

Bihar Appellate Authority for Advance Ruling

Members: Sri Deepak Arora, Chief Commissioner, CGST [Member Centre]
Dr Pratima , Commissioner, SGST [Member State]

Advance Ruling Number: ZD100920007284Z

Date of order: 30/09/2020

Appeal ARN: AD1001210072925

Date of Appeal: 23/08/2020

Name of Applicant: BROAD SON COMMODITIES PRIVATE LIMITED

Name of the Taxpayer: BROAD SON COMMODITIES PRIVATE LIMITED

Address of Taxpayer: undefined, undefined, undefined, undefined, undefined-undefined

GSTIN / UIN / Temporary Id of Taxpayer: 10AABCB0310L3ZH

Name and Designation of Jurisdictional Officer: -NA-

Name and Designation of Concerned Officer: -NA-

Advance Ruling Number pronounced by Authority for Advance Ruling: ZD100920007284Z

Date of Advance Ruling: 30/09/2020

ORDER

In Case of Appeal Order - The Appellant has filed an Appeal, aggrieved by the Advance Ruling pronounced by the Authority for Advance Ruling under section 97 of the **Central Tax, State Tax /UTGST Act, 2017** and the rules made thereunder.

In view of the discussion and findings, the order is passed by the Appellate Authority for Advance Ruling, modifying/confirming the Advance Ruling pronounced by the Authority for Advance Ruling.

In Case of Rejection/Admission of COD Order - The appellant has filed the application for condonation of delay in filing Appeal against Advance Ruling pronounced by the Authority for Advance Ruling.

In view of the observations, as mentioned in the attached Annexure and material placed on record, we do not find any/find merit in this application and accordingly the application filed for condonation of delay in the present appeal is rejected/admitted under section 100 of CGST, SGST/ UTGST Act, 2017.

Please refer the Annexure, attached with this Order, to view the details of Order passed.

This is a system generated Order and does not require any signature.

Dr Pratima , Commissioner, SGST

Member State

Sri Deepak Arora, Chief Commissioner,
CGST

Member Centre

Appellate Authority for Advance Ruling, Bihar

Case no. AAAR/01/2021

M/s Joint Commissioner State Tax

Shahabad Circle, Arrah

Period 2021-22

Salient features of the case are as follows, in brief:

- 1.1 M/S Broadson Commodities Pvt. Ltd. having GSTIN: 10AABCB0310L3ZH, (hereinafter referred to as the "Respondent"), filed an application for advance ruling before Authority for Advance Ruling, Bihar (hereinafter referred to as the "AAR Bihar") under Section 97 of CGST Act, 2017 and Section 97 of the BGST Act, 2017.
- 1.2 The Respondent is engaged in the business of mining of "Sand" in the State of Bihar. The said product 'sand' is classified under Tariff Heading 2505 and are leviable to tax on the value of their supply @ 5% as per the Schedule appended to the tax rate notification. He submitted before the AAR Bihar that he has a lease agreement with the Department of Mines, Bihar, Patna vide letter no. 2961/M, dated 31/12/2018 for the period of five year (2015-19) and by letter no. 339/Mines, Patna. dated 28/12/2019, it is further extended up to 31/10/2020 for mining of sand.
- 1.3 He further submitted that the value of lease decided by the department of mines, Bihar, Patna is worth Rs. 85,33,72,229/- and this value is enhanced by 50% of the lease value for the extended period. Para 7 of the lease agreement dated 31/12/2018 stipulates that the applicant will pay GST applicable at the present rate and the proof of payment shall be submitted to District Mining Office, Patna. Para 1(ii) of letter no.

3391/Mines, Patna.dated 28/12/2019 states that the applicant shall deposit GST liability in accordance with the updated notification.

- 1.4 The Respondent deposited the tax liability under GST on reverse charge basis in Government treasury at the same rate of tax as on supply of like goods involving transfer of title in goods.

2. The Respondent sought Advance Ruling on the following questions:

“Whether M/S Broadson Commodities Pvt. Ltd. is rightly discharging the taxable liability @ 5% through reverse charge mechanism?”

3 Findings Of The AAR, Bihar

3.1 The AAR Bihar observed that the nature of service received by the application is covered under the Service Accounting code 997337 – “Licensing services for the right to use minerals including its exploration and evaluation”. The Government has been providing the service of licensing services for the right to use minerals, after its exploration and evaluation, to the applicant and the applicant has to pay a consideration in the form of rent/royalty to the Government of Bihar for the same.

3.2 The AAR Bihar further observed that the royalty in respect of mining lease is a part of the consideration payable for the licensing Services for right to use minerals including exploration and evaluation falling under the Head 9973, which is taxable at the rate applicable on supply of like goods involving transfer of title in goods up to 31/12/2018 and thereafter taxable @ 9% CGST and 9% SGST from 01.09.2019 under the residual entries of serial no. 17 of the Notification no 11/2017 central tax as amended by Notification No. 27/2018- Central Tax (Rate) dated 31/12/2018

3.3 The AAR Bihar delivered final ruling to the effect that "The activity undertaken by the applicant attracts 5% GST (2.5% CGST + 2.5% SGST) up to 31/12/2018 and taxable at the rate of 18% (9% CGST + 9% SGST) from 01/01/2019 onwards under the residual entries of serial no 17 of the Notification no 11/2017 dated 28/06/2017 as amended by Notification no 27/2018 dated 31/12/2018."

4 Aggrieved by the above ruling of AAR Bihar, Joint Commissioner of State Tax, Sahabad Circle, Arrah filed an appeal before Appellate Authority for Advance Ruling (hereinafter said as "AAAR, Bihar"). The following submissions were advanced on this behalf:-

4.1 The AAR Bihar has proceeded on the assumption that the aforesaid service is classifiable under the head 997337 which reads as:

"Licensing services for the right to use minerals including its exploitation and evaluation"

4.2 The settlement of Sand Ghats does not give the settlee "any right to use mineral" but gives lease holder a right to exploit the natural resources.

4.3 It is clear from the explanatory notes issued regarding classification of services that service like – "Administrative services provided by government officesconcerning discovery, exploitationother aspects of minerals production" is classified under serial no.vii of SAC 999113 and Services of settlements of Sand Ghats (Bandobasti) Provided by the Government shall be covered by this code-SAC 999113 on which rate of tax is @18% from 01/07/2017.

4.4 Even after it, if there exists any doubt then this service would be covered by heading 9997, Other Service Group 99979, Service Code-999799 on which rate of tax is @18% from 01/07/2017. Tax Leviable in arena of above facts, that service being

provided by Government regard settlement of Sand Ghats (Bandobasti) for mining Sand is classifiable under SAC 999113.

4.5 On the basis of above observation JCST Sahabad Circle requested to Set aside/the impugned advance ruling passed by AAR, Bihar and to pass any such further or other order(s) as may be deemed fit and proper in facts and circumstances of the case.

5. During the course of hearings in instant matter, the Respondent has filed a written reply against the appeal filed by Joint Commissioner State Taxes Sahabad Circle Arrah, the principal contentions of which are summarized hereinafter in this para.

5.1 The Respondent is engaged in excavation of sand from the sand ghats which are settled in its favour by the State of Bihar pursuant to auction. The present dispute pertains to the settlement period 2015-2019.

5.2 A bare perusal of the Sand Policy, notification no. 2887 dated 22.07.2014, tender document and letter no.506 dated 21.10.2014 reveals that the state government had settled the sand ghats for a period of 5 years.

5.3 The separate yearly work orders were issued in favour of the Respondent for the District of Patna, Saran and Bhojpur. Consequent thereto, separate yearly agreements were executed by the District Magistrate of Patna and Bhojpur.

5.4 After promulgation of GST, the government came out with notification no 12/2017 dated 28.06.2017 in which certain intra state supply of services were exempted. Sl no. 64 of the notification reads as follows.

"Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Central Government, State Government, Union territory or local authority before the 1st April, 2016:

Provided that the exemption shall apply only to tax payable on one time charge payable, in full upfront or in installments, for assignment of to use such natural resource."

5.5 That is submitted that under the GST regime, the Respondent is covered by the exemption granted under Sl. No 64 of the notification no 12/2017 and is not liable to pay any GST under reverse charge mechanism on the royalty paid to the government.

6. The departmental representative stated that the leasing service is rendered by state government to the respondent. This service falls under heading 997337. The principal contentions of the departmental representative are summarized hereinafter in this paragraph and in the subsequent paragraph.

6.1 In the wake of differing rulings across the Country, the matter was examined in detail by the GST Council in its 45th meeting. After detailed consideration of the issues involved in the matter, the Council recommended the issuance of a circular to clarify the issue. Accordingly, Circular no 164/2021 dated 06.10.2021, was issued on the recommendation of the Council wherein it has been clarified that the said service is taxable @ 18% (CGST 9 % + SGST 9 %) from 01.07.2017.

7. It is worth to mention relevant portion of the said Circular no 164/2021

7.1 The issue at hand has been clarified vide Para 9 of said circular which deals with "Services by way of grant of mineral exploration and mining rights" and it states that the Council is in receipt of various representations requesting clarification as to the rate of GST applicable on supply of services by way of granting mineral exploration and mining rights during the period from 1.07.2017 to 31.12.2018. The circular also clarifies that "with effect from 1.1.2019, the rate schedule has been specifically amended and it is undisputed since then that such service attracts GST at the rate of 18%".

7.2 As regards classification of service, it was recommended by the Council that service by way of grant of mineral exploration and mining rights most appropriately fall under service code 997337, i.e. "licensing services for the right to use minerals including its exploration and evaluation".

7.3 While considering the issue of rate of tax applicable to the said service the Council took note of the following facts:-

"(a) GST Council in its 4th meeting held on 3rd & 4th November, 2016 had decided that supply of services shall be generally taxed at the rate of 18%;

(b) More importantly, the GST Council in its 14th meeting held on 18th & 19th May, 2019, while recommending the rate schedules of services (5%, 12%, 18% and 28%), specifically recommended that all the residuary services would attract GST at the rate of 18%;

(c) The rate applicable on the service of grant of mineral exploration license and mining lease under Service Tax was also the standard rate of 15.5%. Services under this category have been standard rated in GST at 18%;

(d) Therefore, the intention has always been to tax this activity/supply at standard rate of 18%."

7.4 Accordingly, the circular goes on to state that, "as recommended by the Council, it is clarified that even if the rate schedule did not specifically mention the service by way of grant of mining rights, during the period 1.7.2017 to 31.12.2018, it was taxable at 18% in view of principle laid down in the 14th meeting of the Council for residuary GST rate. Post, 1st January, 2019 no dispute remains as stated above".

8.1 We heard contentions from both sides and considered the matter in detail. The primary contention of the Respondent has been summarized in Para 5.4 above whereby it has been argued that far from being a service/activity liable to tax, the nature of the service received by the Respondent falls within the ambit of serial number 64 of notification number 12/2017 Central/State Tax (Rate), dated 28.06.2017. We have considered the said entry at the said serial number 64 very carefully. The substantive part of the said entry reads as under:

*"Services provided by the Central Government, State **Government**, Union territory or local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Central Government, State Government, Union territory or local authority before the 1st April, 2016:..."*

(Emphasis supplied)

8.2 This entry deals with assignment of right to use any natural resources. The instant case does not involve assignment of any **right to use** any natural resource. It is not in dispute that the Respondent engaged is in the business of exploiting sand from the river beds and that the right to explore for, exploit/extract sand is assigned by the Government for consideration, generally termed royalty. Upon extraction of the sand, the Respondent is free to sell it in the market. The Merriam Webster Dictionary defines the word "use" as "to do something with (an object, machine, person, method, etc.) in order to accomplish a task, do an activity, etc.". The activity of the Respondent is no way involved with "using" the sand extracted by it to accomplish any activity or any task. In fact, the Respondent actually parts with the sand extracted by it rather than making any use of it.

8.3 The Council has clarified vide Para 9.3.1 of the impugned circular that service by way of grant of mineral exploration and mining rights **most appropriately fall under service code 997337, i.e. "licensing services for the right to use minerals including its exploration and evaluation"**. A careful consideration of the said classification would reveal that it refers to "licensing services". In the matter at hand, what actually transpires between the Government and the Respondent is the grant of a license by the Government to the Respondent in pursuance whereof the Respondent is entitled to explore, dig for, extract sand from the river beds to sell the said sand (as opposed to using the sand). The Government grants a lease to the Respondent to explore/extract and sell sand instead of merely assigning the right to use the sand so explored or extracted.

8.4 A plain reading of the entry being relied upon by the Respondent makes it abundantly clear that the entry is concerned with assigning the **right to use** a natural resource.

8.5 The aforesaid discussion in Paras 8.1 to 8.4 make it amply clear that the services received by the Respondent do not fall within the ambit of the said serial number 64 of the impugned notification number 12/2017 (supra) as the "right to use" the underlying goods (as contemplated by the said serial number 64) is not involved in the service provided by the State Government to the Respondent.

8.6 Once it is held that the activity in question does not fall within the scope of the said serial number 64, the claim for exemption made by the Respondent fails.

8.7 There is merit in the contention of the departmental representative that the said activity can be appropriately classified under heading 997337 viz. "licensing services for the right to use minerals including its exploration and evaluation". A plain reading of this heading will reveal that it deals with "**licensing**services" in connection with exploration of minerals and mining rights. What is being provided by the Government is a license to mine sand which is very different from the right to use the sand.

8.8 We accordingly, hold that the services provided by Government to the Respondent are classifiable under the heading 997337 viz. "licensing services for the right to use minerals including its exploration and evaluation" and that the rate of tax applicable to this activity is 18% (9% CGST + 9% SGST) with effect from 01.07.2017 itself.

9.1 Before, parting with the issue it is also being clarified that the expression "*...where such right to use was assigned by the Central Government, State Government, Union territory or local*

authority before the 1st April, 2016:..." occurring in the said serial number 64 of the impugned notification number 12/2017 (supra) also does not come to the rescue of the Respondent on **factual grounds alone**. A perusal of the agreement and other document submitted by the Respondent before this Court as also before the Authority for Advance Ruling reveals that separate yearly agreement and work orders were issued by the Authorities of the Mining Department, Government of Bihar in respect of each calendar year. Even the Respondent himself has stated in Para 16 of this reply that-

"separate yearly work orders were issued in favor of the Respondent for the district of Patna, Saran and Bhojpur. Consequent thereto, separate yearly agreements were executed by the District Magistrate of Patna and Bhojpur."

9.2 It is being reiterated that we have unequivocally and categorically held that in the instant matter the services provided by the Government to the Respondent do not fall within the scope of serial number 64 of the impugned notification number 12/2017 (supra), the discussion in the foregoing Para 9.1 above would further negate the contentions of the Respondent on the basis of facts alone even if the activity under question is stretched beyond logic so as to fall within the said serial number 64.

10. While on this issue, it is also noticed that the Respondent has all along been discharging his tax liability in the matter of the service under consideration in this matter, at the rate of 5% on reverse charge basis. This fact is significant since it indicates that for a considerable period of time since the implementation of GST, the Respondent has admitted that services provided by the Government to him in this matter are not exempt and hence do not fall within the ambit of the said serial number 64 of the impugned notification number 12/2017 (supra). Even his

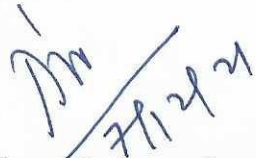
appeal before the Authority for Advance Ruling was limited to the issue of whether 5% was the rate applicable to the activity in question. There was no contention on behalf of the Respondent before the said Authority that the said activity was exempt from tax.

Order

In view of the discussions in Paras 9, 10 and 11 above, the order dated 29.09.2020 passed by AAR Bihar vide memo no 1817 dated 29.09.2020 is set aside It is hereby held that:

- (a) the service by way of grant of mining rights by the State Government is classifiable under heading 997337,
- (b) the said service is covered by serial number 17 of notification number 11/2017 Central/State Tax (Rate), dated 28.06.2017, and
- (c) the said service is taxable at the rate of 18% (9% CGST + 9% SGST) during the period 01.07.2017 to 31.12.2018; Post 1st January, 2019 no dispute remains, it is taxable at the rate of 18% (9% CGST + 9% SGST) as stated above.


Chief Commissioner Central GST &
Central Excise, Ranchi Zone, Patna.


Commissioner State Tax,
Bihar, Patna.