



ODISHA AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX (GST)
RAJASWAVIHAR, BHUBANESWAR-751007(ODISHA)

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

Members Present :

1. Sri Gopal Krishna Pati, IRS, Additional Commissioner, Office of the Chief Commissioner, GST, Central Excise & Customs, Bhubaneswar
2. Sri P. K.Mohanty, OFS(SS), Special Commissioner of CT&GST, Commissionerate of CT&GST, Odisha, Banijyakar Bhawan, Cantonment Road, Cuttack-753001-Odisha.

1	Name and Address of the Applicant	M/s National Aluminum Company Ltd., Plot No.1, NALCO Bhawan, Nayapali, Jaidev Vihar, Bhubaneswar 751013(Odisha)
2	GSTIN or User ID	21AAACN7449M1Z9
3	Date of Filing of Form GST ARA-01	07.12.2021
4	Present for the Applicant	Sri P.Suna, GM (Taxation) Sri J Mohanty, Advocate
5	Date of Personal Hearing	31.01.2023

ORDER NO.01/ODISHA-AAR/2023-24/DATED

Subject:M/s National Aluminum Company Ltd., Plot No.1, NALCO Bhawan, Nayapali, Jaidev Vihar, Bhubaneswar 751013, Odisha (herein after referred to as the 'Applicant') having GSTIN : 21AAACN7449M1Z9 has filed an application for advance ruling under Section 97 of CGST Act, 2017 and Section 97 of the OGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the SGST Act.

1.0 The Applicant having assigned with GSTIN 21AAACN7449M1Z9 has sought advance ruling in respect of the following question:



Whether Compensation Cess paid by the Applicant on purchase of Coal which remained as unutilized ITC in the electronic credit ledger, continues to be available to the Applicant or the Applicant is required to reverse the same?

1.1 At the outset, we would like to make it clear that the provisions of both the CGST Act and the OGST 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 OGST Act.

2.0 **Submission of the Applicant**

2.1 The Applicant, registered under GST having GSTIN No. 21AAACN7449MIZ9 has filed an application under Section 97(1) of CGST Act, read with Rule 104 of CGST Rules, 2017. The Applicant is engaged in manufacture and supply of Aluminum Metal classifiable under Chapter 76 and Alumina falling under Chapter 2818 of the GST Tariff Act, 2017. For the manufacturing of the Aluminum Metal & Alumina, the Applicant purchases various raw materials including Coal on payment of GST and GST Compensation Cess.

2.2 Section 8 of the GST (Compensation to States) Act, 2017 provides for levy of Compensation Cess on such intra-State and inter-State supplies of goods and services or both as may be specified on the recommendations of the Goods and Service Tax Council. Vide Notification No. 01/2017-Compensation Cess (Rate) dated 28.06.2017, the goods, on the supplies of which Compensation Cess would be levied, have been specified along with the rate of Cess. Sl No. 39 of the said Notification specifies that Compensation Cess at the rate of Rs. 400/- per tonne would be levied on supplies of Coal briquettes, voids and similar solid fuel manufactured from Coal falling under HSN 2701. In view of this, Compensation Cess has also been paid by the Applicant on procurement of Coal in addition to the GST charged by the supplier of Coal. In the present case, Compensation Cess has been paid on the inward supplies of Coal. However, no such Compensation Cess is payable on the outward supplies of finished products as the same are non-schedule goods under GST (Compensation to States) Act, 2017.



- 2.3 In addition to the above, the proviso to Section 11 of the GST(Compensation to States) Act, 2017 mandates that input tax credit in respect of Compensation Cess levied on inward supply of goods and services, shall be utilized only towards payment of said Cess on outward supply of goods and services.
- 2.4 The Applicant, in accordance with Section 11 of the GST Compensation Act, 2017 read with Section 16 of the CGST Act, 2017 was availing input tax credit of the Cess paid on the domestic procurements of Coal. However, due to the restriction of utilization of input tax credit of Compensation Cess as provided under the Proviso to Section 11 of the GST Compensation Act, 2017, the Applicant was unable to utilize the credit of Compensation Cess for payment of GST on outward supplies. The credit of Compensation Cess validly availed by the Applicant thus was being accumulated as unutilized credit in the Electronic Credit Ledger of the Applicant. As per Section 16 of the IGST Act, 2017, export of goods are classified as "zero-rated supply" under GST and the Applicant is eligible to claim refund as provided under section 54(3) of CGST Act being read with Rule 89 (4) of the CGST Rule, 2017. As there is no liability to pay compensation cess on outward supply of Calcined Alumina and Aluminium Metal and except claiming refund of ITC as provided under Rule 89 (4) of the CGST Rules, 2017, the balance unutilized amount of Compensation Cess, paid by the Applicant on purchase of coal, remained accumulated in Electronic Credit Ledger of the Applicant since July-2017 onwards. However, it is submitted that there is no direct or express provisions either under the CGST Act, 2017 or GST Compensation Act, 2017 for refund of unutilized ITC or reversal of the same by the Applicant.
- 3.0 The personal hearing was held on 31.01.2023. The Applicant appeared for personal hearing through its representatives. They re-iterated the submissions already furnished in the annexure to the application. During personal hearing, they have requested AAR, Odisha to consider the issue on merit.

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Discussion & findings

4.0 We have gone through the Advance Ruling application of the Applicant along with the submission made thereon. The question before us is as below:

“Whether Compensation Cess paid by the Applicant on purchase of Coal which remained as unutilized ITC in the electronic credit ledger, continues to be available to the Applicant or the Applicant is required to reverse the same?”.

4.1 Before proceeding to arrive as a conclusion, we need to discuss the relevant provision of Section 97 of the CGST Act, 2017. Sub-section 2 of Section 97 provides an exhaustive list of issues/questions on which an advance ruling can be sought under the GST Act. The questions shall be in respect of -

- (a) classification of any goods or services or both;
- (b) applicability of a notification issued under the GST Law;
- (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 transaction amounts to or results in a supply of goods or services or both.

Thus, the questions on which an advance ruling can be obtained are categorically prescribed under the statute and no query or question other than the above can be statutorily entertained for advance ruling.

4.2 Having gone through the question asked by the Applicant in this case, we see that the question raised does not fall under the ambit of the provision of Section 97 (2) of the CGST Act, 2017. Therefore, the subject application with regard to the question asked is not eligible for advance ruling and as such cannot be admitted at this forum as per the mandate of the said provisions of law. Hence, we refrain from going in to the merit of the case in hand.



- 4.3 Further, as per the information available to this forum, we see that DGGI, Rourkela Regional Unit under letter Ref No. DGGI/INV/GST/2873/2021-Gr-A/1698 dated 15.12.2021 & DGGI/INV/GST/2873/2023-Gr A/212 dated 02.03.2023 has informed that an investigation has been initiated against M/s. National Aluminium Company Ltd. for excess/irregular availment of Compensation Cess which is in advance stage of culmination and a Demand Cum Show Cause Notice is on the verge of issuance. In this regard, it would be pertinent to mention here that the proviso to sub Section (2) of Section 98 of the CGST Act, 2017 provides that "the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act".
- 4.4 On examination of the advance ruling application of the Applicant & letters of DGGI, Rourkela Regional Unit, Rourkela, we observe that the Applicant has mis-declared the facts/information in its application submitted before the AAR, Odisha, hence the said application shall not be admitted in terms of the Proviso to Section 98(2) of the CGST Act.

RULING

- 5.0 In view of the discussion made in the foregoing paras (4.0 to 4.4 as above), the application for advance ruling filed by the Applicant is not maintainable under law and liable for rejection. Hence, the said application is rejected in terms of Section 98(2) of the CGST Act, 2017 read with Section 97(2) of the said Act.
- 6.0 The applicant or jurisdictional officer, if aggrieved by the ruling given above, may appeal to the Odisha State Appellate Authority for advance ruling under Section 100 of the CGST/OGST Act, 2017 within 30 days from the date of receipt of the advance ruling.

G K Pati
26.05.2023
(G K Pati)
Member, CGST



P.K. Mohanty
26.05.2023
(P.K. Mohanty)
Member SGST

C. No. V (30)12/ ARA/ODISHA/BBSR/2022/12 / 9378 A

Dated: 29/5/23

To

M/s National Aluminum Company Ltd., Plot No.1, NALCO Bhawan, Nayapali,
JaidevVihar, Bhubaneswar 751013(Odisha).

Copy forwarded to:

1. The Principal Commissioner, CGST & Central Excise, Bhubaneswar
Commissionerate, C R Building, RajaswaVihar, Bhubaneswar-751007 (Odisha)
2. The Commissioner, SGST Odisha, BaniyakarBhawan, Old Secretariat
Compound, Cuttack-753001, Odisha.
3. Office copy.

