

AUTHORITY FOR ADVANCE RULING – CHHATTISGARH
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PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING
U/s. 98 OF THE CHHATTISGARH GOODS AND SERVICES TAX ACT, 2017

Members Present are

Smt. Sonal K. Mishra
Joint Commissioner
O/o Commissioner, State Tax
(CGST), Raipur, Chhattisgarh.

Shri Rajesh Kumar Singh,
Additional Commissioner,
O/o Principal Commissioner,
CGST & Central Excise, Raipur (C.G)

Subject :-Chhattisgarh GST Act, 2017 – Advance Ruling U/s 98 Chhattisgarh GST Act, 2017 –

Advance Ruling U/s 98 sought by M/s Chhattisgarh State Power Generation Co. Ltd. (here in after referred to as CSPGCL) Raipur, Chhattisgarh, the applicant holding GSTIN- 22AADCC5772F1ZW as to whether the amount paid to the Forest department as Abhivahan permission shulk is liable to be taxed under GST or exempt as per clause 4 and 5 of the Notification No. 12/2017, being in the nature of pure service and same is used for specific purpose of "Urban forestry, protection of the environment and promotion of the ecological aspect", covered under the Article 243 G and 243 W of the Indian Constitution being functions entrusted to the Municipality and Panchayat and further as each transaction is separate transaction and Abhivahan Shulk charged is always less than Rs 5000/- per transactions and is not covered by the definition of continuous supply of service u/s 2(33) of the CGST Act 2017, hence exempt or not under Sl No. 9 of the Notification No 12/2017.

Read :-Application dated 21/01/2021 from M/s Chhattisgarh State Power Generation Co. Ltd. (here in after referred to as CSPGCL) Raipur, Chhattisgarh, GSTIN- 22AADCC5772F1ZW.

PROCEEDINGS

[U/s 98 of the Chhattisgarh Goods & Services Tax Act, 2017 (herein- after referred to as CGGST Act, 2017)]

No.STC/AAR/01/2021

Raipur Dated 22/06/21

The applicant, M/s Chhattisgarh State Power Generation Co. Ltd. Raipur, Chhattisgarh, (here in after referred to as CSPGCL) holding GSTIN- 22AADCC5772F1ZW has filed an application U/s 97 of the Chhattisgarh Goods & Services Tax Act, 2017 seeking advance ruling on the applicability of GST Tax liability under the provisions of reverse charge mechanism, on the "Abhivahan Shulk" collected by the Government Of Chhattisgarh.



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2. Facts of the case and contention of the applicant:- The applicant Chhattisgarh State Power Generation Company Limited (in short CSPGCL) having its registered office at Vidyut Sewa Bhawan, Dagania, Raipur, Chhattisgarh is a fully owned state government undertaking engaged in the generation of electricity having power generation plants at different locations in the State of Chhattisgarh. The applicant is duly registered under GST holding GSTIN 22AADCC5772F1ZW at Circle 1, Raipur (C.G). The main raw material for generation of power is coal. A coal mines was allotted to company by the Ministry of Coal GOI for extraction of coal to be used in generation of power. The production in coal mines was commenced with effect from 01.12.2019. As the coal mines being situated in a forest area, hence as per Forest Act and notification issued in this regard vide No. F06-02/2014/10-2 read with Chhattisgarh Abhivahan (Vanopaj) Niyam, 2001, Rs. 15/- per ton is payable to the Forest Department for issuance of transit pass as clearance of the Coal which is called "Abhivahan Shulk." The amount payable to the Forest department is on per ton basis and transit pass was issued on per vehicle basis. A vehicle normally consists of 12 to 30 tonnes of coal, thus the per vehicle charges i.e. Abhivahan Shulk is normally less than Rs. 5000/- per transit pass. Considering the above CSPGCL is of the opinion that no GST is payable on the "Abhivahan Shulk" collected by the Government of Chhattisgarh, under the provision of RCM.

2.1 It is in this backdrop that CSPGCL, the applicant seeks advance ruling on the following questions:-

- i. Whether amount paid to the Forest department as Abhivahan permission shulk is liable to be taxed under GST or exempt as per the clause 4 and 5 of the Notification No 12/2017 being in the nature of pure service and same is used for specific purpose of "Urban forestry, protection of the environment and promotion of the ecological aspect" hence covered under the article 243G and 243W of the constitution being functions entrusted to the Municipality and Panchayat, Hence not liable to tax under GST?
- ii. Whether as each transaction is separate transaction and Abhivahan Shulk charged is always less than Rs 5000/- per transactions and is not covered by the definition of continuous supply of service u/s 2(33) of the CGST Act 2017, hence exempt under sl.no No 9 of the Notification No 12/2017?

3. Personal Hearing:-

Keeping with the established principles of natural justice, personal hearing in the matter was extended to the applicant in person, as requested by them and accordingly, Shri Ashutosh Shrivastava, F.C.A. and authorized representative of the applicant appeared before us for hearing on 26.03.2021. He also furnished a written submission dated 26.03.2021, which has been taken on record.



4. The legal position, analysis and discussion:-At the very outset, we would like to make it clear that the provisions for implementing the CGST Act and the Chhattisgarh GST Act, 2017 [hereinafter referred to as "the CGST Act and the CGGST Act"] are similar and thus, 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 CGGST Act, 2017. Now we sequentially proceed to discuss the issues involved in the ruling so sought by the applicant and the law as applicable in the present case.

4.1 Section 96 of CGST Act, 2017, Authority for advance ruling, stipulates as under:-

Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory.

Section 97(2) of CGST Act, 2017 stipulates that:-

The question, on which the advance ruling is sought under this Act, shall be in respect of—

- (a) classification of any goods or services or both;*
- (b) applicability of a notification issued under the provisions of this Act;*
- (c) determination of time and value of supply of goods or services or both;*
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;*
- (e) determination of the liability to pay tax on any goods or services or both;*
- (f) whether applicant is required to be registered;*
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.*

Further 103 of CGST Act, 2017 stipulates about the ruling pronounced as under: *–The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only –*

- a. On the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;*
- b. On the concerned officer or the jurisdictional officer in respect of the applicant.*

Thus in view of the above section 103 of CGST Act, 2017, the ruling so sought by the Applicant would be binding only on the Applicant and on the concerned officer or the jurisdictional officer as stipulated above.



4.2 Before proceeding ahead to address the issues raised by the applicant on merits, this authority finds it opportune to mention here that Section 95 (a) of the CGST Act, 2017 defines Advance Ruling as a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. This authority would also like to clarify that, although in the instant case the points on which ruling is sought by CSPGCL pertain to the supply of services by the service provider taxable at their end being the supplier of services, the applicant before us is CSPGCL and the impugned supply is by the Forest Department, Chhattisgarh as has been submitted by the CSPGCL. Having observed as above, we also intend to look in to sub-section (3) of Section 9 of the GST Act, which states as under:-

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of Such goods or services or both.

Further Notification No. 13/2017-Central/State Tax (Rate) dated 28-6-2017, issued under the above sub-section reads as under:-

..... GSR.....(E).- In exercise of the powers conferred by sub-section (3) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council hereby notifies that on categories of supply of services mentioned in column (2) of the Table below, supplied by a person as specified in column (3) of the said Table, the whole of central/state tax leviable under section 9 of the said Central Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services as specified in column (4) of the said Table:-

TABLE

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
5	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, - (1) renting of immovable property, and	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.



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<p>(2) <i>services specified below -</i></p> <p>(i) <i>services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority;</i></p> <p>(ii) <i>services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</i></p> <p>(iii) <i>transport of goods or passengers.</i></p>		
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From the above stated provisions of law, it follows that when the services are supplied by the State government, CGST Act, 2017 has cast the onus upon the business entity receiving service / recipient of service as being liable for applicable tax under reverse charge basis. In the present case, as brought about by the applicant, the services are rendered by the Forest Department of the State of Chhattisgarh. Thus, in view of the above entry in the Notification issued for the purposes of Section 9(3) of the GST Act, the applicant would be liable to pay tax in respect of the services received from the said supplier of services viz. Forest Department of the State of Chhattisgarh, and accordingly the applicant being the receiver of the services as also since the applicant is directly impacted with the applicability or otherwise of CGST/SGST on the impugned supply of services being the party herein, this authority intend to pass the rulings sought for by the applicant on the issues raised.

4.2 Thus we proceed to discuss the issues involved above. We have carefully considered the submissions made by the Applicant and the applicable statutory provisions. The Indian Forest Act, 1927 provides that all produces from the mines, if extracted from forest land or transported through forest area shall be called forest produce. As per Chhattisgarh Transit (Forest Produce) Rules, 2001, a transit pass is mandatory for transportation of any forest produce from forest land and is issued by Forest Department after payment of prescribed transit fee . The transit fee is levied on



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the quantity of forest produce being extracted and transported by the lease holder. Coal is a 'forest produce' under Section 2 of the Indian Forest Act, 1927 since it is formed from plant substances preserved from complete decay in a normal environment and later altered by various chemical and physical agencies. The formation of coal itself is due to large tracts of forest getting buried under the ground due to natural processes such as floods and sedimentation. Hon'ble Supreme Court of India in its judgment dated 15 September 2017, in the matter of State of Uttarakhand vs Kumaon Stone Crusher decided the issue of levy of transit fee on forest produce arising out of the States of Uttar Pradesh, Uttarakhand and Madhya Pradesh wherein the State Governments levied transit fees on forest produce under the Indian Forests Act, 1927 which was challenged by the assesseees in the respective three High Courts which delivered different verdicts. Thereafter, Hon'ble Supreme Court, held that levying of fee on transit of forest produce by the State Governments to be constitutionally valid.

4.3 Now coming to the merits of the case it is seen that the relevant clauses of Notification No. 12/2017-CT(R) dated 28-06-2017, read as under:-

In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

TABLE

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
1	Chapter 99	Services by an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) by way of charitable activities.	Nil	Nil
2	Chapter 99	Services by way of transfer of a going concern, as a whole or an independent part thereof.	Nil	Nil



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3	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	Nil	Nil
4	Chapter 99	Services by Central Government, State Government, Union territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.	Nil	Nil
5	Chapter 99	Services by a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.	Nil	Nil
6	Chapter 99	Services by the Central Government, State Government, Union territory or local authority excluding the following services—	Nil	Nil
		(a) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government,		



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		<p>State Government, Union territory;</p> <p>(b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(c) transport of goods or passengers; or</p> <p>(d) any service, other than services covered under entries (a) to (c) above, provided to business entities.</p>		
7	Chapter 99	<p>Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to twenty lakh rupees (ten lakh rupees in case of a special category state) in the preceding financial year.</p>	Nil	Nil
		<p>Explanation. - For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to-</p> <p>(a) services,-</p>		
		<p>(i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;</p>		



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		(ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;		
		(iii) of transport of goods or passengers; and (b) services by way of renting of immovable property.		
8	Chapter 99	Services provided by the Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority : Provided that nothing contained in this entry shall apply to services- (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) of transport of goods or passengers.	Nil	Nil
9	Chapter 99	Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed five thousand rupees :	Nil	Nil



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		<p>Provided that nothing contained in this entry shall apply to-</p> <p>(i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;</p> <p>(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) transport of goods or passengers :</p> <p>Provided further that in case where continuous supply of service, as defined in sub-section (33) of section 2 of the Central Goods and Services Tax Act, 2017, is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service does not exceed five thousand rupees in a financial year.</p>	
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4.4 Thus, above Notification at sr. no. 4 & 5 above provides for Nil rate of GST for Services rendered by Central Government, State Government, Union territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution and for Services by a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.



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4.5 To have a better appreciation of the issues involved, definitions of the above terms as provided under the CGST Act, 2017 are reproduced herein below:

(i) As per Section-2(53) of the CGST, Act, 2017, "Government" means the Central Government.

(ii) As per Section-2(53) of the Gujarat GST, Act, 2017, "Government" means the State Government.

(iii) "local authority" means—

(a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution;

(b) a "Municipality" as defined in clause (e) of article 243P of the Constitution;

(c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;

(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;

(e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;

(f) a Development Board constituted under article 371 of the Constitution; or

(g) a Regional Council constituted under article 371A of the Constitution;

(iv) As per clause (zf) of paragraph-2 of **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017**, "governmental authority" has the same meaning as assigned to it in the explanation to clause (16) of section 2 of the Integrated Goods and Services Act, 2017 (13 of 2017). Clause (16) of section 2 of the Integrated Goods and Services Act, 2017 (13 of 2017) reads as under:

Explanation.—For the purposes of this clause, the expression "governmental authority" means an authority or a board or any other body,—

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;

Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 was further amended by **Notification No.32/2017-Central Tax (Rate) dated 13.10.2017** wherein it is mentioned as under:

in paragraph 2, for clause (zf), the following shall be substituted, namely: —

(zf) "Governmental Authority" means an authority or a board or any other body, —

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution.



(v) (zfa) "Government Entity" means an authority or a board or any other body including a society, trust, corporation,

(i) set up by an Act of Parliament or State Legislature; or

(ii) established by any Government,

with 90 per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority."

4.6 The other decisive condition to be verified is whether the services provided to the applicant are services provided by way of any activity in relation to any function entrusted to a Municipality under Article 243W of the Constitution of India. For better appreciation, the functions entrusted to the panchayats under Article 243G of the Constitution of India are reproduced herein below:

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.



18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.

4.7 The functions entrusted to the municipalities under 243W of the Constitution of India are reproduced hereunder:

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.



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12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.

13. Promotion of cultural, educational and aesthetic aspects.

14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.

15. Cattle pounds; prevention of cruelty to animals.

16. Vital statistics including registration of births and deaths.

17. Public amenities including street lighting, parking lots, bus stops and public conveniences.

18. Regulation of slaughter houses and tanneries.

4.8 The applicant is of the view that they are exempt from the liability of GST in terms of clause 4 and 5 of the Notification No 12/2017 supra being in the nature of pure service and as the same is used for specific purpose of "Urban forestry, protection of the environment and promotion of the ecological aspect", hence covered under the article 243G and 243W of the Constitution being functions entrusted to the Municipality and Panchayat.

4.9 This interpretation by the applicant that the services of issuing transit pass by the Forest department of the State of Chhattisgarh, for clearance of coal through the forests of Chhattisgarh as per Indian Forests Act, 1927 and Notification issued in this regard vide No. F06-02/2014/10-2 read with Chhattisgarh Abhivahan (Vanopaj) Niyam, 2001, comes under the ambit of functions of "Urban forestry, protection of the environment and promotion of the ecological aspect" covered under the article 243G and 243W of the Constitution being functions entrusted to the Municipality and Panchayat, is misplaced and devoid of merit. It is for the movement of forest produce in the forest that permissions are being granted in the form of transit passes issued by the Forest department / authorities as specified under the relevant Act and not for discharging any functions as envisaged under "Urban forestry, protection of the environment and promotion of the ecological aspect" covered under the functions entrusted and as specified under sr. no. 8 to municipalities under 243W of the Constitution of India. Abhivahan permission shulk or Transit fee is charged only when the forest produce, in this case coal transits through a reserved forest, a village forest or a protected forest after having been permitted for the same. Also Forest Act, 1927 is a comprehensive statute relating to transit of forest produce and for the duty leviable on timber and other forest produce.

4.10 The applicant is of the opinion that the aforesaid service falls under entry 4 of Notification No. 12/2017-Central/State Tax (Rate), dated 28-6-2017, and the text of the relevant entry is reproduced hereunder -



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Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Service	Rate (per cent.) [CGST + MGST = IGST]	Condition
4	Chapter 99	Services by Central Government, State Government, Union territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution	Nil	Nil

The entry covers services provided by State Government, however it has been specifically mentioned that the service has to be by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution.

Article 243W of the Constitution reads as under:-

"243W. Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow -

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to -

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule."

The word "Municipality" is defined in the Constitution in the definitions in Article 243P(e)A as "Municipality" means an institution of self-government constituted under Article 243Q:".

Article 243Q thus reads-

"243Q (i) There shall be constituted in every State, -

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area,

in accordance with the provisions of this Part :



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....."

As already discussed in the preceding para, TWELFTH SCHEDULE (Article 243W) reads as under:-

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
15. Cattle pounds: prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.

4.11 It would also be opportune to mention here that as per the National Forest Policy, 1988 issued by the Ministry of Environment & Forest, one of the basic objectives of the State is to "encourage efficient utilization of forest produce and maximizing substitution of wood" and the principal aim of Forest policy must be to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium, which are vital for sustenance of all life forms, human, animal and plant. It is also noteworthy that Forest land or land with tree cover should not be treated merely as a resource readily available to be utilized for various projects and programmes, but as a state asset which requires to be properly safeguarded for providing sustained benefits to the entire community. Diversion of forest land for any non-forest purpose should be subjected to the most careful examination by specialists from the standpoint of ecological, environmental and social costs and benefits. Projects, which involve diversion, should provide in their investment budgets, funds not only for prior regeneration/compensatory afforestation, but also for the development of social infrastructure in the area. Beneficiaries who are allowed mining and quarrying in forest land and in land covered by trees should be required to adopt cluster approach in mining and to repair and re-vegetate the area, after having used it, in accordance



with the Government of India guidelines and established forestry practices. Rehabilitation of the mined areas should be done to ensure ecological restoration of the affected site.

4.12 As can be seen, 'Urban forestry, protection of the environment and promotion of ecological aspects' is a matter listed in the Twelfth Schedule supra and thus there exists a function of a Municipality in relation to the same. We have seen above that the Constitution defines "Municipality" as an institution of self-government. The function as entrusted by the Constitution in relation to 'Urban forestry, protection of the environment and promotion of ecological aspects' is the environmental stability and to promote conservation of bio-cultural heritage. These are sovereign functions.

In this context, as is evident from the Allotment order no. 103/23/2015/NA dated 14.9.2015, issued by the Nominated Authority, Ministry of Coal, Government of India under clause (c) of sub-rule (2) of rule 7 and sub-rule (1) of rule 13 of Coal Mines (Special Provisions) Act, 2015, Gare Palma Sector -II Coal Mines located at Raigarh (Chhattisgarh) was allotted to the applicant M/s Chhattisgarh State Power Generation Company Limited (CSPGCL) along with the mining lease to be granted by the State Government of Chhattisgarh. The applicant was also given / transferred the statutory clearance/licenses, permits, permission, approvals or consents, relating to environment clearance, Forest Clearance issued by the Ministry of Environment and Forests, Government of India. The coal mined / raised in the said allotted mine located at Gare Palma, Raigarh was for the intended purpose of utilization at the applicant's end use plant viz. Marwa Thermal Power Plant located at Marwa, Janjgir Champa, Chhattisgarh having configuration / capacity of 2 x 500 MW.

Thus, the applicant CSPGCL is *inter alia* engaged in the business of generation of power whereas Forest department of the State of Chhattisgarh is *inter-alia* engaged in ensuring the environmental stability and maintenance of ecological balance. For generation of power, the applicant has been allotted coal blocks and consequent to mining / raising of coal at the coal block supra located in the forest, this coal is required to be moved from forest to their place of business viz. Thermal power plant and for this movement of coal from the forest, a permission is granted by the Forest Department of Chhattisgarh and a transit fee is being paid by the applicant for the transit pass issued in this regard by the said Forest Department of Chhattisgarh. Whereas, the functions in relation to "Urban forestry, protection of the environment and promotion of ecological aspects" as entrusted by the Constitution does not entitle the Municipality, as the one performing the function, to receive any charges from anyone for doing the said work. The said function of "Urban forestry, protection of the environment and promotion of ecological aspects" is by nature a sovereign function done for the general public / community at large. These are functions which are legislated to be performed by the

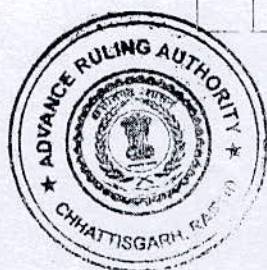


State Government / Municipalities. Such functions are in the nature of performing works for the welfare of public at large.

4.13 In the present case CSPGCL the applicant, a business entity while performing its business activity of mining of coal at an allotted coal mine situated in a Forest and subsequently while the said coal is moved from the Forest area to their place of business for the intended purpose of generation of power, it is mandated to obtain a permission for transit of the same in the form of a transit pass on payment of a scheduled fees. Such granting / obtaining of permission for movement of said Forest produce viz. coal from the Forest of Chhattisgarh, granted by the Forest Department of Chhattisgarh would not result in performing of the sovereign function discussed above. The sovereign function of 'Urban forestry, protection of the environment and promotion of ecological aspects' as envisaged under the Constitution has no relation whatsoever to the grant of permission for transit by way of issuance of transit pass by the Forest department of Chhattisgarh. Thus grant of permission by way of issuance of transit pass for movement of coal in a Forest area can by no stretch of imagination be equated to performing a sovereign function as envisaged under Article 243W of the Constitution.

4.14 It would also be not out of place to mention here that there is a specific entry at sr. no. 6 in the said Notification No. 12/2017-Central/State Tax (Rate), dated 28-6-2017 which reads as under -

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Service	Rate (per cent.) [CGST + MGST = IGST]	Condition
6	Chapter 99	Services by the Central Government, State Government, Union territory or local authority excluding the following services - (a) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;	Nil	Nil



See

	<p>(b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(c) transport of goods or passengers; or</p> <p>(d) any service, other than services covered under entries (a) to (c) above, provided to business entities.</p>		
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There is no ambiguity as regards the fact that CSPGCL, the applicant is definitely a business entity. Thus from the above entry at sr. no. 6 of Notification no. 12/2017-Central/State Tax (Rate), dated 28-6-2017, it becomes very evident that if any services, including the three services excluded in clauses (a) to (c) above, are provided by the Central Government, State Government or local authority to any business entity, they would not be eligible for Nil rate of GST provided above.

4.15 It is also seen that the Constitution Bench of the Hon'ble Supreme Court in the case of *Commissioner of Customs (Import) Mumbai v. M/s. Dilip Kumar And Co. & Others* in C.A. No. 3327 of 2007 [2018 (361) E.L.T. 577 (S.C.)], has dealt with the question -

What is the interpretative rule to be applied while interpreting a tax exemption provision/notification, when there is an ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied?

The Hon'ble Apex Court after a detailed analysis of various decisions of the Apex Court in the context of interpretation of exemption has held that -

(i) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(ii) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.

In *Commissioner of Central Excise, Trichy v. Rukmani Pakkwell Traders* [(2004) 11 SCC 801 = 2004 (165) E.L.T. 481 (S.C.)], the Apex Court held :

"It is settled law that exemption notifications have to be strictly construed. They must be interpreted on their own wording. Wordings of some other notification are of no benefit in construing a particular notification"



In *Hari Khemu Gawali v. Deputy Commissioner of Police, Bombay and Another* [AIR 1956 SC 559], a Constitution Bench of the Apex Court observed as under:

"It has been repeatedly said by this Court that it is not safe to pronounce on the provisions of one Act with reference to decisions dealing with other Acts which may not be in pari materia."

4.16 Thus in view of the above discussions and judicial pronouncements, we come to the considered conclusion that the contention put forth by the applicant that the activity involved herein is in relation to a function entrusted to a State Government / Municipality under Article 243W of the Constitution is misplaced and not sustainable under law. Accordingly it is held that the afore discussed activity of granting permission by the Forest Department of the State of Chhattisgarh and the said "Abhivahan permission shulk" paid for the same is not eligible for NIL rate of GST, provided under Sr. no. 4 & 5 of Notification No. 12/2017-Central/State Tax (Rate), dated 28-6-2017.

5. Now getting in to the second issue in hand, we find that the applicant has opined that no GST is applicable upon them as each transaction is a separate transaction and Abhivahan Shulk charged is always less than Rs 5000/- per transactions and is not covered by the definition of continuous supply of service u/s 2(33) of the CGST Act 2017, hence exempt under sl. No 9 of the Notification No 12/2017 supra.

5.1 Before addressing the aforesaid contention of the applicant, it is seen that the instant Coal block at Gare Pelema Sector-I (Chhattisgarh) was allocated to an initial allottee by the Ministry of Coal, Government of India. Hon'ble Supreme Court vide its order dated 24.9.2014 read with its Judgment dated 25.8.2014 cancelled the allocation of all the coal blocks allocated for captive use to different parties including the said initial allottee, ordering therein that all the prior allottees be allowed to carry out mining only till 31st March 2015 and thereafter to handover the coal block to Ministry of Coal / to the successful bidder, if any. The old allocates were also asked to pay Rs. 295/- per ton as penalty / levy on the whole quantity of coal mined out since the commencement of coal till 31st March 2015. In compliance to the above said judgment by Hon'ble Apex court, the initial allottee handed over the mine to the new allottee viz. the CSPGCL, the applicant, who was the successful bidder of the de-allocated Coal block. It is in this backdrop that the applicant was issued allotment order no. 103/23/2015/NA dated 14.9.2015, referred to above in the preceding para, by the Nominated Authority, Ministry of Coal, Government of India under clause (c) of sub-rule (2) of rule 7 and and sub-rule (1) of rule 13 of Coal Mines (Special Provisions) Act, 2015, vide which Gare Palma Sector -II Coal Mines located at Raigarh (Chhattisgarh) was allotted to the applicant M/s Chhattisgarh State Power Generation Company Limited (CSPGCL) along with the mining lease to be granted by the State Government of Chhattisgarh. The applicant was also given / transferred the statutory clearance/licenses, permits, permission, approvals or consents, relating to environment



clearance, Forest Clearance issued by the Ministry of Environment and Forests, Government of India. The coal mined / raised in the said allotted mine located at Gare Palma, Raigarh was for the intended purpose of utilization at the End Use Plant viz. Marwa Thermal Power Plant located at Marwa, Janjgir Champa, Chhattisgarh having configuration / capacity of 2 x 500 MW. It is further evident from the letter no. 04-02/Coal Block/GP-III/221 dated 22.5.2020 by the applicant, available in public domain, addressed inter-alia to the Department of Forest, Government of Chhattisgarh citing reference to F.No. 8-91/2010-FC dated 18.4.2017 vide which lease has been transferred to CSPGCL, informed about the compliance status regarding the conditions of transfer of lease in respect of diversion of Forest land.

5.2 It is further observed that a person who desires to obtain forest produce is required to be registered with the Forest department and for transit of the same from the Forest has to obtain permission and pay the applicable "Abhivahan permission Shulk" and the said "Abhivahan permission Shulk" is charged on the basis of quantum and quality of coal moved and the said coal must be accompanied with a transit pass issued by Department of Forest, Chhattisgarh in this regard. Therefore the said "Abhivahan Shulk" is a consideration in lieu of permission to transit and carry the said forest produce, which in this case is Coal mined at the said allotted Coal Block. As per Section 2(102) of CGST Act, 2017 "services" means anything other than goods..... and all services, except the list of exempted services as provided under Chapter 99 of GST Tariff, 2017 are liable for applicable GST. Since the services provided by the applicant do not find mention in the list of exempted services, therefore the applicant is liable to pay GST at the applicable rate, to be treated as "other services". The applicant's contention that each transaction is a separate transaction and Abhivahan Shulk charged is always less than Rs 5000/- per transaction and is not covered by the definition of continuous supply of service u/s 2(33) of the CGST Act 2017, hence exempt under sl. No 9 of the Notification No 12/2017 is not tenable, in as much as, the coal block has been allocated by virtue of the above cited allotment order dated 14.9.2015 for generation of power at their Marwa Thermal power plant and consequent to mining of coal from the coal blocks supra, this coal mined are moved from Forest to their place of business and for this movement of coal a permission is granted by the Forest department of the Chhattisgarh Government and a transit fee is being paid by the applicant for the transit pass issued in this regard by the said Forest department of Chhattisgarh. This is not a one of transaction as misconstrued by the applicant; rather it's a supply of the entire coal mined at the allotted said coal block regularly to their power plants from the said coal block located at the Forest and for which permission is granted by the Forest department. It is just for administrative convenience that vehicle wise Abhivahan permission shulk or transit fees are being paid by the applicant.

Without prejudice to above, it is also observed on going through the contents of Notification no. 12/2017-Central/State Tax (Rate), dated 28-6-2017



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claimed by the applicant, that the exclusion clause mentions that nothing contained in this entry shall be applicable for "transport of goods". It is worth notable that the said entry does not refer to "any service relating to transport of goods", rather it simply specifies only about non applicability of the said exemption in respect of "transport of goods". In the case in hand it is ultimately for the movement / transport of coal from the allotted coal block located in a Forest place to the Thermal Power Plant, permission is granted by the Forest Department of Chhattisgarh and for which the impugned "Abhivahan permission shulk" or transit fees is being paid by the applicant, as elaborately discussed in the preceding para.

Thus in view of the above discussions, we come to the considered view that the applicant is not eligible for exemption as provided under sr. no. 9 of Notification no. 12/2017-Central Tax (Rate), dated 28-6-2017, claimed by the applicant.

6. Since it has already been concluded that the applicant is not eligible for the exemption as claimed by them as discussed above, we intend to address the issue of classification and tax rate applicable to the case in hand. We find that only such activities and transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council are not supply. Further, transit fee or Abhivahan Shulk for permission for movement of coal through Forest, is not covered under Sl. No. 4 of the Notification No. 12/2017-C.T. (Rate) dated 28-6-2017, since the entry applies to functions entrusted to State Government /Municipalities as discussed in the preceding paras. Similarly Serial Entry No. 5 of the said Notification relates to functions entrusted to Panchayat.

On the other hand, as discussed in the preceding para, serial No. 6 of the said Notification 12/2017-C.T. (Rate) dated 28-6-2017, states that Services by the Central Government, State Government, Union territory or local authority excluding the following services - (a) (b) (c) (d) any service, other than services covered under entries (a) to (c) above, provided to business entities are to be taxed at 'NIL' rates. Abhivahan permission shulk does not fall under exclusion clauses (a) to (c) and hence they are to be treated as any service other than (a) to (c) provided to a business entity as per clause (d) mentioned therein. There is no doubt as regards the fact that CSPGCL, the applicant is a business entity and from the said entry at sr. no. 6 of Notification no. 12/2017-Central/State Tax (Rate), dated 28-6-2017, it becomes very evident that if any services, including the three services excluded in clauses (a) to (c), are provided by the Central Government, State Government or local authority to any business entity, they would not be eligible for Nil rate of GST provided therein.

Accordingly, the Heading Number 9997 at Entry Serial No. 35 of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 reads - *Other services (washing, cleaning and dyeing services; beauty and physical well-being services; and other miscellaneous services including services nowhere else classified)* with the CGST rate of 9% [The



Corresponding entry in Notification No. 08/2017-Integrated Tax (Rates), dated 28-6-2017 having IGST rate of 18%]. This entry is the residuary entry which covers all other services which are not elsewhere specified. As discussed above, the Abhivahan permission shulk is not covered under Notification relating to "NIL" rate. Further, for ready reference the extract of Notification no. 13/2017-Central Tax (Rate) dated 28.6.2017 already discussed in the preceding para is once again reproduced below.

Notification No. 13/2017-Central Tax (Rate), dated 28-6-2017

S. No.	Categories of Supply of Services	Supplier of service	Recipient of service
5	<p>Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, -</p> <p>(1) renting of immovable property, and</p> <p>(2) services specified below -</p> <p>(i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Central Government, State Government or Union territory or local authority;</p> <p>(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) transport of goods or passengers</p>	<p>Central Government, State Government, Union territory or local authority</p>	<p>Any business entity located in the taxable territory.</p>



Signature

✓ Hence we find that such Abhivahan permission Shulk for the permission granted by the Forest Department merits classification under the residuary Heading 9997 for other services with the tax rate of CGST@ 9% and CGGST@ 9% and the applicant is liable for GST on the said "Abhivahan permission Shulk", under reverse charge basis in terms of Serial No. 5 of the Notification No. 13/2017-Central Tax (Rate), dated 28-6-2017 (as amended), above.

6. Having regard to the facts and circumstances of the case and discussions as above, we pass the following order:-

ORDER

(Under section 98 of the Chhattisgarh Goods and Services Tax Act, 2017)

No.STC/AAR/01/2021

Raipur Dated 22/06/21

The ruling so sought by the Applicant is accordingly answered as under:

- i. The amount paid by M/s Chhattisgarh State Power Generation Co. Ltd. Raipur, Chhattisgarh, the applicant to the Forest department of Chhattisgarh as "Abhivahan permission shulk" for obtaining permission for transit of coal from the Forest area, is liable for GST at the applicable rate and is not eligible to "Nil" rate of tax provided under sr. no. 4 and 5 of the Notification No 12/2017-Central (Rate), dated 28-6-2017, being not covered under the functions envisaged under article 243G and 243W of the Constitution of India.
- ii. The applicant is also not eligible for "Nil" rate of tax on the said "Abhivahan permission shulk", provided under sl. No. 9 of afore mentioned Notification No 12/2017-Central (Rate), dated 28-6-2017, for the reasons as delineated above.
- iii. The said "Abhivahan permission shulk" paid by the applicant to the Forest department for the permission granted by the Forest department of Chhattisgarh, merits classification under the residuary Heading 9997 for other services with the tax rate of CGST@ 9% + CGGST@ 9% and the applicant is liable for GST on the said "Abhivahan permission Shulk", under reverse charge basis in terms of Serial No. 5 of the Notification No. 13/2017-Central Tax (Rate), dated 28-6-2017 (as amended).

Sonal K. Mishra
22/6/21

Sonal K. Mishra
(Member)

Rajesh Kumar Singh
22/6/2021

Rajesh Kumar Singh
(Member)

Place: - Raipur
Date:-
Seal: -

TRUE COPY

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MEMBER
ADVANCE RULING AUTHORITY
CHHATTISGARH, RAIPUR

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ADVANCE RULING AUTHORITY
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