M/s JSW Energy Limited

Appellate Authority for Advance Ruling — Maharashtra

Order No. MAH/AAAR/SS-RJ/01A/2019-20 Dated **13.01.2020**

Q Questions Before the Authority

- Whether the supply of coal or any other inputs on a job work basis by JSL (JSW Steel Limited) to JEL (JSW Energy Limited) is job work under the GST law
- Whether the supply of power by JEL to JSL is covered by the ruling
- Whether the job work charges payable to JEL by JSL are taxable, and at what rate

F Facts

JSW Energy Limited (JEL) runs a captive coal-fired power plant, Units III and IV of which are the subject of the arrangement. JSW Steel Limited (JSL) proposed to supply steam coal and other inputs to JEL, which would convert them into electricity and return the power to JSL for captive use in steel manufacture, with JSL keeping title to the inputs, the power and the resulting ash. JEL would earn job work charges from JSL.

H Ruling

Supply of coal or other inputs by JSL to JEL on a job work basis	**Construed as job work; no GST leviable on this supply**	The Authority revised its earlier view. Coal is an input for JSL, and the fact that it is consumed in generating electricity does not bar job work. Air and water added by JEL are minor under Prestige Engineering.
Supply of power by JEL to JSL	**Not separately answered in the operative order**	The operative ORDER paragraph addresses only the coal or inputs supply and the job work charges. The power supply is not expressly ruled on.
Job work charges payable by JEL's counterpart JSL to JEL	**Taxable under Notification No. 11/2017-C.T. (Rate) dated 28.06.2017, as amended**	The order does not state a rate or HSN. The rate must be read from the notification as amended, which is not reproduced in the order.

The Authority revised its earlier appellate order of 02.07.2018 and held that the proposed supply of coal or other inputs by JSL to JEL for generation of electricity is job work, so no GST is leviable on that supply. The job work charges payable by JSL to JEL are taxable as provided in Notification No. 11/2017-C.T. (Rate) dated 28.06.2017 as amended. The order does not separately answer the question on the supply of power by JEL to JSL.

R Reasoning

The Authority revisited its earlier view after the Bombay High Court remanded the appeal on natural justice grounds. It held that coal is an input for JSL, relying on the definitions of input and business, the JSL

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

Memorandum of Association, Circular No. 79/53/2018-GST and the Supreme Court decision in Maruti Suzuki, which treats inputs used in captive power generation as inputs for the final product. It held that consumption of the coal in generating electricity does not prevent job work, relying on Indorama Textiles and other decisions on electricity generated on a job work basis. On the minor-additions test in Prestige Engineering, it accepted a cost certificate showing coal at over 95% of power generation cost and air and water at under 0.5%. It held that the involvement of the regulator MSEDCL in transmitting power does not defeat the requirement that the principal bring back inputs under section 143(1)(a), by analogy with railway transport.

P Provisions Relied On

Section 2(68) of the CGST Act, 2017 (definition of job work)

Section 143(1)(a) of the CGST Act, 2017 (job work procedure, bringing back inputs)

Section 2(59) of the CGST Act, 2017 (definition of input)

Section 2(17) of the CGST Act, 2017 (definition of business)

Rule 45 of the CGST Rules, 2017 (conditions for inputs sent to job worker)

Circular No. 79/53/2018-GST dated 31.12.2018

Notification No. 11/2017-C.T. (Rate) dated 28.06.2017, as amended

Prestige Engineering (India) Ltd v. Collector of C.Ex., Meerut, 1994 (73) E.L.T. 497 (SC)

Maruti Suzuki Ltd v. CCE, 2009 (240) E.L.T. 641 (SC)

Commissioner of Central Excise, Nagpur v. Indorama Textiles Ltd, 2010 (260) E.L.T. A83 (SC)

! For the Practitioner

A practitioner advising on a captive power or job work model can use this order to argue that coal supplied by a steel principal to a captive power unit may be job work, and that consumption of the inputs and regulator involvement do not automatically defeat it. The order is an appellate ruling confined to the parties and the arrangement described, and it does not decide the GST treatment of the power supplied back. Whether the rate on the job work charges fits a given case must be checked against the notification as amended, which the order does not reproduce.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> mah_aaar_01a_2019-20_jswel.pdf

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