THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX

(constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/SS-RJ/01/2018-19 Date- 02.07.2018

BEFORE THE BENCH OF

(1) Smt. Sungita Sharma, MEMBER
(2) Shri Rajiv Jalota, MEMBER

GSTIN Number	27AAACJ8109N1Z8
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 appeal	Appeal No. MAH/AAAR/01/2018-19 against Advance Ruling No. GST-ARA-05/2017/B-04 dated 05.03.2018
Concerned officer	Central GST, Range- IV, Div-V, Ratnagiri

PROCEEDINGS

(under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

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 provisions under the MGST Act.

The present appeal has been filed under Section 100 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, (herein after referred to as the "Appellant") who has preferred appeal against the Advance Ruling No. GST-ARA-05/2017/B-04 dated 05.03.2018.

FACTS OF THE CASE

A. JSW Energy Limited, (hereinafter referred to as "**the Appellant**") is engaged in the business of power generation and having Goods and Services Tax ('GST') Registration No.27AAACJ8109N1Z8.

B. JSW Steel Limited ("JSL"), having GST Registration No. 27AAACJ4323N1ZG is engaged in manufacture and supply of steel. The manufacturing activity undertaken by JSL requires power on a continuous and dedicated basis. For the said purpose, JSL and the Appellant (both being related party in terms of the Central Goods and Services Tax Act, 2017 ('CGST Act') propose to enter into an arrangement (hereinafter referred to as the 'Job Work Arrangement') for the purpose of supply of coal and processing of the same into power for captive use by JSL.

C. The Appellant's power plant is divided into four units and the said Job Work Arrangement is pertaining to Unit III and Unit IV of the power plant. These are in the nature of captive power units and by virtue of the arrangement, JSL would be construed as Principal and JEL would be working as Job Worker.

D. In terms of the proposed arrangement, JSL would procure coal or any other inputs (herein after collectively referred to as 'inputs') and supply the same to the Appellant for the purpose of carrying out the activity of generation of power. On receipt of the same, Appellant would undertake certain processes to convert the said inputs into power. The detailed process is explained in **Exhibit – 1** to the Appeal. The power generated from the aforesaid process on inputs will be supplied back to JSL for which the Appellant would be receiving job work charges as per the rate that would be agreed as per the Job Work Arrangement. During the whole process under the Job Work Agreement, the title in the inputs vest with JSL along with the power generated with the use of such inputs. In addition to power, fly ash and other resultant

products generated at power plant using the inputs will also vest with JSL and the Appellant will have no ownership in such resultant products.

E. The Appellant had approached the Advance Ruling Authority (AAR) for seeking an advance ruling under Section 95(a) of the CGST Act, for determination of the applicability of GST on the following issues [The copy of the application filed before the AAR was enclosed as **Exhibit – 2** to the Appeal] –

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

PERSONAL HEARING AND ADDITIONAL SUBMISSIONS BEFORE THE AAR

F. Personal hearing was granted to the Appellant on 30.01.2018 and 15.02.2018 where the Appellant reiterated the submissions made in the application filed before the AAR.

G. The Appellant had also made additional written submissions on 20.02.2018 reiterating all the submissions made in the application and certain additional grounds including response to queries raised by AAR. A copy of the additional submissions was enclosed as **Exhibit – 3** to the Appeal.

ORDER PASSED BY AAR

H. The Order dated 05.03.2018, received by the appellant on 09.03.2018, has been passed by AAR holding that the proposed transaction amounts to manufacture and therefore it would not qualify as 'job work' under GST on account of the following:

i. The proposed activity of the Appellant is manufacture which cannot be read into the words 'treatment or process' as found in the definition of 'job work'.
ii. The Impugned Order, relying on the decision of Manganese Ore India Ltd. V. State of M.P. [(2017) 1 SSC 81] has held that intent of the legislation is not to cover such 'treatment or process' into the ambit of the 'job work' which results into a distinct commodity and thereby amounting to manufacture.
iii. The judgments of the courts, relied upon by the Appellant, in relation to job work under the erstwhile regime have been negated on the premise that all the judgments quoted in the application and the additional written submissions are in the context of input tax credit which is not the issue in the current facts.
iv. Since JEL and JSL are related parties, any supplies made between them, even without consideration will be subject to GST.

I. The Impugned Order has not responded on the GST implication in respect of the coal and other inputs supplied by the JSL to Appellant on the basis that the transaction pertains to GST liability of JSL and not of Appellant.

J. Being aggrieved by the Impugned Order, the Appellant has filed the appeal before this appellate authority making prayer to set aside the said impugned order passed by the Advance Ruling Authority and give further order in the facts and circumstances of the case on the following grounds--

GROUNDS OF APPEAL

JOB WORK NOT EVER IN SCOPE TO ALSO INCLUDE MANUFACTURE

1. The AAR has grossly erred in passing the Impugned Order in law while attempting to interpret job work as a process or treatment which does not result in manufacture of a distinct commodity.

2. On perusal of the relevant provisions of CGST Act, it is submitted that if all of the following conditions are fulfilled, the transaction would qualify as an activity of job work and consequently the Principal will be allowed to send the goods without payment of tax 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

3. The Impugned Order does not dispute the fact that the conditions stated above are getting fulfilled in respect of the transaction between JSL and the Appellant, except condition (i) as stated above. The entire edifice on which the Impugned Order stands is that the resultant product, namely Electricity, is a distinct commodity which is not identifiable with the inputs, hence such activity will be covered under 'manufacture' and being a manufacturing activity, it will not qualify as 'job work'. The relevant extract of the Impugned Order is reproduced below: –

Page 9 of the Impugned Order

....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.

.....

.....

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 proportion, 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'.*

.....

.....

Page 10 of the Impugned Order after the definition of 'manufacture' under the CGST Act,

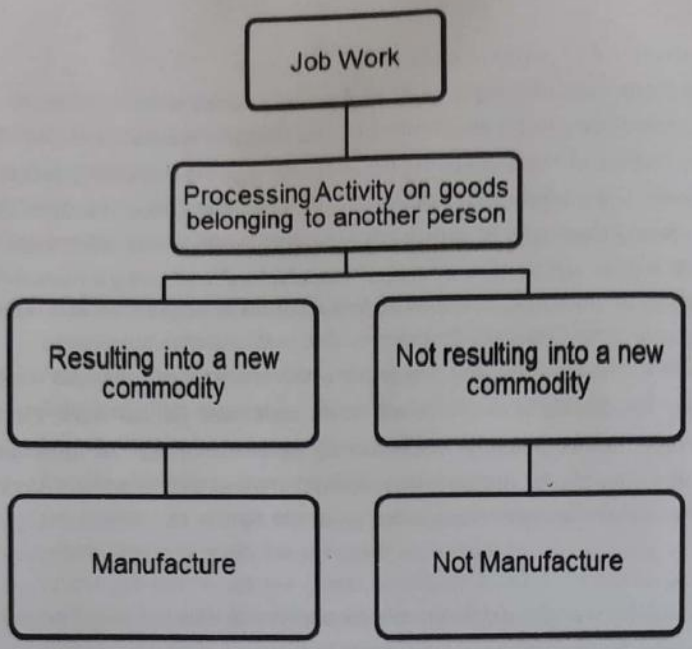
As can be seen the definition itself says that the emergence of a new product from the processing of the inputs would be a manufactured product. ***In the instant case the end product i.e. "electricity" has a distinct name, character and use than the inputs i.e. "coal".*** *Thus, when the Legislature 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 recognised 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"***

4. The Appellant submits that in order to evaluate the terms 'job work' and 'manufacture' reference is made to the definition of 'Job Work' and 'Manufacture' under CGST Act-

i. *Section 2(68) of the CGST Act defines 'Job Work' 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;"*

ii. *Section 2(72) of the CGST Act defines 'Manufacture' as - "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;"*

5. The harmonious interpretation of the above definitions, in order to understand the meaning of 'job work' can be explained by way of the following diagram –



6. On perusal of the definition as illustrated by way of above diagram, it is evident that every processing activity when carried out on the raw material or inputs belonging to another person will qualify as job work. However, when such job work results in emergence of a new and distinct commodity, only then it falls within the ambit of manufacture. Therefore, the way terms have been defined under the CGST Act, manufacturing activity is a sub-set of job work. That is to say if a person undertakes processing of raw material / inputs belonging to another person then the said activity would qualify as job work, which if results in emergence of new product, will also be manufacturing activity. Hence, the term 'job work' and 'manufacture' are not mutually exclusive, as is the meaning sought to be given in the Impugned Order.

INTERPRETATION ADOPTED IN THE IMPUGNED ORDER IS CONTRARY TO CLARIFICATION AND FAQ ISSUED BY CENTRAL BOARD OF EXCISE AND CUSTOMS ('CBEC') [RENAMED AS CENTRAL BOARD OF INDIRECT TAX AND CUSTOMS]

7. The Appellant would also like to submit that the Impugned order is in contradiction to the clarifications and explanations provided by CBEC which is the nodal national agency *inter-alia* responsible for administering GST in India.

8. The Impugned Order has not taken into consideration the fact that the definition of 'job work' under the CGST Act has widened the scope of activities as compared to the definition provided under the Notification No. 214/86 – CE dated 23.03.1986 (as amended from time to time) ['**Notification**'] which was later incorporated in CENVAT Credit Rules, 2004 ('**Cenvat Rules**').

9. The Appellant wants to place reliance on the FAQ on GST issued by the CBEC updated till January 1, 2018, in which CBEC clarified that the definition under CGST Act is much wider than the one given under the Notification. The copy of the FAQ is enclosed with the Appeal as **Exhibit – 5**. The relevant extract of the FAQ is reproduced herein:

> *"Q 1. 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."***

10. The Appellant further relies on the clarification issued by CBEC wherein it has been clearly mentioned that job work is an activity which may or may not tantamount to manufacture but still such process or treatment will qualify as job work subject to fulfillment of other conditions prescribed under the CGST Act and rules made thereof. A copy of the clarification issued by CBEC is enclosed with the Appeal as **Exhibit – 6**. The relevant extract is reproduced herein below:

> *"Job-work sector constitutes a significant industry in Indian economy.* ***It includes outsourced activities that may or may not culminate into manufacture. The term Job-work itself explains the meaning. It is processing of goods supplied by the principal.*** *The concept of job-work already exists in Central Excise, wherein a principal manufacturer can send inputs or semi-finished goods to a job worker for further processing. Many facilities, procedural concessions have been given to the job workers as well as the principal supplier who sends goods for job-work. The whole idea is to make the principal responsible for meeting compliances on behalf of the job-worker on the goods processed by him (job-worker), considering the fact that typically the job-workers are small persons who are unable to comply with the discrete provisions of the law.*
>
> *The GST Act makes special provisions with regard to removal of goods for job-work and receiving back the goods after processing from the job-worker without the payment of GST. The benefit of these provisions shall be available both to the principal and the job-worker."*

11. Given the above, it is evident that CBEC itself emphasize on the widening of the scope of job work under the GST Regime which inter-alia includes every kind of processing activity, whether resulting into manufacture or not. Therefore, taking any contrary view would lead to an incongruous situation which is against the explanations and clarification provided by the CBEC and does not seem to be intent of the Legislature.

FINDING CONTRARY TO SETTLED LAW

12. The Impugned Order is also contrary to the settled position by the judiciary on the issue in dispute. It is a well settled position in law *inter-alia* in terms of the judgment of the Hon'ble Supreme Court and Hon'ble High Court in **Ujagar Prints Etc. vs. Union of India and Others**[1], **Harrison Synthetic Bristles vs Collector of Central Excise, Bombay**[2] and **Sunbel Alloys Co India Ltd. vs Union of India**[3] indicating the fact that the job worker can undertake processes which amount to manufacture. The Appellant would also like to refer the decision of Mumbai Bench of Tribunal **in Eaton Fluid Power Ltd. V/s Commissioner of C. Ex. Pune**[4], wherein the Tribunal held that a job work may or may not amount to manufacture, and just because activities undertaken result in a new commodity, it cannot be said that there was no job work involved. The relevant paragraph is reproduced below

> *"We observe that there is no dispute by the Revenue on the duty payments made on the finished products, namely, hydraulic power packs by the appellant which were cleared from the job workers' premises. There is also no allegation of under-valuation of the finished products either in the show cause notice nor any such findings has been recorded in the impugned order. Once the finished product has correctly discharged the liability there cannot be any leakage of revenue. Cenvat credit envisages that duty/tax paid on the input/input services will be available for discharge of duty liability on the finished products. It is not in dispute that the inputs were used in the fabrication/assembly of the finished products. Similarly, it is also not in dispute that finished products did emerge at the job-workers'*

[1] 1988 (38) E.L.T. 535 (S.C.)
[2] 1997 (95) E.L.T. 9 (S.C.)
[3] 2015 (316) E.L.T. 353 (Bom.)
[4] 2014 (308) E.L.T. 602 (Tri. - Mumbai)

premises. In these circumstances, the conclusion drawn by the adjudicating authority that there is no job work involved in the present case is a contradiction in terms. ***A job work might amount to "manufacture" or might not amount to "manufacture". In many instances the job work results in production of a new commodity. For example, in the case of textile fabrics, a job-worker undertaking the process of bleaching or dyeing of fabrics, new products namely, dyed/bleached fabrics come into existence. Thus, the activities amount "manufacture". Similarly, in the case of a bus body built on a chassis, the activity amounts to "manufacture". Therefore, it cannot be said that since the activities undertaken result in a new commodity, there is no job-work involved. In view of the above, we do not find any merits in the Revenue's contention that merely because a finished product emerged as a result of the activity undertaken by the appellant, the same is not job-work."***

13. The above decision of the Hon'ble Tribunal is clearly applicable in the facts of the present case in as much as the Impugned Order has held that the proposed activity of the Appellant cannot amount to job work since the activities undertaken by the Appellant would result into a distinct commodity. In view of the above decision, the proposed activity would amount to job work even if it amounts to manufacture.

14. In case of **Commissioner of Central Excise, Mumbai-IV vs Ruby Mills Ltd.**[5] while considering the valuation method for an activity undertaken by the job worker, the Mumbai Bench of Tribunal upheld findings of the First Appellant Authority that job worker may undertake an activity which results in manufacture. The relevant extract of the judgment is reproduced below:

"11. We also find that the first appellate authority has correctly enunciated the law as to the activity of job work as to how it should be understood and the valuation of the said goods to be done. We reproduce Paragraphs 15 and 16.

"15. A job worker may undertake manufacturing of excisable goods on account of others from the raw material supplied to him free of cost, and on return of the goods so manufactured to them he takes job charges i.e. manufacturing expenses plus his manufacturing profits. In some cases, the job worker also uses some of materials of his own and includes their cost in the job charge. After job work is done the excisable goods so manufactured may also be delivered to their agents, or buyers as per their instructions. Since the duty of excise is on manufacture of excisable goods, irrespective of whether the manufacturer is owner of the goods or not, the job worker has to pay the duty...."

15. In terms of the said decision, a job worker can undertake manufacture of goods on account of others. The activity continues to qualify as a job work activity even if it amounts to manufacture.

16. Basis the clarifications issued by CBEC and above judgments, it is submitted that the processing activity carried out on inputs owned by another person amounts to job work even if the resultant product is a distinct commodity.

ELECTRICITY CAN BE GENERATED ON JOB WORK IS A SETTLED LAW

17. The Appellant submits that it is well settled *inter-alia* in terms of the below mentioned judgments of the Courts that electricity being intermediate goods used in the manufacture of final product, can be generated on job work basis:

- ***Commissioner of Central Excise, Nagpur vs Indorama Textiles Ltd.***[6]
- ***Haldia Petrochemicals Ltd vs CCE, Haldia***[7]
- ***Sanghi Industries Limited vs CCE, Rajkot***[8]
- ***Sanghi Industries Limited vs CCE, Rajkot***[9]

[5] 2016 (343) E.L.T. 395 (Tri. - Mumbai)
[6] 2010 (260) ELT 382 (Bom HC)
[7] 2006 (197) ELT 97 (Tri.- Delhi)
[8] 2006(206) ELT 575 (Tri.- Delhi)
[9] 2014(302) ELT 564 (Tri.- Ahmd.)

18. The above judgments 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. The relevant extract of the High Court decision in Indorama Textiles Ltd (supra) is reproduced below where the issues of generation of electricity under a job work model is not even disputed by the Authorities –

> *"8. **The fact of electricity being intermediate goods used in manufacture of final product by Respondent No. 1 is not in dispute before us. It is nowhere contended that M/s. IRSL cannot be a job worker and generation of electricity cannot be outsourced. When it can be outsourced, it also follows that Respondent No. 1 need not have a captive power plant**. Only contention is fuel oil is not received in factory of production or/and is not being used or processed any time within factory of production. It is apparent that said issue stands concluded by the above-mentioned judgment of Hon'ble Apex Court and there is no change of law in this respect. It is also clear that inputs or raw material can be directly forwarded to job worker for production of intermediate goods. There is no challenge to understanding/agreement between Respondent No. 1 and M/s. IRSL. We do not find anything perverse in findings recorded in paragraph 6 of the order No. A/67/2007/EB-C-II, dated 31-1-2007 in Appeal No. E/3701/05-Mum. These reasons hold good even for second matter."*

19. 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 of Central Excise, Nagpur vs Indorama Textiles Ltd***[10].

CGST ACT DOES NOT PROVIDE FOR RESTRICTIVE MEANING OF THE WORD 'PROCESS' USED IN THE DEFINITION OF JOB WORK

20. The Impugned Order has held that the word 'process' used in the definition of job work has to be read narrowly so as to exclude activities resulting in manufacture. The Appellant submits that wherever the intention of the law maker is to give a restricted meaning to words used in the definition, the same is either appropriately stated in the definition itself or in any other relevant section of the Act with specific wording to that effect. It is submitted that the CGST Act and the regulations do not in any form or manner stipulate or contemplate to derive a different meaning for the word 'process' when used for 'job work' and when used in 'manufacture' which clearly indicate that the 'process' is to be read without any restrictive meaning. Reference can be made to the definition of 'mixed supply' under the CGST Act which clearly excludes supplies qualifying as 'composite supply'. The definition of 'mixed supply' as defined under Section 2(74) of the CGST Act is reproduced below –

> *"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**"*

21. The 'job work' definition does not provide any exclusion to 'manufacture' and hence should not be read narrowly. It is a settled law that the Act should be read as it is written without adding words not mentioned thereunder.

22. In view of the above submissions, the findings and assertions made by the Impugned Order as regards the differential meaning being assigned to the term 'process' used in job work as well as manufacture is based on erroneous understanding of fact and law and is unsustainable.

COMMERCIAL PARLANCE AND DICTIONARY MEANING

23. The Appellant submits that 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 process*[11]

[10] 2010(260) E.L.T. A83(SC)

[11] The Oxford English Reference Dictionary 1995 pg 1152

- *a systematic series of actions directed to some end*[12]

Treatment

- *Subjection to the action of a chemical, physical or biological agent*[13]
- *Subjection to some agent or action*[14]

24. 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***[15], the Supreme Court examined the ambit of the term 'process'. Relevant extract of the judgment has been reproduced as follows:

> 13. *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...*

25. 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, it is evident that the activities proposed to be carried out by the Appellant would fall within the ambit of the term 'process' or 'treatment' even though it amounts to manufacture.

RELIANCE ON THE DECISION OF HON'BLE SUPREME COURT IN MANGANESE ORE INDIA LIMITED V. STATE OF M.P.[16] IS ERRONEOUS

26. The Impugned Order considers and hinges on various extraneous factors and aspects, none of which have any bearing whatsoever on the basic legal proposition with respect to the facts of the present matter. The Impugned Order relies upon the order passed in Manganese Ores India Limited [Supra] which is inapplicable to the present facts of the Appellant.

27. The Appellant submits that the word 'process' is required to be read in conjunction with the job work activity and not in relation to any other act which has no relevance with the CGST Act. The aforesaid judgment relied upon in the Impugned Order, suggests a different application of the word 'process' very specific to the term used in relation to the mining activity and has no relevance in the current context.

28. It is a well settled position in law inter alia by the judgment of the Hon'ble Supreme Court in **Bharat Petroleum Corporation Ltd. & Another vs. N.R. Vairamani& Another**[17]that reliance cannot be placed on decisions without discussing as to how the factual situation of a case fits in with the facts of the decision on which reliance is placed. Further in the case of **Pan Parag India Ltd vs. DGFT**[18] it was held that it is a settled law that precedent decisions are binding only when factual situation therein fits case under decision. Further, the observations of Courts must be read in the context in which they appear to have been stated.

29. The factual matrix in the Manganese Ores India Limited (Supra) can clearly be distinguished and differentiated from the factual scenario in the present case. In this regard, it is noteworthy that

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[12] Webster's Encyclopaedic Unabridged Dictionary of English Language pg. 1147
[13] The Oxford English Reference Dictionary 1995 pg. 1534
[14] Webster's Encyclopaedic Unabridged Dictionary of English Language pg. 1509
[15] 1991(55) E.L.T. 444(SC)
[16] (2017) 1 SSC 81
[17] AIR 2004 SC 4778
[18] 2016 (336) ELT 625 (Del)

in the facts of Manganese Ores India Limited (Supra) the issue before the Hon'ble Supreme Court was whether the activities employed by the appellants for conversion of mineral ores would be covered by the word "processing" used in explanation (b) to section 3(1) of Madhya Pradesh Electricity Duty Act, 1949, which defined mine to have the meaning provided to it under the Mines Act, 1952. The said definition is as under:

> *"Mine" means a mine to which the Mines Act, 1952 (No. 35 of 1952) applies and includes the premises or machinery situated in or adjacent to mine and used for crushing, processing, treating or transporting the mineral"*

30. The Court held that the word 'processing' used in the Explanation is not clear and hence the rule of *'noscitur a sociis'* needs to be applied which means that the meaning of the word is to be judged by the company it keeps. In the Explanation, 'processing' is used in conjunction with other words i.e. crushing, treating and transporting and therefore, it was preferred to interpret the said word in the Explanation with reference to the words before and after it i.e. to be understood with the associated words. Further, it was held that the words 'crushing', 'treating' and 'transporting' are words of narrower significance and hence, the word 'processing' used between these words should also be given a narrower significance.

31. The Impugned Order fails to recognize the fact that in the same judgment the Hon'ble Apex Court held that the word 'processing' can have a wider meaning which would also include manufacturing. However, in the context of that case the word 'processing' has to be interpreted as per the Mines Act, 1952 and therefore will be restricted to the sense conveyed by the words 'crushing', 'treating' and 'transporting'. The relevant extracts are reproduced below –

> *".....the word "minerals" used in the aforesaid Explanation under the Act would have reference to the mineral which is mined and is then crushed, processed, treated or transported. The word "processing" used in the Explanation has to be interpreted in the context and for the purpose of the said item. **Process can be given a wide or a narrow meaning**. In the context in which it is used in the Explanation, we are disposed to think that it must be given a meaning which emerges when we apply the rule of noscitur a sociis which mean that the meaning of the word is to be judged by the Company it keeps.... [Para 19]*
>
> *We are absolutely conscious that noscitur a sociiis 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 and distinct product...[Para 20]"*

32. Therefore, it is submitted that the Impugned Order has erred in referring to the above decision, which was rendered in different factual and legal context while considering diverse issues, and which do not advance or support the findings in the Impugned Order.

WITHOUT PREJUDICE, THE HSN CODE APPLICABLE TO CERTAIN JOB WORK USES THE WORD 'MANUFACTURING SERVICE'

33. Without prejudice to any other submissions, the Impugned Order failed to appreciate that the HSN Code applicable for the certain specified job work activity clearly uses the word *'Manufacturing services'*.

34. The applicable rate of tax in respect of services are provided in the Notification No. 11/ 2017 – Central Tax (Rate) dated 28.06.2017 (as amended from time to time) ('Rate Notification'). For certain specified job work services, the applicable HSN Code under the Rate Notification is '9988'.

Sl No	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
26	**Heading 9988 (Manufacturing services on physical inputs**	(i) Services by way of job work in relation to- (a)...(e) (ea) manufacture of leather goods or foot wear falling under Chapter 42 or 64 in the First Schedule to the Customs Tariff Act, 1975 (51of 1975) respectively; (f) all food and food products falling under Chapters 1 to	2.5	-

	(goods) owned by others)	22 in the First Schedule to the Customs Tariff Act, 1975 (51of 1975); (g)... ; (h) manufacture of clay bricks falling under tariff item 69010010 in the First Schedule to the Customs Tariff Act, 1975 (51of 1975); (i) manufacture of handicraft goods.		
		(ia) Services by way of job work in relation to- (a) manufacture of umbrella; (b)...	6	-
		(ii) Services by way of any treatment or process on goods belonging to another person, in relation to- (a) ...(c)	2.5	-
		(iia) Services by way of any treatment or process on goods belonging to another person, in relation to printing of all goods falling under Chapter 48 or 49, which attract CGST @ 6per cent.	6	-
		(iii)...	2.5	-
		(iv) Manufacturing services on physical inputs (goods) owned by others, other than (i), (ia), (ii), (iia) and (iii) above.	9	-

35. It is submitted that the above mentioned HSN Code describe the service as *"Manufacturing services on physical inputs (goods) owned by others"* which inter-alia includes various different kind of job work services. The description itself indicates that the activity undertaken by the job worker can amount to manufacture. Considering this, it is the submission of the Appellant that the Impugned Order holding that proposed activity of the Appellant does not amount to job work since it amounts to manufacture is bad in law and must be set aside.

36. **In view of the various submissions made above and on the harmonious reading of the CBEC clarifications, judgments cited in earlier paragraphs to this Appeal, definitions under CGST Act and dictionary meanings of the relevant words, it is submitted that–**

(i) 'Job Work' under GST has been given a wider meaning as compared to the earlier regime.

(ii) Even under the erstwhile regime, 'Job Work' covered manufacture and even under GST regime, it covers manufacture as provided in the CBEC clarification.

(iii) Process undertaken on goods belonging to another person is 'Job Work', independent of whether the said process amounts to manufacture or otherwise.

(iv) There is no restriction under GST law that treatment or process that amounts to manufacture cannot be covered under 'Job Work'. In-fact, the CBEC clarification specifically states that it may or may not amount to manufacture

PRAYER MADE BY THE APPELLANT

In view of the foregoing, the appellant has prayed that:

(a) the Impugned Order holding that the transaction between Appellant and JSL does not qualifies as 'Job Work' may be set aside.

(b) processing of goods belonging to another person qualifies as job work even if it amounts to manufacture may be confirmed.

any other consequential relief that this Appellate Authority may deem proper be granted.

Hearing and submissions

37. The representative who appeared on behalf of the appellant during the hearing proceedings deposed that AAR has misinterpreted the definition of Job work and construed that the treatment and process undertaken by a person on goods belonging to the other registered person should not result into distinct manufactured commodity and accordingly concluded that electricity generated by the appellant using the coal supplied by JSL is a different commodity with different name and use, thereby rendering the entire process/activities undertaken by the appellant as manufacture in terms of the definition as provided under Section 2(72) of the CGST Act, 2017. Thus, the process/treatment performed by the appellant on the coal supplied by JSL would not be covered under the Job work. The Appellant's representative, however, differed with the ruling passed by AAR and argued that as per the provision of Section 2(68) of the CGST Act, 2017 "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. Thus any process/activity undertaken by a person would qualify as job work if all of the following conditions are fulfilled and consequently the Principal will be allowed to send the goods without payment of tax viz.

a. Treatment or process should be undertaken by a person;
b. Such treatment or process should be on goods; and
c. These goods should belong to another registered person

The appellant further deposed that since all of the above three conditions are being fulfilled by them, their activities squarely fit into the job work.

Further, the representative of the appellant emphasized on the definitions of 'Job Work' as well as of 'manufacture' under CGST Act, 2017 and deposed;

(i) that processing of raw materials/inputs belonging to another registered person under job work procedure may or may not result into the emergence of new commodity.

(ii) That the definition of the 'Job work' under the GST Act, 2017 has widened the scope of the activities covered under the 'Job work' as compared to the definition provided under Notification No. 214/86 – C.Ex. dated 23.03.1986

(iii) That any treatment or process by a person on goods belonging to another registered person is 'Job work', the person who treats or processes the inputs is called 'Job worker' and person to whom the goods belong is called 'Principal';

(iv) That Job work sector includes outsourced activities that may or may not culminate into manufacture

The appellant in their support referred to 2nd Edition : 31st March, 2017 (updated as on 1st January, 2018 of FAQ on GST issued by CBIC and the clarification issued by CBEC on Job work)

The appellant further deposed that the impugned order is contrary to the Settled position by the Judiciary on 'Job work' relying on the following judgment

(1) Ujagar Prints Etc. Vs. Union of India & Others (Supreme Court)
(2) Harrison Synthetic Bristles Vs. Collector of Central Excise Bombay (Supreme Court)
(3) Sunbel Alloys Co. India Ltd. Vs. Union of India(Bombay High Court)
(4) Eaton Fluid Power Ltd. Vs. Commissioner of Central Excise, Pune (Tri- Mumbai)
(5) Commr. Of C.Ex. Mumbai – IV Vs. Ruby Mills Ltd. (Tri- Mumbai)

The representative further relied on the following Judgment regarding generation of electricity being intermediate goods used in the manufacture of final products

(i) Commr. Of C.Ex., Nagpur Vs. Indorama Textiles Ltd.(Bombay High Court)
(ii) Commr. Of C.Ex., Nagpur Vs. Indorama Textiles Ltd.(S.C.)
(iii) Haldia Petrochemicals Ltd. Vs. CCE, Haldia (Tri – Delhi)
(iv) Sanghi Ind. Ltd. Vs. CCE, Rajkot (Tri – Delhi)
(v) Sanghi Ind. Ltd. Vs. CCE, Rajkot (Tri – Ahmd.)

The above four judgments cover instances where goods/materials such as Naphtha, Light Diesel Oil, Furnace Oil etc. were supplied to the Job worker for the purpose of generation of electricity.

The appellant further referred to the following judgments

(i) Collector of C.Ex. V/s. Rajasthan State Chemical Works (S.C.)

Para 2B – Bharat Petroleum, Pan Parag

Also, the representative of the appellant deposed that service codes have been given in the Chapter 99 of GST Tariff – Services and in Section 8, Heading No. 9988 at Sr.No. (iv), the services have been described as "manufacturing services" on physical inputs (goods) owned by others. During the course of hearing, when being asked about the present system for supply of electricity to their manufacturing units and whether they have any captive coal-run power plant in their manufacturing units for generation and supply of electricity, the appellant's representative deposed that they would be making further submissions in this case regarding the current power supply arrangement to M/s. JSL and whether M/s. JSL have any captive Coal fired power plant units in any of their manufacturing premises for generation of electricity or otherwise. Also when the Departmental representative argued that coal is not specified as import products for the export of Hot Rolled Non Alloy Steel Plates /Sheets/hoops & Strips under Export Code C508 as per SION specified by DGFT, the appellant's representative deposed that they were very much sure about the existence of coal in the import products list for the export of Hot Rolled Non Alloy Steel Plates /Sheets/hoops & Strips under Export Code C508 as per SION specified by DGFT and have committed before the appellate authority to submit the documents issued by DGFT which would testify their claim regarding coal as one of the import products for the export of the HR Steel manufactured by M/s. JSL. Finally, the appellant's representative concluded his arguments with prayer that the impugned order passed by the Authority for Advance Ruling be set aside and appeal may be allowed.

38. Shri K.K. Srivastava, Addl. Commissioner, Kolhapur, CGST &C.Ex. Commissionerate who appeared on behalf of the concerned/jurisdictional Commissionerate representative contended the submissions/arguments offered by the appellant's representative saying that M/s. JEL are the manufacturer of electricity where coal is one of the main raw materials which is used as fuel in their coal fired power plant, whereas M/s. JSL are the manufacturer of steel and coal is not an input for the manufacture of steel as per the Standard Input Output Norms specified as per the Import Export Policy. The jurisdictional officer deposed that M/s. JSL are not having 'in-house coal fired power plant' for production of electricity for captive consumption and hence coal cannot be considered as input and hence cannot be sent for further processing under Job work procedure without payment of applicable tax. He further deposed that as per the procedure of the Job work under CGST Act, 2017, goods belonging to another registered person are subjected to some treatment or process and are required to be sent back to the 'Principal' within a specified time after the completion of the Job work or otherwise. Whereas in the instant case, the coal to be supplied by the 'Principal' will be used by the Job worker for the generation of electricity and the ultimate goods i.e. electricity will be supplied back to the 'Principal' and not the inputs which have been treated upon or processed upon by the Job worker. In other words, the 'Job worker' is receiving tangible goods in the form of coal and supplying 'intangible' goods in the form of electricity. Thus, the inputs which are being sent to the appellant by JSL are being received in completely different form and character, i.e. the essence of the coal i.e the input has been completely lost. He further deposed that the coal neither being the raw material for the manufacture of steel or steel products by M/s. JSL nor being used as inputs for generation of electricity in the in-house coal fired power plant for captive consumption as discussed above does not qualify to be 'goods' for furtherance of business of M/s. JSL and hence cannot be supplied to M/s. JEL on the Job work basis.

39. As per the deposition made before the appellate authority during the hearing dated 19.06.2018, the appellant vide their letter dated 22.06.2018 made further additional submissions which are as under:

(1) The appellant inter-alia submitted that the Power Plant owned by them where the proposed job work activity on the coal supplied by M/s. JSL is to be undertaken is a Captive Power Plant of JSW group. In respect of this, the appellant have enclosed the following documents

(i) A copy of the Board Resolutions dated 03.03.2011 wherein a resolution was passed for seeking approval to make units III and/or IV captive units of Ispat Industries. The said Ispatindustries is currently the Dolvi, Maharashtra Plant of JSW Steel Limited (JSL).

(ii) A copy of the letter dated 26.04.2011 written to the Maharashtra State Electricity Distribution Co. Ltd. for the purpose of captive power plant.

(iii) A copy of the letter dated 20.04.2012 wherein open access permission was provided by the Maharashtra State Electricity Distribution Co. Ltd. for wheeling of power for the captive power plant at Jaigad, Ratnagiri.

(2) The appellant inter-alia further submitted that Coal is one of the important and integral inputs used by JSL for the manufacture of Steel. For the said purpose of manufacture of steel, they have regularly been importing coal and paying GST thereon and CVD and have been taking credit against them.

(3) They further submitted that residuals left after the processing of Job work in the form of fly ash are either sent back to the Principal or supplied by the appellant as per the direction of JSL.

(4) They further submitted that coal is an input for JSL placing their reliance upon the definition of the input as provided under Section 2 (59) of the CGST Act, 2017.

(5) In para 5.6,they further submitted that JSL has its own power plants for generation of electricity from different fuels at various locations including Dolvi, Maharashtra and Vijaynagar, Karnataka.

(6) In para 5.7, they submitted that the definition of the term 'inputs', read with the definition of business as provided in the CGST Act, 2017 indicates that scope of the term 'input' is very wide and would cover all goods used in the course or furtherance of business. To substantiate this claim, they cited various court and tribunal judgments.

(7) In para 5.9,they relied upon various Courts and tribunals judgments wherein credit have been allowed on inputs which have been used in the generation of electricity which in turn have been used to manufacture final products.

(8) In para 5.10,they further submitted that even in the context of erstwhile definition of inputs, coal or any other inputs for generation of electricity (which is further used to manufacture an entirely different products) have been held to qualify as inputs for over two decades.

(9) In para 6.5, they inter-alia submitted that resultant intermediate goods may be different from the inputs sent by the Principal. For this, they cited following court judgment where job work has been accepted even when the identity of the inputs have been lost, when the intermediary goods are received back from the job worker.

(a) Prestige Engineering (India) Ltd. V/s. Collector of C.Ex. Meerut, [1994 (73) E.L.T. 497 (S.C.)]

(b) Appellate Collector of C.Ex. V/s. Wadpack Pvt. Ltd. [1997 (89) E.L.T. 24 (S.C.)]

(c) Emcee Crown Corks (P) Ltd. V/s. Commissioner of C.Ex. Bangalore [2002(149) E.L.T. 639(Tri.- Bang.)

(d) Bharat Commerce and Industries Ltd. V/s. Collector [1997 (94) E.L.T. A136]

Discussions

40. We have heard both the parties and gone through the submissions made by them. The issue before us is to decide whether the activity undertaken by M/s JEL on behalf of M/s JSL is job work or otherwise. The answers to other questions will follow.

41. The Authority for Advance Ruling in their order dt. 05.03.2018 has decided that since M/s JSL are not the applicant in the proceedings, the ruling sought by M/s JEL on behalf of M/s JSL was not entertained. In respect of ruling sought by the applicant i.e. M/s JEL regarding conversion of coal(to be supplied by M/s JSL) into electricity, the Authority decided the same as supply of goods and not as job work. The main ground for decision of the Authority lies in the fact that definition of Job Work covers 'Process and Treatment' on goods, whereas in the instant case the operations carried out by M/s JEL are beyond the process and treatment, and thus not covered under the definition of Job Work.

42. The Appellant, through written submissions and during personal hearing, have drawn our attention towards various judgments and erstwhile juridical position of Job Work, summarizing that manufacturing may or may not take place during a job work activity. The erstwhile Notification No. 214/86 under Central Excise Act also exempted the goods where manufacturing took place. Under the

GST regime, as argued also before us, and seen from the definition per se, the scope of Job work appears to be wider. Accordingly, we are not inclined to concur with the views of AAR and we hold the view that Job work may or may not involve manufacturing.

43. The moot question before us to decide is therefore is whether, given the preposition that the definition of job work under the GST law may include even manufacture, the process of conversion of Coal into electricity by M/s JEL on behalf of M/s JSL is job work by M/s JEL or not. Here, we are inclined to agree with the formulation laid down vide C.B.E.& C. Circular No. 38/12/2018 dt. 26.03.2018 on issues related to Job Work vide para 5, that

> "....the job worker is expected to work on the goods sent by the principal **and whether the activity is covered within the scope of job work or not would have to be determined on the basis of facts and circumstances of each case**."(emphasis supplied).

We now proceed further in the matter to examine whether the activity proposed to be conducted by M/s JEL on the goods supplied by M/s JSL would be covered under Job Work or not.

44. The Appellant has cited various judgments in support of their argument that the job work involved manufacturing and credit of duty was allowed even in respect of the inputs utilized in manufacture of intermediate goods used in the manufacture of final product. In this case, M/s. JSL are manufacturers of Steel and steel products and M/s JEL are engaged in production of electricity, using Coal as main input. We have gone through the citations and note that in none of these the central issue of decision was on the subject of JOB WORK. All these judgments pertain to the admissibility of the Cenvat/Modvat credit on the goods utilized for manufacture of intermediate goods, which is not the case here. The Appellant had not gone before the AAR on issue of admissibility of credit of tax paid on the inputs. The impugned application pertains to the consideration of activity as Job work, and we would like to restrict ourselves to the issue involved.

45. In order to elaborate it further, we reproduce the definition of 'Job Work' under CGST/MGST Act as under:

> ***'Job work means any treatment or process undertaken by a person on goods belonging to another registered person'***
>
> From the above definition, it is clear that job work involves (i) two persons, (ii) goods and (iii) process/treatment on the goods. Also, the procedure for job work is prescribed under Section 143 of CGST Act and Rule 45 of the CGST Rules. In terms of Section 143(1)(a):
>
> **(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.**

On a harmonious reading of the definition of Job Work and the procedure for the same, it is construed that the principal will send the inputs to the job worker for conducting any treatment/process(which may or may not amount to manufacture) and shall bring back the same after completion of job work or otherwise. Therefore, the goods sent to the job worker should be the **Inputs** of the **Principal**. Here, M/s. JSL are proposing to be the Principal, so the **Inputs** should belong to them.

46. During the course of the hearing on 19.06.2018, the Departmental Representative had raised an issue that the goods being proposed to be sent to the Job Worker M/s JEL, i.e. coal, are the Inputs for M/s JEL for their final product i.e. Electricity and not the Inputs for the Principal, i.e. M/s JSL as they are manufacturer of Steel and not power. Also, Coal is not mentioned in their SION(Standard Input Output Norms). The Advocate for the appellant opposed the same and maintained that Coal is mentioned in the SION for final products of M/s JSL, and that they would produce a copy of same during their additional submission. However, they have failed to do so. On perusal of SION in respect of the product of M/s JSL(C508), Coal does not find a mention- instead of coal, the term 'Coke' is mentioned. Also, the

Appellant in their additional submission have provided the copies of Bills of Entry evidencing the import of Coal for Dolvi Plant of M/s. JSL as well as Karnataka plant. A perusal of the said two documents leads us to understand that, though the two coal items are geologically same, they are two different types, and that the Coal imported by M/s JSL is coking coal and has a different usages compared to steam coal, being used by power plants for generation of electricity which is much cheaper as well. This shows that the inputs being utilized by M/s JSL for the manufacture of their final product i.e. Steel are not the same which they intend to send to M/s JEL for undertaking process on the same. Rather they are proposing to procure the steam coal which are inputs for the power plant of M/s JEL, the job worker and intend to avail the credit of duty on the same which is otherwise not available to M/s JEL as their final product, i.e. electricity, does not fall in the ambit of the GST law.

47. Assuming that the steam coal is also an input for M/s JSL as the same is utilized in the manufacture of Electricity which is finally used in the manufacture of final products of M/s JSL, the question arises how the requirements of Section 143 are met with regard to bringing back the inputs after process/treatment on the inputs, as the inputs in this case are consumed in making electricity.

48. Further, we find from the details of the permissions received from Maharashtra State Electricity Distribution Co. Ltd.(MSEDCL) that M/s JSL is to be supplied electricity through the distribution system of MSEDCL , which means that electricity, being the intermediary goods after processing of the inputcoal, is being uploaded by M/s JEL to the MSEDCL power grid and this grid in turn is being used to obtain the electricity by M/s JSL.. The permissions submitted involve various terms and conditions on the supply of the energy from the Grid of MSEDCL to M/s JSL including fees/charges etc. in addition to the regulations which may change at any point of time, thus affecting the uninterrupted supply of such goods. This clearly shows that Principal will not be in a position to bring back the inputs after processing by the proposed job-worker independent of a third person or entity, who in turn is in the role of regulator and there is no option with the Principal but to follow the laid down regulations. So much so, the return of the inputs after processing is not guaranteed if not allowed by the regulator or third person/entity. Further, no one-to-one co-relation can be established vis-à-vis the receipt of the processed goods due to involvement of the third party. Under the facts as brought out above, the condition of the definition of Job Work involving only two persons is not fulfilled. Nor is the condition of the Section 143(1)(a), namely to bring back the inputs to the premises of the principal, fulfilled.

49. The facts of the case cited by the Appellant in the matter of M/s Essar Steel Ltd. said to having similar arrangements are different from this case, as in that matter the entire electricity generated in was first directly transmitted to M/s Essar. Only the excess electricity after being used for manufacture, was being exported to Grid. Thus, in the case of Essar, the supply of inputs after processing was not dependent on a third person or entity till the goods were returned back to the Principal in full. In case of M/s Kirloskar Ferrous Industries Ltd., the generation of electricity was within the premises of the principal. The cases cited therefore are distinguishable.

50. To take the argument of eligibility of the process to be job-work, we rely on the Hon'ble Supreme Court's pronouncement in the matter of M/s Prestige Engineering (India) v/s Collector of C.Ex. Meerut [1994 (73) E.L.T. 497 (S.C.)], wherein various examples of Job work involved in different Civil Appeals has been discussed. The observations and judgment of the Apex Court are relevant as below:

"Job work means goods produced out of materials supplied by customer and where the job workers contribute mainly their labour and skill though done with the help of their own tools, gadgets or machinery - But when the job worker contributes his own raw material to the article supplied by the customers and manufactures different goods it does not amount to job work however addition or application of minor items by job worker would not detract it being a job work - Like a tailor stitching a shirt or suit out of the cloth supplied by his customer, may use his own buttons, thread and lining cloth and such an activity would amount to job work."

51. In para 17 of the said judgment, Hon'ble Court has explained the definition of Job work which is reproduced below--

"Now, what does the expression `job work' mean? On this question, the Explanation is not of much assistance. The Concise Oxford Dictionary assigns several meanings to the expression `job' but the relevant meaning having regard to the present context is "a piece of work especially one done for hire or profit". The expression `job work' is assigned the following meaning : "work done and paid for the job". The Notification, it is evident, was conceived in the interest of small manufacturers undertaking job-works. The idea behind the Notification was to help the job-workers - persons who contributed mainly their labour and skill, though done with the help of tools, gadgets or machinery, as the case may be. The Notification was not intended to benefit those who contributed their own material to the articles supplied by the customer and manufactured different goods. We must hasten to add that addition or application of minor items by the job-worker would not detract from the nature and character of his work. For example, a tailor entrusted with a cloth piece and asked to stitch a shirt, a pant or a suit piece may add his own thread, buttons and lining cloth. Similarly, a factory may be supplied the shoe uppers, soles etc. by the customer and the factory applies its own thread or bonding material and manufactures shoes therefrom and supplies them back to the customer, charging only for its work. The nature of its work does not cease to be job-work. Indeed, this aspect has been stressed in all the decisions of High Courts referred to hereinbefore."

Thus what we see from the above observations is that, the Supreme Court has held that additions or application of minor items is permissible in job work. But such is not the case here.

Also, In the E-flier published by the CBEC on 'job work', it is mentioned that ' the whole ides in job work is to make the principal responsible for meeting compliances on behalf of the job worker o the goods processed by him (job worker) considering the fact that typically the job workers are small persons who are unable to comply with the discrete provisions of the law. Therefore, we hold that job work on the scale as in this case before us could not have been envisaged when the provisions were outlined.

52. In the matter before us, the appellant have not submitted the following:

(i) The agreement or proposed agreement between M/s JSL and M/s JEL for the process of job work to understand about the quantity and value of the inputs being supplied by the principal and the amount and quantity of the inputs/ material being used by the job worker to the inputs supplied by the principal to carry out the job work process.

(ii) The detail manufacturing process of M/s JEL for production of Electricity mentioning the name, quantity and value of the inputs.

(iii) The procedure/process for accounting for the inputs received from M/s JSL by M/s JEL and co-relation thereof with the goods supplied after job work.

Though it is not possible to ascertain the quantity and value of the material being utilized by the job worker in the conversion of coal provided by the principal into electricity accurately in absence of data before us, it can nevertheless be seen from the details provided by the appellant that coal is not the only input used for the production of electricity. There is large quantity of water and air being utilized in the process. The other materials being used by the job worker are not minor additions to the inputs and all inputs are not provided by the principal. Accordingly it is seen that the process cannot be considered as Job work following the ratio of the above judgment.

53. To elaborate further, in para19 of the said judgment, it is observed as below:

" Now, let us look at the process involved in this appeal. All that Modipon does is to supply steel pipes. The appellant purchases guide rings and strengthening rings from the market. It fits these rings into those steel pipes by itself or gets them fitted in another unit. Thereafter, adopters are fitted on the sides of the cops and then the plastic sleeves are fitted on the cylinders of the cops. This is not a case where the rings and the adopters and sleeves are supplied by Modipon. It is not suggested that the value of rings, adopters and sleeves is very small vis-a-vis the value of steel pipes. The additions made by the appellant are not minor additions; they are of a substantial nature and of considerable value. Except the pipes, all other items which go into the

manufacture of cops are either purchased or procured by the appellant himself and he manufactures the cops out of them. The work done by him cannot be characterised as a job-work. If all the requisite rings, adopters and sleeves had also been supplied by Modipon, it could probably have been said that the appellant's work is in the nature of job-work. But that is not the case here. The Tribunal was, therefore, right in holding that the appellant cannot avail of the benefit of the Notification. The appeal accordingly fails and is dismissed. No costs."

Hon'ble Supreme Court has here explained the spirit of the Job work. A process cannot be considered as job work if principal sends minor inputs to the job worker and all other inputs/goods utilized in the final product are being procured/purchased by the job worker. This will defeat the very purpose and idea of job work. For example, the process where a principal sending only buttons and thread to a job worker to get the shirts manufactured by the job worker by utilizing the fabric purchased by the job worker cannot be considered as job work in light of the above judgment of Apex Court. Similarly, in the instant case if M/s JSL sent only water tankers to M/s JEL and received back Electricity from them on payment of job charges and cost of other raw materials like coal and air, had the process would have been called as a job work process ? We are of the firm opinion that the answer is negative in view of the Apex Court judgment as only minor additions by the job worker on the inputs provided by the principal is envisaged in the law.

54. The various judgments relied upon by the Appellant on various issues are not of much help to them on following grounds:

(i) None of the said judgments are under the statute in which the Advance Ruling was sought and appeal was preferred against the said Ruling.
(ii) None of the judgments involved any decision about any activity to be job work or not, except in the matter of M/s Prestige Engineering(India) Ltd.
(iii) The facts and circumstances of the cases cited by the appellant were different from the facts of the instant case.

55. We would also like to distinguish the said judgments as under:

(i) **Essar Steel Ltd. v/s Commissioner of C. Ex. Surat-I, 2001(129)ELT 213(Tri. Mum.)**:

The issue in the above case was an interpretation of the term 'within the factory of production'. There is no such clause for interpretation in the present case and therefore the case has no relevance here.

Also, entire electricity generated by M/s EPL, a subsidiary of M/s Essar Steel Ltd and adjacent to steel mill, was transmitted through the steel plant and after utilization of the some of it, remaining electricity was transmitted to the grid of Gujarat State Electricity Board. So, there was no regulation or third party on the inputs to reach the Principal after processing of the same.

(ii) **Commissioner of C. Ex. Nagpur v/s IndoramaTextiles Ltd. 2010(260)ELT 382(Bom.)**:

The principal argument here was that furnace oil was never received in the factory of production but sent directly to the job worker and as Indo Rama Textiles did not have a captive power plant, CENVAT credit was not available. The SC referred to the earlier decision in Vikram cement (**2006(194 ELT 3) (SC)** and held that **'within the factory of production'** can be interpreted liberally. **Therefore, it be noted that the primary issue here was not whether the activity is a job work or not. Also, it was never contended by the revenue that the said activity is not job work so the Court had no occasion to decide the same (Para 8 of the order). As such the decision primarily is on allowance of credit and not on whether the same is job work or not.**

Also, the captive power plant was with M/s Indorama Synthetics Ltd., separated by just a wall by M/s Indorama Textiles Ltd. and hence the return of goods after job work was not interrupted/regulated by a third party.

(iii) **Vikram Cement V/s Commissioner of Central Excise, Indore.2006(194)ELT 3(S.C.):**

The dispute before the Larger Bench of the Apex Court was whether credit on explosives used in quarrying limestone which was in turn used to manufacture of cement was available as the limestone mines were outside the factory and the Court had to interpret the words ' within the factory of production' occurring in Rule 57B. **As can be seen from the above text, the issue in this is not at all germane to the present case as we are not called upon to interpret any such expression.**

(iv) **Haldia Petrochemicals Ltd. v/s Commissioner of C.Ex. Haldia. 2006(197) ELT 97(Tri.-Del.):**

In the case of Haldia petrochemicals the question was of the eligibility of Cenvat credit on inputs used in the generation of team and electricity. The Naphtha was sent to a power plant (which was a joint venture of Haldia with Larsen and Toubro) .The credit was sought to be denied on the ground that the that duty is only allowed on inputs used in generation of electricity or steam used for manufacture of the final product within the factory of production. This issue is not relevant as in the present case.

The other issue was whether credit is allowed on the basis that the products are supplied to job worker namely the power plant. So as such the issue was of admissibility of credit. Also the definition of 'input' during the relevant time covered goods used in fuel or for generation of electricity, which was the basis on which the judgement was given, as is clearly evident from Paragraph 22 of the order.

Also, as per para 2 of the said judgment-- "The principal raw material for manufacture of petrochemical products is Naphtha which is procured from India Oil Corporation or other indigenous oil refineries or by direct import from overseas on payment of duty. A small portion of the Naphtha, either as such, or after being partially processed, is also sent to a power plant for generation of electricity or steam". In the instant case, the goods proposed to be sent for job work(Steam Coal) are not the raw material of the Principal.

(v) **SANGHI INDUSTRIES 2006 (206) ELT 575 (Tri Del) / SANGHI INDUSTRIES (2014 302 ELT 564)**
The issue whether the power plant was a job worker or not was not presented before the Tribunal for adjudication. The issue was of admissibility of credit. Also as in the case of Vikram Cement (cited supra), the primary issue was the interpretation of the terms **'within the factory of production.**

(vi) In the other cases cited below:-

a) Reliance Industries Ltd. vs Commissioner Of C. Ex. on 4 February, 1997
b) Equivalent citations: 1997 (93) ELT 213 Tri Mumbai/
c) JaypeeRewa Cement vs Commissioner Of Central Excise (133 ELT 3 (sc),
d) Collector of Excise vs Solaris Chemtech(2007 214 ELT 481 (SC)/
e) Gujarat State Fertilizers (2008 229 ELT 9 SC)/
f) Grasim Industries 2002 (147 ELT 190)

The issue whether a particular activity is a job work or not was at all not before the Court. The only issue was of admissibility of credit.

(vii) The appellant has also relied on the Advance Ruling issued by Gujarat Authority For Advance Ruling on dt. 21.03.2018 vide No. GUJ/GAAR/R/2018/7 in the matter of M/s INOX Air Products Pvt. Ltd. The facts of that case are different from the facts and circumstances of the instant case. M/s Inox Air Products Pvt. Ltd. were providing services of Job work to the principal M/s Essar from the plant located within the premises of the Principal and all the inputs viz. Atmospheric Air, Industrial water and Electricity used for manufacture of Industrial gases belonged to the principal and were supplied by the principal. In the instant case, it is not possible for the principal to provide all the

major inputs to the job worker as the Air and water, constituting substantial quantity and value, belongs to M/s JEL as the proposed activity will be carried out in the premises of M/s JEL.

Also, we need to note here that the advance ruling in other States are not binding on us nor do they have any precedential value

We also observe in all other judgments, the central issue was never the applicability of job work on the some activity being undertaken. It is only in the matter of M/s Prestige Engineering (India) Ltd., Apex Court has dealt with the issue in detail, as there were divergent opinions/orders by Tribunals and High Courts.

56. Thus, the Appellant has not provided documentary evidences, during these appeal proceedings, that-

(i) How can the steam coal, which is prime raw material of the job worker, be considered as inputs for the Principal as they are utilizing coal other than steam coal?

(ii) How would the Principal, M/s JSL be able to bring back the inputs (after processing the same by job worker) under Section 143(1)(a) without being regulated by a third party?

(iii) What are the other inputs/materials, their quantity and value, being procured/purchased by the job worker, M/s JEL, which need to be added to the inputs supplied by the Principal for converting the same into electricity, as the Principal is not supplying all the inputs and in terms of the Judgment of Apex Court, as referred above, the job worker can not make substantial addition to the inputs of the Principal to qualify for the process as job work.

In light of above, we have no doubt to conclude that the activity undertaken by M/s JEL to convert Coal, to be supplied by M/s JSL, in electricity is not covered under the definition of Job work in terms of the CGST Act. Since goods supplied by M/s JSL will be utilized by M/s JEL in manufacture of new commodity i.e. electricity (though attracting NIL rate of duty), the process is manufacture and the same will be considered as supply of goods and not service.

57. Accordingly, we pass the following order:

ORDER

In view of the above discussions and in terms of Section 101(1) of the CGST Act 2017 and MGST Act 2017, we hold that-

The processing undertaken by a person on the goods belonging to another registered person qualifies as job work even if it amounts to manufacture provided all the requirements under the CGST/MGST Act in this behalf, are met with.

The transaction between the Appellant and M/s JSL does not qualify for Job Work under Section 2(68) and Section 143 of the said Acts.

The order of AAR stands modified in terms of the above order.

The appeal filed by M/s JEL stands dismissed with above order.

Sd/-
(RAJIV JALOTA)
MEMBER

Certified True Copy

Sd/-
(SUNGITA SHARMA)
MEMBER

सी. पी. एस. चौहान/C. P. S. CHAUHAN
उप आयुक्त/DEPUTY COMMISSIONER
वस्तु एवं सेवा कर अग्रिम अधिनिर्णय अपील प्राधिकरण, महाराष्ट्र
The Maharashtra Appellate Authority
for Advance Ruling for Goods & Services Tax