

**PUNJAB AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX, BHUPINDRA ROADPATIALA 147001,
PUNJAB**

ORDER NO. AAR/GST/PB/...017.

dated 20.09.2022

[An appeal against this order lies with the Appellate Authority in terms of Section 99 and Section 100 of the CGST Act, 2017 and Section 99 and Section 100 of the PGST Act, 2017 within a period of thirty days from the date of communication of this order.]

1. DETAILS OF THE APPELLANT:-

GSTIN	03AAFCP5120Q1ZC
Legal Name	M/s Punjab State Power Corporation Limited
Trade Name	M/s Punjab State Power Corporation Limited, PSEB Head Office, The Mall, Patiala, Punjab-147001
Issue(s) on which advance ruling is sought	<ol style="list-style-type: none"> 1. Whether the 'coal rejects' whose invoice is raised by 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 of GST and Compensation Cess of raw coal brought from its supplier and transferred to washery/job worker for cleaning? 3. If the answer to above question is yes and ITC is admissible, what is the admissible proportion of Input Tax Credit?
Personal hearing date (s)	<ol style="list-style-type: none"> (i) 03.02.2022 (ii) 11.02.2022 (iii) 18.02.2022 & (iv) 05.08.2022
Hearing attended by	<ol style="list-style-type: none"> (i) APRA & Associates & CA Anmol Gupta & Vishal (ii) Tejpal Bansal, Addl. S.E. (iii) CA Vishal Gill & Tejpal Bansal (iv) CA Vishal Gill & CA Anmol Gupta
Order Date	20.09.2022

2. BRIEF FACTS OF THE CASE:-

- (1) M/s Punjab State Power Corporation Limited, PSEB Head Office, The Mall, Patiala, Punjab-147001 (PSPCL) is a Punjab Government undertaking engaged in the generation, transmission and distribution of electricity (GST Registration No.03AAFCP5120Q1ZC) which is exempt under GST Act, vide Notification No. 12/2017-Central Tax (Rate) dated 28 June, 2017 (Tariff heading 9969).

- (2) For generation of electricity, inter-alia, an essential-raw material is 'coal' which Applicant procures from Coal India Ltd. (CIL) sources. However, as per the guidelines laid down by Ministry of Environment and Forest, Applicant having its plants located at long distance from Coal Mines are mandatorily required to get raw coal washed before captive consumption for meeting percentage ash stipulations as the ash content in raw coal being received from CIL sources is generally on higher side.
- (3) On the quantity procured by the Applicant from CIL Sources, Applicant pays GST @ 5% IGST along with Compensation Cess @ Rs. 400/- tonne to its supplier (CIL sources) in compliance with provisions contained in the statute read with rules and notification.
- (4) Since such raw coal procured by Applicant is mandatorily to be washed before captive consumption, Applicant has engaged some washeries in private sector on job work basis for the job of raw coal beneficiation who in turn supply washed coal to Applicant.
- (5) However, in the process of raw coal beneficiation by washery/job worker, certain low quality coal is also generated (having ash more than the prescribed %) which is commonly referred to as 'coal rejects' which is disposed off/sold directly by the washery/job worker in an environment friendly manner.
- (6) Terms of the engagement with washery/job worker, inter-alia, include:-
 - a) That washery/job worker shall directly lift raw coal from CIL sources on behalf of Applicant by road;
 - b) That washery/job worker is assigned the job of cleaning of coal and the limit of ash content, as required by the Applicant, is informed to the washery/job worker in advance;
 - c) That after beneficiation of raw coal, washery/job worker shall dispatch the washed coal to Applicant's power plants via rail; and
 - d) That with respect to 'coal rejects', it is the property of Applicant but will be disposed off directly by washery/job worker and an invoice will be raised by Applicant in respect of such 'coal rejects'.

3. QUESTION(S) ON WHICH ADVANCE RULING IS SOUGHT

1. Whether the 'coal rejects' whose invoice is raised by 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?
3. If the answer to above question is yes and ITC is admissible, what is the admissible proportion of Input Tax Credit?

4. ELIGIBILITY OF THE APPLICATION FOR ADVANCE RULING

The Section 97(2) of the Central Goods and Services Tax Act, 2017, read with Section 97(2) of the Punjab Goods And Services Tax Act, 2017, provides for the issues on which advance ruling can be sought.

97 (2) The question on which the advance ruling is sought under this Act, shall be in respect of:-

- (i) classification of any goods or services or both;
- (ii) applicability of a notification issued under the provisions of this Act;
- (iii) determination of time and value of supply of goods or services or both;
- (iv) admissibility of input tax credit of tax paid or deemed to have been paid;
- (v) determination of the liability to pay tax on any goods or services or both;
- (vi) whether applicant is required to be registered;
- (vii) 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.

It is observed that the queries of the applicant in para-3 falls under the ambit of Section 97(2) of the CGST Act, 2017, read with Section 97(2) of the PGSI Act, 2017. Hence, the application of the applicant is eligible for a ruling by the Punjab State Advance Ruling Authority.

5. SUBMISSIONS BY THE APPLICANT:-

5.1 The applicant has made the following submissions at the time of filing of advance ruling application:-

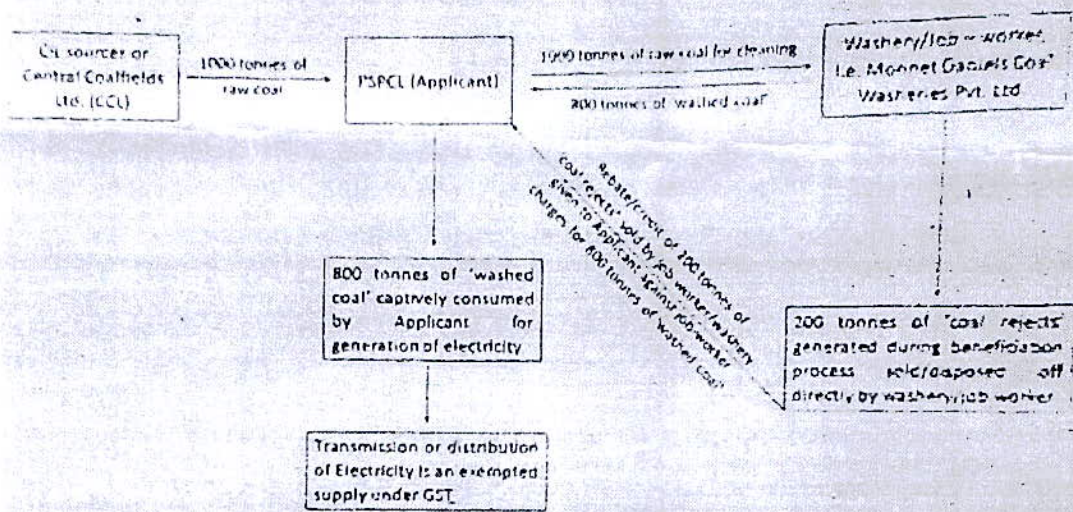
- (1) For generation of electricity, inter-alia, an essential-raw material is 'coal' which Applicant procures from Coal India Ltd (CIL) sources. However, as per the guidelines laid down by Ministry of Environment and Forest, Applicant having its plants located at long distance from Coal Mines are mandatorily required to get raw coal washed before captive consumption for meeting percentage ash stipulations as the ash content in raw coal being received from CIL sources is generally on higher side.
- (2) Since such raw coal procured by Applicant is mandatorily to be washed before captive consumption, Applicant has engaged some washeries in private sector on job work basis for the job of raw coal beneficiation who in turn supply washed coal to Applicant. In the process of raw coal beneficiation by washery/job worker, certain low quality coal is also generated (having ash more than the prescribed %) 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) Terms of the engagement with washery/job worker, inter-alia, include:-
 - a) That washery/job worker shall directly lift raw coal from CIL sources on behalf of Applicant by road;
 - b) That washery/job worker is assigned the job of cleaning of coal and the limit of ash content, as required by the Applicant, is informed to the washery/job worker in advance;

- c) That after beneficiation of raw coal, . washery/job worker shall dispatch the washed coal to Applicant's power plants via rail; and
- d) That with respect to 'coal rejects', it is the property of Applicant but will be disposed off directly by washery/job worker and an invoice will be raised by Applicant in respect of such 'coal rejects'.

5.2 The applicant has made the following additional submissions dated 03.02.2022:-

- (i) That, the entire process of from purchase of Coal to its washing in Washery is detailed in the flow chart below:-

6. The entire transaction flow is summarized for ease of reference via a flow chart as given below -



(ii) That, in case Hon'ble AAR holds that Applicant is liable to pay GST on the invoice raised to coal washery for 'coal rejects', in such a case ITC of the GST and Compensation Cess paid on raw coal purchased from CIL or CCL sources should automatically be regarded as admissible to the Applicant as in such a case, Applicant's output liability is regarded as taxable for which as per Section 16 of the CGST Act, 2017, ITC of taxes & cess paid on inputs shall be automatically admissible.

(iii) That, since compensation cess is levied on quantity based rate instead of *ad valorem* (% based) rate and also, Applicant's quantity of 'coal rejects' can be directly mapped with purchase of raw coal, ITC shall be admissible directly of such quantity of raw coal purchased which is attributable to output 'coal rejects'; that, in such a case, proportionate formulae of ITC as per Rule 42 of the CGST Rules, 2017 shall not come into picture instead credit attributable to taxable supplies i.e. supply of coal reject shall be admissible *as it is*.

(iv) That, *for instance*, in the example taken in flow chart *supra*, as 200 tonnes of 'coal reject' can be identified and segregated easily in the 'input' of raw coal purchased (1000 tonnes in total), ITC shall be allowed directly of GST & Compensation Cess paid by the Applicant on so much quantity which is directly attributable to 'coal rejects', meaning thereby, ITC of GST &

Compensation Cess paid by the Applicant on purchase of 200 tonnes (out of total 1000 tonnes) of raw coal from CIL or CCL sources.

5.3 The applicant has further made the following additional submissions dated 17.02.2022, regarding certain queries raised by Hon'ble AAR and documents sought:-

(i) That, proviso to sub-section (2) of Section 98 of the CGST Act, 2017 provides "*Authority that 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* "

(ii) That, the questions with respect to the taxability & eligibility of Input Tax Credit was raised by the Applicant at the time of filing of Advance Ruling application in January 2020 when no proceedings with respect to coal rejects were pending against the Applicant and thus, application so filed by the Applicant is a valid application.

(iii) That, enquiry was initiated by the office of DGGI in September 2020, i.e., after more than 5 months of filing application with Hon'ble AAR, Punjab and thus, since no proceeding was pending then, proviso to sub-section (2) of Section 98 *ibid.*, must not be applicable upon the Applicant as a valid application was filed by the Applicant.

(iv) That, the Washery process in detail is enclosed as Annexure- B, C, D. That, based on procedure explained in Annexures, it is clear that coal rejects is obtained in two formats, i.e. the rejects obtained from Rotary Breaker (+100 mm sized stones and shale) as well as such coal pieces which are heavy and have high ash content and accordingly, lie at the bottom of the floor of HM bath (-100 mm sized stones/ shale and very high ash content coal). That, it can safely be concluded that coal rejects are not new product formed after applying any manufacturing procedure or job work process and instead such raw coal which is above 100 mm or have high ash content and lie down in HM Bath are simply 'segregated' and regarded as 'coal rejects'.

(v) That, legible copies of sample Invoices along with supporting documents of the entire transaction flow are enclosed as Annexure – E, F & G.

(vi) That, **it is confirmed** that the applicant is **not** availing entire ITC as reflected in its GSTR-2A/2B and thereafter, reversing it, **instead**, since washed coal is captively consumed by the Applicant and output activity of the Applicant is exempt under GST law. Noticee is *ab initio* not availing any ITC on coal but since June 2021 treating the major portion of IGST-ITC as inadmissible ITC and not availing the same by way of credit in its e-credit ledger. To support the same, enclosed documents such as GSTR-3B for the period November 2021 (Annexure-II), E-credit Ledger of the Applicant for the period 01 April 2021 to 07 February 2022 (2021-22 till date) (Annexure-I). This sufficiently proves that Applicant, as per the current practice, is showing major portion of IGST-ITC as reflecting in its GSTR-2A/2B as 'Inadmissible ITC' and not availing & thereafter, reversing the same. Due to this reason, no ITC is credited to Applicant's E-credit ledger also

*Only a miniscule amount of Rs. 5,41,590/lakhs (including IGST, CGST, SGST & Cess) has been availed by the Applicant and on the other hand, major ITC of Rs. 9.48 crores approx. has been directly shown as inadmissible ITC in GSTR-3B which is also not reflected in Noticee's I-credit ledger.

(vii) that the third question raised by the Applicant is whether Appellant is eligible for Input Tax Credit (ITC) of input tax paid on procurement of raw coal (of only so much quantity which is attributable to coal rejects) or whether Appellant has to avail ITC as per Section 17 of the Act read with Rule 42 of the Rules, i.e. in proportionate formulae. Therefore, in case Appellant has to avail ITC on coal rejects as per Rule 42 of the Rules, Appellant has to first take into account the entire Common Credit which might involve a number of Input/Input Services, such as,

- Entire tax paid on purchase of raw coal from CCL or CIL sources;
- Entire tax paid by the Appellant on beneficiation/job work charges collected by Monnet for processing on raw coal;
- Entire tax paid by the Appellant on transportation charges collected by Monnet for transportation of raw coal from mines to washery;
- Entire tax paid by the Appellant on certain administrative expenses, like, Rent paid for office as well as plant (if any), Telephone Expenses, Security Guard expenses, Accounting, Auditing or Legal Services (if any), Office or Factory maintenance expenses (if any), etc.

Further, all the similar expenses which are in the nature of common expenses for providing both output supply of electricity & coal rejects has to be first availed by the Appellant and then, admissibility of the same has to be calculated in sale/turnover ratio.

However, on the other hand, in case Appellant can avail ITC as it is on input tax paid on purchase of raw coal from CCL or CIL sources of only so much quantity which is regarded as coal rejects, in the opinion of the Applicant, the same is much more simple, logical & directly mappable for the purposes of availment of ITC.

For instance, 1000 tonnes of raw coal is purchased out of which 800 tonnes of washed coal is produced while 200 tonnes of coal rejects is segregated

In this case, Appellant can directly either avail ITC of Input Tax paid on purchase of 200 tonnes of raw coal from CIL or CCL sources or Appellant has to avail entire ITC of Input Tax paid on purchase of 1000 tonnes of raw coal along with other common services, listed supra and thereafter, determine proportionate eligibility in the sales ratio of electricity and coal rejects.

Whereas since (a) the Compensation Cess is levied on per MT basis, i.e. on quantity basis and not on ad valorem basis and (b) since the quantity of coal rejects can be mapped with quantity of raw coal purchased, first method direct availment of only so much ITC which is attributable to quantity of coal rejects seems more simple & logical and all the calculation

of common credit (including many other input/input services also) as per Rule 42 can be avoided.

(viii) That resort to proportionate method as per Rule 42 of the Rules must be made only when there is no other alternate available, meaning thereby, where output & input supply cannot be mapped, however, where Compensation cess is leviable on quantity based rate & quantity of 'coal rejects' is ascertainable, ITC of tax paid by the Appellant on procurement of raw coal of such much quantity (as is attributable to coal rejects) must be allowed.

6. DEPARTMENT'S REPLY:-

ACST, Patiala Mr. Manohar Singh has submitted written reply on behalf of the department, which is placed on file. According to his reply M/s Punjab State Power Corporation Limited, GSTIN: 03AAFCP5120Q1ZC submitted an application for advance ruling on following issues:

1. Whether the "coal reject" whose invoice is raised by Applicant upon washery /job-worker, is taxable under GST Act and Compensation Act in the hands of Applicant?
2. Is the answer to above question is yes, whether 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?
3. If the answer to above question is yes and ITC is admissible, what is the admissible proportion of Input Tax Credit?

Applicant is engaged in generation, transmission and distribution of electric energy and having both taxable and exempted outward supplies. For generation of electric energy, applicant buys raw coal from its vendor namely Coal India Limited(CIL) and its subsidiaries' for use in thermal power plants situated in the State of Punjab. As per the guidelines laid down by the Ministry of Environment and Forest, Govt of India, raw coal is washed before captive consumption for meeting percentage of ash specifications as ash content in raw coal received from CIL is higher. But during this whole process, raw coal, washed coal and coal rejects remains the property of Applicant. Applicable HSN code for coal is 2701 and taxable at 5% GST Rate + Rs. 400 PMT Compensation Cess.

Chapter/Heading/Sub-Heading/Tarrif Item	Description of Goods
2701	Coal: briquettes, avoids and similar solid fuels manufactured from coal

The first issue on which advance ruling has been sought is "Whether the "coal reject" whose invoice is raised by Applicant upon washery /job-worker, is taxable under GST Act and Compensation Act in the hands of Applicant?" On this question, it submitted that coal reject are taxable under GST Act and Compensation Act. Vide press release dated 18-01-2018 issued by

the Press Information Bureau, Government of India, Ministry of Finance recommended for changes in GS/IGST Rate and Clarifications in respect of GST Rate on certain goods as per discussions held in the 25th GST Council Meeting held on 18th January 2018, which is extracted under (Para M, Sr. no-3).

Sr. No.	Chapter/Heading /Sub-Heading/Tarrif Item	Description	Present GST Rate	Modification/Clarification recommended
3	2701	Coal rejects	5%+ Rs. 400 PMT Compensation Cess	Coal rejects fall under heading of 2701 and Compensation attract 5% GST and Rs. 400 PMT Compensation Cess

Thus it is clear from the above clarification issued, that coal rejects are taxable at 5% GST Rate + Rs. 400 PMT Compensation Cess.

On the second question, it is submitted that applicant is eligible to avail the ITC on the purchases of raw coal from CIL which is subsequently transferred to washery/job worker for washing of the coal under section 16 of PGST Act 2017 and CGST Act 2017. It has been provided that, "principal shall be entitled to avail ITC in relation to goods sent directly to the premises of job-worker. Moreover, first proviso to sub section (2) of section 16 provides that where the goods are being received in lots or installments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment. For easy understanding section 16 of PGST Act and CGST Act is extracted below:

"(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;

(b) he has received the goods or services or both

Explanation.- For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services

(1) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(i) where the services are provided by the supplier to any person on the direction of and on(c) subject to the provisions of section 41 or section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and (d) he has furnished the return under section 39:

"Provided that where the goods against an invoice are received in lots or installments the registered person shall be entitled to take credit upon receipt of the last lot or installment."

On the issue of third question which is "If the answer to above question is yes and ITC is admissible, what is the admissible proportion of Input Tax Credit?".

As per sub-section (2) of section 17 of the PGST Act, 2017 read with rule 42 of the PGST Rules, 2017, ITC is available only to the extent of use in furtherance of taxable supplies. It implies that where the goods or services are used by the registered tax payer partly for utilization in taxable supplies and partly for exempt supplies, then the ITC will be restricted to an amount which is attributable for taxable supplies (including zero-rated supplies). In such a scenario, the taxpayer has to reverse the proportionate ITC related to exempted supplies as per Rule 42 of the said rules. The exempt supply has been defined in the Act as supply of any goods or services or both:

a. which attracts nil rate of tax; or

b. which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act; and

c. includes non-taxable supply.

Thus, any supply that has been exempted by the government by notification or any Nil rated Supply or supply of non-GST goods such as petrol, diesel will fall within the ambit of exempt supply. Further, as per sub-section (3) of section 17 of PGST Act, 2017 and CGST Act, 2017 supplies under transaction in securities, sale of land and sale of building subject to clause 5(b) of schedule II are also covered within the ambit of exempt supplies. Hence, ITC will be admissible in proportion of taxable supplies made by the applicant.

7. HEARING:-

The case was taken up for hearing on 03.02.2022, 11.02.2022, 18.02.2022 & 05.08.2022. M/s APRA & Associates, CA Anmol Gupta, Tejpal Bansal, Addl. S.E. and CA Vishal Gill appeared for hearing at various dates as mentioned in the Table at the beginning of this order. At the first hearing the applicant was asked to clarify whether any proceedings under the Act are

pending in respect of the matter in question. Replied that some information in September, 2020 after the application for AR submitted that the information was generic and not specific to Coal rejects. Applicant also submitted synopsis additional submissions which were brought on record. Next hearing was fixed for 11.02.2022, wherein the applicant sought time to submit details of DGGI investigation and copies of Invoices. In the next hearing dated 18.02.2022, the applicant submitted the additional documents sought which were also brought on record. On the last hearing of the case i.e. on 05.08.2022, the applicant submitted that they have nothing more to submit on the matter. Accordingly the proceedings of the case were concluded.

8. DISCUSSIONS AND FINDINGS:-

8.1 The submissions made by the applicant in his advance ruling application, additional submissions and the submissions made at the time of personal hearings have been carefully examined and analysed.

8.2 The applicant is a Punjab Government undertaking engaged in generation, transmission and distribution of electricity and is registered under Goods and Service Tax under registration No.03AAFCP5120Q1ZC. Transmission or distribution of electricity is exempt under GST Act, vide notification No.12/2017 dated 28th June, 2017 (Tariff heading 9969). For the generation of electricity, they use an essential raw-material require "Coal" which is procured 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, they 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.

8.3 In the light of the above, the applicant, in the present application has requested for advance ruling on the following issues:-

- (i) Whether the "coal reject" whose invoice is raised by Applicant upon washery/job-worker, is taxable under GST Act and Compensation Act in the hands of Applicant?
- (ii) If the answer to above question is yes, whether 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?
- (iii) If the answer to above question is yes and ITC is admissible, what is the admissible proportion of Input Tax Credit?

8.4 The first issue on which the applicant has requested decision is whether the "coal reject" whose invoice is raised by Applicant upon washery/job-worker, is taxable under GST Act and Compensation Act in the hands of Applicant? We find that the coal rejects generated during the process of Coal washing are nothing but Coal with higher percentage of Ash content. HSN 2701 covers "Coal; briquettes, ovoids and similar solid fuels manufactured from coal". Therefore, Coal

pending in respect of the matter in question. Representative submitted that the DGGI had sought some information in September, 2020 after the application for AR had been submitted. Further, submitted that the information was generic and not specific to Coal rejects. Applicant was asked to share the complete details of the proceedings. Applicant also submitted synopsis cum additional submissions which were brought on record. Next hearing was fixed for 11.02.2022, wherein the applicant sought time to submit details of DGGI investigation and copies of Invoices. In the next hearing dated 18.02.2022, the applicant submitted the additional documents sought which were also brought on record. On the last hearing of the case i.e. on 05.08.2022, the applicant submitted that they have nothing more to submit on the matter. Accordingly the proceedings of the case were concluded.

8. DISCUSSIONS AND FINDINGS:-

8.1 The submissions made by the applicant in his advance ruling application, additional submissions and the submissions made at the time of personal hearings have been carefully examined and analysed.

8.2 The applicant is a Punjab Government undertaking engaged in generation, transmission and distribution of electricity and is registered under Goods and Service Tax under registration No.03AAFCP5120Q1ZC. Transmission or distribution of electricity is exempt under GST Act, vide notification No.12/2017 dated 28th June, 2017 (Tariff heading 9969). For the generation of electricity, they use an essential raw-material require "Coal" which is procured 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, they 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.

8.3 In the light of the above, the applicant, in the present application has requested for advance ruling on the following issues:-

- (i) Whether the "coal reject" whose invoice is raised by Applicant upon washery/job-worker, is taxable under GST Act and Compensation Act in the hands of Applicant?
- (ii) If the answer to above question is yes, whether 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?
- (iii) If the answer to above question is yes and ITC is admissible, what is the admissible proportion of Input Tax Credit?

8.4 The first issue on which the applicant has requested decision is whether the "coal reject" whose invoice is raised by Applicant upon washery/job-worker, is taxable under GST Act and Compensation Act in the hands of Applicant? We find that the coal rejects generated during the process of Coal washing are nothing but Coal with higher percentage of Ash content. HSN 2701 covers "Coal; briquettes, ovoids and similar solid fuels manufactured from coal". Therefore, Coal

rejects are rightly classifiable under HSN 2701 and as per Notification No. 01/2017- Central Tax (Rate) dated 28.06.2017, 2.5% Central GST is also leviable for the same heading i.e. 2701 under schedule-I. Further, as per Notification No. 01/2017- compensation cess (Rate) dated 28.06.2017, Rs. 400 per tonne is leviable as compensation cess under Chapter Heading / Sub-heading 2701. Also, vide press release dated 18-01-2018 issued by the Press Information Bureau, Government of India, Ministry of Finance recommended for changes in CGST/IGST Rate and clarifications in respect of GST Rate on certain goods as per discussions held in the 25th GST Council Meeting held on 18th January 2018, which is extracted as under:-

Sr. No.	Chapter /Heading / Sub-Heading/ Tariff-item	Description	Present Rate	Modification /Clarification recommended
3	2701	Coal rejects	5% + Rs. 400 PMT Compensation Cess	Coal rejects fall under heading of 2701 and attract 5% GST and Rs. 400 PMT Compensation Cess

Accordingly as per above clarification, Coal rejects are to be classified under HSN 2701 and are taxable at 5% GST Rate + Rs. 400 PMT Compensation Cess.

It is pertinent to mention here that vide Notification no. 02/2018-compensation cess (Rate) dated 26.07.2018 Nil rate of GST compensation cess on Coal rejects supplied by a coal washery, arising out of coal on which compensation cess has been paid and no input tax credit thereof has been availed by any person vide notification No. 02/2018- compensation cess (Rate) dt. 26.07.2018 is notified. As the applicant is not covered under the definition of a coal washery, the applicant is not admissible for any exemption from compensation cess. Also, no other exemption notification has been issued in this respect in this regard.

8.5 Now, as the answer to the first issue is Yes, We come to the second issue raised by the applicant, that is, whether 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? In order to address this issue in the correct perspective, the Section 16 of CGST Act, 2017 which prescribes the eligibility and conditions for taking input tax credit and Section 17 which prescribes the apportionment of credit and blocked credits, are reproduced as below:-

Section 16. "(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless:-

(a) **he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;**

[*(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;*]

(b) **he has received the goods or services or both**

Explanation.- For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

(i) *where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;*

(ii) *where the services are provided by the supplier to any person on the direction of and on account of such registered person;*

(c) **subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and**

(d) **he has furnished the return under section 39;**

Provided that where the goods against an invoice are received in lots or installments, the registered person shall be entitled to take credit upon receipt of the last lot or installment:"

and,

Section 17. Apportionment of credit and blocked credits.—

(1) *Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.*

(2) *Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.*

(3) *The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of*

Schedule II, sale of building. [Explanation.— For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.]

(4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of subsection (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(a) [motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:—

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used—

(i) for making the following taxable supplies, namely:—

(A) further supply of such vessels or aircraft; or

(B) transportation of passengers; or

(C) imparting training on navigating such vessels; or

(D) imparting training on flying such aircraft;

(ii) for transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available—

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged—

- (I) in the manufacture of such motor vehicles, vessels or aircraft; or
(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;]

(b) [the following supply of goods or services or both

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply:

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession: Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.]

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service:

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

Explanation.—For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises.

The first proviso to sub section (2) of section 16 provides that where the goods are being received in lots or installments, the registered person shall be entitled to take credit upon receipt of the last lot or installment. Thus, if the applicant fulfils the eligibility conditions as prescribed

under Section 16 of CGST Act, 2017 and if the type of ITC do not fall under the categories prescribed under Section 17 of CGST 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.

But it is imperative to discuss Section 19 of CGST Act, 2017 as the applicant is directly sending its inputs to the premises of its job-worker i.e. Coal Washery Units.

Section 19. Taking input tax credit in respect of inputs and capital goods sent for job work-

(1) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job worker for job work. (2) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job work without being first brought to his place of business.

And, therefore, as provided in terms of above Section 19 of the CGST Act & PGST Act, 2017 that "principal" shall be entitled to avail ITC in relation to goods sent directly to the premises of job-worker.

8.6 On the third issue "If the answer to above question is yes and ITC is admissible, what is the admissible proportion of Input Tax Credit?", it is observed that as per sub-section (2) of section 17 of the CGST & PGST Act, 2017 read with Rule 42 of the CGST & PGST Rules, 2017, ITC is available only to the extent of use in furtherance of taxable supplies. It implies that where the goods or services are used by the registered tax payer partly for utilization in taxable supplies and partly for exempt supplies, then the ITC will be restricted to an amount which is attributable for taxable supplies (including zero-rated supplies). In such a scenario, the taxpayer has to reverse the proportionate ITC related to exempted supplies as per Rule 42 of the said rules. The exempt supply has been defined in the Act as supply of any goods or services or both:-

- a. which attracts nil rate of tax; or
- b. which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act; and
- c. includes non-taxable supply.

Thus, any supply that has been exempted by the government by notification or any Nil rated Supply or supply of non-GST goods such as petrol, diesel will fall within the ambit of exempt supply. Further, as per sub-section (3) of section 17 of PGST Act, 2017 and CGST Act, 2017 supplies under transaction in securities, sale of land and sale of building subject to clause 5(b) of schedule II are also covered within the ambit of exempt supplies. Hence, ITC will be admissible in proportion of taxable supplies made by the applicant.

Further Para No. 3.4 and 3.6 of the applicant is reproduced as under:-

3.4 Accordingly it is sought that whether Applicant will be allowed credit as per the formula given under Section 42(1) ibid., i.e. proportionately or since the quantity of 'coal rejects' can be easily quantified/mapped, therefore GST and cess of 'raw coal' pertaining to such quantity of 'coal rejects' so generated is directly admissible.

3.6 Here, it is pertinent to mention that since compensation cess on coal is being levied based on quantity i.e. Rs. 400 per tonne, instead of levy at ad valorem, the quantity of coal rejects so produced can be easily segregated and mapped to raw coal purchased for the purposes of availing Input Tax Credit (ITC), if admissible.

The proposal of the Applicant is not as per the provisions of the CGST Act, 2017 and the rules and corresponding PGST Act, 2017 and the rules made there-under.

In terms of Section 11 of The Goods And Services Tax (Compensation to States) Act, 2017, the provisions of the Central Goods and Services Tax Act, 2017, the Punjab Goods and Services Tax Act, 2017 and the rules made there-under, including those relating to assessment, **input tax credit**, non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, mutatis mutandis, apply, in relation to the levy and collection of the cess leviable under section 8 on the intra-State supply of goods and services, as they apply in relation to the levy and collection of central tax & state tax on such intra-State supplies under the said Act or the rules made there-under.

Accordingly, it can be stated that the formula prescribed under Rule 42 of CGST & 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.

The applicant has also requested to allow reversing the GST and Compensation cess in terms of quantity of Clean Coal and Coal rejects as the same can be easily mapped by them but there is no such provision as prescribed under the said Rule 42 *ibid*. As Government has added proviso to Rule 42 through Notification No. 16/2019 – Central Tax dated 29.03.2019 and accordingly allowed reversal of ITC made by Real Estate on the basis of Aggregate Carpet Area attributable to exempt supply but nothing has been issued regarding reversal of ITC on the basis of quantity till date. Thus, the provisions prescribed under Rule 42 of CGST Rules, 2017 should be followed by the applicant and they have to make reversal in the proportion of exempt/taxable turnover.

8.7 In view of the forgoing discussions, it is held that:-

RULING

(i) **Whether the 'coal rejects' whose invoice is raised by Applicant upon washery/job-worker, is taxable under GST Act and Compensation Cess Act in the hands of Applicant?**

Yes, Coal rejects are to be classified under HSN 2701 and are taxable at 5% GST Rate + Rs. 400 PMT Compensation Cess.

(ii) **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?**

Where the goods are being received in lots or installments, the registered person shall be entitled to take credit upon receipt of the last lot or installment. Thus, if the applicant fulfils the eligibility conditions as prescribed under Section 16 of CGST Act, 2017 & PGST Act, 2017 and if the type of ITC do not fall under the categories prescribed under Section 17 of

CGST Act, 2017 & 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 be entitled to avail ITC in relation to goods sent directly to the premises of job-worker.

(iii) If the answer to above question is yes and ITC is admissible, what is the admissible proportion of Input Tax Credit?

The formula prescribed under Rule 42 of CGST & 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 & PGST Rules, 2017 should be followed by the applicant and they have to make reversal in the proportion of exempt/taxable turnover.

Varinder Kaur
20/9/22

Viraj Shyamkarn Tidke
20/9/22

Varinder Kaur	Viraj Shyamkarn Tidke
Member, CGST	Member, SGST

Through Regd. Post

M/s Punjab State Power Corporation Limited,
PSEB Head Office, The Mall,
Patiala, Punjab-147001

Attested to be true Copy

ACST-cum-NODAL OFFICER
For Advance Ruling, Punjab

C. No. PB/AAR/GST/141-145

Dated:- 29/9/2022

Copy to:-

1. The Special Secretary, Goods and Service Tax Council, 5th Floor, Tower-II, Jeevan Bharti Building, Connaught Place, New Delhi.
2. The Commissioner of State Taxes, Punjab.
3. The Commissioner, CGST, Ludhiana, GST Bhavan, Rishi Nagar, Ludhiana.
4. The Assistant Commissioner of State Tax, Patiala.
5. The Assistant Commissioner, CGST Division, Patiala.