

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. **Rajiv Agrawal**

Additional Commissioner ,

Office of the Commissioner,CGST and Central Excise, Indore

2. **Manoj Kumar Choubey**

Joint Commissioner ,

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

GSTIN Number. If any/User-id	23AAKCS0723M1ZB
Name and address of the applicant	Sasan Power Limited, Sasan Coal Mines, Mohar & Amlohri Mohar Waidhan Naugai, Singrauli, Madhya Pradesh, 486886
Point on which advance ruling sought	Carry forward of accumulated CENVAT under Section 140 of CGST Act.
Date of Personal hearing	10-05-2018
Present on behalf of applicant	Mr. Gopal Mundra, Mr Ravi Ghiyani and Laxmi Vyas
Case Number	01/2018
Order dated	06-06-2018
Order Number	01/2018

PROCEEDINGS

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

1. **BRIEF FACTS OF THE CASE-**

1.1. M/s.Sasan Power Ltd., Sasan (hereinafter referred to as 'the Applicant'), are engaged in the business of generation and sale of electricity, having Registration No.23AAKCS0723M1ZB. The applicants have been allocated captive coal mines in the state of MP with a condition that the coal extracted would be exclusively used in the power generation plant of the applicant. The applicant have been granted one single Registration under CGST Act 2017 for the captive coal mines as well as power plant which are situated 14 Km apart.

1.2. Prior to 01.07.2017 i.e. the appointed day for roll out of GST, the applicant had been registered with Central Excise department under the existing Central Excise



Act 1944, whereby they were discharging Central Excise duty liability on extraction and manufacture of coal from coal mines for captive consumption, in view of the provisions of the Central Excise Act 1944. Obviously, the applicant, during the period prior to 01.07.2017, had been availing credit of duty paid on inputs/capital goods and service tax paid on services used in or in relation to the activity of extraction/manufacture of coal in terms of Cenvat Credit Rules 2004, and utilizing the same for payment of duty due on coal manufactured and cleared by them. As per the copy of last ER-1 produced by the applicant, for the month of June 2017, they had an accumulated balance of Cenvat Credit to the tune of Rs.225,12,83,731/- which was lying unutilized as on 30.06.2017.

- 1.3. Further, the applicant had been using such coal in their power plant for generation of Electricity, which was exempted from Central Excise duty. During the process of manufacture/generation of electricity in the thermal power plant, *Fly ash* emerges as an inevitable by-product/waste which is further sold by the applicant against monetary consideration.
- 1.4. Consequent upon introduction and roll out of GST with effect from 01.07.2017, the 'supply' has become the taxable event and shifting of coal from coal mines of the applicant to their power plant for self use or captive consumption shall be out of ambit of 'Supply'. In such circumstances, the applicant has sought Advance Ruling on following two questions-
- Whether the applicant is entitled to carry forward the accumulated cenvat credit as reflected in its Excise returns for the month of June 2017 to GST regime in terms of provisions under the CGST Act 2017, more particularly Section 140 of the CGST Act?*
 - If the answer to the above is in affirmative, whether the accumulated Cenvat Credit so carried forward, not being the credit availed under the GST regime, is required to be adjusted/restricted in the manner prescribed under Rule 42 and 43 of the CGST Rules 2017?*

2. **RECORD OF PERSONAL HEARING** – Shri Mr. Gopal Mundra, Mr Ravi Ghiyani and Mrs. Laxmi Vyas appeared for personal hearing on 10-05-2018 and reiterated the stand already taken in the application. He however, informed that the applicant had already claimed the Credit under TRAN-1 which has been duly filed by them with the jurisdictional officers.
3. **DEPARTMENT'S STAND** – The Joint Commissioner, CGST & Central Excise, Commissionerate-Jabalpur, vide his letter F.No.GST/Party/Issue/HQR JBP/2017-18 dtd.10.05.2018 submitted comments on the instant application. On going through the letter, it is amply clear that the applicant have already claimed the credit amounting to Rs.223.35 Crores vide TRAN-1 and the same has been under scrutiny of the jurisdictional officers. It was also pointed out in the letter that the applicant company has also been audited by cost audit and certain objections have been raised through memos issued to applicant. To sum up in a nutshell, the question raised before the AAR, have already been under consideration and scrutiny of the department.



4. DISCUSSIONS AND FINDINGS –

4.1. We have carefully considered the facts put up before the Authority by way of written submission and also those placed during the course of personal hearing. We find that the short point involved in the matter before us is regarding admissibility of Cenvat credit lying unutilized as balance as per the last ER-1 filed by the applicant for the month of June 2017, in light of the provisions of Section 140 of the CGST Act 2017 which specifically deals with the subject of Transitional Credit.

4.2. We have taken a note of the letter F.No.GST/PartyIssue/HQR JBP/2017-18 dtd.10.05.2018 of the Joint Commissioner, CGST & Central Excise, Jabalpur. It is an admitted fact on record, as also transpired during the course of personal hearing, that the question raised by the applicant before the AAR had already been examined by the department as the applicant had claimed such disputed credit in their TRAN-1.

4.3. Before going into the merits of the case, it is necessary to deal with the issue whether the application deserves to be admitted and heard on merits. In this context it is pertinent to refer to Section 97 (2) and Section 98(2), which are following –

4.4. *Section 97(2) The question on which the advance ruling is sought under this Act, shall be in respect of,—*

- (a) *classification of any goods or services or both;*
- (b) *applicability of a notification issued under the provisions of this Act;*
- (c) *determination of time and value of supply of goods or services or both;*
- (d) *admissibility of input tax credit of tax paid or deemed to have been paid;*
- (e) *determination of the liability to pay tax on any goods or services or both;*
- (f) *whether applicant is required to be registered;*
- (g) *whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.*

4.5. A plain reading of Section 97(2) clearly implies that the any question relating to CENVAT credit, which falls under transitional provision, shall be out of purview of Advance Ruling. Admissibility of input tax credit, as given in section 97(2), relates to 'input tax credit' as defined in Section 2(63)of CGST Act 2017 read with Section 2(62) *ibid* and not the CENVAT carried forward in TRAN-1, which categorically pertains to pre-GST regime. Thus, we find that the question placed before us does not fall within the four corners of issues defined for seeking Advance Ruling under Section 97(2) *ibid*. Hence the application does not hold ground to be admitted on this count.



4.6. Further, Section 98(2) of the CGST Act 2017 reads as under –

SECTION 98. Procedure on receipt of application –

(1)

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorized representative and the concerned officer or his authorized representative, by order, either admit or reject the application:

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.

4.7. Now having regard to the Proviso to Section 98(2) of the CGST Act 2017, we are of firm opinion that applicant had not only raised this particular issue, in respect of which Advance Ruling is sought vide application under consideration, before the jurisdictional officers but also the department has already undertaken audit of the accounts of the applicant and raised some objections on the same. We find that the applicant have also agreed to this fact during the course of personal hearing.

4.8. In view of the above, when the question raised before does not fall within the ambit of Section 97(2) and be that as it may, the issue has already been pending before the departmental authorities we do not find any reason to take up the matter on merits. In view of the clear provisions given under Section 97 and Section 98(2) *supra*, the application deserves to be rejected at the stage of admission only.

4.9. In view our discussions and findings, we pass the following ruling-

ORDER

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

The application filed by the applicants is hereby rejected

-sd-

RAJIV AGRAWAL
(MEMBER)

-sd-

MANOJ KUMAR CHOUBEY
(MEMBER)

Copy to:-

1. Applicant
2. The Commissioner(SGST)
3. The Commissionerate(CGST),
4. The Concerned Officer
5. The Jurisdictional Officer – State/Central

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