

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. AJAYKUMAR V. BONDE Joint Commissioner of State Tax, (Member)

(2) Ms. PRIYA JADHAV, Joint Commissioner of Central Tax, (Member)

ARN No.	AD2704230118331J
GSTIN Number, if any/ User-id	27AAXCA3565A1ZJ
Legal Name of Applicant	M/s. AES Engineering Solar Private Limited
Registered Address/Address provided while obtaining user id	GAT No. 85, Mumbai Bangalore Highway, Varve KH, Pune, Maharashtra 412 205.
Details of application	GST-ARA, Application No. 04 Dated 28.04.2023
Concerned officer	State Tax Officer, KHED SHIVAPUR_701 PUN-VAT-C-819-Division- PUNE_ NORTH.

NO.GST-ARA- 04 of 2023-24/2024-25/B- 57 Mumbai, dt. 31.07.2024

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act” respectively] by M/s. AES Engineering Solar Private Limited the applicant, seeking an advance ruling in respect of the following questions.

- Whether on the basis of the facts the applicant is liable to pay Goods and Services Tax (GST) on intra state delivery of electrical energy on the basis of the above agreement?
- Whether on the basis of the facts the applicant is liable to pay Goods and Services Tax (GST) on interstate delivery of electrical energy on the basis of the above agreement?
- In case the applicant is liable to pay Goods and Services Tax (GST), whether the applicant can claim and utilise the CGST and SGST paid at the instance of procurement of the solar power plant as input tax credit for payment of the GST liability as per Sr. No. a) and b) above?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression ‘GST Act’ would mean CGST Act and MGST Act.

1) FACTS AND CONTENTION – Submitted by Applicant.

11 The applicant is a company registered under the Companies Act, 2013.



AB

PPJ

- 1.2 Applicant is engaged in production of Electrical Energy through its solar power plant located at Village Nagansur, Taluka Akkalkot, District Solapur, Maharashtra.
- 1.3 During the period August 2022 till 27 March 2023 the company has incurred an expenditure of Rs. 17,60,43,174/- (including SGST Rs. 1,04,30,132/- and CGST Rs. 1,04,30,132/-).
- 1.4 (i) The applicant has entered into Power Purchase Agreement with Phillip Commodities India Private Limited, having its registered office at 1, 18th Floor, Urmi Estate, 95, Ganpatrao Kadam Marg, Lower Parel, Mumbai – 400 013 vide agreement dated 08 February 2013.
- (ii) Vide corrigendum to the above agreement dated 09 March 2023 the applicant has amended the tenure of the agreement. Accordingly, the tenure of the agreement is 08 February 2013 till 30 April 2023
- (iii) As per the agreement the applicant shall sell electrical energy up to 2MW from its above solar power plant
- (iv) The above agreement defines Contracted Capacity and Delivery Point as follows:
- Contracted Capacity – “Contracted Capacity shall mean up to a maximum of 2 MW of electricity, to be arranged by the SELLER to BUYER at the Delivery Point in terms of this Agreement”
 - Delivery Point - “Delivery Point shall mean the busbar of the End Consumer i.e. Connectivity of End Consumer with DISCOM”
- On a careful analysis of the above terms of the agreement it transpires that the scope of work for the applicant includes delivery of electricity till the busbar of the end consumer with the DISCOM. As such, the apart from production of electrical energy the applicant is also engaged in the business of transmission and distribution of electrical energy.
- 1.5 The electrical energy is sold by the applicant to M/s. Phillip Commodities Private Limited is in turn sold by Phillip Commodities Private Limited to M/s. Kores India Limited through the Grid Connectivity of MSEDCL. M/s. Phillip Commodities Private Limited is an authorised trading partner as registered with the Central Electricity Regulatory Commission of India. Further Power purchase Agreement between kores India Private Limited (buyer/consumer) and Philips commodities India Private Limited (Seller) vide agreement dated 09-02-2022

C) Modus Operandi

Order of events	Description
I	Electrical Energy is generated at the applicant's solar power plant at Guravwadi, Taluka- Akkalkot, Sholapur, Maharashtra
II	The Electrical Energy generated through the solar power plant is delivered at the pooling sub-station of Shree Swami Samarth Solar Green Energy LLP. The role of the applicant ends at this point
III	The Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) accepts the delivery of the electrical energy at the pooling sub-station of Shree Swami Samarth Solar Green Energy LLP which is connected to the MSEDCL grid
	MSEDCL delivers the electrical energy to the ultimate consumer viz. Kores India Limited, Chakan, Pune through its own transmission and distribution infrastructure



AB

PRJ

V	The electrical energy is sold by the applicant to M/s. Phillip Commodities Private Limited which in turn is sold by Phillip Commodities Private Limited to M/s. Kores India Limited through the Grid Connectivity of MSEDCL. As explained above M/s. Phillip Commodities Private Limited is an authorised trading partner as registered with the Central Electricity Regulatory Commission of India.
---	---

c) Business structure

On a careful analysis of the notification as above and the agreement entered with the customer, it can be concluded that the applicant is involved in two different business as follows:

Sr. No.	Description	Taxability under GST	HSN / SAC Code
1	Production of electrical energy	Exempt	271600 Electrical Energy
2	Transmission and distribution of electricity	Taxable	996911- Electricity Transmission Services 996912 Electricity Distribution Services

2) STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

- 2.1) **Exemption notification Supply of Goods:-** - as per the notification no. 2/2017 dated 28/06/2017 vide entry at Sr.No. 104, Chapter/ Heading / Sub-heading Tariff item 2716 00 00 and Description of Goods - Electrical Energy, Electrical Energy has been exempted from GST.
- 2.2) **Exemption notification Supply of Services- Vide** Notification no.12/2017 dated 28/06/2017, Transmission or distribution of electricity by an electricity transmission or distribution utility is taxable at Nil rate.
- 2.3) **Applicants Interpretation-**Accordingly, it transpires that the solar power plant is being utilised towards furtherance of taxable sales made by the applicant company. Hence, the input tax credit pertaining to the procurement of solar power plant can be utilised towards taxable sales of transmission and distribution of electricity to the busbar of end consumer. In support
- 2.4) **Applicant submitted Judicial Precedents: in case of** KLF Nirmal Industries (P.) Ltd. In re - [2021] 129 taxmann.com 337 (AAR - TAMILNADU) The Hon'ble Bench has ruled as below:
- 2.5) Conclusion drawn by the Applicant.

The applicant has made the above detailed analysis on the basis of which it can be concluded as follows:

- The applicant sells electrical energy.
- The transmission and distribution are not within the scope of the applicant.
- As the applicant sells only electrical energy there is no taxable supply in the entire transaction, whereby there is no liability towards the GST.
- Hence, as there is no taxable supply, the applicant is not entitled to input tax credit pertaining to the procurement of solar power plant.

3) Submission of the Jurisdictional Officer-

The intra State supply of electricity generated from solar power plant by the applicant is a supply of goods falling under Customs Tariff Heading 2716 00 00 and is exempted from GST as per entry at Sl. No. 104 of Notification No0 02.2017 Central Tax (Rate) dated 28.06.2017.

The detailed entry as per the above notification is as below: -

Sr. No.	Chapter/ Heading/Sub-heading/ Tariff items	Description of goods
104	2716 00 00	Electrical energy



Handwritten signature/initials in blue ink.

Handwritten initials 'PRJ' in blue ink.

As the supply of electricity generated from solar power plant is exempted from GST, the applicant is not eligible to utilize the CGST/SGST/IGST paid the instance of procurement of the solar power plant.

Section 17(2) is reproduced below for ready reference: -

"Section 17. Apportionment of credit and blocked credits: -

(1) ...

(2) *Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rate 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-rate supplies."*

(3) Rules 42 & 43 of CGST rules 2017- provide that the Applicant is not entitled to Input Tax credit as its all out put supplies are Exempted from tax.

(4) There is no proceedings pending or decided against the applicant under any provisions of The GST Act 2017 as on date.

4. HEARING

Preliminary hearing in the matter was held on 09.05.2024. Mr. Narendra K. Patil, C.A. Appeared, and requested for admission of the application. Jurisdictional Officer Mr. A.S. Jagdale, STO, PUN-VAT-C-819 also appeared.

The application was admitted and called for final hearing on 03.07.2024 Mr. Narendra K. Patil, C.A. authorized Representative, appeared made oral and written submissions. Jurisdictional Officer Mr. A.S. Jagdale, STO, PUN-VAT-C-819 appeared. We heard both the sides.

5. Findings, observation and discussion:-

5.1 Uncontroverted facts of this case are as under:

5.1.1) M/s. AES Engineering Solar Pvt Ltd. (hereafter referred as "Applicant"), is engaged in production of Electrical Energy through its solar power plant located at Village Nagansur, Taluka Akkalkot, District Solapur, Maharashtra.

5.1.2) The applicant has entered into power purchase agreement with Philips commodities India Private Limited, (hereafter referred as "buyer") having its registered office at 1, 18th Floor, Urmi Estate, 95, Ganpatrao Kadma Marg, Lower Parel Mumbai, 400013 vide agreement dated 08.02.2013. M/s. Phillip Commodities Private Limited is an authorised trading partner as registered with the Central Electricity Regulatory Commission of India.

(i) As per the agreement the applicant has agreed to sell electrical energy up to 2MW from its above solar power plant to the Philips Commodities.

(ii) The above agreement defines contracted capacity and delivery point as follows:

- contracted capacity – "contracted capacity shall mean upto a maximum of 2MW of electricity, to be arranged by the SELLER to BUYER at the delivery point in terms of this Agreement"

- Delivery point- "Delivery point shall mean the busbar of the End consumer i.e. connectivity of end consumer with DISCOM.

(iii) The applicant has submitted that as per the aforesaid agreement between applicant and Philips commodities India Limited Parel Mumbai 13 the delivery point of electricity is defined as under: **Delivery Point**

"Delivery Point" shall mean the busbar of the End Consumer i.e. connectivity of End consumer with DISCOM.



AB

PNJ

The applicant has submitted invoices issued:

TAX INVOICE					
Date: 22.04.2024 Invoice: AES / MAR-2024			To: Philips Commodities India Pvt Ltd 18 th floor, Urmi Estate, 95, Lower Parel, Mumbai, Maharashtra GST- 27AACCR6675H1Z0		
Sr. No.	Description	Unit	Qty	Rate	Amount Rs.
1	Sale of Power: Solar Units Sold for the month of Mar-2024	KWH	3,54,322	3.80	13,46,424
Total Amount (In Words)				Grand Total	13,46,424

- 5.1.3) The Electrical Energy generated by Applicant is delivered at the pooling sub-station of Shree Swami Samarth Solar Green Energy LLP. The role of the applicant ends at this point. The Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) accepts the delivery of the electrical energy at the pooling sub-station of Shree Swami Samarth Solar Green Energy LLP which is connected to the MSEDCL grid.
- 5.1.4) Billing of exported units is be done on main meter (22004263) installed at 33/11kv Nagansur Sub-station on percentage basis & Auxiliary supply will be billed on consumer end metering: 23001435, as actual at park end. 7) MSEDCL does not charge "Transmission and distribution charge" to the Applicant.
- 5.1.5) The electrical energy is sold by the applicant to M/s. Phillip Commodities Private Limited which in turn is sold through power purchase agreement executed on 09.02.2023 between Phillip Commodities Private Limited to M/s. Kores India Limited (hereinafter referred as "End Consumer"), ltd situated at (G.N. 149, Chakan, Talegaon road, Tal. Khed, Dist. Pune- 410501.), through the Grid Connectivity of MSEDCL.
- 5.1.6) MSEDCL delivers the electrical energy to the ultimate consumer viz. Kores India Limited, Chakan, Pune (End Consumer) through its own transmission and distribution infrastructure. MSEDCL charges the "Transmission and distribution charge" from the End Consumer which ultimately consumes the Electricity.
- 5.1.7) Invoice is raised by MSEDCL on the ultimate consumer which includes only the transmission, distribution and other incidental charges pertaining to the electricity supplied through Open access.

Sample Bill of Supply issued by Maharashtra State Electricity Distribution Co. Limited's to M/s. Kores (India Ltd Chakan Foundry , is as under
Consumer Number: 176099030420
Consumer Name: M/s. Kores (India) Ltd Chakan Foundry DN
Address: G.N. 149, Chakan Talegaon RD, Tal., Khed, Dist-Pune, 410501
For total amount of Rs. 1,48,84,270/-
It has submitted where total units supplied to Kores (India) Ltd on date 01.03.2024 to 31.03.2024 are shown to be Rs. 1,48,84,270/- breakup of this out of the units of Rs. 1,48,84,270/- consumed by Kores (India) ltd units



AB

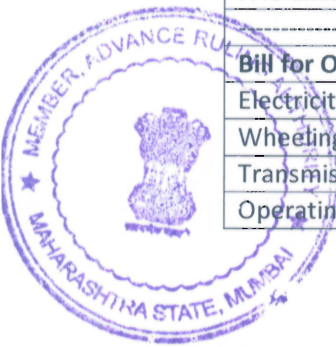
PRJ

received from generating company AES Engineering Solar India Pvt Ltd to the generating station described as under: -

MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.			
OPEN ACCESS METER CONSUMPTION REPROT FOR THE MONTH MARCH-2024			
Consumer No.	176099030420	Consumer Name	M/s. Kores (India Ltd Chakan Foundry)
Serial Number	23001435	Meter Data Source	Meter
Generation	SOLAR	Generating Company	M/s. AES Engineering Solar Pvt Ltd
Type			
Generating Station	33/11KV NAGANSUR SUB STATION-33KV FDR	Offset Priority	1
Agreement Start Date	01.03.2024	Agreement End Date	31.03.2024
Transaction Type	Short term	Feeder voltage	33
OA Contract Demand	1980	Energy Purchase Agreement	Yes
Bulk Power Transmission Agreement (BPTA)	No	Interstate Open Access	No.
CPP/Self Use	Non-Captive	Injection & Drawal on same feeder	No
Applied for Medium Term	No	Connected to grid	Yes
Single Generator with Multiple meters	No		
Consumption Details			
Export Units (KWH)	3,95,632	Units for OA Adjustment (KWH)	3,95,632
Units Aft. Transmission Loss (KWH)	3,54,322	Units Aft. Distribution loss (KWH)	3,65,960
Final Units (KWH)	3,54,322	Units adjusted against OA (KWH)	3,01,916
Over Injected Units (KWH)	0	Banked Offset Units (KWH)	52,406

5.1.8 Observation- In this invoice issued by Mahavitrans to M/s. Kores (India) Limited Chakan Foundry (end consumer) has charge transmission charges it Rs. 18,86,265/- and operating charges at Rs. 60,730/-. Relevant portion of the bill of supply are reproduced as under:

Maharashtra State Electricity Distribution Co. Ltd.			
Bill of Supply			
Circle	Pune Rural Circle	Bill Month	Mar- 2024
Consumer Name	M/s. Kores (India) Ltd Chakan Foundry DN	Consumer Number	176099030420
Address	Plot No. J2 S-Block, Pimpri, 411026.		
Bill for MSEDCL Consumption		Rate	Amount Rs.
Demand Charges		499.00	23,71,747.00
Energy Charges KVAH Units: 677001		8.12	54,97,248.00
FAC Charges @ 0.35			51,223.90
Bill for Open Access		Rate	Amount Rs.
Electricity Duty		0.1800	1,21,142.34
Wheeling Charges (1886265@.6)			11,31,759.00
Transmission Charges			18,86,265.00
Operating Charges			60,730.00



AB

90-5

5.2 Based on this fact the applicant has raised following questions as under:

1. Whether on the basis of the facts the applicant is liable to pay Goods and Services Tax (GST) on intra state delivery of electrical energy on the basis of the above agreement?
- 2) Whether on the basis of the facts the applicant is liable to pay Goods and Services Tax (GST) on interstate delivery of electrical energy on the basis of the above agreement?
- 3) In case the applicant is liable to pay Goods and Services Tax (GST), whether the applicant can claim and utilise the CGST and SGST paid at the instance of procurement of the solar power plant as input tax credit for payment of the GST liability as per Sr. No. a) and b) above?

5.3) Provisions of GST Act, Rules & Notification.

- 1) Electrical Energy are goods under GST Laws and notification no. 2/2017- Central Tax (Rate)- dated 28.06.2017 and Notification No.2/2017-Integrated Tax (Rate)- dated 28.06.2017, both vide , Sr. No. 104, Exempt from tax "Electrical Energy having Tariff item 271600 00, under GST Laws , respectively on Intra-State and Interstate supplies., respectively.
- 2) MSEDCL recovers "Transmission charges" from the End Consumer, which are exempted from Tax vide Notification no. 12/2017- Central Tax (Rate)- dated 28.06.2017 and Notification No. 12/2017-Integrated Tax (Rate)- dated 28.06.2017, both vide Entry at Sr no. 25 Heading 9969 – "Transmission or distribution of electricity by an electricity transmission or distribution utility", on Intra-State and Interstate supplies., respectively.
- 3) Provisions of section 17- of the GST Act, provide as under,
"17. Apportionment of credit and blocked credits.

(1)

(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."

Rule 42. "Manner of determination of input tax credit in respect of inputs or input services and reversal thereof.-(1) The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-
....."

- 5) **Rule 43- "43. Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases.**- (1) Subject to the provisions of sub-section (3) of section 16, the input tax credit in respect of capital goods, which attract the provisions of sub-sections (1) and (2) of section 17, being partly used for the purposes of business and partly for other



AB

203

purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

6. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

For reasons as discussed in the body of the order, the questions are answered thus –

1. **Whether on the basis of the facts the applicant is liable to pay Goods and Services Tax (GST) on intra state delivery of electrical energy on the basis of the above agreement?**

Answer : - In the invoices issued by applicant to its buyer, the applicant has invoiced charges for 'supply of Electricity' only and has not collected 'delivery charges' (transmission charges). Supply of "Electrical Energy "is exempted from Tax vide Entry at Sr. No 104 of the Notification No. 2/ 2017-Central Tax-(Rate) dated 28th June 2017

2. **Whether on the basis of the facts the applicant is liable to pay Goods and Services Tax (GST) on interstate delivery of electrical energy on the basis of the above agreement?**

Answer : - In the invoices issued by applicant to its buyer, the applicant has invoiced charges for 'supply of Electricity' only and has not collected 'delivery charges' (transmission charges). Supply of "Electrical Energy "is exempted from Tax vide Entry at Sr. No 104 of the Notification No. 2/ 2017-Integrated Tax-(Rate) dated 28th June 2017

3. **In case the applicant is liable to pay Goods and Services Tax (GST), whether the applicant can claim and utilise the CGST and SGST paid at the instance of procurement of the solar power plant as input tax credit for payment of the GST liability as per Sr. No. a) and b) above?**

Answer : - As the output supplies of Applicant are exempted from tax, Applicant is not entitled to claim input Tax Credit on its inward supplies of goods or services or both or capital goods (procurement of the solar power plant) used in generation of Electricity as per provisions of Section 17 r.w. rules 42 and 43, which prescribe for calculation of Input Tax Credit.



1. The applicant

AJAYKUMAR V. BONDE
(MEMBER)

PRIYA JADHAV
(MEMBER)

2. The concerned Central / State officer

Copy submitted for information to-

1. The Commissioner of State Tax, Maharashtra State, Mumbai
2. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
3. The Joint commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.

