



सत्यमेव जयते

BEFORE THE AUTHORITY FOR ADVANCE RULINGS
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 28th day of March 2018

Order No. AAR/AP/01/(GST)/2018

in

Application No.AAR/04(GST)/2018

1	Applicant	M/s SINO RESOURCES (GSTIN:37CUFS4359L174) D.No.10-1-47, FLAT NO 4D, 4 th FLOOR, DUTT ISLAND BUILDING, SIRIPURAM, VISAKHAPATNAM - 530003
2	Jurisdictional Officer	Assistant Commissioner, China Waltair Circle
3	Present for the Applicant	Sri. P. Srinatha (Advocate)
4	Present for the Jurisdictional Officer	
5	Date of Personal hearing	19.02.2018

Note: Under Section 100 of the APGST Act'2017, an appeal against this ruling 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.

M/s SINO RESOURCES, Door No. 10-1-47, 4D, 4th Floor, Dutt Island Building, Sripuram, Vishakhapatnam (hereinafter also referred as an **applicant**), having GSTIN **37CUFS4359L174** is an importer of coal and also deals in trading of coal. The applicant has filed an application seeking advance ruling on a specific question.

2. The applicant has sought advance ruling on following issue:
"Whether Input Tax Credit (ITC) is available on Clean Environment (Energy) Cess paid at the time of import of Coal?"

The applicant submitted relevant supporting documents which suggested that they had a stock of 13,000 Metric Tons of Coal as on 30th June 2017, of which 4000 Metric Tons consisted of imported coal. On the imported coal the applicant had paid Rs. 16,00,000/- (Rupees Sixteen Lakhs) as clean energy Cess, which the applicant has taken credit as Transitional Credit in TRANS-1. The advance Ruling is basically sought on above issue whether the said Transitional Credit is permissible or not.

3. In terms of Section 98 of CGST Act' 2017, the application was forwarded to the jurisdictional officer i.e., Assistant Commissioner, China Waltair Circle, Visakhapatnam Division. The jurisdictional officer in his remarks submitted that,

"Clean Energy Cess payable on Coal is not mentioned as eligible for taking credit under the credit rules. Hence, the Company is not eligible to take credit on clean energy Cess paid by the dealer under the said rules. Moreover clean energy Cess cannot be paid by utilizing the credit available in the credit account. It is to be paid be cash as specified in the proviso 7 of Rule 3(4) of credit rules. Provided also that the CENVAT credit of any duty specified n sub-rule (1) shall not be utilized for payment of the clean energy Cess leviable under section 83 of the Finance Act'2010" and also submitted that "as the clean energy Cess payable is not eligible for giving credit under the existing

laws prior to the introduction of APGST Act'2017 the transitional credit on clean energy Cess payable under the APGST Act, 2017 does not arise".

3.1 A Personal Hearing was given to the applicant / jurisdictional officer on 19.02.2018, for the purpose of admission of the application so filed before the authority. The same was attended by Authorized representative Shri. P.Srinatha (Advocate). During the course of P.H., the authorized representative submitted that the issue for which they have sought advance ruling falls under Section 97 (2)(d) of CGST Act'2017. The applicant has filed his written submissions through e-Mail on 19th February 2018.

4. We have gone through the application filed by the applicant and the comments of jurisdictional tax officer. At this stage, our discussion and findings is for admittance or otherwise of the application under Section 98 (2) of the CGST Act' 2017. The application for advance ruling can be filed for any of the question falling under Section 97(2). For the sake of clarity, the relevant extract of the CGST Act' 2017 is reproduced hereunder:

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 provisions of the GST Act(s);
- (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 under the Act;
- (f) whether applicant is required to be registered under the Act;
- (g) whether any particular thing done by the applicant with respect to any goods or services amounts to or results in a supply of goods or services, within the meaning of that term.

Section 2(62) : "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 and includes—

- (a) the integrated goods and services tax charged on import of goods;
- (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
- (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
- (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
- (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act, but does not include the tax paid under the composition levy;

5. As seen from the definitions referred for 'input tax' under CGST Act'2017, it is very clear that the input tax refers to taxes chargeable under SGST, CGST & IGST Acts only. Accordingly, Section 97(2)(d) shall refer to admissibility of input tax credit under GST Acts. However, we find that 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 under CGST. Hence, the question sought do not fall under the ambit of Section 97(2)(d) of the CGST Act' 2017. Accordingly, we pass the following order:

ORDER

6. The subject application filed by the applicant is beyond the jurisdiction of this authority, as it is beyond the domain of Section 97(2) of the CGST Act' 2017. Therefore, the application is not admitted under Section 98(2) of the CGST Act' 2017.


(J V M SARMA)
28/3/18
Joint Commissioner (State Tax)
Member


(AMARESH KUMAR)
Joint Commissioner (Central Tax)
Member