


 सत्यमेव जयते	RAJASTHAN APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX NCR BUILDING, STATUE CIRCLE, C-SCHEME JAIPUR – 302005 (RAJASTHAN)	
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PROCEEDINGS UNDER SECTION 101 OF THE CENTRAL GST ACT, 2017 AND RAJASTHAN
GST ACT, 2017



BEFORE THE BENCH OF

1. MS. ARCHANA P. TIWARI, MEMBER
2. SH. ALOK GUPTA, MEMBER

ORDER NO. RAJ/AAAR/05/2018-19 DATED 5.12.2018

Name and address of the appellants	:	KEI INDUSTRIES LIMITED Phase III, SP - 919-920-922, KEI INDUSTRIES LIMITED, RIICO Industrial Area, Bhiwadi, Alwar, Rajasthan, 301019
GSTIN of the appellants	:	08AAACK0251C1Z7
Clause(s) of Section 97(2) of CGST / SGST Act, 2017, under which the question(s) raised	:	(b) applicability of a notification issued under the provisions of this Act;
Date of Personal Hearing	:	14.11.2018
Present for the Appellant	:	Sh. Manish Gaur , Advocate, Ms. Jyoti Pal , Advocate and Shri Adarsh Jain, Sr. General Manager
Details of Appeal	:	Appeal No. RAJ/AAAR/APP/05/2018-19 against Advance Ruling No. RAJ/AAR/2018-19/09 dated 01.08.2018

Proceedings

(Under Section 101 of the Central GST Act, 2017 and Rajasthan GST Act, 2017)

At the outset we would like to make it clear that provisions of both the Central GST Act, 2017 and Rajasthan GST Act, 2017 are same except for certain provisions. Therefore, unless a mention is

specifically made to such dissimilar provisions, a reference to the Central GST Act would also mean a reference to the same provisions under Rajasthan GST Act.

2. The present appeal has been filed under Section 100 of the Central GST Act, 2017 (hereinafter also referred to as 'CGST Act') and Rajasthan GST Act, 2017 (hereinafter also referred to as 'RGST Act') by M/s KEI INDUSTRIES LIMITED against the Advance Ruling No. RAJ/AAR/2018-19/09 dated 01.08.2018.

BRIEF FACTS OF THE CASE

3. KEI Industries Ltd. (hereinafter also referred to as the "Appellant") is a public limited company incorporated in India and is engaged in the business of manufacturing and supply of various kinds of Power Cables.

4. The issue is the supply of Copper XLPE insulated armoured low tension cables(hereinafter referred to as "electric/power cables") by the Appellant to M/s. Vedanta Ltd.

5. M/s.Vedanta is undertaking petroleum operations under PRE-New Exploration Licensing Policy(PRE-NELP) granted by the Government of India/State Government to Cairn Energy India Pvt. Ltd. in the State of Rajasthan which was vested in Vedanta after the merger of Cairn India Pvt. Ltd. in Vedanta. For carrying out such petroleum operations, it uses various kinds of machines and equipment. Almost all machines and equipment used by Vedanta for petroleum operations run on electricity and thus, electric cables are required for providing electricity to such machines and equipment.

6. M/s. Vedanta issues tender notice for supply of power cables required for its petroleum operations and further selects a supplier who is required to supply power cables in accordance with the specifications of the cables viz. the cable type, length, thickness, material, color, etc. provided by M/s.Vedanta in the order sheet issued for this purpose.

7. The Appellant had been selected by M/s. Vedanta for supplying cables to it by raising Purchase Order No. 4500030187 and 4500030182 both dated 14.11.2017 and amended rev-01 dated 12.01.2018. Directorate General of Hydro carbons has certified through certificate dated 18.01.2018 that the goods i.e. power cables of various specifications, supplied as per attached list are required for the petroleum operations.



8. It is to be noted that in the instant case, the Appellant is not aware of the type, nature and functions, etc. of the machines or equipments for which the cables are required and therefore, the Appellant is supplying power cables to the Appellant on the basis of the job sheet provided by M/s. Vedanta. Once the Appellant receives the order sheet, it manufactures the power cables as per the specifications provided therein. The Appellant manufactures the power cables of exact length/specifications as ordered by M/s. Vedanta and the same are supplied exclusively to M/s. Vedanta and not to any other recipient.

9. It is pertinent to note that even though the cables are manufactured as per the specifications provided by M/s. Vedanta and supplied exclusively to M/s. Vedanta, the cables are not exclusively or specifically meant to be used with such machines in as much as these power cables are general power cables and are capable of being used with any machine/equipment.

10. The Appellant submitted the following questions for Advance Ruling

“Whether the power cables supplied by the Appellant would be covered under the scope of Sl. No. 1 of Notification No. 03/2017-CT?”

11. Appellant contended that power cable supplied to M/s. Vedanta for supplying electricity to the machines or equipments used in its petroleum operations would qualify as ‘material’, ‘accessories’, ‘consumables’, and/or ‘stores’ of Sl. No. 1 of Notification No. 03/2017-CT for running machines listed in the list annexed to that notification. (Entry No.1 to 23) and thus can be supplied at concessional rate as mentioned in the notification.

12. The AAR did not find merit in the contention of the Appellant on account of the following :-

- i) On careful perusal of notification it is evident that Electric cables are not included in any of the entries of goods specified from entry no. 1 to 23 of the List of goods appended to Notification No. 03/2017-CT.
- ii) Entry no. 24 of List of goods appended to Notification No. 03/2017-CT. restricts accessories, stores, materials or consumables ONLY in relation to the goods specified in the list of goods from entry no. 1 to 23. What Appellant has failed to specify is that “Electrical cables” supplied by him will be accessories, stores, materials and/or consumables to which specific goods as mentioned in entry no. 1 to 23 of the list of goods .
- iii) Moreover on examination of purchase orders it is found that they too do not specify that electrical cables supplied will be accessories, stores, materials and/or consumables to which specific goods as mentioned in entry no. 1 to 23 of the list.



iv) Appellant has mentioned that Electrical Cables so supplied by them

1) are not specific and exclusive to machine used by M/s Vedanta .

2) supplied cables are capable of being used with more than one kind of machine by M/s Vedanta .

Thus it can be inferred that:

1) dealer is not aware off and has not clarified that “Electrical cables” supplied will be used as accessories, stores, materials and/or consumables to which goods falling under entry no.1 to 23 of the list.

2) “Electrical cables” supplied can very well be used as by M/s. Vedanta as accessories, stores, materials or consumables for even those goods which are not covered under entry no.1 to 23 of the list.

3) It is to be noted that in the instant case, the Appellant is not aware off the type, nature and functions, etc. of the machines or equipment for which the cables are required. The Appellant is supplying power cables to on the basis of the job sheet provided by M/s. Vedanta.

v) It is a clear possibility that there are other machine and equipment and their accessories, stores, materials and consumables which though being used in process of petroleum operation but are not enjoining concessional rate as they are not covered under entry no. 1 to 23 of the notification yet being supplied electricity by these electrical cables to make them functional .

vi) In common parlance “ Electrical Cables” are generally used for setting up of a system in which by electric cabling or wiring, electricity is downloaded from the main source (i.e. from grid or transformers) and further transmitted , distributed or supplied to various points in working area. Machines, equipments and accessories draw supplies of electricity from these points to be functional. Hence Electrical Cables are generally used to set up a network of wires and cables which are usually permanent in nature through which electricity can flow, distributed and supplied to various points. To regard Electrical Cables as “accessories, stores, materials or consumables for running of the goods specified in the List” as mentioned in entry no. 24 of the notification is not rational by any stretch of imagination.

vii) The Appellant has failed to identify/clarify as to under which category i.e. accessories, stores, materials and/or consumables as mentioned in S.No. 1 to 23 of the list, would electrical



cables fall. Further he has not given any assurance regarding restricting the use of electrical cables as accessories, stores, materials, consumables to goods falling under entry no.1 to 23 of the list, which is an essential pre requisite to claim concession.

13.

Case for the Party

ELECTRIC CABLES SUPPLIED BY THE APPELLANT WOULD BE COVERED UNDER THE SCOPE OF SL. NO. 1 OF NOTIFICATION NO. 03/2017-CT(RATE) DATED 28.06.2017

The LD. AAR has failed to appreciate the fact that DGH is the sole authority to certify that goods are required for petroleum operations after ascertaining the use of goods and all the other conditions as per the notification number 3/2017. Further an exhaustive procedure is being followed by DGH for issuance of essentiality certificate as DGH is the Indian governmental regulatory body established under the Ministry of petroleum and Natural gas, Government of India.

Appellant's understanding:

- 1 According to the Appellant, the electric cables supplied by the Appellant to Vedanta for supplying electricity to the machines or equipment used in its petroleum operations would qualify as 'material', 'accessories', 'consumables', and/or 'stores' under Sl. No. 1 of Notification No. 03/2017 for running machines listed in the list annexed to that notification. The reasons are furnished herein below:

Applicable provisions:

Notification No. 03/2017

- 2 Notification No. 03/2017 provides for exemption to the intra-State supplies of goods, the description of which is specified in column (3) of the Table with relevant List appended thereto and falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Table, from so much of the central tax leviable thereon under Section 9 of the CGST Act as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table and subject to the relevant conditions annexed to the notification. A copy of the Notification No. 03/2017-CT is enclosed as **Annexure-H**. A corresponding benefit is given under Rajasthan Goods and Services Tax Act vide File No. F.12(56) FD/Tax/2017-Pt-I-42 dated 29.06.2017. Similar benefit on inter-state supplies is given under IGST Act vide Notification No. 03/2017-Integrated Tax (Rate) dated 28.06.2017.
- 3 For quick reference, the relevant entry of Notification No. 03/2017 is reproduced herein below:



S. No	Chapter/Heading/ Sub-Heading/ Tariff item	Description of Goods	Rate	Condition No.
(1)	(2)	(3)	(4)	(5)
1	Any Chapter	<p>Goods specified in the List annexed to this table required in connection:</p> <p>(1)</p> <p>(2) Petroleum operations undertaken under specified contracts; or</p> <p>(3)</p> <p>(4)</p> <p>(5)</p>	2.5 %	1

- 4 As per the above entry, the given benefit would be subject to Condition No. 1 provided in Notification No. 03/2017. The relevant portion of the said condition is reproduced hereunder:

Condition No.	Condition
1.	<p>If:</p> <p>a. the goods are supplied to, -</p> <p>(i)</p> <p>(ii) <u>an Indian Company or Companies, a Foreign Company or Companies, or a consortium of an Indian Company or Companies and a Foreign Company or Companies (hereinafter referred to as the "contractor") or a sub-contractor of the contractor and in each case in connection with petroleum operations to be undertaken under a contract with the Government of India; or</u></p> <p>b. where the recipient of outward supply of goods, -</p> <p>(i)</p> <p>(ii) <u>is a contractor, he produces to the Deputy Commissioner of Central tax or the Assistant Commissioner of Central tax or the Deputy Commissioner of State tax or the Assistant Commissioner of State tax, as the case may be, having jurisdiction over the supplier of goods, at the time of outward supply of goods, a certificate from a duly authorised officer of the Directorate General of Hydro Carbons in the Ministry of Petroleum and Natural Gas,</u></p>



	<p><u>Government of India, to the effect that the goods are required for,</u></p> <p><u>(A) petroleum operations referred to in sub-clause (ii) of clause (a) under the contract referred to in that sub-clause, or</u></p>
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- 5 Further, Sl. No. 1 of Notification No. 03/2017 provides that the said benefit would be available for the goods provided in List 1 of Notification No. 03/2017. The List of goods appended to Notification No. 03/2017-CT specifies various goods including,

“24. sub-assemblies, tools, accessories, stores, spares, materials, supplies, consumables for running, repairing or maintenance of the goods specified in this List”.

Analysis of the entry

- 6 On a careful perusal of the above entry, it is clear that the concessional rate benefit would be available to the goods specified in the list to Notification No. 03/2017 provided the goods are used for the activities mentioned in the entry i.e. petroleum operations which are undertaken under the contracts/licenses specified in Sl. No. 1. The list of contracts/license provided in Sl. No. are as under:
- License or mining leases granted by Government of India or any State Government to the ONGC on nomination basis; or
 - Specified contracts; or
 - Specified contracts under New Exploration Licensing Policy; or
 - Specified contracts under Marginal Field Policy; or
 - Specified contracts under the Coal Bed Methane Policy
- 7 It is submitted that as per Sl. No. 1, this exemption will be available to petroleum operations undertaken under the specified contracts. However, the term ‘specified contracts’ is not defined under Notification No. 03/2017-CT. On a careful perusal of Sl. No. 1, it can be inferred that specified contracts are those contracts which are entered under the policies specified in the list. However, unlike other clauses of Sl. No. 1, clause (b) does not provide the policy under which the specified contracts are entered.
- 8 At this juncture, attention is invited to Condition No. 1 to Sl. No. 1 which provides that the goods should be supplied to the organization/companies who have entered into contract with the Government of India. On a conjoint reading of clause (b) along with condition no. 1(ii), it can be inferred that specified contracts referred in clause (b) are those contracts which are entered into with the Government of India in relation to petroleum operations.
- 9 It is to be noted that prior to introduction of New Exploration Licensing Policy, licenses for petroleum explorations were granted by the Central or State Government. The licenses granted by the Central or State Government before the NELP are also known as Pre-NELP contracts.
- 10 Thus, in view of the above discussion, it can be concluded that the term “specified contracts” under clause (b) of Sl. No. 1 would mean and include all those contracts which are entered into with the Government of India under the policies/rules other than specifically covered under other clauses of Sl. No. 1 and would include Pre-NELP contracts.
- 11 Further, this benefit would also be subject to the following conditions:



- the goods are supplied to an Indian company or a foreign company or a consortium or a contractor thereof, in connection with the operations undertaken under a contract with the Government of India; and
- a certificate from the Directorate General of Hydro carbons certifying that the goods are required for the petroleum operations referred in the Sl. No. 1.

14 It is to be noted that the term 'Indian Company' has not been defined in Notification No. 03/2017-CT. Moreover, it is also not defined in the CGST or IGST Act. In common parlance, an 'Indian Company' would mean any company who is established and registered in India in accordance with the relevant laws prevailing at that time.

15 To substantiate the same, reference is made to the definition provided in the Income Tax Act, 1961, which defines Indian Company under section 2(26) as under:

"(26) "Indian company" means a company formed and registered under the Companies Act, 1956 and includes....."

16 In view of the above, it can be concluded that to claim benefit of concessional rate of tax under Notification No. 03/2017, the following conditions are required to be satisfied cumulatively in the instant case:

- The goods must be covered under the list to the Notification No.03/2017;
- The goods must be supplied in connection with petroleum operations undertaken under specified contracts;
- The goods are supplied to an Indian company or a foreign company or a consortium or a contractor thereof in connection with the operations undertaken under a contract with the Government of India; and
- A certificate from the Directorate General of Hydro carbons certifying that the goods are required for the petroleum operations referred in the Sl. No. 1 is produced

Applicability of the above analysis to the present case

The conditions of availing benefit under the notification are satisfied in the instant case

16 **Condition No. 1:** Fulfillment of condition no.1 is discussed in detail in the later part of this application.

17 **Condition No. 2:** The electric cables supplied by the Appellant to Vedanta are used for supplying electricity to the machines which are used for undertaking petroleum operations under the specified contract i.e. the contract entered into by Cairn Energy India Pvt. Ltd. with the Government of India under Pre-NELP. Thus, it can be concluded that the supply of electric cables is in connection with the petroleum operations under the specified contract. It is submitted that fulfilment of Condition No. 2 is not disputed in the impugned order by the Ld. AAR.

18 **Condition No. 3:** In the instant case, the Appellant is supplying electric cables to Vedanta which is a public limited company registered under the Companies Act, 1956. Thus, the Appellant is supplying goods to an Indian Company. Such cables are supplied to Vedanta in relation to their petroleum operations being undertaken in the State of Rajasthan. It is to be noted that the license for petroleum exploration in field RJ-ON-90/1 was given to Cairn Energy India Pvt. Ltd. under the Pre-NELP. This information is available at the website of Directorate General of



Hydrocarbons (http://www.dghindia.gov.in/index.php/show_field_lists?rd_id=43). Subsequently, Cairn Energy India Ltd. was merged into Vedanta Ltd. The relevant certificate dated April 19, 2017 from the Company Secretary of Vedanta certifying the merger between Vedanta and Cairn Energy India Ltd. as approved by the National Company Law Tribunal is enclosed as **Annexure-I**. Thus, with this merger, the petroleum exploration license granted to Cairn Energy India Ltd. was transferred to Vedanta. It is submitted that fulfilment of Condition No. 3 is also not disputed in the impugned order by the Ld. AAR.

- 19 **Condition No. 4:** It is also explained in the facts above that at the time of placing order with the Appellant, Vedanta produces a certificate issued by the Directorate General of Hydrocarbons (referred as "DGH") certifying that the goods specified in the certificate are required for the petroleum operations undertaken by Vedanta. Thus, the Appellant supplies the goods to Vedanta only when it produces the requisite certificate. A copy of the certificate issued by the Directorate General of Hydrocarbons dated 18.01.2018 is already enclosed as **Annexure-E**. It is submitted that fulfilment of Condition No. 4 is also not disputed in the impugned order by the Ld. AAR.
- 20 The Appellant wishes to place reliance on the decision of Hon'ble Customs, Excise & Service Tax Appellate Tribunal in the case of **Focus Energy Ltd. versus Commissioner of Customs (Import), Mumbai** reported at **2014(313) E.L.T 231 (Tri. Mumbai)**. The Hon'ble Tribunal, in relation to identical exemption, i.e. Sl. No. 358 of Customs Notification No. 12/2012-Cus, held that so long as genuineness of Essentiality certificate obtained from Directorate General of Hydrocarbons, certifying the fact that goods were imported for petroleum operations by the Appellant, is not questioned and the goods are used in the process of petroleum operations, benefit of exemption cannot be denied.
- 21 In the present case, the certificate from Directorate General of Hydro carbons states that the electric cables supplied by the Appellant are required for petroleum operations. Therefore, in the present case also, so long as genuineness of the certificate is not in doubt, concessional benefit should be made available to the Appellant for supply of the electric cables (covered by the certificate) to Vedanta.
- 22 Moreover, the impugned order mentions at Para 9(q) that the certificate dated 18.01.2018 states that 'the certificate would stand withdrawn in case the said goods are used for purposes other than its intended use'. In this regard, it is submitted that this shall not impact the Appellant's eligibility to the exemption under Notification No. 03/2017. This sentence in the certificate is to take care of a possible event of unauthorised diversion of goods, in which case certificate would stand withdrawn. So long as there is no diversion of the goods, the certificate stands valid and benefit shall not be denied.
- 23 In view of the above, it can be safely concluded that in the instant case, condition no. 2, 3 and 4 as discussed above, are satisfied by the Appellant.

Condition No. 1: Electric cables supplied by the Appellant are covered by entry no. 24 of the list

- 24 As far as condition no. 1 is concerned, it is to be analyzed if the electric cables supplied by the Appellant to Vedanta would be covered by entry no. 24 of the list appended to Notification No. 03/2017-CT which covers "*sub-assemblies, tools, accessories, stores, spares, materials, supplies, consumables for running, repairing or maintenance of the goods specified in this List*". A detailed analysis of the same is given in the following paragraphs.



The electric cables supplied by the Appellant qualify as accessories which are required for running the goods (machines) specified in the list

- 25 The benefit of concessional rate of duty is extended to the accessories used for running machines covered under the List appended to Notification No. 03/2017. However, the term 'accessories' is also not defined in Notification No. 03/2017.
- 26 To understand the meaning and scope of the term 'accessories' used in Notification No. 03/2017, reference is made to the dictionary meaning of the term 'accessories', which have been extracted hereunder:

(i) *The New Merriam-Webster's Dictionary*

"a person or thing that aids subordinately, an adjunct, appurtenance, accompaniment"

(ii) *The Oxford Advanced Learners Dictionary*

"an extra piece of equipment that is useful but not essential"

(iii) *The Collins's Co build English Dictionary for Advanced Learners*

"accessories are items or equipment that are not usually essential, but which can be used with or added to something else in order to make it more efficient, useful or decorative"

(iv) *The Chamber's English Dictionary*

"subsidiary, present along with something more important"

- 27 Moreover, while determining the meaning of the term 'accessories', the Hon'ble Apex Court in the matter of **Annapurna Carbon Industries Co. vs. State of Andhra Pradesh [AIR 1976 SC 1418]**, has relied upon various dictionaries and held as under:

"we find that the term "accessories" is used in the schedule to describe goods which may have been manufactured for use as an aid or addition. A sense in which the word "accessory" is used is given in Webster's Third New International Dictionary as follows: "an object of device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else." Other meanings given there are: "supplementary or secondary to something of greater or primary importance"; "additional"; any of several mechanical devices that assist in operating of controlling the tone resources of an organ". "Accessories" are not necessarily confined to particular machines for which they may serve as aids. The same item may be an accessory of more than one kind of instrument."

- 28 Further, in a recent case of **CCE, Salem vs. Madras Aluminum Co. Ltd., [2017 (349) ELT 133] maintained at 2017 (354) ELT A192**, the issue pertaining to meaning of the term 'accessories' came up before the Hon'ble Madras High Court, wherein, the court held that the term 'accessories' means thing which could be added to something else in order to make former more useful, versatile or attractive.
- 29 On a careful perusal of the above referred meaning of the term 'accessories', it is clear that accessories are those things or equipment which are not essential but which are used to make something else more efficient or useful.



- 30 In the instant case, Vedanta is using various machines for carrying out petroleum operations which are also procured by obtaining Essentiality Certificate from Director General of Hydrocarbons certifying that such machines are used for petroleum operations. Such machines used for petroleum operations run on electricity and therefore, would require electric cables to supply electricity to the machines. The electric cables so required for supplying electricity to machines are supplied by the Appellant to Vedanta.
- 31 It has already been discussed in the facts above that the machines used by Vedanta in the petroleum operations run on electricity and in the absence of electricity, the machines cannot function. It is to be noted that the electric cables are used to supply electricity to machines which would make machines functional. Thus, undoubtedly, the electric cables are necessary for functioning of machines and therefore, the electric cables make these machines more efficient or useful.
- 32 In view of the above, it is clear that the electric cables add to the usefulness or efficiency of the machines in as much as it makes the machines functional. Therefore, it can be safely concluded that electric cables supplied by the Appellant to Vedanta qualify as accessories.
- 33 The above contentions are further supported by placing reliance on various judicial decision, wherein, the meaning and scope of the term 'accessories' has been discussed.
- 34 Reliance in this regard is placed on the decision of Hon'ble Tribunal in the matter of **CC, Bangalore vs. NI Micro Technologies Pvt. Ltd. [2014 (311) ELT 458 Tri - Bang]**, wherein, while deciding that the battery of a cellular phone is an accessory, the Tribunal held as under:

"3. After giving careful consideration to the submissions, we find that parts, components and accessories of mobile handsets including cellular phones were chargeable to 'nil' rate in respect of basic customs duty and additional customs duty (CVD) under Sl. No. 320 of Customs Notification No. 21/2005 at the time of importation of the subject goods. It is not the case of the appellant that the importer did not satisfy the relevant condition. It is common knowledge that a cellular phone cannot function without a battery. If that be so, the battery has to be considered as accessory, if not part/component, of cellular phone and consequently, the benefit of the Notification is admissible to the item imported by the respondent. The decision cited by the learned Dy. Commissioner (AR) is not applicable to the present case in as much as, in the cited case, the goods considered by this Tribunal were parts/components of cellular phone battery and not battery itself. In the result, we agree with the view taken by the learned Commissioner (Appeals) and dismiss this appeal."

....Emphasis Supplied

- 35 Similarly, in the case of **State of Punjab vs. Nokia India Pvt. Ltd. [2015 (315) ELT 162] SC**, Hon'ble Apex Court had held that the charger would qualify as accessory of mobile phone.
- 36 Reliance is also placed on the decision of **Allied Healthcare, India vs. CC, Chennai [2010 (259) ELT 711 - Tri Chen]**. In this case, while deciding the availability of exemption under



Notification No. 17/2001-Cus. to stents as accessories of Cardiac Catheters (endoscope), the Hon'ble Tribunal held that stents are essential for treatment function of endoscope as treatment is not complete without implanting stent with help of catheters and therefore, stents are treatable as accessories. A similar decision was given in the matter of **CC, Chennai vs. Indian Surgicals [2009 (244) ELT 603 Tri Chen]**. The decision has been followed at 2010 (259) E.L.T. 711 (Tri. - Chennai).

- 37 In the above referred decisions, the battery and stents are held to be accessories of the cellular phone and catheters respectively on the ground that the main equipment i.e. phone or catheters cannot function without battery or stents. In the instant case, it has already been explained in detail that machines, even though complete in themselves, cannot function without electric cables in as much as the same is required for supplying electricity to the machines which is required for functioning of machines. Thus, the electric cables are essential for the functioning of machines and therefore, in view of the above referred decision, it is clear that electric cables supplied by the Appellant would qualify as 'accessories' required for running the machines.
- 38 Attention is also invited to the decision of Hon'ble Delhi Tribunal in the matter of **CCE, Chandigarh vs. Arihant Spring Mills [2002 (147) ELT 1181]**. In this case, the Tribunal has held that the electric installations including enamelled winding wires, which are used for transmission of electricity to machines, would be eligible to cenvat credit as the same is classifiable as components/accessories/parts of machine. The aforesaid decision stands affirmed by the **Supreme Court** reported at **2003 (151) ELT A178**.
- 39 Similarly, in the case of **Ashoka Synthetics Ltd. vs. CCE, Bhubaneswar [1997 (96) ELT 170 Tri]**, it was held that wires and cables which are used for transmission of power are essential for running of machinery and therefore, are accessories of the machinery. Moreover, in the case of **Grasim Cement vs. CCE, Raipur [1997 (96) ELT 354 Tri]**, the Hon'ble Tribunal had allowed cenvat credit on the wires and cables on the ground that these are accessories of machines and therefore, would be covered by the definition of capital goods.
- 40 It is to be noted that the issue involved in **Arihant Spinning Mills (supra)**, **Ashoka Synthetics Ltd. (supra)** and **Grasim Cement (supra)**, pertains to the cenvat credit of the goods in dispute. However, in these cases, it has been held that the electric wires/cables which are essential for providing electricity to the machines qualify as accessories of machines and on the basis of this reasoning, it can be concluded that the electric cables supplied by the Appellant, being essential for the functioning of machines in as much as it is required for providing electricity to machines, qualify as accessories of such machines with which these are used.
- 41 In view of the above discussions and the judicial decisions relied upon, it is submitted that the electric cables supplied by the Appellant to Vedanta in the instant case qualify as accessories for running specific machines given in the list annexed to Notification No. 03/2017.
The electric cables supplied by the Appellant also qualify as material for running the goods (machines) specified in the list
- 42 It is pertinent to note that entry no. 24 of the list appended to Notification No. 03/2017 also covers materials required for running, repairing or maintaining the machines provided in that list. The term 'material' used in the list is not defined in Notification No. 03/2017. Thus, it becomes



imperative to refer to the dictionary meaning of this term. Some of them are extracted below for reference:

(i) *The New Merriam-Webster's Dictionary*

"highly important, significant"

(ii) *The Oxford American Desk Dictionary, New edition, 2000*

"important, essential, relevant"

(iii) *The Chambers Dictionary, New edition*

"that out of which anything is or may be made, that which may be made use of for any purpose"

(in pl.) "equipment, implements, etc. needed for a task or activity"

(iv) *The New Lexicon Webster's Dictionary, Vol. 1*

"necessary tools, equipment, etc."

(v) *Collin's English Dictionary for Advanced Learners, new edition*

"materials are the things that you need for a particular activity"

(vi) *Oxford Advanced Learner's Dictionary*

(pl.) "things that are needed in order to do a particular activity"

- 43 On a careful perusal of the above extracted dictionary meanings of the term 'material', it is apparent that the term 'material' means and includes all those things, equipment or implements which are necessary or important for carrying out any particular activity.
- 44 It has already been discussed in the facts above that the machines procured by Vedanta for carrying out petroleum operations run on electricity and therefore, in order to run those machines, electricity would be required. In other words, in the absence of electricity, the machines cannot function and would be rendered useless. The electricity required for functioning of machines is supplied with the help of electric cables and therefore, the electric cables are essential for running the machines.
- 45 In view of the above discussions, it is abundantly clear that the electric cables supplied by the Appellant are required for a particular purpose i.e. providing electricity to the machines and are essential for the functioning of machines. Therefore, the electric cables so supplied by the Appellant would qualify as material required for running the machines given in the list appended to Notification No. 03/2017. It is to be noted that the Ld. AAR has not disputed this submission of the Appellant.



The electric cables supplied by the Appellant also qualify as consumables or stores which are required for running the goods (machines) specified in the list

46 It is to be noted that besides spares, materials, accessories, entry no. 24 of the list to Notification No. 03/2017 also covers stores or consumables. In order to decide if the electric cables supplied by the Applicant would qualify as stores or consumables, attention is invited to the decision of Hon'ble Ahmedabad Tribunal in **Sanghvi Aerospace (P) Ltd. vs. CCE, Ahmedabad[2009 (247) ELT 578 Tri - Ahmd]**. In the said case, the issue involved was whether or not, the wires and cables supplied for aircrafts, satellite launch vehicles, etc. would be entitled to the benefit under Notification 10/97-C.E. While deciding the issue in favor of the Appellant in that case, the Tribunal held as under:

"11. According to the learned advocate, the wires and cables supplied by them are eligible under this notification. However, **we find that wires and cables can be said to be covered by Sl. No. 8 of the Notification reproduced above since it covers stores also.** The exemption is not limited to only parts or equipments but also systems, sub systems, equipments and stores. **Therefore, a view can be taken that wires and cables are nothing but consumable stores which are stored and used from time to time as and when required.** The Commissioner has observed that in respect of a few clearances the party has claimed benefit of Sl. No. 7 of the notification. However, as already mentioned the item seems to be covered by Sl. No. 8.

12.

13. All the decisions cited by the appellants as regards Notification No. 10/97-C.E. are for furniture, transformers, generators etc. and the clearance of these items have been allowed on the ground that they are used for research purposes and whether they are scientific or technical equipments is a matter that can be decided only by the concerned organization and there cannot be a general rule. **It is also noticed that Notification No. 10/97 covers consumables also in addition to accessories and spare parts.** Therefore this cannot be treated on par with Notification No. 6/2002. **Therefore wires and cables cleared can be covered under the heading consumables and therefore it has to be held that this is also admissible as far Notification No. 10/97 is concerned."**

...Emphasis Supplied

47 The above referred decision makes it abundantly clear that the wires and cables are also eligible to qualify as stores or consumables. Therefore, the electric cables supplied by the Appellant in the instant case would also qualify as stores or consumables for running machines specified in the list and would be covered by the entry no. 24 of the list to Notification No. 03/2017. It is to be noted that the Ld. AAR has not disputed this submission of the Appellant.

48 The AAR at Para 9(u) of the impugned ruling has held that it is not rational to consider electrical cables as accessories, stores, materials or consumables for running of the goods mentioned in the list on the basis that electric cables are used for downloading, transmission, distribution of electricity to various points. The impugned ruling further mentions about logic poles, insulators, transformers and other equipment used to ensure flow of electricity.



- 49 In this regard, it is submitted that the AAR has not considered the dictionary meanings and multiple tribunal decisions cited by the Appellant in its application. On the basis of submissions made above, para 22 – 47, it is submitted that this finding in the impugned order is incorrect.
- 50 Further, the AAR at Para 9(x) of impugned order has given a finding that the Appellant failed to identify/clarify as to which category i.e. accessories, stores, materials or consumables as mentioned in entry no. 1 to 23 of the list, would electric cables fall.
- 51 In this regard it is submitted that entry no. 24 of the list appended to Notification No. 03/2017 covers spares, accessories, sub-assemblies, consumables, stores, material, tools which are required for running, repairing or maintenance of the goods specified in the said list. The AAR has failed to appreciate that some words used in this entry viz. material, accessories are of wider connotation and would cover in its ambit almost all the goods (in any form whatsoever) required for running, repairing or maintenance of the machines specified in the list. Not only this, the terms used in this entry can also be used interchangeably which makes it even clear that the Government intends to extend this benefit to all the goods, which are required for undertaking petroleum operations, when supplied to specified persons. It is also pertinent to mention that AAR has failed to appreciate that use of such electric cables (which can be termed as accessories/spares/material interchangeably as quoted above) is certified by Director General of Hydrocarbons by issuing Essentiality Certificate whereby the Entry No. 9/24 is specifically mentioned under the S. No. of Notification No. 3/2017.
- 52 Further, as correctly noted in the impugned order at para 9(m), entry no. 24 covers within its scope only such accessories, stores, materials, and/or consumables that are required for running, repairing or maintenance of the goods specified in the list, meaning the goods specified in Entry No. 1 – 23. It is submitted that the electric cables supplied by the Appellant to Vedanta are for use with the following machines (covered under Entry No. 9 of the list):
- i. Electrical submersible Pump's motor
 - ii. 33KV ring main unit
 - iii. Progressive cavity Pump's motor
 - iv. Electrical Heat Tracing
 - v. Power and Motor Control Center
 - vi. Plant Lighting
 - vii. UPS
- 53 An undertaking to this effect has been given by Vedanta vide its certificate dated 06.09.2018, enclosed as **Annexure-F**. The certificate also certifies that the electric cables supplied by the Appellant are ONLY being used with the machines / equipment used in relation to the petroleum operations undertaken by Vedanta and that the electric cables are not diverted to any other use. In view of the above, the Appellant is entitled to the concessional rate of Goods and Service Tax under Notification 3/2017.
- 54 It is further submitted that the fact that the electric cables are for use with the machines / equipment falling under Entry No. 9 of the list is also certified by the Directorate General of Hydrocarbons in its certificate dated 18.01.2018, enclosed as **Annexure-E**. In this regard, Annexure A to the certificate, specifically column 3 of the table therein, may be referred. That the certificate was duly submitted before the Ld. AAR, however, the Ld. AAR completely ignored the said certificate and denied the benefit to the Appellant by holding that whether the electric cables are used with machines covered under Entry no 1 to 23 of the list is not clear. It is submitted that such finding by the Ld. AAR is factually and legally incorrect and therefore, the Impugned ruling should be set aside



- 55 The AAR at Para 9 of the impugned ruling has given a finding that the Appellant has failed to mention specific machines / equipment, as mentioned in entry no. 1 – 23 of the list, in relation to which the electric cables are being used as materials, accessories consumables or/and stores as listed by entry 24 of the Notification No. 03/2017. The Appellant understand this point to be the main reason for denial of benefit of Notification No. 03/2017 to the Appellant.
- 56 It is humbly reiterated that Ld. AAR has failed to consider that use of such electric cables is certified by DGH after considering all the relevant conditions, its usage and documentation such as purchase order, Performa Invoice, details of GST jurisdiction of Vendor supplying the goods, etc) in this regards by way of issuance of Essentiality certificate to the effect that such electric cables are required to be use in petroleum operations. The DGH exercises proper due diligence regarding the usage of the such goods in the petroleum operations before issuance of EC and the EC once issued by DGH is the sole & legitimate proof of the goods to be required for petroleum operations. It is to be appreciated that DGH is the Indian governmental regulatory body established under the Ministry of petroleum and Natural gas, Government of India.
- 57 . As mentioned above, the electric cables supplied by the Appellant are used by Vedanta with machines / equipment, as listed above at para 51, covered under Entry No. 9 of the List appended to the Notification No. 03/2017. Therefore, it is submitted that the requirement that the electric cables must act as accessory / material / store / consumable for running, repairing or maintenance of goods mentioned under Entry No. 1 – 23 of the list is established in the instant case
- 58 Another reason for denial is that the Appellant had not given any assurance regarding restricting the use of electric cables as accessories, stores, materials or consumables to goods falling under entry no. 1 to 23 of the list, which is pre-requisite to claim concession under the Notification No. 03/2017.
- 59 In this regard, the Appellant is now submitting an undertaking / certificate by Vedanta (enclosed as **Annexure - F**) mentioning the machines with which the electric cables are used. Further, Vedanta has certified that electric cables are exclusively being used for machines running for petroleum operations and that the same are not being diverted for any other use.
- 60 In view of the detailed discussion above, it can be safely concluded that the electric cables supplied by the Appellant to Vedanta are covered by the list (entry no. 24) appended to Notification No. 03/2017. Moreover, the electric cables are supplied to Vedanta, an Indian company, against the certificate issued by the Directorate General of Hydrocarbons. As all the conditions prescribed in Notification No. 03/2017 for Sl. No. 1 are satisfied, the Appellant is eligible for the benefit of concessional rate of duty under Notification No. 03/2017.
- 61 Therefore, the impugned order should be set aside and the Appellant should be provided the benefit under Notification no. 03/2017.

14. **Personal hearing** was given to appellants on 12.11.2018 and 14.11.2018 . Shri Manish Gaur, Advocate, Ms. Jyoti Pal, Advocate and Shri Adarsh Jain , Sr. General Manager of the Appellant appeared for personal hearing . During hearing , they reiterated the submissions already made in the Application made before the AAR and the Appeal memo . During the hearing, a query was raised by the Bench that transaction on which Advance Ruling was sought had occurred earlier to the filing the application for Advance Ruling. In answer to the query, the learned Advocate submitted that this question can not be raised at the appellate stage. The GST Act provides two stage hearing before the



advance Ruling Authority. The first is admission of the application and the second is decision on the application on merits. In the present case, the AAR admitted the application and no such objection was ever raised at that time. After the admission, the Authority decided the application on merits and rejected the application. Against the rejection on merits the present appeal has been filed. Moreover, the department has not filed any appeal against the admission of the application. They also submitted a copy of compilation of the case laws supporting the arguments that the cables are accessories and once the certificate has been issued by the DG Hydrocarbons, the said certificates are conclusive.

15. During personal hearing , the appellant has also asked for some time to gather and produce the material for rebutting the above query put forth by us. Their request was allowed.

16. In follow up to above , written submission were tendered by the Appellant on 26.11.2018 which are being reproduced hereunder :-

2. At the outset, the Appellant most humbly submits that the basis of the objection raised by the Appellate Authority is factually incorrect as the supply was not complete on the date of filing the advance ruling application. The Appellant submits that in terms of the Purchase Order No. 4500030187 and 4500030182 both dated 14.11.2017 and amended rev-01 dated 12.01.2018 (hereinafter referred to as “PO”), the Appellant is responsible for supply of electric cables and to provide warranty service in respect of such electric cables supplied. Though the cables have been supplied, however, such warranty for the electric cables supplied is in fact continuing even today. Warranty Clause on internal page 11 of the purchase order no. 4500030182 both dated 14.11.2017 [page 79 of our appeal memo] provides that “*warranty shall be 18 months from the receipt of material or 12 months from the date of installation, whichever is earlier*”. It is submitted that the entire transaction is for supply of goods and supply of warranty services and will be completed only on expiry of warranty period. Supply of warranty is in continuation to the supply of goods, which is the principal supply. Thus, the Appellant submits that since the supply in the present case is continuing and an ongoing supply, the advance ruling application filed by the Appellant satisfies the definition of ‘advance ruling’ being in relation to the supply of electric cables being undertaken by the Appellant.

3. Without prejudice, the Appellant also submits that the Appellant regularly enters into similar contracts for supply of identical / similar electric cables to various customers like Vedanta. In fact, there were purchase orders pending also on the date when the Appellant filed the advance ruling application, i.e. on 09.05.2018. A sample copy of such a purchase order is enclosed as **Annexure-1** to these submissions. It is submitted that the question asked in the advance ruling application should not be restricted to the POs enclosed by the Appellant with the Advance Ruling Application. The POs were only a representative copy for all such contracts that are regularly entered into by the Appellant for supply of identical electric cables in identical situations, i.e. in relation to petroleum operations, against a certificate by Directorate General of Hydrocarbons and satisfying other conditions of the Notification No. 03/2017-CT(rate).

The question of maintainability of advance ruling application cannot be re-considered at the Appellate stage



4. Also, it is to be noted that the question of maintainability of the advance ruling application filed by the Appellant was taken up before the Advance Ruling Authority and the application was specifically held to be admissible. The application was admitted, and advance ruling has been passed on merits vide the impugned ruling. The Appellant submits that no objection was raised at that time, neither has the department filed any appeal against the impugned ruling to the extent that it is admitting the application filed by the Appellant.

5. The Appellant humbly submits that at this stage, when the application has been decided by the Advance Ruling Authority on merits after admitting the application specifically, the Appellant's appeal shall not be rejected by the Hon'ble Appellate Authority on the ground of maintainability before the Advance Ruling Authority.

6. The Appellant submits that courts have in a catena of decisions held that the question of maintainability shall not be raised at a belated stage, especially when the matter has been admitted and either kept pending or decided on merits as raising a question of maintainability at a later stage serves no purpose. In this regard, the Appellant wishes to rely upon the following judgments:

i. ***M.K. TRADING CO. vs. UNION OF INDIA, 2018 (11) G.S.T.L. 37 (Bom.)***

"7. It is surprising that at the final hearing of the appeal, which was filed in the year 2012, the Tribunal perused the records only for the purpose of exercising this discretion and passed an order initially running into four pages. Then, on an application for rectification of this mistake, namely, dismissal of the appeal which was already admitted, by invoking a proviso, the tribunal devoted its attention to this issue and passed an order running into five pages. The time which the tribunal devoted for all this could have very well and fruitfully been devoted to the adjudication on merits of the appeal. **It is improper to throw out a litigant on such a technical ground after the appeal is entertained and kept pending. Once the appeal was admitted in this case and kept pending, then, no useful purpose is served by dismissing it at the final hearing on the ground of maintainability.** Ultimately, it is a discretion vesting in the Tribunal, which it must exercise judiciously and not capriciously. We find that refusal to decide the appeal on merits was vitiated by an error of law apparent on the face of the record."

ii. ***PRAKASH CHANDRA GOYAL vs UNION OF INDIA, 2010 (256) E.L.T. 667 (Cal.)***

"12. Ordinarily, this writ application involving questions about alleged sale of goods by the government to a private party should not have been entertained in the writ jurisdiction. **But, since the writ has been entertained and it is pending for a period of about three years, now the writ petitioner cannot be relegated to the remedy of a suit.**"

iii. ***Shahnaz Ayurvedics vs. Commissioner of Central Excise, Noida, 2004 (173) ELT 337 (All.)*** approved by the Hon'ble Supreme Court in the case of ***Commissioner v. Shahnaz Ayurvedics - 2004 (174) E.L.T. A34 (S.C.)***



“22. Be that as it may, the Hon’ble Apex Court in *Union of India v. Ahmedabad Electricity Co. Ltd. &Ors.*, 2003 (158) E.L.T. 3 (S.C.) = JT (2003) 8 SC 153, while dealing with the same provisions, has categorically held that the writ jurisdiction is not barred in all the circumstances. Thus, we are of the view that the writ petition can be entertained against the impugned judgment and order. **The petition was entertained at the initial stage after hearing the learned Counsel for the Revenue, and interim relief had been granted after having deliberations at length and the Counsel for Revenue did not even raise the plea in this regard at that time. It is being raised at a belated stage, the same is not worth acceptance and accordingly rejected.**”

- iv. **Kesoram Rayon vs. Collector of Customs, 1989 (44) ELT 37 (Tri.-Del)** approved by the Hon’ble Supreme Court in the case of **Kesoram Rayon vs. Collector of Customs, Calcutta, 1996 (86) ELT 464 (S.C.)**

“6. ... Having failed to do so, the learned JCDR could not now raise the preliminary objection that an appeal against the impugned order of the Collector (Appeals) before this Tribunal is not maintainable on the ground that the appellants did not file an appeal against the Assistant Collector’s order dated 8-5-1985. In similar circumstances, in the case of *Additional Commissioner of Income-tax v. Dalmia Magnesite Corporation*, reported in (1979) 117 ITR 930, the Hon’ble Madras High Court has held that the Tribunal was not right in holding that the appeal before it was not maintainable because the appeal taken before the Appellate Assistant Commissioner itself was not competent. **We are of the view that in the case before us, the Assistant Collector granted personal hearing to the appellants after issuing the demand notice dated 8-5-1985. In his order dated 25-6-1985, he dealt with the appellant’s liability towards payment of duty and interest under Section 72(1) of the Customs Act. In our view, the Assistant Collector’s order dated 8-5-1985 and 25-6-1985 got merged together and the Collector (Appeals) also decided the issues relating to the appellants’ liability to payment of duty and interest. In the circumstances, the preliminary objection regarding maintainability of the present appeal before us is not sustainable and hence the preliminary objection is rejected.**”

7. In view of the decisions cited above, the Appellant humbly submits that its appeal should not be dismissed on the ground of maintainability.

8. It is pertinent to mention here that department has not filed any appeal against the order of Advance Ruling Authority admitting the application for advance Ruling. It is submitted that in the absence of any appeal by the department, Appellate authority Suo moto cannot raise the issue of maintainability of application before the Advance Ruling Authority.

DISCUSSION AND FINDINGS

17. Having gone through the decision of the Authority for Advance Ruling (AAR) and submissions made by the Appellant in written form as well as those made during the course of personal hearing , we



find that the Appellant wants the authority to decide whether the benefit of the Notification No. 03/2017-Central Tax (Rate) dated 28.06.2017 is available to them or not. We find from the record that the Appellant has asked for the benefit of this notification with respect to supply of goods mentioned by the DGH in the certificate dated 18.01.2018 . We find that the supplies mentioned in the Certificate had been effected in the month of Jan.,2018 , actual date of the transactions as per GSTR-1 is 22.01.2018 and 24.01.2018 . We also find that the Appellant had applied for the Advance Ruling on 09.05.2018 whether benefit of the notification No. 03/2017-Central Tax (Rate) dated 28.06.2017 is available to these transactions i.e. the transactions effected in the month of Jan.,2018. Since the Appellant has asked for ruling on the transactions effected prior to the date of filing of the application before AAR , we find it appropriate to visit the definition of the 'Advance Ruling' given under Section 95(a) of the CGST Act which we are reproducing hereunder :-

95(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

18. From the definition, it is very much clear that the scope of the Advance ruling for both i.e. AAR(Authority for Advance Ruling) and AAAR(Appellate Authority for Advance Ruling) is limited to the transactions being undertaken or proposed to be undertaken . In the instant case, as already narrated, the application seeking advance ruling was filed on 09.05.2018 before the AAR with respect to supplies undertaken in the month of Jan.,2018 . Hence the case is out of the purview of the Advance Ruling.

19. Ld. Advocate has argued during hearing that it is not the opportune time to agitate the question that transaction on which Advance Ruling was sought had occurred earlier to the filing the application for Advance Ruling . We are not in agreement with the contention put forth by the Advocate. If the lower forum i.e. AAR has committed any error , this forum is not bound to carry the burden of that error. AAAR is an independent forum . Needless to mention that this body (AAAR) is at a higher pedestal than that of AAR and so it has all the powers to modify the ruling of the AAR the way it deems fit . If the AAR has entertained and pronounced its ruling on any issue which was outside the scope of the Advance Ruling , this forum (AAAR) has every power to undo the job done by the AAR while disposing appeal, and this job can be done by the AAAR even if neither of the Party (i.e Appellant or



Department) pleaded for the same during the proceedings of the appeal filed before it . This position is evident from Section 95(a) ibid which bounds this body (AAAR) also to entertain appeals only in relation to supply of goods or services or both being undertaken or proposed to be undertaken. This sole provision is enough to pronounce loudly that even decision on maintainability of the issue is not sacrosanct for this forum.

20. The appellant has also contended that, as per Purchase Order , warranty for the supplies undertaken is continued even today , hence , it can't be said that the supplies were completed before they applied for Advance Ruling. They have submitted that the entire transaction is for supply of goods and supply of warranty services and will be completed only on expiry of warranty period. Supply of warranty is in continuation to the supply of goods, which is the principal supply. The contention of the appellant is not tenable . As per Section 95(a) ibid , the advance ruling can only be sought for supplies being undertaken or proposed to be undertaken . In the instant case, supply i.e. Sale of cables stood undertaken upon issue of invoice and movement of the goods on 22.01.2018 and 24.01.2018. Continued existence of the warranty on the date of filing of application i.e. 09.05.2018 does not put the transaction under the category of "supplies being undertaken". Sale of goods (with sale of warranty its part and parcel) already stood undertaken on 22.01.2018/24.01.2018 itself . If version of the appellant is accepted, supply of many goods like TV, Refrigerator , washing machine etc. would be treated as 'being undertaken' even 5 to 10 years after their sale just because of their warranty clauses. In other words, a supplier of these goods can apply for advance ruling even 10 years after the sale of these goods just because warranty on the goods has not come to an end.

21. Appellant has submitted that they regularly enter into similar contracts for supply of identical / similar electric cables to various customers like Vedanta. In fact, there were purchase orders pending also on the date when the Appellant filed the advance ruling application, i.e. on 09.05.2018 hence the question asked in the advance ruling application should not be restricted to the POs enclosed by the Appellant with the Advance Ruling Application. We find that the appellant has asked for advance ruling with respect to particular transactions i.e. transactions mentioned in the DGH certificate dated 18.01.2018 . Hence we are bound to pronounce our verdict on these transactions only .




22. The Appellant has submitted that courts have in a catena of decisions held that the question of maintainability shall not be raised at a belated stage, especially when the matter has been admitted and kept pending as raising a question of maintainability at a later stage serves no purpose . We are not in agreement with the contention of the Appellant . We have perused the various decisions cited by the Appellant . We find that these are not applicable to the facts and circumstances of the instant case. It is not the case where appeal has been entertained initially and later on its maintainability has been questioned . The question on maintainability has been raised by us at the first available opportunity i.e. during the hearing on 14.11.2018. Going by natural justice, we could not have decided this question on our own i.e. without hearing the Appellant . Hence appellant was heard and question was posed before them on 14.11.2018. Hence this case does not fit into the facts and circumstances of the cases cited by the Appellant .

23. The Appellant has again submitted that at this stage, when the application has been decided by the Advance Ruling Authority on merits after admitting the application specifically, the Appellant's appeal shall not be rejected by the Hon'ble Appellate Authority on the ground of maintainability . We have already discussed this issue at length in the Para No. 19 hereinabove.

24. In view of foregoing, we rule as under :-

RULING

25. As the question posed by the Appellant is related to supplies undertaken by them prior to the date of filing of the application for advance ruling, no ruling can be given on the question .


(ARCHANA P. TIWARI)
MEMBER


(ALOK GUPTA)
MEMBER



To

SPEED POST

M/s. KEI INDUSTRIES LIMITED
PHASE III, SP - 919-920-922,
RIICO INDUSTRIAL AREA, BHIWADI,
ALWAR, RAJASTHAN, 301019.

F.No. IV(16)AAAR/RAJ/05/2018-19/

12533 to 12538

Dated 06.12.2018

Copy to :-

1. The Chief Commissioner of CGST , Jaipur Zone , Jaipur .
2. The Commissioner of SGST & Commercial Taxes, Kar Bhawan, Ambedkar Circle, Rajasthan , Jaipur.
3. Deputy / Asstt. Commissioner, GST Division – C Bhiwadi, Alwar (Rajasthan)
4. AC/CTO, Special Circle-1, Bhiwadi, Commercial Taxes Dept. Bhiwadi. Alwar (Rajasthan)
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(Pramod Kumar Sharma)
Superintendent

