

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH
GOODS AND SERVICE TAX

O/o THE COMMISSIONER, COMMERCIAL TAX,
MOTI BUNGALOW,

MAHATMA GANDHI MARG, INDORE (M.P.) - 452007

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PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017

Members Present

1. ShriManoj Kumar Choubey
Joint Commissioner

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

2. ShriVirendra Kumar Jain
Joint Commissioner

Office of the Commissioner CGST and Central Excise, Indore

GSTIN Number. If any/User-id	23AABCA2804L1Z2
Name and address of the applicant	M/S Adani Enterprises Ltd, Shukla Bhawan, Behind Housing Board Colony, Pachkhora, WaidhanDistt. Singauli (MP)
Point on which advance ruling sought	98a. Classification of any goods or services or Both; 98d. Admissibility of input tax credit of tax paid or deemed to have been paid
Present on behalf of applicant	Shri Gopal Chosla, GM, Finance, Mr. Vishal Agrawal, Tax Consultant and Shri Harsh Vikram, ___ Finance & Account on behalf of the Applicant.
Case Number04./2021
Order dated	06/08/2021
Order Number	10/2021

PROCEEDINGS

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



1. Adani Enterprises Limited (hereinafter referred to as 'Applicant'), is a company incorporated under the Companies Act, 1956. It is registered with the GST Authorities in the State of Madhya Pradesh and has been granted Registration No 23AABCA2804L1Z2.
2. The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

BRIEF FACTS OF THE CASE AND SUBMISSION OF THE APPLICANTS IN THEIR APPLICATION IS AS UNDER –

3 The Applicant has entered into Agreement dated 08.03.2019 with Andhra Pradesh Mineral Development Corporation Limited (hereafter referred to as "APMDCL"), in terms of which, it has been appointed as a Mine Operator (hereinafter referred to as "MO") for planning, engineering, financing, construction, development, operation and maintenance of Suliyari coal mine and subsequent delivery of coal to the Owner.

3.1 In terms of Clause 2 of the Agreement, the Applicant is to provide "Mining Services" which has been defined in the definition clause 1.1, to mean "mining and related services more particularly set forth in Schedule 2".

3.2 Schedule 2 to the Agreement *inter alia* envisages that the Applicant shall undertake the following activities:



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- i. Land Acquisition (1A) - The MO will assist and facilitate the acquisition of all types of land which include Government, Private, Forest land etc. All the land will be acquired in the name of APMDCL.
- ii. Rehabilitation and Resettlement (1B) - The MO will be responsible for preparing Rehabilitation and Resettlement plan for the Project and get it approved by the State Government. The MO was also responsible construction of the Rehabilitation and Resettlement colony ("R&R Colony") basis the mutual finalisation of the design. Further the payment for the said construction was to be reimbursed by APMDCL.
- iii. Mining Method (2) - The MO will be responsible for deployment of trucks and shovels and Surface Miners to mine the Site as specified in the Mining Plan
- iv. Mining Equipment (3) - The MO will be responsible for deployment of state of the art mining equipment.
- v. Mine Engineering (4) - The MO will interalia be responsible to undertake provision of engineering and mining staff, geological Modelling & In-filling, Mine Planning etc.
- vi. Mine Operations (5) - The MO will interalia be responsible to undertake a variety of operations ranging from planning the mine (Site), its development and construction, mining and extracting coal in accordance with the requirements of Owner, construction, maintenance and



operation of mine dewatering plant, sump, and garland drains with de-silting provisions, construction and maintenance of all access ways and haul roads, arrangement and use of explosives.

vii. Mine Maintenance (6)

viii. Mine Infrastructure (11) - The MO will be responsible for constructing, operating and maintaining the mine infrastructure

3.3 The Applicant submits that as a MO, apart from setting up the mine and subsequently operating and maintaining it, the Applicant has also been given the mandate of constructing the R&R colony in terms of Clauses 1 & 1B of Schedule 2 to the Agreement for the purpose for rehabilitation & resettlement of the displaced individuals ("Project Affected Families"/" PAP"). The cost incurred for constructing the R&R Colony will be reimbursed by APMDCL. It is relevant to note that the Applicant in terms of the said agreement is only required to construct the R&R colony for APMDCL. The land on which the R&R colony is built, belongs to APMDCL as well as the super-structure that will be constructed will also belong to APMDCL, and that, the Applicant will not have any title or ownership of the R&R Colony at any point in time. A copy of the Agreement with APMDCL dated 08.03.2019 along with the Schedules is attached and marked as Exhibit "A".



3.4 For the construction of the R&R Colony, the Applicant had appointed a sub-contractor, who will undertake the said construction work and invoice the Applicant for the supply of works contract services. In turn, the Applicant will

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raise an invoice on APMDCL for supply of works contract services, seeking reimbursement towards the actual expenditure, incurred on the construction of the R&R Colony without any mar-up or margin.

3.5 The applicant submitted that

(a) The nature of Mining activity and the construction are totally independent of each other. The risks, rewards and the skillset required for execution of the works are totally independent of each other.

(b) Both the works can be very well handled by different contractors. Even in the instant case, the applicant is not actually executing the work, but had entered into a back-to back arrangement with the contractors who are responsible for the actual execution of the construction work.

(c) While the construction is a one-time activity that will start independently and will conclude soon, the mining contract stretches over a period of time.

40 (d) The manner of determination of consideration of both the contracts are different from each other. While the construction cost is reimbursed at actuals without any mark-up or margin, the consideration under mining are based on the actual quantity mined and other factors which are elaborated in the Contract enclosed

3.6 The Applicant's interpretation with respect to the questions posed by it is as under:



Submissions of applicant with respect to Question 1

- (i) The Applicant submits that Section 2(30) of Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act), defines "Composite Supply" to mean:

"a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;"

- (ii) On perusal of the above definition, it appears that a "composite supply" essentially and irreplaceably has the following ingredients:

- i. consisting of two or more taxable supplies of goods or services or both, or any combination thereof,
- ii. which are naturally bundled
- iii. and supplied in conjunction with each other
- iv. in the ordinary course of business, one of which is a principal supply.

- (iii) In the facts of the present case, undoubtedly there are at least two taxable supplies viz. supply of mining services & supply of works contract services.

The question that arises is whether the said services can be said to naturally bundled. Though the phrase "naturally bundled" has not been explained, interpreting the same contextually, it would mean that the supplies involved should be such that the same are naturally supplied together. In other words,



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there should not be an artificial bundling of the supplies, like that in the instant case, where supply of works contract of a construction of colony is not naturally or ordinarily bundled with the supply of mining services rendered by a mine operator.

(iv) Further the definition of "Composite Supply" requires that the supplies which are naturally bundled should be supplied in conjunction with each other "in the ordinary course of business". The CBIC has, in its flyer on "Composite and Mixed Supplies", listed out some indicators for determining whether a supply can be said to be bundled in the "ordinary course of business". The indicators are listed out herein below for ease of reference:

- The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.
- Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.

The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example, service of stay in a hotel is often combined with a service or



laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

- Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are -
- There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
- The elements are normally advertised as a package.
- The different elements are not available separately.
- The different elements are integral to one overall supply
- If one or more is removed, the nature of the supply would be affected.

(v) As manifest from above, it is clear that there is no straight jacket formula for the determining whether the two supplies, which are supplied in conjunction with each other are naturally bundled in the ordinary course of business or not. The determination of the same will vary in each case.

(vi) In the present case, it is submitted in terms of Agreement dated 08.03.2019, the Applicant has been appointed by APMDCL as a MO to set up the mine and subsequently operate and maintain the same. The Applicant has additionally been given the mandate of construction of the Rehabilitation & Resettlement ("R&R") colony for which it will be reimbursed on actuals. The two activities are independent supplies and are not in the ordinary course of business



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supplied in conjunction with each other, so as to qualify as a composite supply. Normally a mine operator supplies the service of setting up the mine and operating and maintaining it. However, in the present case, the Applicant is required to construct a R&R colony for the project affected persons, in addition to supplying the services of a mine operator.

(vii) In view of the above submissions, it is clear that the rendition of construction services (of the R&R Colony) and Mining Services is not a "composite supply" for the purposes of the CGST Act, 2017.

(viii) Furthermore, it is submitted that activity of construction of R&R Colony clearly falls within the scope of the "works contract" as defined under Section 2(119) of the CGST Act, 2017. For reference purposes, the said definition has been reproduced hereunder:

"—works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;"

(ix) On the perusal of the above definition, it appears that the activity of constructing a building (immovable property) is one of the specified activities in the definition of works contract. The other condition of there being a transfer of property in goods is also satisfied inasmuch as the title of the steel, cement, etc.



which goes in the construction of the building is transferred to APMDCL. Thus the, activity of construction of R&R colony squarely falls within the scope of the definition of "Works Contract" Services inasmuch as the activity involves "construction" of an Immovable Property and there is a "transfer of property in goods" involved in the execution of the construction of R&R colony.

Submissions of applicant with respect to Question 2

(x) The Applicant submits Section 17(5) deals with blocked credits under the GST law. It enlists various circumstances under which the Input Tax Credit cannot be availed by the Recipient of Supply, notwithstanding the provisions of Section 16(1) & 18(1) of CGST Act. Sub-Section(c) section 17(5) deals with blocked /ineligible credit relating to "Works Contract Services". The relevant provisions are as follows:

(c) *works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;*

Explanation. -- For the purposes of clauses (c) and (d), the expression --construction includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;

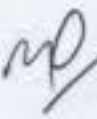


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Explanation. --For the purposes of this Chapter and Chapter VI, the expression --plant and machinery means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or

(xi) On a reading of the Section 17(5)(c) of the CGST Act, 2017, it appears that the said provision attracts disallowance of Input Tax Credit in respect of works contract services when supplied for construction of an immovable property (other than plant and machinery) except where, it is an input service for further supply of works contract service. Thus, ITC for works contract can be availed only by a registered person who is in the same line of business, and is using such services received for further supply of works contract services.

(xii) The Applicant submits that as stated above, services of construction of the R&R Colony clearly fall within the scope of the "Works Contract Services" and therefore, if the sub-contractors raise invoices on the Applicant for "Works Contract Services", the Applicant will be eligible for the ITC, as it is in the same line of business in other words, such input services will be used for providing works contract services as it's outward supply. In view of the above, disallowance under Section 17(5)(c) is not attracted.

 (xiii) The disallowance u/s 17(5)(c) are attracted only when the works contract service is procured otherwise than in the course of further supply of work contract service. In the present case, the applicant is procuring the works contract service and is in turn rendering the same to the APMDC. Hence the disallowance u/s 17(5)(C) shall not arise in the hands of the applicant, but may only arise in the hands of APMDC. In case the disallowance u/s 17(5)(C) is given effect in the hand of the ultimate consumer being APMDC, then applying



the same in the hands of Applicant will amount to double restriction of ITC which is never the intention of the ACT.

(xiv) Hence in the view of the Applicant the service of Mining and Service of construction or monitoring of construction are two independent activities. The consideration for both is independently determined. Hence the question of which is predominant of these two shall not arise at all. As the applicant is receiving the Work contract services in the course of further supply of the same as works contractor, the restriction of section 17(5)(C) shall not arise in the hands of Applicant, but in the hands of the ultimate consumer only.

4. QUESTION RAISED BEFORE THE AUTHORITY-

The Applicant has filed present application in order to obtain a Ruling with regard to the below mentioned questions:

- (i) Whether the services of construction of the R&R Colony supplied by the Applicant would be taxed as a part of the composite supply of mining service or the same would be taxed separately as a supply of works contract service.
- (ii) Whether the Applicant will be eligible to avail Input Tax Credit of tax paid to the sub-contractor on works contract services for construction of R&R colony, or the same would be disallowed in terms of Section 17(5)(c) of the CGST Act, 2017.

5. DEPARTMENT'S VIEW POINT:-



This office vide letter No. AAR/459 dated 03.06.2021 called the report/department view on the questions raised by the applicant from the jurisdictional Commissioner, Commissionerate, Jabalpur. The Additional Commissioner(Technical) CGST and Central Tax, Hqrs. Jabalpur vide letter GEXCOM/TECH//GST/473/ dated 05.08.2021 have submitted his reply/view after going through the provisions of law and Agreement between Applicant and APMDC in respect of Question No.1 in para 3 of the said letter that *"There is no Lucid formula in CGST Act/Rules to determine "Naturally bundled" services. In the instant case it appears that there is no relation between Construction service for R&R colony and Mining Services and hence it appears that the said services are not bundled either in the ordinary course of business or a composite supply rather it appears to be a supply of Works Contract Service."*

Further, the Additional Commissioner(Tech) CGST, Jabalpur in respect of question No.2 submitted in para 5 of said letter dated 05.08.2021 that *"However, in the instant case as per the application filed by the Applicant, they have engaged sub-contractor for supply of services for construction of R&R colony in the same line of business and such services received for further supply of Works Contract service to APMDC. The Sub-contractor will charge GST on account of supply of construction service of R&R colony in their tax invoice to the Applicant i.e. M/s Adani Enterprises Limited (GSTIN:23AABCA2804L1Z2) and the applicant may be entitled to take & utilize ITC as per GST Act & Rule on the basis of Tax invoice raised by his sub-contractors as his output works contract service for construction of R&R colony only to APMDC & the said Input tax credit should not be utilized towards the payment of GST liability with regards to supply of Mining Services."*

6. RECORD OF PERSONAL HEARING -

Shri Gopal Chosla, GM, Finance, Mr. Vishal Agrawal, Tax Consultant and Shri Haresh Nikaam, Manager, Finance & Account, Shri Deep Khare, Deputy Commissioner, Satna, the concerned officer SGST and Shri Deelip Kumar, Asstt. Commissioner, CGST, Rewa appeared for personal hearing through virtual hearing. The representative of the applicant reiterated the submissions already made in the application. The applicant during virtual hearing emphasizes on the definition of Composite supply given in the Section 2(30) of CGST Act and submitted that the



construction of R&R colony is not covered under the Composite supply and covers under Works contract service. He further emphasizes that:-

(a) The nature of Mining activity and the construction are totally independent of each other. The risks, rewards and the skillset required for execution of the works are totally independent of each other.

(b) Both the works can be very well handled by different contractors. Even in the instant case, the applicant is not actually executing the work, but had entered into a back-to back arrangement with the contractors who are responsible for the actual execution of the construction work.

(c) While the construction is a one-time activity that will start independently and will conclude soon, the mining contract stretches over a period of time.

(d) The manner of determination of consideration of both the contracts are different from each other. While the construction cost is reimbursed at actuals without any mark-up or margin, the consideration under mining are based on the actual quantity mined and other factors which are elaborated in the Contract.

6.1 The Applicant further through mail dated 26.07.2021 submitted as under: -

(i) That Adani Enterprises Ltd, the Applicant has been awarded a contract by Andhra Pradesh Mineral Development Corporation Ltd (APMDCL) for planning, engineering, financing, construction, development, operation and maintenance of Suliyari coal mine located in Madhya Pradesh.

(ii) That APMDCL has been allotted the said Suliyari Coal Mine located in Madhya Pradesh by the Ministry of Coal, Government of India in terms of Order No.103/10/2016/NA dated 29.9.2016, is recorded in the definition of 'Mine' in



agreement dated 8th March, 2019 executed between the Applicant and APMDCL (hereinafter referred to as the Agreement).

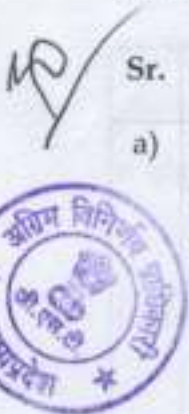
(iii) That in terms of clause 2.1 of agreement dated 8th March, 2019, Applicant has been appointed as the Mine Operator (hereinafter referred to as MO) to provide Mining Services. The expression Mining Services has been defined in the agreement to mean 'Mining and Related services' more particularly set forth in Schedule 2.

(iv) That Schedule 2 of the Agreement specifies that the Applicant shall *inter alia* undertake the Rehabilitation & Resettlement and would be responsible for preparing Rehabilitation and Resettlement plan for the Project and get it approved by the State Government. The MO was also responsible construction of the Rehabilitation and Resettlement colony ("R&R Colony") basis the mutual finalization of the design. Further the payment for the said construction was to be reimbursed by APMDCL.

(v) That as per clause 8.1 of the Agreement, while setting out APMDCL's obligation *inter alia* provides that it would make payment to the applicant towards construction of R & R colony.

(vi) That insofar as payment towards R & R colony is concerned, Schedule 2 read with Schedule 15 to the Agreement stipulates that the entire cost towards construction of the R & R colony would be paid on milestone basis as under:

Sr.	Percentage of cost	Mile Stone
a)	5% of the cost towards construction of R & R colony - as initial advance amount, interest bearing.	Acknowledgement of letter of acceptance by the Applicant alongwith submission of Bank guarantee covering 110% of the advance amount and approval of Master Network and detailed PERT network on work schedule for construction of R & R colony.
b)	5% of the cost towards construction of R & R colony - as initial advance amount, interest bearing.	On certification by APMDCL that by the Applicant has opened its office at the site and mobilized its equipment alongwith submission of bank guarantee covering



	110% of the advance amount.
c) 80% of the cost towards construction of R & R colony	On submission of GA drawings of the building indicating the various dimensions and design criteria of the building and on construction of the building in line with the approved design criteria and basic GA drawings.
d) 10% of the cost towards construction of R & R colony	On final acceptance of the R & R colony.

Submissions on the issues raised for determination

(vii) Insofar as question (1) raised for determination is concerned, the issue on which determination has been sought is whether construction of the R & R colony is to be taxed as a supply of works contract service, or the same is a part of composite supply of mining service.

(viii) The expression 'composite supply' has been defined in Section 2(30) of the CGST Act, to mean "a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply".

(ix) The expression 'principal supply' has been defined in Section 2(90) of the CGST Act, to mean supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

(x) The following ingredients *sine-qua-non* for supplies to be regarded as composite supply -

- i. consisting of two or more taxable supplies of goods or services or both, or any combination thereof,
- ii. which are naturally bundled



iii. and supplied in conjunction with each other

iv. in the ordinary course of business, one of which is a principal supply.

(xi) that construction of a R & R colony is not naturally bundled with the supply of mining services and the same is also not supplied in conjunction with mining services in the ordinary course of business.

(xii) that a mine operator is, in the ordinary course of business, required to work the mine to extract coal/other natural resource, for the extraction of which the mine operator has been appointed. In the ordinary course of business the mine operator does not undertake the construction of a rehabilitation colony. It was thus submitted that the said two supplies cannot be said to be naturally bundled in the ordinary course of business.

(xiii) that the construction of the R & R colony and undertaking mining operations could not be said to be a composite supply also for the reason that the two supplies were not made in conjunction with one another in the ordinary course of business, inasmuch as the works contract service of constructing the R & R colony is a one-time activity, and would conclude prior to the mine having commenced commercial operations. Therefore, by no stretch of imagination can it be contended that the two supplies in question are made in conjunction with one another.

(xiv) It was submitted that the activity of constructing the R&R colony was appropriately taxable as supply of works contract services, as defined in Section 2(119) of the CGST Act, to mean a contract for building, construction of an immoveable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

(xv) that the construction of the R&R colony is construction of an immoveable property and that in the course of such construction the property in the steel, cement, sand, aggregates, etc. (goods) is transferred from the Applicant to APMDCL. The said supply is aptly classifiable as supply of works contract service.



(xvi) Insofar as question (2) raised for determination is concerned, the same seeks a ruling on the question whether the applicant would be entitled to avail Input Tax Credit of the GST discharged by the sub-contractor appointed by it for the construction of the R&R colony.

(xvii) that Section 17(5)(c) of the CGST Act stipulates that Input Tax Credit would not be available in respect of works contract services when supplied for construction of an immovable property (other than plant & machinery) except where it is an input service for further supply of works contract service.

(xviii) that the construction of the R&R colony is a works contract service being supplied by the Applicant to APMDCL and consequently it is eligible to avail ITC of the works contract services rendered by the sub-contractor for the construction of the R&R colony.

7. DISCUSSIONS AND FINDINGS: -

7.1. We have carefully gone through the submissions made by the applicant in the application dated 06.03.2021, additional submission through mail dated 26.07.2021 and submission made at the time of personal hearing. The main issue is to decide whether the service of construction of R&R colony supplied by the Appellant is covered under the Works contract service or under Mining Service as composite supply and the credit of ITC on the tax paid to sub-contractor under Works contract service for construction of R& R Colony is eligible or not under Section 17(5)(c) of the CGST Act, 2017. For clarify the questions raised by the Applicant, we discuss the issue one by one in foregoing paras.

7.2 Firstly, we discuss about whether the services of construction of R&R colony supplied by the Applicant would be taxes as a part of composite supply of mining service or not. The definition of "Composite supply" as per Section 2(30) of Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act) reproduced as under :



"a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;"

As per the above definition, a "composite supply" essentially has the following ingredients:

- (iii) Consisting of two or more taxable supplies of goods or services or both, or any combination thereof,
- (iv) which are naturally bundled
- (v) Supplied in conjunction with each other

7.3 Hence for classify of the service of construction of R&R colony by the applicant as composite supply of mining service, the above ingredients is essentially should be there. We go through the Agreement signed between the Applicant and APMDC submitted by the Applicant with their application and we observe that as per para 8.2 (c)(page no.36),only mentioned that R&R activities provided at clause 1B of Schedule 2 of this Agreement. The said para is mentioned under the heading of Mine operator obligation during the development stage of the Agreement. The relevant para 1B of the Schedule of Agreement in respect of Construction of R&R colony and Schedule 15 in respect of terms of payment for construction of R & R Colony is reproduced below :-

"Para 1B Rehabilitation and resettlement: -The mine operator shall be responsible to prepare Rehabilitation and Resettlement plan for the Project, get it approved by the state government and accordingly, implement the approved plan; the Mine Operator shall be responsible for R&R activities as per the approved R&R policy/Scheme/Plan, including construction of R&R township, infrastructure facility at R&R site etc. However payment of compensation to eligible PAFs(Project affected families) as per approved R&R policy /scheme/plan shall be paid by APMDC directly to appropriate government authority/ PAFs.



R&R Colony shall be constructed by the Mine Operator on mutual finalization of plan and design. Documented payment towards the cost of R&R colony construction shall be reimbursed to the mine operator."

"Schedule 15 - Terms of Payment for Construction of R&R Colony

1. Terms of Payment for R&R Colony

A. Five percent (5%) of the cost towards construction of R&R Colony as initial advance amount as interest bearing (interest@13.55%per annum)on

- (i) Acknowledgement of Letter Of Acceptance by MDO*
- (ii) Submission of unconditional Bank Guarantee covering 110% of the advance amount along with the interest as per the formats provided by the Owner which shall be initially kept valid up to ninety (90) days beyond the schedule date of completion of Development Stage. However, in case of delay in completion of these facilities, the validity of this Bank Guarantee shall be extended by the period of such delay, and*
- (iii) Approval of Master network and detailed PERT network on the work schedule for construction of R&R Colony.*
- (iv) Submission of unconditional, irrevocable Bank Guarantee for the amount of Contract Performance Guarantee as per the formats provided by the Owner.*
- (v) In case Joint Operating Agreement between MDO and its Subsidiary (ies) and/or Holding Company and/or Subsidiaries of its Holding Company forms part of the contract, then submission of an unconditional Bank Guarantee as per the formats provided by the Owner from such Subsidiary (ies) and /or Holding Company and/or Subsidiaries of its Holding Company towards faithful performance of the Joint Operating Agreement for an amount specified in the JOA.*
- (vi) Award of Construction of R&R colony package by Mine Operator to his Sub Contractor (if applicable)*

B. A further Five percent (5%) of the cost towards construction of R&R Colony as initial advance amount as interest bearing (interest @13.55% per annum) on



- i. *Fulfilment of conditions mentioned at Item no. I(A)(i), I(A)(iii), (A)(iv), I(A)(v), I (A)(vi) above*
 - ii. *On certification of Owners representative that the Mine Operator has opened his office at Site and mobilized the plant & equipment and*
 - iii. *Submission of unconditional Bank Guarantee covering 110% of the advance amount along with the interest as per the formats provided by the Owner which shall be initially kept valid up to ninety (90) days beyond the schedule date of completion of Development Stage. However, in case of delay in completion of these facilities, the validity of this Bank Guarantee shall be extended by the period of such delay.*
- C. *Eighty percent (80%) of cost towards construction of R&R Colony against different milestones involved in construction of R&R Colony shall be as per terms and conditions provided at Appendix] of Schedule 2.*
- D. *Ten percent (10%) of the cost towards construction of R&R Colony on Final Acceptance of the R&R Colony.*

Note 1: The recovery of the interest component on the interest bearing advance amount shall be made from the progressive payments released to the Mine Operator. The amount of interest to be recovered from a particular bill shall be calculated @ 13.55% per annum on the value of advance corresponding to the percentage of total progressive payment being released. The period for which the interest is to be calculated shall be reckoned from the date of release of the advance payment to the actual date of release of the said progressive payment or the expiry of the stipulated time frame for release of such progressive payments under the contract, whichever is earlier. The interest on the advance payment shall stand fully recovered on release of all the progressive payments. If the amount payable under any interim bill is not sufficient to cover all deductions to be made for interest on the advance payment and other sums deductible therefrom, the balance outstanding shall be recovered from the next payments immediately falling due. Note 2: In case the Contractor decides not to take interest bearing advance payment, the advance payment shall be proportionately



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adjusted in the balance payments excluding final payment due on Final Acceptance of R&R Colony."

7.4 We observe that as per the Agreement with APMDC, Applicant as a Mine Operator planning, engineering, financing, construction, development, operation and maintenance of Suliyari coal mine and subsequent delivery of coal to the Owner. We observe that in the said Agreement mainly the work is given related to mining of Coal and during the development stage of mines, there are certain obligation to the Mine operator including construction of R&R colony. In the Agreement, each and every work define separately in the said Agreement/Schedule of Agreement. As per para 1B of the Schedule of Agreement (Page No.7 and 8) mentioned above, the construction of R&R colony is for rehabilitation and resettlement and Mine Operator/ Applicant is responsible for construction of R& R colony during development stage of mines. Further, we observe that as per the Schedule 15(1) which is relates to Terms of payment for construction of R&R Colony in the Schedule of Agreement (at page 79)(reproduced above) in which the stages of payment by APMDC to the Applicant have been mentioned and find that the payment of construction of R&R colony is made separately and has no connection/correlation with the payment of any other works/services including Mining Service as the other payment of mining service also described separately in the said Agreement i.e. Terms of payment of Coal handling plant given in Schedule 15(2). Further we observe that as per Para 1B of the Schedule of Agreement (page No.7), the cost of construction of R&R colony will be reimbursable, hence I find that the said payment is independent and has no connection with other services provided by the Applicant. The relevant para reproduced below :-

"R&R Colony shall be constructed by the Mine Operator on mutual finalization of plan and design. Documented payment towards the cost of R&R colony construction shall be reimbursed to the mine operator."

7.5 We observe that in this case the construction of R&R colony is to be done from the sub-contractor by the Applicant and the invoice of the said construction was raised by the sub-contractor to the Applicant under Works contract service and



thereafter the Applicant reimburse the same amount from the APMDC by raising the invoice to APMDC. The Applicant has additionally been given the mandate of construction of the Rehabilitation & Resettlement ("R&R") colony for which it will be reimbursed on actuals.

7.6 We observe that the Applicant submitted that the construction of R & R colony is not naturally bundled with the supply of mining services and the same is also not supplied in conjunction with mining services in the ordinary course of business. We find that as per the Agreement between Applicant and APMDC, these services i.e. mining service and works contract service is not naturally bundled as the construction of R&R colony is not related to mining service and provide independently by the Applicant.

7.7 We go through the issue and find that the construction of R&R colony service is not in any way in combination with mining service as the construction of R&R colony is one time job whereas the mining service is a regular job for longer period, hence both the services are not going together or not depend on one another, supplied independently. Further we find that the terms of payment of each service mentioned separately in the Agreement and there is no connection/combination of payment of both the services. Invoices of the services is also raised separately. Hence both the services can be identifiable separately and has no conjunction with each other for qualify the same as composite service.

40 In view of above, we find that the services of construction of R&R colony is not composite supply with mining service.

78 For classifying whether the construction of R&R colony is covers under the definition of Works contract service, The definition of "works contract" as per Section 2(119) of the CGST Act, 2017 is reproduced below :-

"—works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance,

renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;"

As per the above definition, any construction of colony/building wherein transfer of property in goods is involved in the execution of such contract is covers under the definition of Works contract service for payment of GST. We observe that in this case as per the submission of the applicant, satisfied the condition for construction of Building and transfer of property in goods is involved inasmuch as the title of the steel, cement, etc. which goes in the construction of the building i.e. R&R colony is transferred to APMDC, hence, we find that the construction of R&R colony is covers under the definition of Works Contract Service and GST is leviable on the said service under the Works contract service.

7.9 Now we discuss about the second question raised by the Applicant that whether the applicant will be eligible to avail ITC of tax paid to the sub-contractor on Works Contract Service for construction of R&R Colony or the same would be disallowed in terms of Section 17(5) (c) of the CGST Act, 2017. We observe that the Section 17(5) of the CGST Act, 2017 deals with blocked credits under the GST law and enlists various circumstances under which the Input Tax Credit cannot be availed by the Recipient of Supply, notwithstanding the provisions of Section 16(1) & 18(1) of CGST Act. The Sub-Section(c) of Section 17(5) deals with blocked ineligible credit relating to "Works Contract Services". The relevant provisions are as follows:



"(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

Explanation. -- For the purposes of clauses (c) and (d), the expression --construction includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;

....

Explanation. -- For the purposes of this Chapter and Chapter VI, the expression --plant and machinery means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or'

We observe that as per the provision of the Section 17(5)(c) of the CGST Act, 2017, recipient of supply/service is not eligible for Input Tax Credit in respect of Works contract services when supplied for construction of an immovable property (other than plant and machinery) except where, it is an input service for further supply of works contract service. As per the exception given above in the Section 17(5)(c), ITC for works contract service can be availed only by a registered person who is in the same line of business, and is using such services received for further supply of Works contract service. We observe that in this case the applicant is receiving the Work contract services i.e. construction of R&R colony from the sub-contractor in the course of further supply of the same as Works contractor to APMDC, hence the restriction of section 17(5)(C) shall not applicable to the Applicant. Hence, we find that in respect of the construction of RR colony, the applicant is eligible to take ITC of tax paid to sub-contractor under works contract service which will be used for providing the same to the APMDC.

7.10 We go through the reply/opinion of the department submitted by the Additional Commissioner, CGST & Central Tax Jabalpur mentioned above in para 4 and observe that the department also is in opinion that the construction of R&R



colony by the Applicant is covers under the Works Contract Service and not covers under the Mining service as composite supply. Further in respect of 2nd question raised by the applicant, the Additional Commissioner, CGST, Jabalpur vide letter dated 05.08.2021 is in the opinion that the Applicant is eligible for ITC of the tax paid to the sub-contractor for construction of R&R Colony under Works contract service but the said ITC is not allowed to utilize for payment of tax for mining services. Hence, we find that the opinion of the department is in line with the view of this authority as discussed above.

7.11 In view of above, as per the submission of the Applicant, Agreement, departmental view submitted by the Additional Commissioner, Jabalpur and the provisions of GST law, we conclude that the construction of the R&R colony by the applicant is supply of works contract service and also eligible for ITC of tax paid to sub-contractor for providing further Works contract service only.

8. Ruling

8.1 In respect of 1st question, the Authority hereby is of the opinion that the services of construction of the R&R Colony supplied by the Applicant would be taxed under the Works Contract Service.

8.2 In respect of 2nd question, the Authority hereby is of the opinion that the Applicant will be eligible to avail Input Tax Credit of tax paid to the sub-contractor on works contract services for construction of R&R colony and utilize same for providing/supply of Works Contract service only. Further in terms of Section 17(5)(c) of the CGST Act, 2017, the said credit should not be utilized towards the payment of GST liability with regards to any other service including Mining Service.

8.3 The ruling is valid subject to the provisions under section 103 (2) until and unless declared void under Section 104 (1) of the GST Act.



—sd—
(Manoj Kumar Choubey)
(Member)

—sd—
(Virendra Kumar Jain)
(Member)

Copy to:- 04/2021/A.A.R/R-28/19

INDORE dated 06/08/2021

1. Applicant
2. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore
4. The Commissioner, CGST & Central Excise, Indore
5. The Concerned Officer
6. The Jurisdictional Officer - State/Central

Manoj Kumar Choubey
सत्यप्रतिलिपि

