



ODISHA AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX (GST)
RAJASWAVIHAR, BHUBANESWAR-751007(ODISHA)
PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING
U/S.98 OF THE GOODS AND SERVICE TAX ACT, 2017

Members Present:

1. Sri Abhay Gupta, IRS, Additional Commissioner, Office of the Chief Commissioner, GST, Central Excise & Customs, Bhubaneswar.
2. Sri Nihar Ranjan Nayak, Additional Commissioner, CT & GST Commissionerate Odisha, Baniyakar Bhawan, Cantonment Road, Cuttack-753001- Odisha.

Name and Address of the Applicant	M/s. Essel Mining Industries Limited, Plot no. 1297/1298/1299, Essel Mining Industries Ltd, Cinema Hall Lane, Kendujhar, Odisha – 758035
GSTIN or User ID	21AAACE6607L1ZU
Date of Filing of Form GST ARA-01/ Date of submission of required documents	13.02.2024
Present for the Applicant in the Personal hearing.	Saurabh Bhise, Advocate Biswajit Bhaduri, A.G.M.
Date of Personal Hearing	23.04.2024



ORDER NO. 01/ODISHA-AAR/2024-25 Dated / /2024

Subject: M/s. Essel Mining Industries Limited (herein after referred to as the 'Applicant') having principal place of business/registered office/corresponding address at Plot no. 1297/1298/1299, Essel Mining Industries Ltd, Cinema Hall Lane, Kendujhar, Odisha – 758035 bearing GSTIN 21AAACE6607L1ZU has filed an application for advance ruling under Section 97 of CGST Act, 2017 and Section 97 of the OGST Act, 2017 in FORM GST ARA-01 discharging fee of Rs.5,000/- each under the CGST Act and the SGST Act.

1.0 The Applicant has sought ruling in respect of the following question:

“Whether handover of Building and Civil Structure, including railway siding, by the applicant to OMCL tantamount to sale of building and covered under clause no.5 to Schedule III of the CGST Act, 2017?”

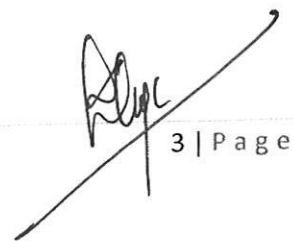
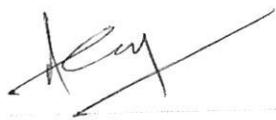
1.1 At the outset, we would like to make it clear that the provisions of both the CGST Act and the OGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the OGST Act.

2.0 Submission of the Applicant

2.1 M/s. Essel Mining Industries Ltd. (hereinafter referred to as “the applicant”), is a public limited company registered under the Companies Act, 1956. The applicant is, *inter-alia*, engaged in the business of mining, iron pellets, Noble Ferro Alloys etc. amongst others. The applicant is registered under the CGST Act, 2017 vide GSTIN 21AAACE6607L1ZU (in the State of Odisha).



- 2.2 The applicant had entered into a lease deed with the Government of Odisha dated 30.03.1988 wherein mining rights in the form of mining lease were granted for Jiling Langalota Iron and Manganese Mines situated at Joda Mining sector of Keonjhar district of Odisha. The period of the said lease deed was valid from 1.10.1984 to 30.09.2004, which was further extended up to 31.3.2020 by the Government of Odisha.
- 2.3 To carry out the mining operations at the aforesaid mines, the applicant had constructed building & Civil Infrastructures along with railway sidings and plant and machinery. The lease deed had exclusively granted the power to the applicant to carry out any operation on the said mines which were necessary for carrying out mining operations.
- 2.4 As mentioned above, the validity of the lease deed was extended up to 31.03.2020. Thereafter, the Government of Odisha, pursuant to the letter dated 11.01.2021, decided to grant the mining lease to Odisha Mining Corporation Limited (hereinafter referred to as the "OMCL") which is a wholly owned corporation of the Government of Odisha. The OMCL approached the applicant and expressed their willingness to acquire the infrastructure constructed by the applicant on the said mines. After detailed discussion between the applicant and OMCL, a final understanding was reached between them wherein it was agreed that the OMCL will take over the buildings, including railway siding and plant and machinery constructed by the applicant on the mines. Subsequently, the Government of Odisha approved the said transaction between the applicant and OMCL vide letter no. SM-MC1-MISC-0047-2020-5344/SM dated 24.05.2023. Thereafter, the applicant and OMCL entered into a



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deed dated 28.06.2023 for “handing over and taking over of building & civil structure and Plant & Machinery” on “as is where is basis”. The total consideration agreed upon between the applicant and OMCL, as per deed, was Rs.18,50,36,664/-. Furthermore, pursuant to 3rd round of negotiation between the applicant and OMCL, a final consideration for handing over of Plant and Machinery, railway siding and building structure was reached which is as follows:

- Rs.18,10,51,928/- were charged by the applicant for handing over the possession of Building and civil structures.
- Rs.39,84,736/- were charged by the applicant for handing over the possession of Plant and Machineries.
- Rs.2,04,65,062/- were charged for handing over the possession of Railway siding.

2.5 According to the applicant, the handing over of Plant and Machinery for the transaction value of Rs.39,84,736/- shall be liable for GST and accordingly the applicant had already discharged the tax on the same. However, according to the applicant, the handover of Building and Civil Structures, including railways siding (hereinafter referred to as the “Building”), for transaction value of Rs.18,10,51,928/- and Rs.2,04,65,062/- respectively, is sale of building which is not leviable to GST as per the clause no. 5 to Schedule III of the CGST Act, 2017. The applicant requests the Hon’ble Odisha Authority for Advance Ruling to issue ruling on whether such handover of Building and Civil structures by the applicant is covered under clause no.5 to Schedule III of the CGST Act, 2017.



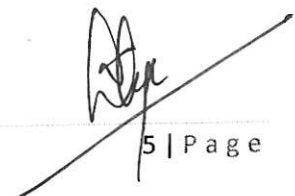
2.6 **APPLICANT'S INTERPRETATION**

As per the applicant's understanding, handing over possession of the building including railway siding to OMCL is the sale of building. The applicant understands that the applicant has transferred the ownership of the building to OMCL and therefore, such transaction qualifies as sale of building.

2.6.1 It is pertinent to refer Section 7 of the CGST Act, 2017 which talks about the scope of supply under the Act. From the definition of Supply, it is understood that the Act has not defined the term supply exhaustively as the definition of the supply begins with the words "supply includes". Therefore, the supply under the CGST Act, 2017 is a wider concept and includes all forms of transactions which may constitute supply.

2.6.2 In respect of the transaction in dispute, which involves handing over the possession of Building and Civil Structure, the applicant understands that such transaction is not leviable to GST, in terms of clause (a) of sub section (2) of Section 7 of CGST Act, 2017. The sub-section 2 begins with the wordings "notwithstanding anything contained in sub-section (1)" which makes it clear that the present sub-section (2) presides over the definition of supply and even if the transaction satisfies the definition of supply, such transaction will not fall under the scope of supply. The applicant submits that the transaction in dispute is covered in clause no. 5 of Schedule III to the CGST Act, 2017.

2.6.3 The word 'sale' is not defined under the GST Act, 2017. Reference has been made to Section 54 of the Transfer of Property Act wherein the sales of immovable property is defined as under:



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54. "Sale" defined.—"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

The Applicant quoted several judgements such as **Bhatia Co-operative Housing v. D. C. Patel (SC) 1952, ThakoorChunderPoramanick v. Ramdhone Bhuttacharjee (Cal FB) 1866** etc and submitted that the person who built any structure on the land belongs to another person, is entitled to either remove the structure or receive compensation in case the structure remains on the land for the benefit of the owner of the soil. This gives a lessee the right and ownership over the structure erected on the land. Thus, in the present case, the ownership of the Building and Civil structure lies with the applicant only.

The Applicant further submitted that they had constructed the building and civil structure for their own use. The applicant is already in possession of Completion Certificate. Therefore, the entire transaction is out of the ambit of Schedule II as it is neither supply of goods nor supply of services.

2.6.4 In the present case, it has been decided to not remove the Building for the future benefit of the owner of the soil/future lessee. Furthermore, the applicant has transferred the entire rights in building to OMCL without retaining any benefit/rights over the building. Thus, the entire transaction falls under the definition of "sale" as extracted above. As the entire transaction falls under the category of 'sale of building', the same is neither supply of goods nor supply of services as per clause no. 5 of Schedule-III to the CGST Act, 2017, as extracted above. Therefore, the applicant is not liable to discharge GST on the entire transaction.

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2.6.5 So far as railway siding is concern, according to the applicant, the same is also in the nature of “building” and therefore, outside the purview of GST.

2.6.6 Without prejudice to the submission made above by the applicant, even if the applicant assumes that the ownership of the building doesnot belongs to the applicant, the entire transaction, otherwise also, do not fall under the scope of supply. The definition of supply clearly depicts that in order to qualify as supply under section 7(1)(a) of the CGST Act, 2017, a transaction must be either supply of goods or services.

2.6.7 The transactions in money are specifically excluded from the ambit of services. Accordingly, it is submitted that transaction in money does not involve provision of any service and only refers to mere payment and receipt of money.

The applicant submits that consideration received from OMCL is merely a transaction in money as there is no provision of service by the applicant which falls under the scope of supply. The entire consideration is part and parcel of the transaction between the Government of Odisha and OMCL. The mines along with land belong to the Government of Odisha. Therefore, the building and civil structure shall also belong to Government of Odisha.

3.0 The personal hearings were fixed on 11.03.2024 & 23.04.2024 under due intimation to the applicant, the jurisdictional officer of State & Central GST (intimated through their respective Commissionerates along with a



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copy of the application and the written submission of the Applicant). The Applicant, through its representatives Shri Saurabh Bhise, Advocate & Shri Biswajit Bhaduri, A.G.M., appeared for personal hearing on dated 23.04.2024. They re-iterated the submissions already furnished in the application filed for advance ruling and requested to decide the issue accordingly. The Revenue has neither submitted its comments nor appeared for personal hearing.

Discussion & findings

- 4.0 We have gone through the advance ruling application, question on which advance ruling has been sought and the Applicant's interpretation of law and/or facts, as the case may be, in respect of the question asked. We observe that, the issue before us is squarely covered under Section 97(2) of the CGST Act, 2017 and therefore we admit the application for consideration.
- 4.1 The questions before us to decide are as under;
"Whether handover of Building and Civil Structure, including railway siding, by the applicant to OMCL tantamount to sale of building and covered under clause no.5 to Schedule III of the CGST Act, 2017?"
- 4.2 The issue was examined in detail. It is observed that the Applicant had entered into a lease deed with the Government of Odisha dated 30.03.1988, which was subsequently extended up to 31.03.2020, wherein, mining rights in the form of mining lease were granted for Jiling Langalota Iron and Manganese Mines situated at Joda Mining sector of Keonjhar district of Odisha. The lease deed had granted the liberty and power to the applicant to erect, construct, maintain and use on or under



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the said land any engines, machinery, plant dressing floors, workshops, storehouse, bungalows, godowns, sheds and other building carry out any operation on the said mines which were necessary for carrying out mining operations. To carry out the mining operations at the aforesaid mines, the applicant had constructed building & Civil Infrastructures along with railway sidings and plant and machinery. After the expiry of lease deed, the Government of Odisha, decided to grant the mining lease to Odisha Mining Corporation Limited ("OMCL"). The applicant and OMCL entered into a deed dated 28.06.2023 for "handing over and taking over of building & civil structure and Plant & Machinery" on "as is where is basis". The Applicant has charged consideration of Rs.39,84,736/- for handing over of Plant and Machinery, Rs.2,04,65,062/- for handing over railway siding and Rs.18,10,51,928/- for handing over building and civil structure. The Applicant is stated to have already discharged GST on handing over of plant and machinery to OMCL treating the same as supply of goods.

4.3 In order to determine as to whether the activity of handover of Building and Civil Structure, including railway siding, by the applicant to OMCL tantamount to supply of goods or services or both, it is necessary to delve into the relevant provisions of CGST Act as indicated below:

4.3.1 The relevant extract of the Section 7 of the CGST Act, 2017 is as follows:

Section 7. Scope of supply.-

- (1) For the purposes of this Act, the expression - "supply" includes-
- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;



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¹[(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation.-For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

(b) import of services for a consideration whether or not in the course or furtherance of business; and

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; ³[****]

(d) ⁴[****].

- (1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.
- (2) Notwithstanding anything contained in sub-section (1),-
- (a) activities or transactions specified in Schedule III; or
- (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,
- shall be treated neither as a supply of goods nor a supply of services.
- (3) Subject to the provisions of sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as -
- (a) a supply of goods and not as a supply of services; or
- (b) a supply of services and not as a supply of goods.

4.3.2 Further, the terms "consideration", "goods" and "Services" are defined in the CGST Act, the relevant extracts of sub-section (52) and (102) of Section 2 are as follows.

Section 2. Definitions.-

In this Act, unless the context otherwise requires,-

(31) "**consideration**" in relation to the supply of goods or services or both includes-



(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

(52) "**goods**" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

(102) "**services**" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

From the above extracted definition of Supply, it is understood that the Act has not defined the term supply exhaustively as the definition of the supply begins with the words "supply includes". Therefore, the supply under the CGST Act, 2017 is a wider concept and includes all forms of transactions which may constitute supply.

4.3.3 Clause no. 5 of Schedule III to the CGST Act, 2017 is as below:

"5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building."

The word 'sale' is not defined under the GST Act, 2017.

As per Section 54 of the Transfer of Property Act wherein the sales of immovable property is defined as under:



54. "Sale" defined. – "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

4.3.3.1 The Apex Court in the case of **CIT v. Motors and General Stores (P.) Ltd (1967) 66 ITR 692** also relied upon the above definition in the context of the Income Tax Act and held that 'sale' is a transfer of ownership in immovable property for a money consideration.

4.4 From the above, it is observed that "Sale is a transfer of ownership in immovable property for a money consideration." Further, Building structure and railway siding constructed on land is attached to it and is part of land. Without land, any building or any portion of building structure has no existence, and for transfer of ownership in building some rights in land is essential. Building is in nature of addition to land. After construction of building on land the property has to be sold as land and building. Building cannot be sold without appropriate claim in land. Therefore, for selling building or building structure or any portion/part of it, proportionate share in land is also to be transferred.

4.5 In the instant case, the applicant has no right or ownership in the land. In view of the above, the interpretation of applicant that handover of Building structure and railway siding, by the applicant to OMCL tantamount sale of building and covered under clause no. 5 of Schedule -III of CGST Act, 2017, is not correct. Further, applicant has received consideration on handover of Building structure and railway siding. The applicant's other interpretation that consideration received from OMCL is merely a transaction in money, is also not correct.



- 4.6 As per provisions under sub-Section 1A of Section 7 of the CGST Act, 2017, in order to treat an activity as either supply of goods or services as referred to in Schedule- II, it is necessary to determine as to whether the said activity constitutes a Supply in accordance with provisions of sub-Section (1) of Section 7 of the of the CGST Act, 2017.
- 4.7 Now the moot question is whether the activity of handing over the possession of Building & Civil Structures, Railway siding constructed/erected by the applicant on the land belonging to the State Government, to the new lessee (OMCL) on "as is where is basis" for a monetary consideration vide the said deed dated 28.06.2023 between the applicant and OMCL constitute a supply or not.
- 4.8 The relevant extracts of the Lease deed dated 30.03.1988 between applicant and the Government of Odisha, in respect of the obligation of the Lessee to remove their properties on the expiry of lease is as below:

Clause 5& 6of Part IX of Lease deed dated 30.03.1988-

5. *The lessees having first paid and discharged rents, rates and royalties payable by virtue of these presents may at the expiration or sooner determination of the said term or within six calendar months thereafter (unless the lease shall be determined under clause 1 and 2 of this part and in that case at any time not less than three calendar months not more than six calendar months after such determination) take down and remove for their own benefit all or any engines, machinery, plant, buildings, structures, tramways, railways and other works, erections and conveniences which may have been erected, set up or placed by the lessees in or upon the said lands and which the lessee are not bound to*



deliver to the state under clause 20 of Part VII of this schedule and which the state Govt. shall not desire to purchase.

6. *If at the end of six calendar months after the expiration or sooner determination of the said term under the provision contained in clause 4 of the Part VIII of this schedule become effective there shall remain in or upon the said land any engines, machinery, plant, buildings, structures, tramways, railways and other works, erections and conveniences or other property which are not required by the lessees in connection with operations in any other lands held by them under prospecting license or mining lease the same shall if not removed by the lessees within one calendar month after notices in writing requiring their removal has been given to the lessees by the state Govt and may be sold or disposed of in such manner as the state Govt shall deem fit without liability to pay any compensation or to account to the lessees in respect thereof.*

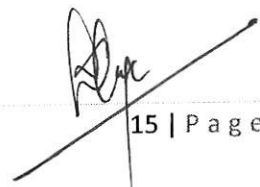
4.9 It is apparent from the above mentioned clauses of the lease deed dated 30.03.1988 and statement of facts submitted by the applicant, that the applicant has the obligation to remove the buildings/structures and railway siding within the time specified in the lease deed. However, in the event the buildings/structures and railway siding erected/set-up by the applicant are not removed by the applicant, the State Government have the liberty to sell or dispose of the same in such manner as deemed fit without having liability to pay any compensation to the applicant in respect of the said buildings/structures and railway siding.

4.10 The applicant constructed the buildings, civil structures and the railway siding on the land of the State Government for mining activities in accordance with the lease deed 30.03.1988. After expiry of the validity of



the lease deed on 31.03.2000, the State Government vide their letter dated 11.01.2021, decided to grant the mining lease to Odisha Mining Corporation Limited (hereinafter referred to as the "OMCL") which is a wholly owned corporation of the government of Odisha. As per the consent of the State Government, applicant entered with an agreement with OMCL vide a deed dated 28.06.2023 (deed of handing over and taking over Building & Civil Structure and Plant & Machinery) wherein the applicant agreed *inter-alia* to hand over the possession of Building & Civil Structures, Railway siding to OMCL on "as is where is basis" for a monetary consideration of Rs.18,10,51,928/- and Rs.2,04,65,062/- respectively. In the circumstances where it was 'obligatory on the part of the applicant' to remove the buildings/structures and railway siding in accordance with **Clause 5 of Part IX of Lease deed dated 30.03.1988** than otherwise and upon consent of the State Government, the applicant is entering with an agreement with OMCL for handing over the to the possession of Building & Civil Structures, Railway siding to OMCL against monetary consideration of Rs.20,15,16,990/- effectively implies that the applicant has made a contractual promise to the OMCL to refrain from removing the buildings/structures and railway siding erected on the land of the Lessor so that the said structures can be put to use by the new lessee namely OMCL.

4.11 Therefore, the deed dated 28.06.2023 (deed of handing over and taking over Building & Civil Structure and Plant & Machinery effectively implies that the applicant and OMCL entered into a contractual agreement wherein, the applicant is making a promise to OMCL to refrain from removing the buildings/structures and railway siding erected on the land leased out by the State Government to OMCL against receipt of monetary



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consideration which the applicant was otherwise obliged to remove the said structures in accordance with Clause 5 of Part IX of Lease deed dated 30.03.1988. This contractual agreement between the applicant and OMCL wherein the applicant effectively agrees to an obligation to refrain from removing the constructed/erected structures for the benefit of OMCL against receipt of consideration of Rs.20,15,16,990/- is covered under the **scope of supply** under Section 7(1) of the CGST Act and the contractual agreement of agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act is treated as a **supply of Service** as per entry Sl. No. 5(e) of the Schedule-II of the CGST Act.

4.12 In view of the foregoing discussions, we are of the opinion that contractual agreement between the applicant and OMCL for handing over Building and Civil Structure, including railway siding in lieu of consideration, by the applicant implies that the applicant effectively agrees to the obligation to refrain from removing the constructed/erected structures against receipt of consideration of Rs.20,15,16,990/- for the benefit of OMCL is covered under the scope of supply under Section 7(1) of the CGST Act and the said contractual agreement of agreeing to the obligation to refrain from an act is treated as a **supply of Service** as per entry Sl. No. 5(e) of the Schedule-II of the CGST Act. It is a service classifiable under other miscellaneous service (SAC 999792) and taxable @18% under Sl. No. 35 of Notification no. 11/2017 CT (Rate) date 28.06.2017. Held Accordingly.



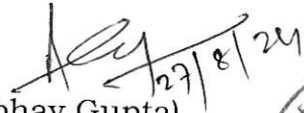
5.0 In view of the above, we pass the following order:

RULING

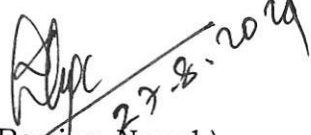
Q.1 Whether handover of Building and Civil Structure, including railway siding, by the applicant to OMCL tantamount to sale of building and covered under clause no.5 to Schedule III of the CGST Act, 2017

Ans: Answer is in the 'Negative'. The contractual agreement of handing over of Building and Civil Structure, including railway siding, by the applicant against receipt of consideration; effectively a contractual agreement to refrain from removing the erected structures against receipt of consideration is treated as supply of service as per the Clause 5(e) of Schedule -II of the CGST Act, 2017. It is a service classifiable under other miscellaneous service (SAC 999792) and taxable @18% under Sl. No. 35 of Notification no. 11/2017 CT (Rate) date 28.06.2017.

6.0 The Applicant or jurisdictional officer, if aggrieved by the ruling, may appeal to the Odisha State Appellate Authority for advance ruling under Section 100 of the CGST/OGST Act, 2017 within 30 days from the date of receipt of the advance ruling.


(Abhay Gupta)
Member, CGST




(Nihar Ranjan Nayak)
Member, SGST

C. No. V (30)20/ ARA/ODISHA/BBSR/2023/17 / 22854-56 A

Dated: 28/8/24

To

M/s. Essel Mining Industries Limited,

Plot no. 1297/1298/1299,

Cinema Hall Lane, Kendujhar,

Odisha - 758035.

Copy forwarded to:

1. The Commissioner, CGST & Central Excise, Rourkela Commissionerate, Rourkela.
2. The Chief Commissioner, SGST Odisha, Baniyakar Bhawan, Old Secretariat Compound, Cuttack-753001, Odisha.
3. Office copy.