

	<b>KERALA AUTHORITY FOR ADVANCE RULING</b>
	<b>GOODS AND SERVICES TAX DEPARTMENT</b>
	<b>TAX TOWER, THIRUVANANTHAPURAM</b>

BEFORE THE AUTHORITY OF : *Shri. B.G. Krishnan IRS &*  
: *Shri. B.S. Thyagarajababu B.Sc, LL.M*

Legal Name of the applicant	M/s. Prodair Air Products India (P) Ltd
GSTIN	32AAFPC0045E1Z2
Address	Ambalamedu, Ernakulam.
Advance Ruling sought for	i) Whether on facts and circumstances of case, the activity undertaken by the applicant amounts to 'job work' as defined under Section 2(68) of GST Laws and consequently classified as supply of services? ii) In case the proposed activity is considered as job work, what would be the tax rate for supply of job work services? iii) In case the proposed activity is considered as job work, what is the value on which the applicant would be liable to pay GST?
Date of Personal Hearing	26.09.2018
Authorized Representative	Mr.Nitin Vijaiveergia & Paresh Sancheti.

**ADVANCE RULING No. KER/ 22 /2018 Dt.20.10.2018**

The applicant is a manufacturer of industrial gases such as Hydrogen, Nitrogen, Oxygen etc. The applicant set up an industrial gases plant adjacent to Bharath Petroleum Corporation Ltd, who is the sole customer. The plant is owned and operated by the applicant on the land owned by BPCL on lease rent basis. The applicant manufactures Industrial Gases using various inputs such as natural gas, de-mineralized water, raw water etc supplied by the customer BPCL. Certain quantum of natural gas provided by the customer is supplied to the gas turbines for generation of electricity which is used to power the entire plant. At present BPCL sells all inputs to the applicant collecting Sales Tax/VAT and applicant sells manufactured industrial gases to BPCL charging GST. Natural gas provided by BPCL is the major input which is a commodity outside the levy of GST, whereas the finished product, industrial gas attract GST. Now they desire to change the business model to job work model. Under this model, BPCL would commence movement of inputs to applicants plant through pipeline as a principal supplier on free of cost

and the applicant acting as job worker would converting the inputs to industrial gases and same would be sent back to BPCL through pipelines. Under this circumstances the applicant sought for advance ruling on the following:

- i) Whether on facts and circumstances of case, the activity undertaken by the applicant amounts to 'job work' as defined under Section 2(68) of GST Laws and consequently classified as supply of services?
- ii) In case the proposed activity is considered as job work, what would be the tax rate for supply of job work services?
- iii) In case the proposed activity is considered as job work, what is the value on which the applicant would be liable to pay GST?

The authorized representative of the applicant was heard. It is stated that the customer BPCL would commence the movement of natural gases and other inputs through pipeline on the basis of job work delivery challan under Rule 55(b) of GST Rules to the applicant's plant on free of cost basis. On receipt of the said inputs, the applicant would be converting these inputs to industrial gases such as Hydrogen, Nitrogen, Oxygen etc. The industrial gases would be sent back to BPCL plant on the basis of the Job work delivery challan under Rule 55(b) of GST Rules. Applicant would be issuing monthly tax invoice charging the conversion charges for processing / conversion of inputs to industrial gases along with applicable GST.

The applicant would be recovering the job work charges for processing of natural gas and other inputs into industrial gases for BPCL. The job work charges would include the job work fee and conversion guarantee fee. As the inputs are received on free of cost, the job work/processing charges will be significantly lower than the market value of industrial gases provided by the applicant to the principal. The BPCL would be disclosing the inputs including natural gases sent to the applicant in the return ITC-04 which is required to be submitted by the principal supplying goods to the job worker on a quarterly basis. The applicant would be disclosing the value of tax invoices raised in respect of supply of job work services as taxable supplies in GSTR-1 as well as GSTR-3B.

Job work is defined under Section 2(68) of GST Law as any treatment or process undertaken by a person on goods belonging to another registered taxable person. The word

'goods' means every kind of movable property other than money and securities. The essential requirement to be fulfilled to establish a transaction as job work is the treatment or process undertaken on the goods belonging to another. Section 143 of GST Law explain the procedure to be followed in the case of job work transaction. A registered taxable person may, under intimation, send any inputs without payment of tax to a job worker for job-work and bring back inputs after completion of job work or otherwise, within one year of their being sent out, to any of the place of business without payment of tax. The word input defines as any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business.

The applicant being a job worker satisfy the necessary ingredients to carry out job work activity. The treatment or process undertaken by the applicant on the goods belong to the principal ie, BPCL. The goods on which treatment or process apply are the inputs of the principal. The principal transfer the inputs meant for job work on free of cost under intimation to the 'job worker'. The term 'process' is wide enough to include any activity of conversion, manufacture, development or preparation of goods. Therefore the activity of conversion of natural gas and other inputs to industrial gas qualify as 'treatment or process' of inputs. Hence the activity squarely fall under the scope of 'job work'.

Under GST regime the scope of 'job work' includes manufacture as well. The HSN 9988 pertains to job work, specifically includes the words, manufacturing services on physical inputs owned by others. The term 'manufacture' defined under Section 2(72) of GST Law as processing of raw material or inputs in any manner resulting in emergence of a new product having distinct name, character and use. The inputs received by the applicant send back to the principal as industrial gases, which have a distinct name, character and use as compared to the inputs. In Eaton Fluid Power Ltd case [2014(308)ELT602(Tri-Mumbai)], it has specifically observed that a job work may or may not amount to manufacture, and just because activities undertaken result in a new commodity, it cannot be said that there was no job work involved. In the case of JSW Energy Ltd, Maharashtra Appellate Authority for Advance Ruling observed that job work may include 'manufacture' or bringing into existence a new distinct product. Hence the definition of job work under the GST Act is much wider compared to the pre-GST regime.

Therefore any activity whether amounting to manufacture or not, could qualify as job work activity, subject to the condition that the inputs owned by the principal and the job worker carried treatment or process on the inputs/goods. The value on which GST would be payable by the applicant for rendering of job work services shall be the transaction value i.e., price actually paid or payable as per the commercial arrangement between the applicant and principal. No other cost shall be required to be considered for the valuation of the job work activity unless the same is specifically included in the job work charges as agreed between the parties.

The authority has examined the issues meticulously. The inputs supplied by the principal such as natural gas, de-mineralized water, raw water etc can be classified as goods. The industrial gas returned to the principal would also fall under the definition of goods. Natural gas is the major inputs provided by the principal for job work, which is not a taxable commodity under GST. Job work is defined as any treatment or process undertaken by a person on 'goods' belonging to another registered taxable person. As far as a job worker is concerned, statute does not specify any restriction that the 'inputs' subject to the treatment or process shall be taxable goods. Therefore, irrespective of whether the goods received by the applicant are taxable or not, job work activity should be allowed to be carried out on such activity. The principal is a taxable person under GST Law. The ownership of all the inputs as well as the output are vested with the principal. These inputs and outputs are used in the course or furtherance of business of manufacture of petroleum products. Under GST regime 'inputs' have wider meaning, as such the goods sent by the principal such as natural gas, de-mineralized water raw water etc should fall under the definition of inputs as the same being indirectly used for ultimate manufacturing of petroleum products. Further, the industrial gas received by the principal shall also fall under the definition of inputs as the same are being used for manufacturing of final petroleum products. Therefore the scope of the term 'in the course or furtherance of business' under GST Law is wide enough to include all those goods which are used directly or indirectly for the conduct of business.

These inputs subject to particular process by the job worker and converted in to industrial gas and returned to the principal. It is settled position of law that job work is an activity which may or may not tantamount to manufacture. A job worker may undertake manufacturing of goods on account of others from the inputs supplied to him free of cost, and realize job work

charges on return of the goods so manufactured or processed. In such a scenario the job worker alone has the liability to pay tax on the job work charges realized.

The industrial gas produced out of the major materials or inputs supplied by the principal. The job worker used some minor, ancillary goods to complete the process. The application of minor items by the job worker would not detract it being a job work. Therefore the processing undertaken by the applicant on the goods belong to the principal, another registered person qualifies as job work even if it amounts to manufacture.

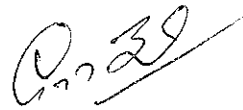
Therefore the activity carried out by the applicant of processing natural gas and other inputs received from BPCL on free of cost basis and manufacturing industrial gases shall fall under the scope of 'job work' under GST. The services included under the Heading 9988 are manufacturing services performed on physical inputs owned by others. The activity of the applicant is job work as the output is not owned by the applicant providing this service. Hence the activity falls under serial No.(ii) of the HSN 9988 taxable @18% GST.

In the light of the discussion above, the following rulings are issued:

- i. The activity undertaken by the applicant of processing natural gas and other inputs received from BPCL free of cost basis and manufacturing industrial gases from them shall fall under the scope of 'job work' under GST.
- ii. The activity of the applicant being job work; is a provision of service, as the input as well as output is owned by the principal and not owned by the applicant and falls under serial No.(ii) of the HSN 9988 taxable @18% GST.
- iii. GST is payable on the transaction value for which job work service is rendered.



B.G. Krishnan IRS  
Joint Commissioner of Central Tax  
MEMBER



B.S. Thyagarajababu, B.Sc, LL.M  
Joint Commissioner of State Tax  
MEMBER

To

M/s. Prodair Air Products India (P) Ltd., Ambalamedu, Ernakulam.

