



सत्यमेव जयते

BEFORE THE AUTHORITY FOR ADVANCE RULING

For the State of Andhra Pradesh (Goods and Service Tax)

(5th Floor, O/o Chief Commissioner of Commercial Taxes, D.No:5-56, Block-B, R.K Spring Valley Apartments, Edupugallu, Vijayawada-521151.)

Present:

Sri. J.V.M Sarma (Member)

Sri.Amaresh Kumar (Member)

The 26th day of June 2018

Order/AAR/AP/04(GST)/2018

In

Application No.AAR/10(GST)/2018

1	Applicant	M/s NSL MINING RESOURCES INDIA PRIVATE LIMITED (GSTIN:37AADCN0483C1ZQ) Survey.No.53/A, Veerayapalli Village, BethamCherla(M), Kurnool District, Andhra Pradesh 518599.
2	Jurisdictional Officer	Assistant Commissioner , Kurnool -III Circle, Kurnool
3	Present for the Applicant	Dasari Nageswara Rao & K. Sivaram
4	Present for the Jurisdictional Officer	Remarks Received through mail
5	Date of Personal hearing	21 st May 2018 and 25 th June 2018

Note: Under Section 100 of the APGST Act'2017, an appeal against this order lies before the appellate authority for advance ruling constituted under section 99 of APGST Act'2017, within a period of 30 days from the date of service of this order.

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1. M/s NSL MINING RESOURCES INDIA PRIVATE LIMITED, GSTIN : 37AADCN0483C1ZQ (hereinafter also referred as an applicant), having are engaged in procuring low grade Iron Ore from third party miners, upgrading the quality of Iron ore by beneficiation process and sells the upgraded iron ore.

2. The applicant firm had filed an application in Form GST ARA -01, dated 06.04.2018, for seeking advance ruling on 'the following issues...

- ❖ Whether Excise duty , CVD and SAD paid on Capital Goods purchased prior to July 1st July 2017 on which CENVAT credit has not been claimed earlier, can be claimed U/s 140(2) of the CGST Act, 2017 in the absence of registration under Central Excise Act?
- ❖ Whether VAT paid on Capital Goods purchased prior to July 1st 2017 on which Input Tax Credit has not been claimed earlier, can be claimed U/s 140(2) of the Andhra Pradesh GST Act,2017?

3. In this connection, according to Section 98(1) of CGST / APGST Act'2017, a copy of the said application has been forwarded to both (Central tax & State tax) the jurisdictional officers, to offer their remarks on the question raised by the applicant and as well as to know any proceedings pending / passed regarding the applicant.

4. In this regard it is ascertained from the remarks as offered by the jurisdictional officer, i.e Assistant Commissioner State tax, Kurnool III Circle, Kurnool Division, stated that there is no proceedings were either pending before any authority or passed by any authority. Hence, based on the remarks obtained from jurisdictional officer, this authority conducted a personal hearing on 21st May 2018. The applicant firm represented through their authorized representative, they attended for the personal hearing and made submissions on the issues raised by them and requested the members of the authority for one more opportunity for personal hearing. Accordingly, the authority conducted 2nd personal hearing on 25th June 2018, and made submissions on the issues.

5. The applicant firm, in their written submissions submitted that...

The applicant firm is engaged in procuring low grade iron ore from third party miners, upgrading the quality of iron ore by beneficiation process and sells the upgraded iron ore. Beneficiation is the process that improves the economic value of the ore by removing the gangue minerals and foreign matter etc., Chapter Note 4, Chapter 26 of CETA 1985, the process of conversion of ores in to concentrates shall be a process amounting to manufacture. Iron ore concentrate falls under HSN 2601 11 50, which is an excisable product.



On admissibility of the application, the applicant firm stated in their personal hearing dated 21st May, 2018 that...

- a) Section 97(2)(d) of CGST Act, 2017 the question on which an advance ruling can be sought, shall be in respect of admissibility of input tax credit of tax paid/ deemed to have been paid. In this regard requested to admit its application in respect of clarification sought on eligibility to claim credit under transition provision of Section 140(2) and Section 140(5).
- b) The authorized representative argued that transition credit is credited to 'Electronic Credit Ledger' of the registered person, and therefore is in the nature of 'Input Tax Credit'. Transition credit of CVD and SAD paid is carried forward as "Central Tax" in the transition form GST TRAN-I. Transition credit of VAT paid is carried forward as "State Tax" in the transition form GST TRAN-I.
- c) Further, they contended that the term "tax" has not been defined in CGST Act. However, input tax credit is defined under section 2(63) of CGST Act, 2017 as...

"Input Tax Credit" means the credit of input tax.

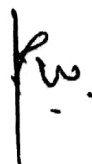
"Input Tax", defined under Section 2(62) of CGST Act, 2017 as ...

"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.

Since, the transitional credit is carried forward as Central tax and State tax, the same will be covered under input tax credit.

- d) They contended that without prejudice to the above 97(2)(d) of CGST Act, 2017 allows for question relating to admissibility of input tax credit of tax paid or deemed to have been paid. Since the transitional credit is allowed as CGST and SGST credit, the tax paid in respect of such transition credit shall be deemed to have been paid under GST, and therefore the query relating to the admissibility of transitional credit is rightly covered under 97(2)(d).
- e) Further, submission were made in relation to the claim of credit as raised in their application.

6. The authority raised certain issues relating to the admissibility of the application under section 97(2)(d), and requested the applicant firm to submit their submissions on statutory permissibility on admission of application, in response to that the authorized representative requested time for submissions in person. The request made by the applicant firm, considered by this authority and personal hearing granted accordingly.



7. In their 2nd personal hearing dated 25th June, 2018 the applicant firm further made submissions on admissibility of the application as under along with the eligibility to claim credit.

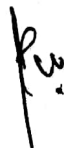
- a. section 140 is a beneficial and enabling provision for transition of credits.
- b. the heading of Section 140 reads as transition provision for "input tax credit" – indicating clearly that the credits under section 140 qualify as "input tax credit"
- c. the definition of "input tax" under section 2(62) should be read in context. Section 2 starts with a preamble "unless the context otherwise required...". Therefore, the definition has to be read only in the context of transactions in GST and not for the purpose of interpreting the term "input tax credit" under the transition provisions
- d. The transition credits are carried forward in electronic credit ledger for utilization – this is similar to section 16 relating credit of input tax paid in GST
- e. Interpretation that "input tax credit" does not include transition credits would lead to an anomaly since none of the provisions of the GST law relating to "input tax credit" including payment of tax, assessment, penalty etc can apply to such credits.

Further, exhibited an advance ruling given by the Authority for Advance Rulings for the State of Uttarakhand, and contended the application is admissible and claimed credit is eligible as per the provisions of CGST / APGST Act, 2017.

8. On careful examination of the material on record, and the submissions made by the applicant firm, along with the statutory provisions, this authority is of the opinion...

- a) The definition referred for "Input Tax", under CGST Act, 2017 is very clear and that the input tax refers to taxes chargeable under SGST, CGST, UTGST and IGST only.
- b) Section 97(2)(d), shall refer to admissibility of Input Tax Credit under the said Acts, i.e SGST, CGST, UTGST, IGST only.
- c) The input tax credit referred by the applicant relates to the transitional relief, which is paid under the Act, other than the acts referred in the definition of Input Tax Credit under CGST Act, 2017.

At this juncture, this authority is limiting its discussions and findings for admittance or otherwise of application under Section 98(2) of the CGST Act, 2017. Basing on the above findings this authority is of the opinion the questions sought by the applicant in their application do not fall under the ambit of Section 97(2)(d) of CGST Act, 2017. Accordingly this authority pass the following order.



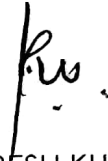
ORDER:

The subject application filed by the applicant firm i.e M/s NSL Mining Resources India Private Limited, GSTIN : 37AADCN0483C1ZQ, is beyond the jurisdiction of this authority, as it is beyond the domain of Sub-section 2 of Section 97 of CGST Act,2017 and APGST Act,2017.

Therefore, the application is "**not admitted**" under sub-section 2 of section 98 of CGST Act,2017 and APGST Act,2017



Sd/- (J.V.M. SARMA)
Joint Commissioner (State Taxes),
Authority for Advance Ruling,
Andhra Pradesh.



Sd/- (AMARESH KUMAR)
Joint Commissioner (Central Taxes),
Authority for Advance Ruling
Andhra Pradesh.