

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****e-mail : aar@mptax.mp.gov.in Phone : 0731- 2437315 fax. no. : 0731-2536229****PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017****Members Present**

1. Rajiv Agrawal
Additional Commissioner,
Office of the Commissioner, CGST and Central Excise, Indore
2. Manoj Kumar Choubey
Joint Commissioner,
Office of the Joint Commissioner of Commercial Tax, Indore Division-1

GSTIN Number. If any/User-id	23AADC4472AIZZ
Name and address of the applicant	M/s Madhya Pradesh Power Generating Company Limited Block No. 9 ShaiktiBhawan, Floor no. II, Rampur, Jabalpur, Madhya Pradesh 452008
Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	a) Classification of any goods or services or both; b) Determination of liability to pay tax on any goods or services or both;
Present on behalf of applicant	Shree Neeraj Agrawal and Shree Sanchit Agrawal ,CA
Case Number	15/2019
Order dated	25/09/2019
Order Number	14/2019

PROCEEDINGS**(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)**

1. The present application has been filed u/s 97 of the Central Goods and Services Act, 2017 and MP Goods and services Act, 2017 (hereinafter also referred to as CGST Act and SGST Act respectively) by M/s Madhya Pradesh Power Generating Company Limited (hereinafter referred to as the Applicant), registered under the Goods & Services Tax.
2. The provisions of the CGST Act and MP GST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MP GST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

3. BRIEF FACTS OF THE CASE:

- 3.1 Madhya Pradesh Power Generating Co. Ltd. (MPPGCL) is a wholly owned company of MP Government engaged in generation of electricity in the state of Madhya Pradesh. It is a successor entity of erstwhile Madhya Pradesh State Electricity Board (MPSEB).
- 3.2 The Company, while operating and maintaining its existing units, is also constructing new Power Plants for increasing capacity in the State of Madhya Pradesh. It is having four thermal power plants namely SSTPS Dongalia (Khandwa), SGTPS Birsinghpur, ATPS Chachai and STPS Sarni and 10 hydel stations all over Madhya Pradesh.
- 3.3 MPPGCL is engaged in supplying electricity which is exempted supply under GST. So, the company does not avail any input tax credit on inputs used in generation of electricity. Thus GST paid on inputs forms part of cost of generation of electricity. The electricity so generated is supplied to Madhya Pradesh Power Management Company Limited (MPPMCL) at rates determined by Madhya Pradesh Electricity Regulatory Commission (MPERC). These rates include cost of generation and reasonable return on capital. The electricity is further supplied to Distribution Companies who supply it to end consumers. Thus any increase in rate of GST on inputs directly impacts the amount billed to end customers.
- 3.4 For generation of electricity from thermal plants it purchases coal mainly from Coal India Limited and its subsidiaries such as WCL, SECL, NCL etc. The coal so purchased under Fuel Supply Agreements (FSA) is transported to various thermal stations from coal mines.
- 3.5 Vide Notification GSR 02(E), dated January 02, 2014, Ministry of Environment and Forests had amended Environment (Protection) Rules 1986 which stated that the stand-alone thermal power plant (of any capacity), or a captive thermal power plant of installed capacity of 100 MW or above, located beyond 500 kilometres from the pit-head shall be supplied with, and shall use, raw or blended or beneficiated coal with ash content not exceeding thirty-four per cent, on quarterly average basis.
- 3.6 So in order to comply with such guidelines if the coal is transported for more than 500 kms then the coal is to be washed (i.e. process of coal beneficiation) to reduce ash content below 34%.



4. QUESTIONS RAISED BEFORE THE AUTHORITY:-

The following questions have been posted before the Authority in the application:-

- 4.1 Whether charging GST @5% of transportation services by Goods Transport Agency (GTA) by road under RCM and 18% on coal beneficiation and loading charges (as stated in point no.9 of Statement of Facts) is in compliance with the provisions of the GST Law?
- 4.2 If the answer to Q-1 is negative, then what should be the applicable GST rate on these services and who is liable to pay tax to the government?

5. CONCERNED OFFICER'S VIEW POINT:

The Concerned Officer Submitted that the services of coal beneficiation and transportation of coal are two different services and will attract individual rates of 18% and 12% respectively. However, if the transporter is not availing input tax credit then the applicable rate will be 5%. If company is liable to pay tax under Reverse Charge than the rate of GST would be 5%.

6. RECORD OF PERSONAL HEARING:

- 6.1 Shree Neeraj Agrawal, CA and Shree Sanchit Agrawal, CA authorized by the applicant, appeared for personal hearing and reiterated the submissions already made in the application. He reiterated the facts submitted along with the application. The Applicant states that –
- 6.2 MPPGCL is purchasing Run-of-Mine (RoM) coal from South Eastern Coalfields Limited for its STPS and SSTPP units.
- 6.3 It has placed work orders for coal transportation and coal beneficiation and associated works such as loading.
- 6.4 The scope of work involves following activities to be performed by the contractor:
 - 6.4.1 Road Transport of RoM Coal from coal mines to coal washery plant of the contractor.
 - 6.4.2 Beneficiation (Washing) of RoM coal to reduce ash content at their washeries.
 - 6.4.3 Transportation of Washed Coal from their coal washeries to Railway Sidings.
 - 6.4.4 Loading of washed coal into Railway rake for dispatch to the destination thermal power plants located in MP State.
- 6.5 The company while floating a new tender for the same works is inviting price bids with GST components in the following manner:
 - 6.5.1 GST on Transportation Services by road by a Goods Transport Agency of RoM and Washed Coal @5% on RCM basis.
 - 6.5.2 GST on Beneficiation Services and Loading charges @18% to be paid to government by supplier.
- 6.6 Scope of Supply: Section 7. (1) For the purposes of this Act, the expression "supply" includes–
 - (i) 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;
 - (ii) import of services for a consideration whether or not in the course or furtherance of business;



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

6.7 Composite Supply: Section 2(30) of CGST Act 2017 (30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

6.8 Mixed Supply: Section 2 (74) "mixed supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

6.9 Principal Supply: Section 2 (90) "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary

6.10 The services provided by washery operator can be broadly classified into two services namely Services of Transportation and Services of Washing Coal.

6.11 The tender document specifically mentions that separate prices are to be quoted for each services. So, the supply does not fall under the ambit of Mixed Supply.

6.12 Now, the issue arises whether the supply can be called composite supply. For a supply of two or more taxable services to be called as composite supply there should be a predominant element of supply. In the given case neither of the two services can be said to be predominant as both the services are equally important for MPPGCL. The tender is issued for procuring both the services simultaneously.

6.13 So, we are left with only one definition that is supply and as individual rates of both the supplies are already notified. Both the supplies should be taxed individually.

7. DISCUSSIONS AND FINDINGS:

7.1 We have carefully considered the submissions made by the applicant in the application and during time of personal hearing.

7.2 We find that the question before us essentially pertains to classification of the services in question and rate of tax applicable on supply on such services and also on determination of liability to pay tax. We, therefore observe that the issue before us is squarely covered under section 97(2)(a) of the Act and therefore we admit the application for consideration.

7.3 We have given a careful consideration to the arguments adduced by the applicant and the counsel at the time of personal hearing. The applicant has argued that the services of coal beneficiation and transportation are two different services although supplied together by the supplier. The services do not fall under the purview of composite supply or mixed supply under CGST Act 2017.

7.4 Having duly considered the arguments put forth by the applicant, we are satisfied that both the services are independent of each other. The price charged by the supplier for both the services are separately mentioned in price bid invited by the company and none of the services can be considered as predominant over the other service. Both the services are important for the company and the company has invited tender for availing both the services.

7.5 So, coal beneficiation services fall under the purview of SAC 9997 and is chargeable at the rate of 18% GST. Transportation services fall under the SAC 9965 and is chargeable



to tax @12% but if supplier does not avail Input tax credit the GST Rate would be 5%. Thus, the answer to Q-1 sought by the applicant is affirmative.

7.6 Since the answer to question no. 1 is affirmative there is no need to answer question no. 2. Hence our order is restricted to the first question itself.

7.7 In view of the discussions foregoing, we find that as the tender document covered in the application is concerned, the GST will be applicable @18% for coal beneficiation under SAC9997 and transportation services will fall under SAC 9965.

RULING

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

- 8.1 The services of coal beneficiation and transportation are two different supplies and they will attract the following rates:
- Coal Beneficiation: GST @18%(CGST 9% + SGST 9%) under SAC9997
 - Transportation by a GTA by road @5% (CGST 2.5% + SGST 2.5%) under Reverse Charge Mechanism if supplier does not avail input tax credit. Or else GST @ 12% (CGST 6% +SGST 6%). In the latter case the tax is to be paid by supplier i.e. transporter under SAC9965.
- 8.2 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.

RAJIV
RAJIV AGRAWAL
(MEMBER)

No. 15/2019/A.A.R/R-28/29
Copy to:-

1. Applicant
2. The 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

MANOJ
MANOJ KUMAR CHOUBEY
(MEMBER)

INDORE dt. 25/09/2019

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