forwarded to:

1. The Commissioner, CGST & Central Excise, Bhubaneswar Commissionerate, Bhubaneswar.
2. The Commissioner, SGST Odisha, Banijyakar Bhawan, Old Secretariat Compound, Cuttack-753001, Odisha.
3. Office copy.

