

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri B. V. Borhade, Joint Commissioner of State Tax
(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax

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| GSTIN Number, if any/ User-id | 271700000133ARY |
| Legal Name of Applicant | M/s JSW Energy Limited |
| Registered Address/Address provided while obtaining user id | JSW Centre, Bandra Kurla Complex, Near MMRDA, Ground, Bandra East, Mumbai - 400 051 |
| Details of application | GST-ARA, Application No. 05 Dated 7.12.2017 |
| Concerned officer | Central GST, Range- IV, Div-V, Ratnagiri |
| Nature of activity(s) (proposed / present) in respect of which advance ruling sought | |
| A Category | Service provision |
| B Description (in brief) | A brief description of the nature of activity in respect of which advance ruling is sought is mentioned in the application attached herewith and marked as <u>Annexure-I</u> . |
| Issue/s on which advance ruling required | (v) determination of the liability to pay tax on any goods or services or both. (vii) whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term |
| Question(s) on which advance ruling is required | As reproduced in para 01 of the Proceedings below. |

PROCEEDINGS

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA-05/2017/B- 04

Mumbai, dt. 05/03/18

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by M/s JSW Energy Limited, the applicant, seeking an advance ruling in respect of the applicability of GST on:

1. Supply of coal or any other inputs on a job work basis by JSL to JEL
2. Supply of power by JEL to JSL
3. Job work charges payable to JEL by JSL

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST 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 MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-

“ANNEXURE I - STATEMENT OF THE RELEVANT FACTS HAVING A BEARING ON THE QUESTION(S) ON WHICH THE ADVANCE RULING IS REQUIRED

1. This Application is being filed by JSW Energy Limited (**‘the Applicant’/‘JEL’**). The Applicant, having Good and Service Tax (**‘GST’**) Registration No.27AAACJ8109N1Z8is engaged in the business of generation of power. The Applicant’s power plant is divided into four units.
2. JSW Steel Limited (**‘JSL’**), having GST Registration No. **27AAACJ4323N1ZG**is engaged in manufacture and supply of steel. JSL requires power on a continuous and dedicated basis, for manufacturing steel at its steel plant. For the said purpose, JSL and the Applicant proposed to enter into an arrangement (herein after referred to as **‘Job Work Agreement’**) pertaining to Unit III and Unit IV of the power plant which are in the nature of a captive power plant
3. In terms of the proposed arrangement, JSL would supply coal or any other inputs (herein after collectively referred to as **‘inputs’**) to the Applicant on a free-of-cost basis. On receipt of the same, JEL would undertake certain processes to convert the said inputs into power. In accordance with the Job Work Agreement, the title to the coal or any other inputs along with the power generated from the said inputs will vest with JSL.
4. The mechanics of the transaction and consideration payable by JSL to the Applicant for the generation and supply of power has been diagrammatically illustrated.
5. The above can be further explained as under:
 - a. JSL imports coal from suppliers located outside India
 - b. Required inputs (such as coal) would be supplied by JSL to JEL. For the purpose of this arrangement, JSL shall be construed as a **‘Principal’**. On receiving the inputs, JEL shall undertake the activities in accordance with the Job Work Agreement
 - c. Power generated from the aforesaid activities shall be supplied back to the Principal
 - d. JEL would recover charges from JSL in accordance with the Job Work Agreement. Each invoice shall contain details of the inputs supplied to JEL and power supplied to JSL and the charges for services rendered during the preceding month, applicable taxes and the date of payment for the said consideration
6. In view of the above, the issue for determination before the Authority for Advance Ruling (**‘AAR’**) is the applicability of GST on:
 - I. Supply of coal or any other inputs on a job work basis by JSL to JEL
 - II. Supply of power by JEL to JSL
 - III. Job work charges payable to JEL by JSL

ANNEXURE II - STATEMENT CONTAINING THE APPLICANT’S INTERPRETATION OF LAW AND/OR FACTS, AS THE CASE MAY BE, IN RESPECT OF THE QUESTION(S) ON WHICH THE ADVANCE RULING IS REQUIRED

1. ISSUE FOR DETERMINATION

- 1.1. The questions/ issues before Your Honor for determination are applicability of GST on:
 - a. Supply of coal or any other inputs on a job work basis by JSL to JEL
 - b. Supply of power by JEL to JSL
 - c. Job work charges payable to JEL by JSL
- 1.2. The questions / issues placed for determination before Your Honor have to be appreciated in light of the following position of law and its applicability to the proposed activity by the Applicant, discussed hereunder.

2. POSITION OF LAW

PROVISIONS REGARDING ‘JOB WORK’ UNDER THE GST REGIME

- 2.1. The term **‘Job Work’** is defined under Section 2(68) of the CGST Act, 2017 as under:

“(68) ‘job work’ means any treatment or process undertaken by a person on goods belonging to another registered person and the expression Job Worker shall be construed accordingly;”
- 2.2. On perusal of the aforementioned definition, it can be observed that all of the following three conditions need to be fulfilled to classify an activity as a Job Work, viz:
 - (i) Treatment or process should be undertaken by a person;
 - (ii) Such treatment or process should be on goods; and
 - (iii) These goods should belong to another registered person
- 2.3. To summarize the above, under the GST Regime, a Job Worker shall undertake a treatment or process on the goods (i.e. inputs) belonging to another person for the transaction to fall within the ambit of Section 2(68) of the CGST Act.
- 2.4. In addition to the above, Section 143 (1) (a) of the CGST Act requires bringing back of inputs, after completion of Job Work or otherwise, within one year of their being sent out, to any place of business of the Principal. Fulfilment of such a condition would allow movement of inputs between the said entities without payment of taxes. For the said purpose, inputs include intermediate goods arising from any treatment or processes carried out on the inputs by the Principal or the Job Worker. Relevant extracts of the said Section are reproduced as follows:

143. (1) A registered person (hereafter in this section referred to as the “principal”) may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise, and shall,—

(a) bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;

*(b) 1 (b)
Explanation.—For the purposes of job work, input includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker.*

PROVISIONS REGARDING ‘SERVICES OF TREATMENT OR PROCESS WHICH IS APPLIED TO ANOTHER PERSON’S GOODS’ UNDER THE GST REGIME

- 2.5. The term **‘supply’** has been defined under Section 7 of the CGST Act and covers supply of goods as well as services. The said definition also seeks reference to Schedule II wherein specified supplies have been classified either as a good or a service. Entry 3 of the said schedule provides that *‘Any treatment or process which is applied to another person’s goods is supply of services’*. Accordingly, the said activity would be construed as a service.

- 2.6. The Applicant also seeks reference to the above classification for the purpose of levy of GST.

PROVISIONS REGARDING ‘VALUATION’ UNDER THE GST REGIME

- 2.7. Section 15 of the CGST Act pertains to valuation of taxable supplies, which would be the transaction value, i.e. the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. For the said purpose, the term **‘related person’** shall cover:

- (i) officers or directors of one another's businesses;
- (ii) legally recognized partners in business;
- (iii) employer and employee;
- (iv) persons (including legal persons) who directly or indirectly owns, controls or holds twenty-five per cent or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly controls the other;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or they are members of the same family;
- JSL and JEL would be treated as related persons on account of direct or indirect control over each other.
- 2.8. On account of JSL and JEL being related person, valuation of supply of goods or services or both would be determined under the prescribed rules. For said purpose the Government vide Chapter IV of CGST Rules, 2017 ('the CGST Rules') has laid down the procedure for determining the valuation of the goods/services or both.
- 2.9. Rule 28 of the said rules prescribe that the value of supply of goods and services or both, where the supplier and recipient are related, shall be-
- the open market value of such supply
 - if the open market value is not available, the value of supply of goods or services of like kind and quality
- 2.10. Further the proviso to above referred rule provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods and services.
- 2.11. In the present case, it is submitted that JSL would be eligible to avail the credit of the GST payable on charges paid to JEL (subject to the underlying provisions of the GST legislation). Accordingly, the value attributable to the Job Work charges could be construed as the transaction value for levy of GST.
- 3. RELEVANT CLAUSES OF THE AGREEMENT BETWEEN JEL AND JSL**
Illustrative clauses, which would be a part of the contractual agreement are given below:
- 3.1. Key Definitions**
Inputs – Input means Coal, or any other supplies that are required by JEL for provision of Job Work services in terms hereto. The agreed grade, characteristics and specifications of Inputs to be delivered by JSL under this Agreement are at Annexure
Job Work Services – means the activity of processing Inputs supplied by JSL to produce Products], being more particularly described in Annexure, pursuant to this Agreement and the relevant Instructions.
Power – Power shall mean electrical output generated in MW terms.
Product – Product includes power – in addition to the fly ash and other resultant products generated at Power Plant through the Job Work Services.
- 3.2. Supply of Inputs**
On and from the Effective Date, JSL appoints JEL, on a Job-Work basis to carry out the treatments and processes comprising the Job-Work Services on supply by JSL of the Inputs (free of charge).
On occurrence of the above, JEL shall provide the Job Work Services in accordance with the terms hereof.
The Parties agree that JEL shall not be able to perform the Job Work Services (which obligations are contingent upon supply of the Inputs) under the Agreement unless the Power Plant receives uninterrupted availability/accessibility, as applicable, of/to the Inputs in accordance with the Agreement.
- 3.3. Restriction on Sale of Inputs**
JEL agrees that it shall use the Inputs supplied by JSL hereunder solely for the purposes of providing the Job Work Services and shall not sell or otherwise dispose of the Inputs.
- 3.4. Title and Risk of Loss**
JSL warrants that at all times it shall have good title to all Inputs delivered to JEL, its transfer is lawful, and at the time of delivery, such Inputs will be free and clear of any lien, claim, demand, security interest or other encumbrance.
JSL shall retain title to and risk of loss with respect to the Inputs supplied to JEL.
- 3.5. Loading and Delivery**
JSL shall supply the Inputs, as may be agreed between the Parties at such time as would enable JEL to comply with the Instructions
Delivery Procedures and detailed operational procedures to ensure smooth delivery to and loading of Inputs shall be agreed in writing between the authorised representatives of the Parties.
- 3.6. Measurement of Quantity**
The quantity of Inputs supplied shall be as weighed on JSL's [electronic weighbridges]. A representative of JEL may be present to witness the weighment. If the [weighbridges] fail, weight will be determined on mutually agreed volume to weight conversion basis.
JEL, at its expense, shall procure, install, own and maintain two sets of Metering System separately for each transformer as per regulations of Central Electricity Authority. The energy meter and associated equipment shall be of 0.2s accuracy class. These meters shall function as main meters and check meters. The general location of these meters shall be the metering point. Such equipment shall be capable of providing instantaneous output measurements to measure electrical output delivered at a specific time..
- 3.7. Records**
Supply of Inputs, including delivery challans documenting the movement of goods, and provision of Job Work Services shall be evidenced by documentary proof, mutually agreed by the Parties in accordance with the Applicable Law. At the end of the [Month] a jointly signed report showing the challan - wise quantity delivered by JSL shall be prepared.
- 3.8. Additional Covenants, Roles and Responsibilities**
JEL shall
(i) provide the Job Work Services on a continuous and dedicated basis, and will have the ability to deliver the desired Products to JSL;
The above are only relevant extracts from the underlying Job Work Agreement which have been reproduced to substantiate the arrangement of the Principal and the Job Worker.
- 4. SUBMISSIONS OF THE APPLICANT**
- 4.1. At the outset, it is submitted that traditionally the concept of job work, which has evolved over the period clearly signifies that the same involves undertaking certain processing activities in respect of the goods supplied by the Principal, resulting in intermediate/ finished product. A Job Worker typically works on behalf of and for the owner of goods on which the Job Work is being undertaken who is also termed as Principal.
- THE ACTIVITY UNDERTAKEN BY THE APPLICANT FALL WITHIN THE AMBIT OF THE TERM 'JOB WORK' AS DEFINED UNDER THE CGST ACT**
- 4.2. As per the provisions of the CGST Act mentioned above in paragraph 2.1, for treatment or process undertaken by a person to be termed as a 'Job Work', the said treatment or process should be undertaken on the goods belonging to another person. Therefore, there are three essential requirements to be fulfilled by the Company in the present case to term the present transaction as 'Job Work', namely:
- a) The activity undertaken by the Applicant should qualify as a 'treatment or process',
 - b) The treatment or process undertaken should be on goods i.e. the inputs (coal) involved in the present case should fall within the ambit of term 'goods'
 - c) These inputs/goods should belong to JSL
 - d) Inputs should be brought back after completion of Job Work or otherwise, within one year of their being sent out, to any place of business of the Principal.
- Fulfillment of the conditions mentioned above are explained hereunder:



ACTIVITY UNDERTAKEN BY THE COMPANY AMOUNTS TO 'TREATMENT OR PROCESS'

4.3. In terms of the first condition, the activities undertaken by the Applicant should qualify as a treatment/ process. Given that the terms 'treatment' or 'process' have not been defined under the GST laws, reliance is placed on various dictionary meanings and judicial precedents in this regard:

- **CST v. Samodar Padmanath Rao [1968 (22) STC 187 (Bom)]:** "One of the meanings that can be given to the word 'process' is to subject to a particular method or technique of preparation, handling, or other treatment designed to affect a particular result"
- **Haldia Petrochemicals Ltd. v. Commissioner Of C. Ex., Haldia [2006 (197) E.L.T. 97 (Tri. - Del.)]:** In this case, it has been held that the term 'processing' is a much wider term
"In our opinion, the expressions "further processing" and "any other purpose" mentioned in Rule 4(5)(a) are fairly wide and would take their colour from the processes mentioned in the definition of 'input'. As such the generation of power or steam as intermediate products would fall within the scope of these expressions, and would amount to Job Work."
- **S.B. Sarkar's Word & Phrases of Excise, Customs & Service tax, 4th Edition:** Process means "Prepared, handled, treated or produced by a special process []"
- **Websters Dictionary:** "processing means to subject to some special process or treatment; to subject (esp. raw material) to a process of manufacture, development or preparation []."

4.4. Considering the above, it can be submitted that the activity of generation of power undertaken by the Applicant amounts to a 'process' and accordingly, the Applicant is undertaking a process in the present case on the goods. Therefore, condition (a) mentioned above in paragraph 4.2 is fulfilled in the present case.

INPUTS SHOULD FALL WITHIN THE AMBIT OF THE TERM 'GOODS' AS DEFINED IN THE CGST ACT

4.5. In terms of the second condition, the inputs on which the treatment/ process is undertaken by the Applicant should qualify as 'goods'. In this regard, it is pertinent to refer to Section 2(52) of the CGST Act, which defines the term 'goods' as under:

"(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply"

4.6. As mentioned above, in the present case, the inputs used by the Applicant for generating power are coal or any other inputs which are supplied by JSL and consumed for the generation of power. Coal or any other inputs used by the Applicant for generation of power are movable property. Therefore, in the present case these inputs i.e. coal or any other inputs can be considered as a 'goods'.

GOODS USED FOR GENERATION OF POWER BY THE APPLICANT BELONG TO JSL

4.7. In terms of the third condition, the goods should belong to JSL and should be provided to the Applicant for undertaking the activity of generation of power. Reference is also sought to the agreement between JEL and JSL, the relevant clauses of which have been set out at paragraph 3 hereinabove. Upon perusal of the said clauses, the following emerge as the key features of the contractual and commercial arrangement between the parties:

- JSL is to provide coal or any other inputs on free-of-cost basis to JEL, and the ownership of coal or any other inputs will remain with JSL at all times;
- JSL shall be the sole and absolute owner of the power generated by JEL;
- JEL cannot in any manner deal with the power that is generated from the processing which is carried out by utilizing the inputs provided by JSL, and the mere fact that JEL processes the coal provided by JSL for generation of power does not give JEL any rights whatsoever over the power so generated;

4.8. In terms of the proposed arrangement between the parties, JSL is required to provide coal for generation of power by JEL. The said inputs are processed by JEL for generation of power by employing its plant and personnel, and JEL has no rights whatsoever to the resultant power. Accordingly, the activity undertaken by JEL on behalf of JSL would be classifiable as a Job Work activity.

4.9. The Applicant submits that there is no iota of doubt that the coal and the other inputs belongs to JSL and the ownership of the same always remain with JSL only.

BRINGING BACK THE INPUTS

4.10. Under the GST regime, the condition pertaining to return of inputs to the Principal is mentioned in paragraph 4.2. The same is in line with the erstwhile CENVAT Credit Rules, 2004. For a better understanding of the scope of this condition, reference is sought to the judgment of the Apex Court in the matter of **Prestige Engineering (India) Limited vs Collector of Central Excise, Meerut [1994 (73) ELT 497 (S.C.)]** where the Supreme Court observed that "initiating upon the same articles being returned to the customer after undergoing the manufacturing process at the hands of the Job Worker may rob the notification of any substance whatsoever". The above principle was relied on by the CESTAT, New Delhi in the matter of **Haldia Petrochemicals Ltd vs Commissioner of C.Ex. [2004 (177) ELT 708 (Tri-Delhi)]**, wherein the appellant supplied raw materials to their Job Worker who was a power plant. In the said context, it was held that

"Having regard to the fact that inputs for generation for power or steam are specifically mentioned in the definition of "input", we are of the view that the Cenvat credit is available even if the identity of the input is lost when the Job Worker returns the goods after further processing....."

Based on the above, it can be construed that barter of inputs was also an acceptable form of receiving the inputs sent by the Principal.

4.11. Reference can also be cited to the decision of the Hon'ble High Court of Bombay in the matter of **CCE, Aurangabad vs. Endurance Technologies Pvt. Ltd. [2015-TIOL-1371-HC-MUM-ST]**, where credit on inputs and input services used by wind mills to generate energy which is made available to the manufacturer through power board under the barter system, has been allowed. The Tribunal at Chennai in the matter of **DCW Ltd vs. Commissioner of C.Ex, Triunelveli [2016(332) ELT 142(Tri-Chennai)]** and in the matter of **The India Cements Ltd and Others vs CCE, Salem and Others [2015-TIOL-(982-CESTAT-MAD)]** also followed the above principle. Relevant extract of the India Cement Ltd case is reproduced as follows:

"Our view above is fortified from the judgment of the Hon'ble High Court of Bombay in Central excise appeal No. 14/2012 in the case of CCE, Aurangabad Vs. Endurance Technology Pvt. Ltd., disposed on 02.12.2014. The Hon'ble Court examining the meaning of the 'input' under Cenvat Credit Rules, 2004 and admissibility of credit of tax on such input held that there should not be inadmissibility of input credit on input or input services used by wind mills to generate energy which is made available through power board under barter system."

In the judgment of Endurance Technologies, the High Court has concluded that input tax credit of the inputs used in generation of power under barter transaction, where the power is supplied back against the inputs, would be available.

On basis of the above mentioned judgments it can be construed that transaction of processing the coal supplied by JSL and supplying back the power generated to JSL would fulfill the condition of bringing back the inputs.

4.12. As all the conditions mentioned under paragraph 4.2 required to be fulfilled by the Applicant in order to fall under the ambit of the term 'Job Work', are satisfied, the present transaction would be construed as a Job Work transaction and the Applicant would be considered as a Job Worker of JSL.

CLASSIFICATION OF A JOB WORK ARRANGEMENT AS A SUPPLY OF SERVICE

4.13. The Applicant seeks reference to Schedule II of the CGST Act and humbly submits that a job work arrangement would be in the nature of a supply of service. Entry 3 of the said schedule is reproduced as follows:

"Any Treatment or process which is applied to another person's goods is a supply of services".

4.14. On the basis of the above, it is respectfully submitted that for the generation of power from coal, the following processes are undertaken by the Applicant:

- A machine called a pulverizer grinds the coal into a fine powder.
- The coal powder mixes with hot air, which helps the coal burn more efficiently, and the mixture moves to the furnace.
- The burning coal heats water in a boiler, creating steam.
- Steam released from the boiler powers an engine called a turbine, transforming heat energy from burning coal into mechanical energy that spins the turbine engine.
- The spinning turbine is used to power a generator, a machine that turns mechanical energy into electric energy. This happens when magnets inside a copper coil in the generator spin.
- A condenser cools the steam moving through the turbine. As the steam is condensed, it turns back into water. The water returns to the boiler, and the cycle begins again.

On the basis of the above, the processes undertaken on JSL's coal by JEL would amount to supplying a service and subjected to tax under the GST regime.

APPLICABILITY OF GST ON THE PRESENT TRANSACTION

4.15. On establishing a job work arrangement between JSL and JEL as per above, the applicability of GST on the subject transaction also needs to be examined. For the said purpose, reference is sought to Section 143(1) of the CGST Act which allows movement of inputs or capital goods without payment of tax, to a job worker for job work activities. Accordingly, it is humbly submitted that movement of coal or any other inputs from JSL to JEL would not be subjected to tax on account of movement of inputs for job work activities.

4.16. As mandated under a job work arrangement, the Principal shall be required to bring back inputs after completion of job work or otherwise, within a period of one year of they being sent out without payment of tax. In the said context, the Applicant has submitted under paragraphs 4.10 to 4.12 of this Application that the subject transaction is in accordance with the prescribed conditions of the job worker arrangement whereby inputs (i.e. coal) is being returned to the Principal.

4.17. For determining the applicability of GST on Job Work charges, reference is sought paragraphs 4.13 and 4.14 of this document. In the said context, it is humbly submitted that a job worker is engaged in supplying a service specified under Schedule II of the CGST Act and accordingly GST would be applicable on the said job worker charges.

4.18. In addition to the above, for the purpose of determining the value of job work charges subject to GST, reference is sought to Rule 28 of the CGST Rules mentioned under paragraphs 2.9 and 2.10 of this application, which pertains to valuation of supplies between related persons. As per the said rules, the value of supply of services would be the open market value of such supply. This term has been explained to mean the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made. Accordingly, it is submitted that GST would be applicable on the job work charges levied by JEL to JSL.

SUBMISSION DT.16.02.2018

1. MEANING AND DEFINITIONS

1.1. At the outset, we would like to refer to the definition of 'job work' as defined under Section 2(68) of the CGST Act. The said definition is reproduced as follows:

Job work means any treatment or process undertaken by a person on goods belonging to another registered person and the expression 'job worker' shall be construed accordingly

Basis the aforesaid definition, any 'treatment' or 'process' undertaken on goods belonging to another person shall be construed as a job work activity.

Since the terms 'treatment' or 'process' have not been defined under the GST legislation, reference is sought to the dictionary meaning which explain the said terms and are reproduced as follows:

Process

- a natural or involuntary operation or series of changes; handle or deal with by a particular processⁱⁱ
- a systematic series of actions directed to some endⁱ

Treatment

- Subject to the action of a chemical, physical or biological agentⁱⁱⁱ
- Subject to some agent or action^{iv}

1.3. In addition to the above, reference is also sought to judicial precedents wherein the aforesaid terms have been explained. In the matter of *Collector of Central Excise vs Rajasthan State Chemicals Works – 1991(55) E.L.T. 444(SC)*, the Supreme Court examined the ambit of the term 'process'. Relevant extract of the judgement has been reproduced as follows:

The natural meaning of the word 'process' is a mode of treatment of certain materials in order to produce a good result, a species of activity performed on the subject-matter in order to transform or reduce it to a certain stage. According to Oxford Dictionary one of the meanings of the word 'process' is "a continuous and regular action or succession of actions taking place or carried on in a definite manner and leading to the accomplishment of some result." The activity contemplated by the definition is perfectly general requiring only the continuous or quick succession. It is not one of the requisites that the activity should involve some operation on some material in order to its conversion to some particular stage. There is nothing in the natural meaning of the word 'process' to exclude its application to handling. There may be a process which consists only in handling and there may be a process which involves no handling or not merely handling but use or also use. It may be a process involving the handling of the material and it need not be a process involving the use of material...

1.4. In light of the above cited meanings and judicial interpretation, it is submitted that the term process is wide enough to cover even a mere handling of materials. Considering the scope of the said term, the Company humbly submits that the activities proposed to be carried out by the Company would fall within the ambit of the term 'process' or 'treatment'.

1.5. In addition to the above, the other pre-requisite for categorizing the proposed activity as a 'job work' would be the said treatment or process is required to be undertaken on goods belonging to another person. As per the proposed arrangement, coal would be supplied by the Principal (i.e. JSW Steel Ltd) to the Company for the purpose of carrying out the specified processes for generation of electricity which is supplied back to the owner of the coal, including the by-product i.e. fly ash. Thus, the Company humbly submits that the pre-requisites i.e. carrying out a treatment or process on goods belonging to another would qualify the proposed transaction under the ambit of a job work.

2. DEPARTMENTAL FREQUENTLY ASKED QUESTION (FAQ)

2.1. Without prejudice to the above, the Company humbly submits that the definition of the term 'job work' as defined under the GST legislation has a wider meaning than the one, as existed under the pre- GST regime. This has also been clarified in the FAQ issued by the Central Board of Excise and Customs – New Delhi^v which is reproduced as follows:

Q1. What is job work?

Ans. Job work means undertaking any treatment or process by a person on goods belonging to another registered taxable person. The person who is treating or processing the goods belonging to other person is called 'job worker' and the person to whom the goods belongs is called 'principal'.

This definition is much wider than the one given in Notification No. 214/86 – CE dated 23rd March, 1986. In the said notification, job work has been defined in such a manner so as to ensure that the activity of job work must amount to manufacture. Thus the definition of job work itself reflects the change in basic scheme of taxation relating to job work in the proposed GST regime.

2.2. Based on the above, the Company humbly submits that the tax authorities have sought to differentiate the ambit of the term job work as existing under the GST regime, when compared to the pre-GST era. Under the GST regime, the definition seeks to cover a wider scope of services provided by the job worker. However, the Company humbly submits that its proposed activities would squarely be covered under the definitions of the term job work as existing under the pre-GST regime and accordingly the same should not be interpreted in a restrictive manner under the GST legislation.

3. PROVISIONS APPLICABLE TO A JOB WORKER UNDER THE GST REGIME

3.1. The Company seeks reference to Section 7 of the CGST Act which defines the ambit of the term 'supply'. The said Section also seeks reference to Schedule I wherein supplies of goods or services or both between related persons or between distinct persons made in the course or furtherance of business without consideration would be deemed to be a supply.

3.2. In light of the above inclusion, the Company also refers to Section 143 of the CGST Act wherein for the purpose of job work, a Principal may send inputs or capital goods without payment of tax to a job worker, subject to fulfilment of certain prescribed conditions, without any transfer of ownership permanent or temporary, defacto or dejure.

3.3. Based on a harmonious reading of Section 7 and Section 143 of the CGST Act and reiterating what was stated during the personal hearing, the Company humbly submits that supply of goods, without payment of tax, for the purpose of a job work activity would be governed by Section 143 and subjected to the conditions mentioned therein. Further the Company humbly submits that the legislature does not exclude related parties from entering into a job work arrangement.

4. APPLICABLE JUDICIAL PRECEDENTS

4.1. Without prejudice to the above submissions, the Company humbly submits before Your Honor certain judicial precedents wherein the facts are squarely applicable to the present application. These can be cited as follows:

- *Commissioner of Central Excise vs Indorama Textiles Ltd.* [2010 (260) ELT 382 (Bom HC)]
- *Haldia Petrochemicals Ltd vs CCE, Haldia* [2006 (197) ELT 97 (Tri.- Delhi)]
- *Sanghi Industries Limited vs CCE, Rajkot* [2006(206) ELT 575 (Tri.- Delhi)]
- *Sanghi Industries Limited vs CCE, Rajkot* [2014(302) ELT 564 (Tri.- Ahmd.)]

A copy of the aforesaid cases were submitted at the time of the personal hearing held on 15.02.2018.

4.2. The above judgements cover instances where materials (such as naphtha, light diesel oil, furnace oil, etc) were supplied to the job worker for carrying out a specified process for the purpose of generation of electricity. Nowhere have the Courts denied or held that the activities undertaken do not result into a job work activity. Further the Supreme Court dismissed the appeal petition filed by the Commissioner of Central Excise Nagpur against the order of the Hon'ble Bombay High Court in the matter of Indorama Textiles Ltd (supra) - *Commissioner vs Indorama Textiles Ltd. 2010(260) E.L.T. A83(SC)*.

In light of the aforesaid submissions and the submissions made earlier, it is submitted that the transaction proposed to be undertaken by the Company would be construed as a job work transaction and the Company would be considered as a job worker. Further, the GST would be payable only on the Job Work charges charged by the Company."

03. CONTENTION - AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

"SUPPLY OF COAL OR ANY OTHER INPUTS ON A JOB WORK BASIS BY JSL TO JEL

JSL intend to supply the inputs 'coal' to JEL on job work basis to convert coal into electrical energy and pay job-work charges to receive electricity from JEL.

The term 'job work' has been defined under Section 2(68) of the CGST Act, 2017 as

"job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression job-worker shall be construed accordingly.

And the provisions governing job work procedure are set out in Section 143 of the CGST Act, 2017. Therefore the scope and meaning of the term 'job work' has to be decided by taking into account provisions governing the job work procedure.

Section 143: Job work Procedure- (1) A registered person (hereafter in this section referred to as the " Principal") may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise, and shall-

(a) Bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixture, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;

(b) supply such inputs, after completion of job work or otherwise, or capital goods other than moulds and dies jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out from the place of business of a job worker on payment of tax within India, or with or without payment of tax for export, as the case may be:

Provided that the principal shall not supply the goods from the place of business of the job worker in accordance with the provisions of this clause unless the said principal declares the place of business of the job worker as his additional place of business except in a case-

(i) Where the job worker is registered under section 25; or

(ii) Where the principal is engaged in the supply of such goods as may be notified by the Commissioner

(2) The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.

(3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise in accordance with the provision of clause(a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provision of clause (b) of sub-section (1) within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out.

(4) Where the capital goods, other than the moulds and dies, jigs and fixtures, or tools, sent for job work are not received back by the principal in accordance with the provisions of clause(a) of sub section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) with in a period of three years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out.

(5) Notwithstanding anything contained in sub-section (1) and (2), any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax, if such job worker is registered, or by the principal, if the job worker is not registered.

Explanation: - For the purpose of job work, inputs include intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker.

From the above legal provisions read together, it implies that in job work the job worker can undertake any treatment or process on goods belonging to another registered person and after job work such goods must necessarily be returned to the principal. In another words the goods supplied by the principal to be treated and processed upon by the job worker and processed goods to be returned to the principal. Though in the definition of job work it is specified that the job worker can undertake any process or

treatment, the provisions governing the job work procedure are the deciding factor to qualify whether any process or treatment amount to job work. And the basic underlying principal of job work is that the goods sent for job work **may be subjected to any process or treatment but said goods after such treatment/process must be returned to the principal. Both the definition of Job Work given in Section 2(68) of CGST Act, 2017 and the procedure in Section 143(a) of the CGST Act, 2017 should be read in conjunction while coming to a conclusion about whether an activity is a job work or not.**

The real question to be decided in the instant matter is that whether combustion of subject goods 'coal' for generation of electricity would amount to 'treatment or processing' of coal. The answer is negative because the subject goods 'coal' being in the nature of tangible goods are **used** in this case for combustion in the boiler to convert water in to steam. The generated steam is in turn is supplied to the turbine to generate electricity. And the goods 'electricity' is intended to be supplied to JSL in lieu of coal. This itself means that the inputs supplied by the principal are not subjected to any 'treatment or process' but they are used/consumed to generate/manufacture 'electricity'. As such the processed/treated upon goods are not returned to the principal only the ash or residue is proposed to be returned back. And the goods proposed to be returned back to the principal coal ash/residue can not be deemed as processed goods.

One illustrative example of job work on coal is conversion of coal into Coke. Coal can be subjected to destructive distillation to be converted into Coke. This process satisfies the definition of 'job-work' as well as the governing provisions stipulated u/s 143 are followed. Unlike the instant case where Coal is consumed in the boiler to generate steam which in turn is used in the generation/manufacture of a new commodity 'electricity' falling under CSH No 2716 0000. And the new commodity 'electricity' is supplied back to the principal. It is expected in job work that goods supplied by the principal undergo 'treatment/process' at job worker's end and after such treatment/job work they are returned to the principal. The process undertaken by JEL traverse well beyond the scope of the term 'job work'. It is more than job work.

This office is of the view that the act of sending tangible goods 'coal' to be consumed in the manufacture intangible goods 'electricity' is beyond the scope of term 'job work' as per GST Law. Therefore supply of Coal or any other input would not amount to supply on a job work basis and applicable GST would apply. The rest of the question put forth for decision by JEL may be decided accordingly."

04. HEARING

The case was taken up for hearing on dt.30.01.2018 and on dt.15.02.2018 when Sh. Rohit Jain (Advocate) attended alongwith Ms. Hirva Shah, DGM and reiterated the contention as made in the written submission. Written submission was tendered during hearing and a request was made to make a further submission. The same has been tendered. Sh. M. V. Kulkarni, Superintendent attended on behalf of the concerned officer from the Central Tax Office and furnished a written submission.

05. OBSERVATIONS

We have gone through the facts of the case. The issue put before us is in respect of a future transaction which would be on the lines thus -

JSW Steel Limited (JSL) and JSW Energy Limited (JEL), as the applicant informs, are related persons on account of direct or indirect control over each other.

- JEL, the applicant, is engaged in the business of generation of power. The applicant's power plant is divided into four units.
- JSL is engaged in the manufacture and supply of steel. JSL requires power on a continuous and dedicated basis, for manufacturing steel at its steel plant. For the said purpose, JSL and JEL proposed to enter into a Job Work Agreement pertaining to Unit III and Unit IV of the power plant which are in the nature of a captive power plant.
- In terms of the proposed agreement, JSL would supply coal or any other inputs to JEL on a free-of-cost basis. On receipt of the same, JEL would undertake certain processes to convert the said inputs into power. In accordance with the Job Work Agreement, the title to the coal or any other inputs along with the power generated from the said inputs will vest with JSL.

- The above can be further explained as under :
 - a. JSL imports coal from suppliers located outside India.
 - b. Required inputs (such as coal) would be supplied by JSL to JEL. For the purpose of this arrangement, JSL shall be treated as a 'Principal'. On receiving the inputs, JEL shall undertake the activities in accordance with the Job Work Agreement.
 - c. Power generated from the aforesaid activities shall be supplied back to the Principal.
 - d. JEL would recover charges from JSL in accordance with the Job Work Agreement. Each invoice shall contain details of the inputs supplied to JEL and power supplied to JSL and the charges for services rendered during the preceding month, applicable taxes and the date of payment for the said consideration.
- In the aforesaid background, we are called upon to determine the applicability of GST on:
 1. Supply of coal or any other inputs on a job work basis by JSL to JEL
 2. Supply of power by JEL to JSL
 3. Job work charges payable to JEL by JSL

We proceed with the issue thus -

The applicant before us is JEL. We refer to the GST Act to understand the mechanism of an Advance Ruling wherein clause (a) of section 95 says that -

“95. In this Chapter, unless the context otherwise requires,—

(a) “advance ruling” means a **decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;**

As can be seen the ruling is in respect of the supply undertaken or proposed to be undertaken by the applicant. If this is the case then we see that the question no.1 as posed before us pertains to supply by JSL and not JEL, the applicant. In view thereof, the same cannot be entertained by us. Further, during hearing, the applicant has also acceded to this question not being entertained by the Advance Ruling Authority in view of the supply being by JSL and not by JEL, the applicant. We therefore restrict these proceedings to question nos.2 and 3 and move on to decide the same.

SUPPLY OF POWER BY JEL TO JSL

There is a supply of power by JEL to JSL. JEL has stated that JSL and JEL are related persons. A study of the application reveals that the applicant has submitted that -

- i. Movement of coal or any other inputs from JSL to JEL would not be subjected to tax on account of movement of inputs for job work activities.
- ii. GST would be applicable on the job work charges levied by JEL to JSL.

We are not concerned with (i) above as it is not a supply by JEL. As regards (ii) about supply of electricity by JEL to JSL, we will have to examine the correct position after analysis of GST provisions that will be applicable in the context of the present case.

As we begin to analyse, we see that the inputs provided by JSL to JEL are coal or any other inputs and after processing these, the output is electricity which is supplied to JSL. As an immediate observation, we have to say that the goods sent for job work are coal and after the so claimed process of 'job work' by JEL, the new product 'electricity' comes into existence. It is very apparent that the goods which are received after job work are in no way identifiable with the goods which were sent for job work. Electricity is a totally new commodity which will be delivered to JSL. To ascertain whether conversion of coal into electricity would tantamount to being 'job work', we need to examine the relevant provisions under the GST. We find that the definition of job work under GST Act is as under -

"(68) "job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly:

As can be seen the definition calls for application of a treatment or process to the goods. Treatment or process in this definition would mean some processes on the goods but would definitely not mean a complete transformation of the input goods into a new commodity. For this proposition, we draw support from the decision of the Hon. Supreme Court in *Manganese Ore India Ltd. v. State of M.P.*, (2017) 1 SCC 81 : 2016 SCC OnLine SC 1280 which has very lucidly explained the meaning of the term 'treatment and processing'.

"20. We are absolutely conscious that noscitur a sociis rule is not applied when the language is clear and there is no ambiguity, which according to us does exist and is perceptible in the Explanation in question. A very broad and a wide definition of the term "processing" if applied, would include manufacture of a new or distinct product. Manufacture normally involves a series of processes either by hand or machine. If a restricted construction is not applied it would create and give rise to unacceptable consequences. It is not the intent to treat and regard manufacturing activities as processing. Manufacturing, as is understood, means a series of processes through different stages in which the raw material is subjected to change by different operations. (For difference between process and manufacturing see CIT v. Tara Agencies [CIT v. Tara Agencies, (2007) 6 SCC 429], Orient Paper and Industries Ltd. v. State of M.P. [Orient Paper and Industries Ltd. v. State of M.P., (2006) 12 SCC 468] and Aspinwall & Co. Ltd. v. CIT [Aspinwall & Co. Ltd. v. CIT, (2001) 7 SCC 525].)

21. The words "crushing", "treating" and "transporting" are words of narrower significance and the word "processing" used between these words should not be given a very wide meaning, for the legislative intent, according to us, is narrower. The word "processing" would take its meaning in the cognate sense. In other words, the general word "processing" will be restricted to the sense conveyed by the words "crushing", "treating" and "transporting". The intent being that electricity tariff payable in respect of mining activities would include the mine itself, all machinery situated or located in the mine or in a premises adjacent to the mine wherein crushing, processing, treatment or transportation of the minerals as mined is undertaken. The word "processing" herein would mean those processes with the help of hands or machineries connected and linked to mining activity. It would not include process by which a new or different article other than the one which has been mined, is produced. It relates and signifies the composite activity of mining and processing. The intent is not to include processes which would lead to creation of a different commodity as known in the commercial world for otherwise even manufacturing activity would get covered, whereas manufacturing unit is liable to pay electricity tariff at a lower rate. The intent and purpose is certainly not to compel and force a manufacturing unit being set up at an acceptable distance from the mine, for the manufacturing unit adjacent to the mine would have to pay electricity tariff at a higher rate. Pertinently, a manufacturing unit set up by another entity, whether adjacent to the mine or not, would pay a lower tariff. Such absurdity and irrationality has to be avoided. In the present context, we would, therefore, hold "processing" would mean activities in order to make the mineral mined marketable, saleable and transportable, without substantially changing the identity of the mineral, as mined. When there is a substantial change at the mineral mined and the process results in a different commodity being produced or transforming and completely changing the mineral, it would fall outside the scope of the word "processing". The restricted construction will also be acceptable in view of the use of the word "mineral" at the end of the Explanation. The word "mineral" in the Explanation is the product which was mined and is put to "crushing", "processing", "treatment" and "transporting" the mineral. In other words, mineral means mineral which was mined and not a new product created by using or processing the mineral mined.

Applying the ratio in the above case, we see that the definition of 'job work' in the GST Act uses the words 'treatment or process'. The impugned activity undertaken by the applicant to convert the coal into electricity would not be covered by the words 'treatment or process' as found in the definition of 'job work'. Here, the intent of the legislation is not to cover such

treatment or process as would result into a distinct commodity. The activity, in fact, is a manufacture of electricity. And we find that the activity of 'manufacture' has been defined in the GST Act which is as follows :

“(72) “manufacture” means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term “manufacturer” shall be construed accordingly;”

As can be seen the definition itself says that the emergence of a new product from the processing of the inputs would be a manufactured product. In the instant case the end product i.e., “electricity” has a distinct name, character and use than the inputs i.e., “coal”. Thus, when the Legislature has provided for the definition of 'job work' as well as 'manufacture', the meaning as understood by the definition of 'manufacture' cannot be read into the words 'treatment or process' as found in the definition of 'job work'. 'Treatment', 'Process' and 'Manufacture' are three different activities recognized by the Legislature. The intent of the Legislature is to restrict the scope of 'job work' to 'treatment' or 'process' and not to extend the same to 'manufacture'. We need not deliberate more on the issue as the emergence of a distinct commodity is very obvious and therefore beyond the applicability of the definition of 'job work' under the GST Act.

Here, we would like to say that the applicant has placed much reliance on certain case laws under the Central Excise Act which have been reproduced above. However, the case laws deal with the provisions as were available under the said Act. Such are not the facts in the instant case. We find that these case laws relied upon by the applicant were in the context of eligibility of input tax credit vis-à-vis the definition of input. For the sake of better understanding, we would like to reproduce one such definition which was in consideration in the case of Haldia

Petrochemicals Ltd vs CCE, Haldia [2006 (197) ELT 97 (Tri.- Delhi)] -

“input” means all goods, except high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and includes accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production, and also includes lubricating oils, greases, cutting oils and coolants.

As can be seen, the processes involved in the above cases required that the inputs used may or may not have been found in the final product. The facts before us and the applicable provisions are different than those found in the case laws relied upon by the applicant. Further, we observe that the facts and applicable provisions being unambiguous, we do not feel the need to comment or discuss the other case laws and provisions as relied upon by the applicant.

We are of the firm view that the activity undertaken by JEL amounts to manufacture of electricity from the coal as supplied by JSL and is squarely covered in the definition of 'manufacture' under the GST Act. It is, therefore, not covered by the scope of the definition of 'job work' under the GST Act as contended by the applicant.

We now invite attention to Section 7 of the GST Act which explains the scope of 'supply':

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;

- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
 (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.
- (2) Notwithstanding anything contained in sub-section (1),—
 (a) activities or transactions specified in Schedule III; or
 (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.
- (3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—
 (a) a supply of goods and not as a supply of services; or
 (b) a supply of services and not as a supply of goods.

It can be seen that sub-section (2) begins with the word “notwithstanding” and sub-section (3) begins with the words “Subject to the provisions of sub-sections (1) and (2)”. The way the sub-sections (2) and (3) are framed determines the effect of the provisions in sub-section (1). Now we see that clause (c) of sub-section (1) refers to activities specified in Schedule I. It is further specified that these activities of Schedule I may be made or agreed to be made without a consideration. So we shall have a look at the Schedule I thus –

“SCHEDULE I [See section 7]

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:
 Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
3. Supply of goods—
 (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
 (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
4. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.”

Para 2 of the Schedule I is about supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business. Further, the Explanation to section 15 explains ‘related persons’ thus –

“Explanation.—For the purposes of this Act,—

- (a) persons shall be deemed to be “related persons” if—
- (i) such persons are officers or directors of one another's businesses;
 - (ii) such persons are legally recognised partners in business;
 - (iii) such persons are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or
 - (viii) they are members of the same family;”

As can be seen the applicant has informed that in terms of sub-clause (v) of clause (a) of the Explanation to section 15, JSL and JEL are related persons on account of direct or indirect control over each other. In view thereof, in terms of para 2 of Schedule I, the supply of goods or services or both between JSL and JEL would be treated as supply even if made without consideration. Therefore, the supply of power by JEL to JSL would be a transaction of ‘supply’. And GST would be applicable on this supply.

We would now look at the third question –

JOB WORK CHARGES PAYABLE TO JEL BY JSL

As already discussed above, the transaction between JEL and JSL is a transaction of supply of goods and not a ‘job work’. And hence, the question does not survive.

In view of all above deliberations, the questions can be answered thus -

05. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

ORDER

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA-05/2017/B- 08

Mumbai, dt. 05/03/18

For reasons as discussed in the body of the order, the questions are answered thus -

- Q.1 Applicability of GST on supply of coal or any other inputs on a job work basis by JSL to JEL
- A. This question pertains to supply JSL and not JEL, the applicant. In view thereof, the same is not entertained.
- Q.2 Applicability of GST on supply of power by JEL to JSL.
- A. This question is answered in the affirmative.
- Q.3 Applicability of GST on job work charges payable to JEL by JSL.
- A. The transaction between JEL and JSL is a transaction of supply of goods and not a 'job work' and therefore, the question does not survive.

PLACE - Mumbai

DATE - 05/03/18

B. V. BORHADE

(MEMBER)

— sd —

PANKAJ KUMAR

(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
3. The Jurisdictional Commissioner of Central Tax

CERTIFIED TRUE COPY

[Handwritten Signature]

ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI