PUNJAB APPELLATE AUTHORITY FOR ADVANCE RULING  
Order No. 02/ AAAR/PSPCL/ 2023/ 333-35 Dated: 20.03.2023  
Present:  
  
1. Sh. Rajesh Puri, Chief Commissioner, IRS (C&IT), CGST  
  
Commissionerate, Chandigarh Zone, Chandigarh  
  
2. Sh. Kamal Kishor Yadav, IAS, Commissioner of State Tax, Punjab  
  
Name and Address of appellant M/s Punjab — State Corporation Power  
Limited, PSEB Head Office, The Mall,  
Patiala, Punjab-147001  
  
GSTIN 03 AAFCP512001ZC  
  
Date of Application 31-10-2022  
  
Represented By / Mr. Atul Gupta, Chartered Accountant  
Date of Personal Hearing 9" of February, 2023  
  
Order of Authority of Advance| AAR/GST/PB/07 dated 29.09.2022  
Ruling issued by the Punjab Authority for  
  
Advance Ruling, Punjab  
  
PROCEEDINGS  
  
At the outset, we would like to make it clear that the provisions of both the  
  
Central Goods and Services Tax Act, 2017 and the Punjab Goods and Services Tax  
Act, 2017, (hereinafter referred to as, “CGST Act, 2017 and PGST Act, 2017”) 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 corresponding similar provisions under the PGST Act.  
  
FACTS OF THE CASE:  
  
M/s Punjab State Power Corporation Limited (PSPCL) (hereinafter referred to as,  
“the appellant”) holding GSTN 03AAFCP5120Q1ZC is a Punjab Government  
  
undertaking engaged in generation and distribution of Electricity.  
  
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2. The transmission or distribution of electricity is exempt under GST Act, vide  
Notification No.12/2017 dated 28" June, 2017 (Tariff heading 9969). For the  
generation of electricity, the appellant requires essential raw-material "Coal" which is  
being procured by them from Coal India Limited (CIL). In order to comply with the  
guidelines laid down by the Ministry of Environment and Forest, they are  
mandatorily required to get the raw coal washed before captive consumption for  
meeting the stipulated percentage ash. To undertake this activity, the appellant have  
engaged some washeries in private sector on job work basis for the job of coal  
beneficiation who in turn supplies the washed coal to the applicant. During the  
process of washing of coal at the washery/job worker, certain low quality coal is also  
generated which is commonly referred to as -Coal rejects" which is disposed off/sold  
  
directly by the washery/job worker in an environment friendly manner  
  
3. The appellant filed an application before the Authority for Advance Ruling,  
Punjab (hereinafter referred to as, “AAR, Punjab”). The appellant sought Advance  
Ruling on the following questions before the AAR, Punjab:  
  
1. Whether the coal rejects whose invoice is raised by the applicant upon  
washery/job worker is taxable under GST Act and Compensation cess Act  
in the hands of Applicant?  
  
2. If the answer to above question is yes, whether Applicant is eligible to avail  
Input Tax Credit (ITC) of GST and Compensation Cess of raw coal  
brought from its supplier and transferred to washery/job worker for  
cleaning? and  
  
3. If the answer to above question is yes and ITC is admissible, what is the  
  
admissible proportion of Input Tax Credit?  
  
4. AAR Punjab disposed off the said application of the appellant vide Order  
No.AAR/GST/PB/07 dated 29" of September, 2022. The point-wise rulings of the  
  
AAR Punjab are enumerated as under:  
  
1. Whether the coal rejects whose invoice is raised by the applicant upon  
washery/job worker is taxable under GST Act and Compensation cess Act  
  
in the hands of Applicant?  
  
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Advance Ruling: Yes, Coal rejects are to be classified under HSN 2701 and  
are taxable at 5% GST Rate + Rs 400 PMT compensation Cess.  
  
. Ifthe answer to above question is yes, whether Applicant is eligible to avail  
Input Tax Credit (for brevity, “ITC”) of GST and Compensation Cess of  
raw coal brought from its supplier and transferred to washery/job worker  
for cleaning?  
  
Advance Ruling: Where the goods are being received in lots or  
instalments, the registered person shall he entitled to take credit upon  
receipt of the last lot or instalment. Thus, if the applicant fulfils the  
eligibility conditions as prescribed under Section 16 of CGST Act, 2017  
and PGST Act, 2017 and if the type of ITC does not fall under the  
categories prescribed under Section 17 of CGST Act, 2017 and PGST Act,  
2017, the applicant is eligible to avail Input Tax Credit of GST and  
Compensation Cess of raw coal brought from its supplier and transferred to  
washery/job worker for cleaning. Further, the "principal" shall he entitled  
  
to avail ITC in relation to goods sent directly to the premises of job-worker.  
  
. If the answer to above question is yes and ITC is admissible, what is the  
  
admissible proportion of Input Tax Credit?  
  
Advance Ruling: The formula prescribed under Rule 42 of CGST and  
PGST Rules,2017 for manner of determination of input tax credit in  
respect of inputs or input services and reversal thereof will be applicable in  
both cases i.e. GST and Compensation Cess. Therefore, the provisions  
prescribed under Rule 42 of CGST and PGST Rules, 2017 should he  
followed by the applicant and they have to make reversal in the proportion  
  
of exempt/taxable turnover.  
  
Appeal before the Appellate Authority for Advance Ruling, Punjab: The  
  
appellant aggrieved by the said order passed by the AAR, Punjab, filed an appeal  
  
with the Appellate Authority for Advance Ruling, Punjab seeking further  
  
clarification to para 3 of their application. The appellant submitted that the  
  
impugned order lacks clarity insofar as Ruling on Question no. 3 of their Advance  
  
ety?  
  
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Ruling application is concerned and AAR, Punjab, did not take cognizance of  
various factual and legal aspects. The appellant has also submitted that in order to  
answer the 3" question of the Applicant concerning the 'admissible proportion of  
ITC available to the Applicant’, AAR vide Para 8.6 of Impugned Order has simply  
pronounced a ruling that the same will be governed as per Rule 42 of CGST Rules,  
2017 ("the Rules") and later ruled that ITC is admissible to the Appellant in  
proportion of taxable & exempt turnover. The appellant sought further clarity on  
Rule 42 of the CGST Rules as how to calculate the admissible ITC applicable to  
  
them as they are engaged in taxable as well as exempted supplies.  
  
6. RECORD OF PERSONAL HEARING:  
  
The appellant was accorded the opportunity of Personal Hearing and Sh. Atul  
Gupta, Chartered Accountant appeared for the Personal Hearing on 09" of  
February, 2023 and submitted that the appellant is purchasing coal and after the  
washery operation, some part of coal is sold as such. They submitted that on the  
portion which is going into the exempted activity the ITC reversals should be based  
on the actual quantum of compensation cess paid on such coal instead of adopting  
value of such coal for the purpose of Rule 42 and Rule 43 of the CGST Rules, 2017  
and equivalent SGST Rules. The reason for this request is that compensation cess is  
  
levied on specific basis and not on the basis of ad-valorem basis.  
  
6.2 On being asked whether Rule 42 and 43 provides for adoption of quantity as  
the criteria for apportionment, the Authority observed this would mean that we  
intend to rewrite Rule 42 and Rule 43 of the CGST Rules, 2017. To this, the  
appellant replied that the compensation cess is out of purview of the said rules as it is  
  
not on ad-valorem but on specific basis.  
  
6.3 Further, the Appellate Authority desired to know under which clause of sub-  
section (2) of section 97 of the CGST Act, 2017 they are seeking Advance Ruling to  
which they replied that they are seeking Advance Ruling under clause (d) of the said  
sub-section which provides admissibility of ITC on tax paid or deemed to have been  
  
paid.  
7. DISCUSSIONS AND FINDINGS:  
  
We have carefully examined the appeal filed by the appellant and the additional  
  
submissions made by appellant and observed that the AAR, Punjab have covered the  
  
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application of the appellant under the ambit of clause 3 of sub-section (2) of Section  
97 of the CGST Act 2017, whereas the appellant during the Personal Hearing  
submitted that they have sought Advance Ruling under clause (d) of sub-section (2)  
of Section 97 of the CGST Act,2017 which provides for admissibility of ITC on tax  
  
paid or deemed to have been paid.  
  
7.2 In light of the aforementioned submissions of the appellant, the following  
  
questions require examination before going into the merits of the case;  
  
(a) Whether the issue raised by the appellant before the Authority for Advance  
  
Ruling is maintainable as per the provisions of:  
  
i. Clause (c) of sub-section (2) of Section 97 of the CGST Act,2017, as stated  
in the para 4 of the Order passed by the AAR, Punjab; or  
  
ii. Clause (d) of sub-section (2) of Section 97 of the CGST Act,2017, as  
  
submitted by the representative of the appellant during the Personal Hearing.  
  
(b) Whether the AAAR is empowered to remand back the case on the issue of  
  
maintainability (Case laws)  
  
7.3. On the issue raised in point (a) above we are of the opinion that the question  
of maintainability was not examined at the AAR stage and it would be in the fitness  
  
of the things that the issue be re-examined by AAR itself.  
  
7.4 Further, on the issue raised in point (b) above, it is to state that as per sub-  
section (1) of Section 101 of the CGST Act 2017, the appellate authority may pass  
such order as it thinks fit, confirming or modifying the ruling appealed against or  
  
referred to. The relevant portion of the Section is reproduced as under:  
  
“The Appellate Authority may, after giving the parties to the appeal or reference an  
opportunity of being heard, pass such order as it thinks fit, confirming or modifying the  
ruling appealed against or referred to.“  
  
(emphasis supplied)  
  
As the power of remand back is not clearly detailed in the provision, it would  
be in fitness of things to refer to other Acts wherein similar provisions have been  
  
provided to appellate authorities.  
  
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For this we refer to the powers so provided to Commissioner (Appeals) under  
  
the erstwhile Central Excise Act, 1944. The relevant section is reproduced as under:  
  
“35A The Commissioner (Appeals) shall, after making such further enquiry as may be  
necessary, pass such order, as he thinks just and proper, confirming, modifying or  
  
annulling the decision or order appealed against.”  
  
Further, reference is invited to sub-section (5) of Section 85 of Finance Act,  
  
1994, which is reproduced as under:  
  
“(5) Subject to the provisions of this Chapter, in hearing the appeals and making order under  
this section, the Commissioner of Central Excise (Appeals) shall exercise the same powers and  
follow the same procedure as he exercises and follows in hearing the appeals and making  
  
orders under the Central Excise Act, 1944 (I of 1944).”  
  
A bare perusal of the above sections shows that the language used in the  
section 35A (as applied to cases of Service tax vide Section 85(5)) is similar to that  
used in Section 101 of CGST Act, 2017. Therefore, the jurisprudence so developed  
over the years may be referred as para-materia while ascertaining the ambit and  
  
scope of the powers of the AAAR.  
  
7.5 Therefore, we refer to the following cases for better understanding the scope  
and ambit of powers to Appellate Authority and whether the same includes power to  
  
remand back:  
  
a) The Hon'ble Supreme Court in UOIv. Umesh Dhaimode, 2002-TIOL-415-SC-  
CUS, in the context of Section 128(2) of the Customs Act, the Court held that  
“As the order under appeal itself notes, the aforesaid provision vested the appellate  
authority with powers to pass such order as it deemed fit confirming, modifying or  
annulling the decision appealed against. An order of remand necessarily annuls the  
decision which is under appeal before the appellate authority. The appellate  
authority is also invested with the power to pass such order as it deems fit. Both  
these portions of the aforesaid provision, read together, necessarily imply that the  
appellate authority has the power to set aside the decision which is under appeal  
  
before it and to remand the matter to the authority below for fresh decision.”  
  
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b) In the case of Commissioner of Central Excise vs Medico Labs and  
Anr.(2004) 192 CTR Guj 112, wherein the Hon’ble High Court of Gujarat has  
held that:  
  
i. “We must also state that even after amendment, which has come into force w.e.f.  
Ith May, 2001, powers of remand by allowing the appeal of the Commr.(A)  
have not been taken away specifically. In that view of the matter, we are of the  
considered opinion that the appellate authority, viz., Commr.(A) was vested with  
the power while deciding the appeal as he deemed fit by confirming, modifying or  
annulling the decision or order appealed against him. In our considered opinion,  
order of remand necessarily annuls the decision, which is under appeal before the  
appellate authority. Therefore, we entirely agree with the view taken by the  
  
learned single Member of the Tribunal that even afier amendment of Section  
  
35A of the Central Excise Act, the appellate authority has the power to set  
aside the decision, which is under appeal before it and it has power to  
  
remand the matter to the authority below for its fresh consideration.  
  
c) In the case of ALS. BABU SAH DESIGNS Versus COMMISSIONER OF C.  
EX. (APPEALS), CHENNAI-1 {2020 (38) G.S.T.L. 161 (Mad.) IN THE  
HIGH COURT OF JUDICATURE AT MADRAS}it was observed that  
Commissioner (Appeals) can pass orders as he thinks fit including an order of  
remand.  
  
d) In the case of M/s ALD Automotive Pvt. Ltd. Vs. Asst. Commissioner of  
Commercial Taxes (Audit)-1 Bengaluru in the Writ Petition Nos. 13315-  
13316 of 2017 and WP Nos. 13752-13773 of 2017 (T-RES), decided on  
26.06.2017 reported — 2017(7) GSTL 290 (Kar.) held as under in para 8 and 9:  
  
‘8 Needless to say, a reasoned order is an essential requirement of the  
principles of natural justice. In catena of cases, the Hon’ble Supreme Court has  
observed that even a quasi-judicial body is required to give reasons in its order.  
For, such orders are appealable in nature; for, such orders adversely affect the  
rights of the people, therefore, both the Appellate Authority and the adversely  
affected party have right to know the reasons for the quasi-judicial body while  
  
passing of its order.  
  
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“Thus, the Assessing Officer is duty bound to give cogent reasons for  
rejecting the specific plea raised by the petitioner. However, the Assessing officer  
has failed to do so.  
  
9. Thus, for the reasons stated above, this court has no other option but to set  
aside the assessment order dated 21.02.2017 and the assessment order dated  
01.03.2017, and to remand the case back to the Assessing officer. This court  
directs the Assessing officer to give an opportunity of personal “hearing to the  
  
petitioner, and to deal with each and every plea raised by the petitioner”.  
  
(d) In the case of Commissioner of Service Tax Vs. Associated Hotels  
Ltd. [2015 (37) STR 723 (Guj.)], the Hon'ble High Court of Gujarat has  
given its verdict as to whether the Commissioner (Appeals) exercising  
powers under Section 85 of the Finance Act, 1994 has the power to  
remand the proceedings back to the adjudicating authority, the relevant  
  
portion of para-4 is reproduced as under:  
  
"If proper inquiry is not conducted or the proceedings is decided ex parte, it would  
not be necessary in every case that the Commissioner (Appeals) converts himself to  
the adjudicating authority and conducts the entire inquiry necessary for proper  
adjudication of the issues. In such a case, the Commissioner (Appeals) may as  
well decide to remand the proceedings, and we see no limitation on his powers to  
  
do so."  
  
(e) Further, in this regard we would also like to rely upon the order of the  
  
Principal Bench of CESTAT, New Delhi in the case of Commissioner of  
Central Excise, Meerut-Il Vs. Honda Seil Power Products Ltd.  
[2013(287) ELT 353 (Tri.-Del.)].  
  
The tribunal in the above referred case had held that "There may be circumstances  
where only just and proper order could be remand of the matter for fresh  
adjudication. For example, if the order-in-original is passed without giving  
opportunity of being heard to the assessee or without permitting him to adduce  
evidence in support of his case then only order-in-appeal by the Commissioner  
(Appeals) could be to set aside the impugned order on the ground of failure of justice.  
This would create an anomaly and cause prejudice to the Revenue as it would bring  
  
an end to the litigation without adjudicating on the demand raised by the show  
  
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cause notice. Therefore, only just and proper order in such a case would be the order  
of remand to adjudicate the matter de novo after giving due hearing to the assessee.  
Thus, we are of the view that power to remand the matter back in appropriate cases  
  
is inbuilt in Section 35A(3) of the Central Excise Act, 1944."  
  
7.6 We, also observe that the direction for remand has also been resorted to by  
  
other AAARs in the following cases:  
a) M/s D.M Net Technologies-Gujarat AAAR Order dated 22.08.2022  
  
b) M/s Myntra Designs Pvt. Ltd. —Karnataka AAAR Order dated  
21.11.2022  
  
Hence, from the above, it is apparent that the appellate authority can remand back  
the appeal of the appellant to the AAR, Punjab to re-examine the maintainability of  
the application filed by the appellant as per sub-section (2) of Section 98 of the CGST  
  
Act, 2017and accordingly pass the order on merit.  
ORDER  
  
Without going into the merit of the case, we remand the appeal of the  
appellant to the AAR, Punjab to re-examine whether the application of the appellant  
is covered under sub-section (2) of Section 97 of the CGST Act,2017 or otherwise  
  
and pass an order on its maintainability.  
  
The appeal stands disposed off accordingly.  
  
eto Xe ) Kamal Kishgr Yadav, IAS,  
  
Chief Commissioner, Commissioner of State Tax,  
CGST and CX Zone, Chandigarh, Punjab.  
Chandigarh  
  
Place: Chandigarh  
  
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