

**GIB/MH/JSW ENERGY/07-06-2019/HC-122**

**High Court Category :** Taxability

**State :** Maharashtra

**Order No.:** GIB/MH/JSW ENERGY/07-06-2019/HC-122

**Name of Entry :**  
JSW Energy Limited

**Date :** 07-06-2019

**Breif Issue :**

**Facts & Issue of the case**

The petitioner, JSW Energy Limited (JEL), is engaged in the business of generation and sale of electricity, proposed to enter into an arrangement with JSW Steel Limited (JSL) involving conversion of coal and other inputs into electricity and conversion of electricity into Steel on job work basis. In order to ascertain whether, the proposed arrangement, indeed qualifies as “job work” as defined under section 2(68) of the Central Goods and Services Tax Act, 2017 (CGST Act) and consequently whether the petitioner is entitled to benefits under the CGST and MGST, the petitioner, applied to the Advance Ruling Authority seeking Advance Ruling on the applicability of GST to the proposed arrangement.

The Advance Ruling Authority vide order dated **5 March 2018** ruled that the proposed arrangement did not qualify as 'job work' primarily because the same amounted to 'manufacture' as defined under Section 2(72) of the CGST Act. On this basis, the Advance Ruling Authority ruled that the proposed arrangement attracted GST. The Ruling of Advance Authority can be found on [GIB/MH/ JSW ENERGY/05.03.18/AAR-132](#).

Aggrieved, the petitioner appealed to the Appellate Authority. The Appellate Authority, vide its order dated **2nd July 2018** disagreed with the reasoning of Advance Ruling Authority that the proposed arrangement did not amount to 'job work' because the same amounted to 'manufacture'. However, the Appellate Authority upheld the ultimate conclusion of Advance Ruling Authority relying upon **two different and distinct grounds**. The Ruling of Appellate Authority can be found on [GIB/MH/JSW ENERGY/02.07.2018/AAAR-17](#)

The challenge in this petition is to the orders dated **5 March 2018** and **2 July 2018** made by the (Advance Ruling Authority) and the (Appellate Authority). The petitioner now submits that, since the Statute has provided for no further appeal against the orders of Appellate Authority, the Court should examine the impugned orders on the basis of substantive merits. It was further submitted that at no stage was the petitioner put to notice regards the 'new grounds' and also the petitioner was not offered any opportunity to place documentary evidences with regard to the 'new grounds'. The petitioner relies on the decision of the Supreme Court in **Reckitt & Colman of India Ltd. vs. Collector of Central Excise 1996 (88) ELT641 (SC)**, in support of this proposition and contends that Appellate Authority's

impugned order dated 2nd July 2018 is required to be set aside and the matter remanded to Appellate Authority for reconsideration by adherence to the principles of natural justice.

**Decision of Advance Ruling Authority :****Decision**

The court, in its decision, made it clear that court do not propose to examine the impugned orders on their substantive merits or demerits, merely because Statutes in question have not provided for any further appeal against the decision of the Appellate Authority and any such attempt, would virtually amount to converting these proceedings under Article 226/227 of the Constitution of India, which are essentially proceedings seeking judicial review, into appellate proceedings. Therefore, the court refused to accept petitioner's contention that the Appellate Authority exceeded jurisdiction in adverting to 'new grounds', in support of its decision as reflected in the impugned order dated 2nd July 2018.

The court after considering the facts and circumstances of the present case, is satisfied by the fact that the Appellate Authority should have at least indicated to the petitioner that it proposed to take into consideration the 'new grounds' and further, afford an opportunity to the petitioner to place on record agreements or other documentary evidences in order to meet these 'new grounds'. The failure to do so has not only resulted in violation of principles of natural justice, but also occasioned serious prejudice to the petitioner.

Accordingly, on the aforesaid ground, the court kept aside the impugned order dated 2 July 2018 made by the Appellate Authority and remands the petitioner's appeal to the Appellate Authority for reconsideration on its own merits and in accordance with law. On this occasion, the court granted the petitioner liberty to produce before the Appellate Authority additional material or documentary evidences which might have bearing upon the new or additional grounds relied upon by the Appellate Authority whilst making the impugned order dated 2 July 2018.