

JHARKHAND AUTHORITY OF ADVANCE RULING

GOODS AND SERVICES TAX

DIVISIONAL OFFICE OF STATE TAX, CIVIL COURT COMPOUND,

NEAR JAIPAL SINGH STADIUM, RANCHI, 834001

Advance Ruling Order No. JHR/AAR/2021-22/04, Dated 09th July, 2021

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| <p>Sri Pradhuman Badri Prasad Meena, Additional Commissioner, Office of the Pr. Commissioner, CGST and CX Audit Commissionerate, Ranchi - Jharkhand.</p> | <p>Member (Central Tax)</p> |
| <p>Sri Ram Chandra Prasad Barnwal, Joint Commissioner (Administration), Ranchi Division, Ranchi- Jharkhand.</p> | <p>Member (State Tax)</p> |
| <p>Name and address of the applicant</p> | <p>M/s. Pachhwara Coal Mining Private Limited, Registered Address: Ground Floor, C/o Smt. Beby Rani, W/ o Pradip Kumar Ravi Das, DAV School Road, Near Bajaj Showroom, Gokulpur, Laddu Bagan, Pakur, Jharkhand - 8161074, India. Correspondence Address: Ground Floor, C/o Smt. Beby Rani, W/o Pradip Kumar Ravi Das, DAV School Road, Near Bajaj Showroom, Gokulpur, Laddu Bagan, Pakur, Jharkhand -8161074, India.</p> |
| <p>GSTIN of the applicant</p> | <p>20AAICP6353Q1Z0</p> |
| <p>Application No. and Date</p> | <p>Advance Ruling/ SGST & CGST/ 2020-21/AR/ AD2011200001198 dated 04/11/2020.</p> |

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| Clause(s) of Section 97(2) of CGST/SGST/UGST Act, 2017 under which the question(s) raised | | (a) classification of any goods or services or both; |
| Date of Personal hearing | | 09-02-2021 & 05-03-2021. |
| Present for the applicant | | Sri Harish Bindumadhavan, Advocate; |

Note: Under Section 100 of the JGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of JGST Act 2017, within a period of 30 days from the date of service of this order.

PROCEEDINGS

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

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Jharkhand Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and JGST Act"] by Pachhwara Coal Mining Private Limited, the applicant, seeking an advance ruling in respect of the following question:-

Whether the provision of such transportation service for the temporary period till extension of the railway siding to the mine location is an independent activity, and exempted from the payment of GST under SI. No. 18 of Notification No. 12/2017-CT(R) dated 28 June 2017?

2. At the outset, we would like to make it clear that the provisions of both the CGST Act and the JGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the JGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act/JGST Act would be mentioned as being under the "GST Act".

HEARING

3. The case was taken up for hearing on dated 05.03.2021 with respect to admission or rejection of present application when Shri Harish Bindumadhavan, Advocate along with Shri R. Subba Raju, Authorized Signatory of the applicant appeared and made submissions as per contentions made in their application.

OBSERVATIONS

4. We have gone through the facts of the case including documentary evidences like copies of agreement and written submission made by the applicant. We find that the applicant is registered under Goods and Services Tax ('GST') Act, 2017. As per their submission they are a special purpose vehicle (SPV) formed through a consortium between NCC Limited (NCC) and BGR Mining & Infra Limited (BGR) for carrying on the business of Mine Developer and Operator (MDO) having stakes of 51% and 49%, respectively. The West Bengal Power Development

Corporation Ltd (WBPDCCL) had floated a Request for Proposal (RFP) for engaging a Mine Developer and Operator for extracting coal and connected transportation services in their captive mines located at Pachhwara North Block.

5. Being successful bidder the applicant has been awarded with the work of MDO by WBPDCCL. Further, as the railway sidings were not extended till the mine at the time of execution of the contract, the applicant was also required to provide transportation services so as to deliver the extracted coal to the railway sidings as directed by WBPDCCL for the period of 5 years by when the railway line extension is expected to be completed by WBPDCCL. The scope of work as summarized by the applicant is as follows,-

(i) Drilling and blasting operations with appropriate safeguards and compliance to statutory requirements

(ii) Excavation of OB by excavators and transportation by dumpers to OB dumping locations as per the Mining Plan

(iii) Mining of ROM coal by surface miner as per the Mining Plan and transportation of coal by dumpers to the mine pit top

(iv) Delivery of coal at the Delivery Point

(v) For the initial period, till extension of Pakur railway siding to the Mine, which is expected to be 5 (five) years from the Coal Production Start Date, the scope of work for the MDO would also cover:-

(a) Loading of coal from the mine pit top to tipper trucks for transportation

(b) Transportation of coal by tipper trucks to the railway siding at Pakur and unloading of coal at the railway siding at Pakur.

(c) Loading of coal onto railway wagons including the associated tasks of maintaining the railway siding at Pakur.

(vi) Undertake community development and welfare activities in the local community.

6. Further, as per para 9.4.3 of the agreement, the lowest final price of the LI Bidder shall be split into two parts, -

(i) Base Mining Charge shall be considered to be 80% (Eighty percent) of the lowest Final Price of the LI offer - this shall be the base charge for the production of coal and all associated activities and bringing the coal to the pit top of the mine.

(ii) Base Transportation & Handling Charge shall be considered to be 20% of the lowest Final Price offer of the LI Bidder - this shall be the base charge for transportation of coal from the mine pit top to the railway siding at Pakur, including loading of coal onto the railway rakes and ensuring

proper operation, maintenance and security of the railway siding. This charge shall be payable till the time the MDO is required to transport coal by road to the railway siding at Pakur.

(iii) Both the Base Mining Charge and the Base Transportation & Handling Charge shall be computed upto 2 decimal places.

7. As per the bid, the MDO shall be responsible for providing adequate security for preventing the theft and pilferage of coal upto the Delivery Point. The quantity of coal excavated from the mine in a month shall be determined based on monthly Laser Measurement. The quantity of coal excavated shall be reconciled with the quantity of stock at the mine and at the Delivery Point and quantity of coal dispatched from mine. Transit and handling losses shall be allowed to the extent of 0.5% of quantity of the coal excavated as calculated through the in-situ Laser Measurement and after dividing the volume of coal excavated by the specific gravity of the coal. The MDO shall be penalized for any transit and handling losses beyond the 0.5% and the quantum of the penalty shall be 300% of the prevailing per ton Mining Charge payable to the MDO.

8. Pursuant to receipt of the said contract, the applicant sub-contracted the entire contract, i.e., extraction of coal, storage and handling and the temporary transportation of such coal to designated delivery points, to BGR in terms of the operation and maintenance agreement dated 12 December 2018 entered with them. Therefore, BGR would be effectively carrying out all the activities of CMA. As submitted by the applicant, the consideration payable for the subject supplies between PCMPL and BGR is as follows,-

(i) Mining charges shall be INR 569.66 per Ton; and

(ii) Transport & Handling shall be INR 142.42 per Ton.

9. It has also been submitted by the applicant that,-

(i) the independent transporters (employed by BGR) issue invoices to BGR for the transportation services;

(ii) BGR issues invoices to PCMPL separately for extraction of coal and for transportation services;

(iii) PCMPL issues invoices to WBPDCCL, separately for both the services as per the individual process agreed for the said supplies.

(iv) For carrying out the transportation activities, BGR has engaged more than two hundreds independent transporters who have been providing the transportation services. In this regard, such independent transporters in terms of the said agreements, would deploy suitable trucks along with experienced drivers at the disposal of BGR at the mine location for a minimum agreed quantity of coal to be transported for the subject period of 5 years. BGR would incur the requisite costs for diesel for such trucks and would also install tracking equipment and monitor the movement of such trucks deployed by the transporters during such contract period.

(v) The following procedure is adopted by BGR in the transportation of such extracted coal to the designated delivery points of WBPDCCL as per the contractual terms

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| 1 | Specified vehicles deployed by the transporters are issued with loading slip and gate pass to enter into the mine |
| 2 | Vehicles enters the mine pit-head for loading of coal |
| 3 | Loaded vehicle enters the weighbridge for weighment and weight details are entered in the loading slip and handed over to the vehicle operator |
| 4 | Vehicle drivers returns the loading slip at mine exit check-post and are issued a Transport Challan in Form-D [Mines & Minerals (Development & Regulations) Act 1957] generated by WBPDCCL for payment of royalty and Delivery Challan issued (under Central Goods and Services Tax Act, 2017) by the applicant for movement of goods |
| 5 | Once the vehicle reaches the railway siding, weighment is done by WBPDCCL and weighment challans are issued at the railway siding. Thereafter, unloading and loading on railway rakes is being undertaken by the applicant. |

(vi) None of the parties involved in transportation of the coal i.e. the applicant or BGR or the underlying transporters engaged by BGR issues any consignment notes while carrying out the transportation activities.

Further, the entire transportation is highly regulated and carried out mainly based on documents like loading slip, transport/royalty challan issued by the customer, namely, WBPDCCL.

(vii) The consideration towards mining services as well as transportation and handling services are based on the coal delivered at delivery points and measured based on the final weighment at railway sidings recorded in the weighment slips issued to the transporter, the copy of which is submitted to BGR by the transporters, which in turn are submitted to WBPDCCL through the applicant while issuing the invoices by the applicant on WBPDCCL.

10. In this case applicant's submission is that it has entered into two separate contracts one for mining of coal and other for transportation of coal from pit head to railway siding. Applicant seeks an advance ruling with respect to second contract for transportation of coal from pit head to railway siding by asking that "whether the provision of such transportation service for the temporary period till extension of the railway siding to the mine location is an independent activity, and exempted

from the payment of GST under SI. No. 18 of Notification No. 12/2017-CT (R) dated 28th June 2017".

11. The applicant have also submitted the following factual and legal submissions, among others, in relation to the aforesaid question,-

(i) Intention of the parties is provision of two independent services, i.e., MDO services and transportation services in as much as they agreed for provision of two independent services one in the nature of base mining activity for extraction of coal and second by way of transportation of such extracted coal to the designated delivery points.

(ii) Their supply of services cannot be termed as composite or bundled services and handling and transportation of coal/mineral may be considered as distinctive activity.

(iii) The transportation and related handling services provided by the applicant would get classified within the ambit of SAC Code 996511 as such services are provided by the applicant not in the capacity of Goods Transport Agency (GTA). Further, such transportation services provided by other than GT A are specifically exempted from the levy of GST in terms of SI. No. 18 of Notification No. 12/2017-CT(R) dated 28.06.2017.

(iv) At all time WBPDCCL would remain the owner of such coal extracted from the captive mine. Therefore, the applicant, BGR or any other third party transporters engaged by BGR would not issue consignment notes indicating lien of the extracted coal, but would merely by transporting such coal from one location of WBPDCCL to another location of WBPDCCL and not part of such extraction of coal or the transportation thereof assume lien on such coal.

(v) In the present case, as the documents issued by BGR like loading slips, delivery challans, etc cannot be considered as consignment notes, and in the absence of issuance of any consignment note either by the applicant or any other parties involved in the course of transportation of the underlying goods, the applicant would not be a Goods Transport Agency, and therefore in terms of SI. No. 18(a) of the Notification No. 12/2017-CT(R), as amended, the subject transportation services rendered by them to WBPDCCL would be exempt from the levy of GST.

ANALYSIS AND FINDINGS

12. We have carefully considered the submissions made by the applicant in the application and during personal hearing held in this regard. We find that the question before us essentially pertains to classification of the services and rate of tax applicable on supply of such services and also on determination of liability to pay tax. We observe that the issue before us is squarely covered under Section 97(2)(a) of the GST Act and, therefore, we admit the application for consideration. We have given a careful consideration to the arguments adduced by the applicant at the time of personal hearing as well as to their written submission including other documents submitted before us.

13. The applicant in relation to their question argued that the mining services of coal provided by them and transportation of mined coal to railway siding are two different services and these two

services do not fall under the purview of composite supply or mixed supply under CGST Act, 2017.'

14. Having duly considered the arguments put forth by the applicant, we are satisfied that both the services are independent of each other. The price charged by the supplier for both the services are separately mentioned in the contract held in this regard. As per their submission the bills/invoices are also separately raised in this regard. Moreover, none of the services can be considered as predominant over the other service. Both the services are important for the service recipient and accordingly invited tender and held contract for availing both the services. These services in any way cannot be considered as naturally bundled services as order of both the services can be awarded to separate service providers. Also they are not supplied in conjunction with each other in the ordinary course of business. Further, neither one of it can be said to be a principal supply nor are these services supplied made in conjunction with each other for a single price.

15. Accordingly, considering the arguments submitted by the applicant with documentary evidences and reliance placed by them in a series of case laws, including ruling of Hon'ble Supreme Court in the case of CCE Raipur Vs Singh Transporters, with respect to question of classification in identical issues, we find that answer to this part of the question is affirmative in as much as that transportation of coal from pit-head of the mine to railway siding is an independent activity.

16. The applicant further contended that if the transportation is independent activity, then exemption is available to them as they are supplying transportation services other than GTA. Since first part of this question has been replied supra in affirmative, now the issue before hand is to decide as to whether or not the exemption is available to the applicant (i.e. PCMPL) as transportation other than GTA.

17. To arrive at a conclusion, the applicant has submitted Coal Mining Agreement dated 18th October 2016 held between The West Bengal Power Development Corporation Ltd, Bidyut Unnayan Bhaban, 3/C, Block-LA, Salt Lake City, Sector-III, Kolkata - 700 098 and the applicant, namely, M/s Pachhwara Coal Mining Private Limited, a company incorporated under the provisions of the Companies Act 2013 having its registered office at C/o - NCC Limited, NCC House, Madhapur, Hyderabad -500 081.

18. The said agreement dated 18.10.2016 made it clear in the first place that the applicant PCMPL is a separate legal entity duly incorporated and registered under the p Companies Act 2013. Relevant extracts of the Coal Mining Agreement (CMA) entered by the applicant with WBDCL are as under,-

(i) The mining charge quoted in the Bid is Rs. 619.20 per Ton.

(ii) The base mining charge shall be revised every quarter (commencing from the first quarter after the Bid Date) to reflect the variation in Price Index occurring between the Reference Index Date of the quarter preceding the Bid Date and the Reference Index Date for the quarter preceding the date of revision, and the amount so determined shall be the Mining Charge for that quarter.

(iii) Provided that in respect of the Coal produced and Delivered by the Mine Developer and Operator during any Accounting Year prior to COD, reference to "Mining Charge " shall mean an amount of 80% of the Mining Charge as calculated in accordance with sub-clauses (i) and (ii) above.

(iv) The Transportation & Handling Charge quoted in the Bid is Rs. 154.80 per Ton.

(v) The base Transportation & Handling Charge shall be revised every quarter (commencing from the first quarter after the Bid Date) to reflect the variation in Price Index occurring between the Reference Index Date of the quarter preceding the Bid Date and the Reference Index Date for the quarter preceding the date of revision, and the amount so determined shall be the Base Transportation & Handling Charge for that quarter.

(vi) Provided however that the Transportation & Handling Charge shall only payable for the period during which the Delivery Point is the railway siding at Pakur, at a distance of about 55 Km from the Mine.

(vii) The quantity of coal delivered by the MDO shall be weighed and recorded at the Delivery Point. When the Delivery Point is the siding at Pakur, the quantity of coal delivered shall be the Railway Receipt Weight, when the Delivery Point is the receiving hopper of the coal handling plant with rapid loading system, the quantity of coal shall be weight measured and recorded at the receiving hopper. The Mining Charge and the Transportation & Handling Charge shall be payable to the MDO based on the quantity of coal delivered at the Delivery Point.

19. As regard billing & payment, it has been agreed in the said agreement dated 18.10.2016 that the applicant shall, by the 5 day of each month submit in triplicate to WBPDCCL, an invoice in the agreed form (the monthly invoice) signed by the authorized signatory of the applicant setting out the computation of the mining charge (and re-handling charges, if any) payable by WBPDCCL to the applicant in respect of the immediately preceding month in accordance with the provisions of this Agreement. It has also been found agreed that the applicant shall, with each monthly invoice, submit,-

(a) A certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the agreement;

(b) An estimate of the approximate weight of coal stored at the coal depot at the close of the relevant month;

(c) Delivery of coal to WBPDCCL during the relevant month;

(d) Official documents in support of the variation in price index and price index for transportation and handling charge;

(e) Detailed calculations of the mining charge, transportation & handling charge, re-handling charge, and any other amounts payable by WBPDCCL in accordance with this agreement;

(f) Details in respect of aggregate incentives and aggregate damages payable in accordance with the provisions of articles 24;

(g) The net amount payable under the monthly invoice; and

(h) Proof of having complied with the provisions of all applicable laws required to be complied with regarding payment of wages and salaries.

20. Under the above circumstances agreed by the applicant and WBPDCCL, we find here pertinent to briefly revisit submissions of the applicant regarding transportation activity. The applicant has submitted that PCMPL is also required by WBPDCCL to transport the extracted coal from the mine to the railway siding against payment of agreed upon rate; that pursuant to receipt of the contract from WBPDCCL, PCMPL has sub contracted the entire work including transportation of coal to the designated delivery points against payment of agreed upon rate; and that for the purpose of transportation of coal from the mine to the railway siding, the sub-contractor is availing transportation services from truck owners/operators (transporters) against payment of agreed upon rate in the agreement so held in this regard.

21. As far as transportation is concerned, a plain reading of above discussed agreement held between the applicant and WBPDCCL made it clear that the applicant is making an "outward supply" as defined under Section 2(83) of the GST Act 2017. They are making outward supply of support to WBPDCCL in as much as the applicant is arranging a sub-contractor for transportation of coal from the mine pit head to the railway siding and look after their day to day activity and, therefore, it is a kind of supplying support service in transportation. Thus the activity undertaken by the applicant is a 'Service' under CGST Act, 2017 for supply of which they are charging a separate consideration. Section 2(102) of the CGST Act 2017 defines services as following -

(102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

22. Applicant has also submitted that in such cases they cannot be termed as GTA and, therefore, exemption is available to them being supplier of transportation service other than GTA service. However, it is evident from rate clause of agreements of the applicant with WBPDCCL and with PCMPL that there is value addition in the service of transportation at every stage. Moreover, the applicant is not acting like an "agent" as defined under Section 2(5) of the GST Act 2017 nor a partner of WBPDCCL as is evident from the fact that agreement dated 18.10.2016 has been held for supply of services including the supply of transportation service by the applicant.

23. Further, the said agreement dated 18.10.2016 made it clear that the applicant (PCMPL) is having a separate legal entity duly incorporated and registered under the Companies Act 2013. Thus the entire business between the applicant and WBPDCCL has been held on principal to principal basis for an agreed "consideration" as defined under Section 2(31) of the GST Act 2017. It can be safely concluded that the applicant would be considered as supplier of support services to its customer, i.e., WBPDCCL by way of arranging sub-contractor for transportation of goods

including resultant activities like coordinating with the logistics team of recipients of service, ensuring timely delivery of the consignment to the consignee, assuming end to end responsibility of transporting the goods to the desired location, etc. Being main contractor of WBDCL it can also be safely concluded that the applicant has been allotted with the service of overall supervision of the transportation activity under consideration.

24. If entire supply chain of transportation service, as explained by the applicant, has been taken into consideration then the position is such that transporters are providing services to BGR at an agreed rate, BGR is providing services to PCMPL at an agreed rate of Rs. 142.42 for transportation of per MT coal; the applicant, namely, PCMPL is providing services to WBDCL at an agreed rate of Rs. 154.80 for transportation of per MT coal. In the entire supply chain the applicant never remains a direct supplier of transportation service to WBDCL. Accordingly, the applicant cannot be termed as GT A in spite of the fact that they are supplying service to WBDCL for which they are required to issue invoices also as per the agreement nor they can be treated as direct supplier of transport service as listed under major Chapter Heading 9965. Although, such services are broadly covered under Chapter 99 (All Services) of GST Tariff-Services considering the agreement in which requirement of issuance of invoices has been agreed upon alongwith total responsibility of safe transportation of coal to a designated place, i.e., from mine pit-head to railway siding in the instant case.

25. In view of above, the support in transport services provided for a consideration by the applicant would be covered by other supporting transport services (Heading 996793) and covered under Entry 1 l(ii) of the Notification No. 11/2017-C.T. (Rate) dated 28.06.2017 & would be chargeable to GST at 18% (CGST 9% + SGST 9%) after appropriate valuation of the service. The relevant entry has been reproduced below

for ready reference.

| Sr. No. | Chapter, section or heading | Description of service | Rate (per cent) | Condition |
|----------------|--|---|------------------------|------------------|
| 11 | Heading 9967 (Supporting services in transport) | (ii) Supporting services in transport other than (i) above. | 9 | - |

ORDER

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

Question - Whether the provision of such transportation service for the temporary period till extension of the railway siding to the mine location is an independent activity, and exempted from the payment of GST under SI. No. 18 of Notification No. 12/2017-CT(R) dated 28 June 2017?

Answer - The transportation service supplied by the applicant to The West Bengal Power Development Corporation Ltd (WBPDC) will fall under the other supporting transport services (Heading 996793) and covered under Entry II(ii) of the Notification No. 11/2017-C.T. (Rate), dated 28.06.2017 & would be chargeable to GST at 18% (CGST 9% + SGST 9%) as provided under the Notification No. 11/2017-C.T. (Rate), dated 28.06.2017 (as amended).

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

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|------------------------------|--------------------------------|
| Pradhuman Badri Prasad Meena | Sri Ram Chandra Prasad Barnwal |
| Member | Member |
| (Central Tax) | (State Tax) |

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