

Tax Alert: Maharashtra AAAR reverses its earlier order, holds conversion of coal received from principal into electricity constitutes ‘job work’

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Summary

The Maharashtra Appellate Authority for Advance Ruling (AAAR) reversed its earlier order and held that the conversion of steam-coal, received from principal, into electricity would constitute 'job work' under the Goods and Services Tax (GST) regime.

The AAAR has held that coal, despite being consumed in the process of the generation of electricity, thereby becoming irretrievable, will not preclude the proposed arrangement from being a job work transaction.

Facts of the case

- The appellants¹ are engaged in the business of generation of electricity. It entered into an arrangement with one of its group entities² (principal) to supply power on job work basis. Under the said arrangement, the principal supplies coal for the purpose of processing and generation of power which shall be captively consumed by the principal.
- The appellant had filed an application before the Maharashtra Advance Ruling Authority (AAR) to ascertain whether the above arrangement would tantamount to job work³.
- The Maharashtra AAR ruled⁴ that the arrangement did not qualify as job work primarily on the grounds that the same amounted to manufacture⁵.
- Aggrieved by the said order, the appellants filed an appeal before the Maharashtra AAAR.
- The AAAR⁶ upheld the order of AAR and held that the transaction proposed to be undertaken does not qualify for 'job work' as job work envisages presence of two persons only. In the present case, the conditions are not satisfied due to presence of the third party⁷.
- In addition, the AAAR also observed that since coal would stand consumed and therefore irretrievable in the same form after the conclusion of the job work, the arrangement did not fulfil the conditions prescribed⁸ in relation to bringing back same inputs by the principal.
- The appellant challenged the Maharashtra AAAR order before the Bombay HC. The Bombay HC⁹ remanded the matter to Maharashtra AAAR for fresh consideration, holding that the authority exceeded its

¹ M/s JSW Energy Limited

² M/s JSW Steel Limited

³ Section 2(68) of the CGST Act

⁴ Order No. GST-ARA-05/2017/B-08 dated

⁵ Section 2(72) of the CGST Act

⁶ Order No. MAH/AAAR/SS-RJ/01/2018-19 dated 2 July 2018

⁷ MSEDCL, which is the power regulator in the state of Maharashtra having the authority to formulate the norms and guidelines regarding the electricity distribution within the state

⁸ u/s 143 of CGST Act

⁹ Order No. Writ Petition No. 5 of 2019 dated 7 June 2019

jurisdiction by introducing two 'new grounds' which were never raised before the Maharashtra AAR, that too without putting the Appellant to notice on them.

Maharashtra AAAR's observations and order after remanded back by Bombay

HC¹⁰

- **Electricity can be generated on job work basis:** The AAAR stated that it is established that electricity can be generated on job work basis and when electricity can be generated on job work basis, it is bound to happen that any inputs sent to the premises for generation of electricity would not be sent back in the same original form. Further, the AAAR took note of the appellant's reliance upon various Supreme Court ruling to claim that job work has been accepted even where identity of inputs has been lost when the intermediary goods are received back from job worker.
- **Coal being irretrievable cannot preclude the transaction:** The AAAR thus held that, coal, despite being consumed in the process of the generation of electricity, thereby becoming irretrievable, will not preclude the proposed arrangement from being a job work transaction.

- **Coal qualifies as input:** Therefore, the Maharashtra AAAR reversed its earlier order and held that coal qualifies as an input under an arrangement where the same is supplied by principal for processing into power by the appellant for captive use by the principal.

Our comments

This is a welcome judgment and would be useful for business houses having with similar models. The judgment will have positive implications, especially on steel, cement industries. The earlier/original decision by the Maharashtra AAAR had treated the activity of conversion of coal provided by the principal into electricity as manufacturing activity resulting into working capital issues. The revision of the order is a welcome move and will hopefully help in reducing future litigations.

Even though advance ruling is applicable to the applicant only, the same acts as a guiding tool for other taxpayers as well.

¹⁰ Order No. MAH/AAAR/SS-RJ/01A/2019-20 dated 13 January 2020

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