

APPELLATE AUTHORITY FOR ADVANCE RULING - CHHATTISGARH
3rd & 4th Floor, Vanijyik Kar GST Bhawan, Sector-19, Atal Nagar,
Raipur (C.G.) 492002

PROCEEDING OF THE APPELLATE AUTHORITY FOR ADVANCE RULING
U/s. 101 OF THE CHHATTISGARH GOODS AND SERVICES TAX ACT, 2017

Members Present are

Smt. Reena Baba Saheb Kangale,
Commissioner, State Tax,
Chhattisgarh, Raipur

Shri Vinod Kumar Saxena,
Chief Commissioner,
CGST & Central Excise, Bhopal Zone

Sub:- Chhattisgarh GST Act, 2017 - Advance Ruling U/s 101 :-

(i) Regarding determination of the liability to pay tax on Contributions made to DMF and NMET.

Read:- Application dated 18-03-2019 from Shri P.K. Mahapatra, Assistant General Manager (Finance) NMDC Limited, ADMN Building Hilltop Road, Near CSD, 1st Floor, Bachel Complex, Dantewada (South Bastar) Chhattisgarh 494553

PROCEEDINGS

[U/s 101 of the Chhattisgarh Goods & Services Tax Act, 2017 (herein- after referred to as CGGST Act, 2017)]

No.STC/AAAR/01/2019

Raipur, Dated 04/06/2019

The appellant M/s P.K. Mahapatra, Assistant General Manager (Finance) NMDC Limited, ADMN Building Hilltop Road, Near CSD, 1st Floor, Bachel Complex, Dantewada (South Bastar) Chhattisgarh GSTIN 22AAACN7325A1Z5 has filed this appeal u/s 100 of the Chhattisgarh Goods & Services Tax Act, 2017 requesting advance ruling in respect of the following question:-

What is the Appellant's liability to pay tax on contributions made to District Mineral Foundation (DMF) and National Mineral Exploration Trust (NMET) as per Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act, 1957) ?



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2. Facts of the case:-

- I. The Appellant NMDC Limited is a state-controlled mineral producer of the Government of India. It is owned by the Government of India and is under administrative control of the Ministry of Steel. It is India's largest iron ore producer and exporter producing millions of tons of iron ore from fully mechanized mines in Chhattisgarh.

Pursuant to an agreement, NMDC Bachel is required to pay royalty as per Mines and Minerals (Development & Regulation) Act, 1957. As per Section 9 of the said Act, NMDC is required to pay royalty @15%. Further Section 9B and 9C of Mines and Minerals (Development & Regulation) Act, 1957 mandates that NMDC shall contribute 30% of royalty to District Mineral Foundation and 2% of royalty to National Mineral Exploration Trust.

- II. M/s NMDC has applied for advance ruling on the following two issues:

1. Whether royalty paid in respect of mining lease can be classified under "Licensing for the right to use minerals including its exploration and evaluation falling under the heading 9973 attracting GST at the same rate of tax as applicable on supply of like goods involving transfer of title in goods" ?

The query has been ruled in affirmative, as per the appellant's view, by the Authority for Advance Ruling in Chhattisgarh Goods & Service Tax, Raipur.

2. Determination of the liability to pay tax on contributions made to District Mineral Foundation (DMF) and National Mineral Exploration trust (NMET) as per MMDR Act, 1957.

On this question, the AAR has ruled that "the contribution made to the DMF and NMET by M/s. NMDC as per MMDR Act, 1957 are liable to GST under Reverse Charge Mechanism."

- III. The appellant preferred an appeal on the 2nd question in para(II) before the Appellate Authority for Advance Ruling in Chhattisgarh, Atal Nagar, Raipur.
- IV. As per Section 100(1) of CGST Act, appeal against the advance ruling can be presented before the Appellate Authority. Based on the said Section, the Appellant has presented appeal on the following grounds:



- a) Contributions made to DMF and NMET are not for any taxable supply and hence, no GST should be applicable on the contributions made by the appellant.
- b) Contributions made by the appellant does not amount to consideration for supply of service.
- c) Both the trusts neither qualify as 'government' nor as 'local authority' and hence there can be no liability on the appellant to pay GST under reverse charge.

3. Contention of the Appellant:

3.1 The appellant relied upon Section 7 of the CGST Act, 2017 which defines the term "supply". The relevant portion of the same is as below:

"7(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;

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

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

....."



Section 7 of the CGST Act, 2017 defines the term "supply" to include all forms of supply of goods or services or both. Also, it expressly seeks to include all activities treated as supply of goods or supply of services as referred to Schedule II of the CGST Act, 2017. In this regard, Clause 5 of Schedule II provides for the list of activities that shall be treated as a supply of services. They also relied upon clause 5(e) of Schedule II of the CGST Act, 2017 which provides that agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to an act shall be treated as a supply of services.

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3.3 That, the term “service” is defined as follows under section 2(102) of the CGST Act, 2017:-

“services means anything other than goods, money and securities but includes activities relating to the use of money or 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.”

For an activity to qualify as a ‘service’, the same has to be performed at the behest of the service recipient. An act done without corresponding desire or without reciprocate contractual obligation of the service recipient cannot be considered as an activity for a consideration.

3.4 That, for a supply to be taxable under GST law, the same has to be for a ‘consideration’. Relying upon the definition of the term ‘consideration’ u/s 2(31) of the CGST Act, 2017, the appellant contended that consideration can be monetary or non-monetary and the same should be ‘in respect of’, ‘in response of’, ‘or for the inducement of the supply’ of goods or services or both.

3.5 Based on the above, the Appellants submission was that the levy of GST is attracted only when there is i)an activity undertaken at the behest of the service recipient and ii) the same is in response to/for consideration (as contemplated u/s 2(31) of the CGST Act, 2017). The appellant contended that there is no activity undertaken by the DMF and NMET trusts at the behest of the appellant for a consideration and hence there cannot be levy of tax.The Appellant is mandated under law to contribute to the trusts set up and there is no voluntary contribution made by the appellant in return for an activity.In any event since the trusts in question do not qualify as “government” or “local authority” there can be no obligation on the appellant to discharge GST under the reverse charge mechanism.

3.6 They also cited the decision of Hon’ble CESTAT (Mumbai Bench) in the case of Cricket Club of India v. Commissioner of Service Tax [(2015 (40) STR 973] :-



“11.....Consideration is , undoubtedly, an essential ingredient of all economic transactions and it is certainly consideration that forms the basis for computation of service tax. However, existence of consideration cannot be presumed in every money flow. The factual matrix of the existence of a monetary flow combined with convergence of two entities for such flow cannot be moulded by tax authorities into a taxable event without identifying the specific activity that links the provider to the recipient.

12. Unless the existence of provision of a service can be established , the question of taxing an attendant monetary transaction will not arise.

.....”

They also cited the decision of Hon'ble CESTAT (Mumbai) in the case of Marmgao Port Trust v. Commissioner of Customs, Central Excise and Service Tax, Goa: 2016 TIOL 2843 CESTAT Mum:-

"18. In our view, in order to render a transaction liable for service tax, the nexus between the consideration agreed and the service activity to be undertaken should be direct and clear. Unless, it is established that a specific amount has been agreed as a quid pro quo for undertaking any particular activity by a partner, it cannot be assumed that there was a consideration agreed upon for any specific activity so as to constitute a service."

3.7 That, the said trusts qualify neither as 'government' nor as 'local authority'. As per Section 2(53) of CGST Act, 2017, government means "Central Government" and as per Section 2(53) of Chhattisgarh GST Act, Government means "State Government". Further, the said trust does not fall within the definition of local authority which is defined under section 2(69) of the CGST Act, 2017. An autonomous trust set up for an independent purpose do not fall under the definition of Government or local authority. At the max such trust may fall under the definition of governmental Authority which is defined in Explanation of Section of Section 2(16) of IGST Act. Based on above, the appellant's contention was that services provided by Governmental Authority is not covered under reverse charge and therefore the supplier is liable to charge GST and remit to the credit of Government. It was further stated by the Appellant that both the trusts does not fall under the definition of Government. The same is an independent non-profit body to carry out operations entrusted to it. Since the payment is not made to the government, there is no requirement of payment of GST under reverse charge in terms of notification 13/2017- Central Tax (Rate).

4. Personal Hearing:-

In accordance with the established principles of natural justice, personal hearing in the matter was extended to the authorized representative of the appellant and accordingly, Mr. S. Ananthanarayanan (CA), Mr. Rahul Binani (CA) and Mr. Sanjay Padhy appeared for hearing on 24.04.2019. They also furnished a written submission dated 24.04.2019, which has been taken on record.

4.1 With regard to DMF and NMET, the appellant submitted that the contributions do not fall under the definition of supply under section 7 of CGST Act. However, if it is considered as supply the liability is on the Trust and not on the appellant. They



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submitted in terms of Notification no. 13/2017 that the liability under reverse charge is only when the supply is made by Central Government, State Government, Union Territory or local authority, as the trust does not fall under any of the categories mentioned above. Hence, there is no liability on the appellant to pay GST. They drew attention to Chhattisgarh District Mineral Fund Rules and NMET Rules wherein the collection is defined as 'contribution' and not as consideration. Similarly, they highlighted Rule 3 wherein the Fund is created as a trust and a non-profit body and hence they contended that since there is no supply, there is no activity in furtherance of business.

4.2 Also, as per National Mineral Exploration Trust Rules, 2015 it was the appellant's contention that National Mineral Exploration Trust (NMET) is a trust which was set up as a non-profit body for the purpose of detailed exploration of minerals that would facilitate high growth in the mining sector. As per Section 9C(2) of MMDR Act, the object of the Trust is to use the funds accrued to the Trust for the purpose of regional and detailed exploration in such manner as may be prescribed by the Central Government. Also the funds accumulated with the NMET would be utilized to set up the exploration activities. The Appellant stated that in no manner such contribution made to DMF/NMET can be regarded as payment towards service by way of royalty or right to use minerals, had such contribution been towards mining rights, the same would have been retained by the State Government. The said sum is for the benefit of the interest of persons and the areas affected by mining related operations and exploration activities, thus cannot be considered as consideration towards the mining right.

4.3 In order to tax a particular transaction as "Supply" under Section 7 of CGST Act, there should be supply of goods or services agreed to be made for a consideration. In the instant case, supply of service is missing and therefore the main criteria for levy of tax under Section 7 is not satisfied. Without prejudice to the above, assuming but not admitting that there is a service provided by the trust in lieu of contribution made by the Appellant, the said service is not under notified services, under Reverse charge.



5. Legal position, Analysis and Discussion:-

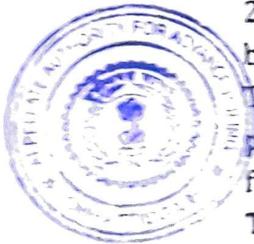
5.1 The provisions for implementing the CGST Act and CGGST Act, 2017 are similar. Now we chronologically discuss the provisions that are applicable in the instant case.

CONTRIBUTIONS TO DMF AND NMET ARE IN THE FURTHERANCE OF BUSINESS:

M/s NMDC Limited is a state-controlled mineral producer of the Government of India. It is owned by the Government of India and is under the administrative control of Ministry of Steel. M/s NMDC is India's largest iron ore producer and exporter, operating from three fully mechanized mines located in the State of Chhattisgarh and Karnataka. The operating mines of NMDC include Bailadila Iron Ore Mine, Kirandul Complex, Distt. South Bastar, Dantewada (Chhattisgarh), Bailadila Iron Ore Mine, Bacheli Complex, Distt. South Bastar, Dantewada (Chhattisgarh), Donimalai Iron Ore Mine, Donimalai, Distt. Bellary (Karnataka) and Diamond Mining Project, Majhgawan, Panna (Madhya Pradesh). The appellant has preferred appeal in respect of aforesaid issues in relation to their Bailadila Iron Ore Mine, Bacheli Complex of NMDC.

M/s NMDC is an enterprise of Central Government and they have been provided Government land on lease for iron ore extraction by the Government of Chhattisgarh. As per Mines and Minerals Act, the miners pay royalty to the State Government on the basis of quantum of minerals extracted. Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957 mandates NMDC to pay royalty @ 15%. Apart from this, section 9B and 9C of the said Act mandates that NMDC shall contribute 30% of royalty to District Mineral Foundation (Constituted on State level) and 2% of royalty to National Mineral Exploration Trust (NMET). The appellant seeks an appeal against the advance ruling with regard to tax liability under GST on such contributions to DMF and NMET.

The State Government has allotted the said mines for the mining activity and for the same activity they are bound to pay the royalty. Thus, the activities of M/s NMDC, squarely comes under the definition of business as defined u/s 2(17) of the CGST ACT, 2017. For this mining activity, they are also duty bound under Section 9B and 9C of Mines and Minerals (Development & Regulation) Act, 1957 for contribution of 30% of royalty to District Mineral Foundation, DMF (Constituted on State level) and 2% of Royalty to National Mineral Exploration Trust (NMET). This contribution to both the trust is on account of their mining operations being carried out in the State. Thus mining gets covered under "any other similar activity, whether or not it is for a pecuniary benefit" as defined under u/s 2(17)(a) and also under the activity for furtherance of their trade as defined under u/s 2(17)(g) of the CGST ACT, 2017. There is no ambiguity that M/s NMDC pays royalty for its business of iron ore extraction and also pays to both the trusts i.e. DMF and NMET in the course of furtherance of this business only. By no stretch of imagination, this can be treated as



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donation. In case of failure to contribute to the above trusts, the business/rights of iron ore extraction would legally get hampered. Whereas, donations are always voluntary here in the instant case there is compulsory payment to both the trusts in proportion to the amount of royalty. Thus there hardly remains any doubt that the said contributions paid by M/s NMDC to both the trusts are amounts being paid in the course of furtherance of its business activities .

5.3 CONTRIBUTIONS MADE TO DMF AND NMET ARE THE MONETARY VALUE OF AN ACT OF FORBEARANCE -AS AN UNDERTAKING-FOREBEARING TO CAUSE ANY FURTHER DAMAGE TO THE ENVIRONMENT WHICH IS THE DUE CONSIDERATION HERE :

Rule 2 of Chhattisgarh District Mineral Foundation Trust Rules, 2015 stipulates the following definitions with regard to the contribution made to DMF and NMET in addition to royalty.

Rule 2(1)(d) defines who "Collector" is and shall have the same meaning assigned to him/her under the Chhattisgarh Land Revenue Code, 1959 (No. 20 of 1959)

Rule 2(1)(e) defines "Contribution" means the contribution to be collected in the Trust from the holders of a mining lease or a composite license (prospective license-cum-mining lease) in case of Minerals or a mining lease or a quarry lease or a quarry permit in the case of Minor Minerals in the District at such percentage of the royalty to be paid in terms of the Second Schedule of the Act, as may be prescribed by the Central Government in the case of Minerals and such percentage of royalty to be paid in the case of Minor Minerals as may be prescribed by the State Government from time to time.

Accordingly, owing to above discussions, a conclusion can be drawn that the contribution made by M/s NMDC to DMF and NMET merits as a part of mining royalty which is paid in the course or furtherance of business.

The appellant in their contention has stated that the contributions made to the trusts does not amount to consideration for supply of service. The term 'consideration' has been defined u/s 2(31) of the CGST Act, 2017 as follows:

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



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(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;

It is observed that the act undertaken by DMF and NMET would be considered as consideration for forbearance.

FORBEARANCE

The objective of DMF trust is to mitigate adverse impact of mining. The amount paid to the said funds is a consideration amount paid for the benefit of and the interest of persons and areas affected by the mining related operations and to promote exploration activities. The contributions are in the manner of an undertaking to forbear from causing environmental damage and protection to the ecosystem.

DMF and NMET provide almost 60% of the fund for the following:

a) The works which are undertaken by the Trusts include centralized water purification systems, water treatment plants, permanent/ temporary water distribution network, etc. The trust is required to perform this work to mitigate the adverse effects which are created by the holder of mining lease. Because of the mining and exploration activities the drinking water gets very much affected in these areas and the aforementioned trusts inturn work for the benefit of people and thereby investing a huge amount of money for providing clean drinking water facility to the people affected by such act.

b) The second most important work provided by the Trusts is to work for the improvement of Environment preservation and also to control the pollution. These trusts provide for effluent treatment plants, prevention of pollution of streams, lakes, ponds, ground water, other water sources in the region, measure for controlling air and dust pollution caused by mining operations and dumps, mine drainage system, mine pollution prevention technologies, aids measures for working or abandoned mines and other air, water &



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surface pollution control mechanisms required for environment-friendly and sustainable mine development of the area affected by the mining operations. The said trust also works to control the effect of pollution created by the holders of mining lease i.e. in the instant case NMDC. It also lays emphasis on providing a healthy and fresh environment to the people including workers of NMDC and their families who are in turn affected by the said mining operations.

c) The said trusts also undertake the activities relating to health care of the people affected by the mining operations. Their primary focus is to provide health care facilities in the affected area. They not only emphasize on the health care but also provide a hygienic and clean infrastructure for taking care of the people affected. They provide provisions for necessary staffing, equipments and supplies required for making such facilities effective. They also try to abide by all the guidelines provided by National Institute of Miners Health and thus it can be stated that the amount which has been collected by the DMF and NMET use the fund for building infrastructure and for providing facilities which are needed for taking care of the mining related illness and diseases.

It is imperative to state here that DMF and NMET's primary focus is on the overall development of the area which is affected by mining or mining related operations which are undertaken by the holders of the mining lease.

5.4 CONTRIBUTIONS TO DMF AMOUNTS TO "TAXABLE SUPPLY" FOR A CONSIDERATION IN THE COURSE OF BUSINESS :

The discussion in the preceding paras fulfills that the contributions are certainly to be treated as taxable supply as defined under clause (a) of sub-section (1) of section 7 of the CGST Act, 2017 i.e. "7(1) For the purpose of this Act, the expression "supply" includes- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business; (b)....."

The appellant in their contention have also stated that for an activity to qualify as 'service', the same has to be performed at the behest of the service recipient. The Chartered Accountants of India has decided in the case of M/s. Pioneer Partners, Bhiwani, having advance ruling no. HAR/HAAR/R/2018-19/03 that "the term 'services' has been defined under section 2(102) "services means anything other than goods, money and securities but includes activities relating to the use of money or conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate



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consideration is charged." It was, inter alia, ruled that " the receipt of services i.e. the appellant is liable to discharge the tax liability on such services provided it to by the Government on reverse charge basis."

The clause 5(e) of the Schedule II of the CGST Act, 2017 read with section 7(1A), the relevant portion of which has been extracted as under:-

SCHEDULE II

[Section 7]

5. Supply of services

The following should be treated as supply of services, namely:-

(a).....

.....
(e) agreeing to the obligation of to refrain from an act, or to tolerate an act or a situation, or to do an act: and....."

In the instant case, the miner (here NMDC) agrees to perform the obligation i.e. to do an act and to contribute the trusts a specified percentage of royalty (30% of royalty to DMF and 2% of royalty to NMET) in addition to the royalty paid u/s 9 of MMDR Act, 1957. Hence the miner's contribution to the DMF and NMET qualifies as supply of service.

5.5 DMF TRUST AND NMET TRUST ARE TRUSTS WHICH CAN BE SAID TO BE LEGALLY ENTITLED TO OR ENTRUSTED BY THE CENTRAL OR ANY STATE GOVERNMENT WITH THE CONTROL OR MANAGEMENT OF A LOCAL FUND; HENCE A LOCAL AUTHORITY

The appellant in their contention have also stated that the DMF and NMET both the trusts have been constituted under the provisions of Mines and Minerals (Development and Regulation) Act, 1957. And also stated that they could be treated as Government authority but both the trusts could not be treated as State Government or Central Government authority. Moreover, the appellant contended that they could not be defined as a local authority as they are not constituted as per defined parameters of the constitution nor they undertake any such activities.

In this context, Section 2(69) of the GST Act is to be examined to consider the above contention of the appellant. The definition of 'local authority' is provided as under:-



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"Local Authority" means -

- a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution;
- b) a "Municipality" as defined in clause (e) of article 243P of the Constitution;
- c) a Municipal Committee, a Zilla Parishad, a District Board and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006 (41 of 2006);
- e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- f) a Development Board constituted under article 371 of the Constitution; or
- g) a Regional Council constituted under article 371A of the Constitution;

DMF (District Mineral Foundation Trust) and NMET (National Mineral Exploration Trust) are to be construed as a Local Authority under Section 2(69)(c). To make applicable the said clause, two conditions have to be satisfied:

1. That the trusts are other authorities.
2. They are legally entitled to or entrusted by the Central or State Government with control and management of municipal or local fund.

Trusts are other authorities:

In Rajasthan State Electricity Board vs Mohan Lal & Ors (1967 AIR 1857) the definition of the term other authorities has been defined. It was held by the Bench that-

This dictionary meaning of the word "authority" is clearly wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi-governmental functions. The expression "other authorities" is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India.

DMF (District Mineral Foundation Trust) can be treated as an authority legally entitled to or entrusted by the Central or State Government with control and management of municipal or local fund because of the reasons stated below:

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- In exercise of powers conferred under Section 9(B), 15(4) and 15A of the Mines and Minerals (Development and Regulation) Act, 1957 (No. 67 of 1957), the State Government of Chhattisgarh has created DMF (District Mineral Foundation Trust). Thus, it can be stated that it is a statutory body created under statute.
- DMF is a perpetual body and has common seal according to Rule 3. Having perpetual body and common seal are common characteristics of a body corporate or an authority. The Seal of the Trust has been provided under Rule 34 of DMF Rules for the purpose of trust. This is also an essential ingredient to consider it as an authority.
- The object of the District Mineral Foundation Trust is to work for the interest and benefit of persons and areas affected by mining or mining related operations in such manner as specified in these Rules.
- A detailed plan for expenditure of funds have been provided under Rule 22 of the said Rules. It talks about various developmental and infrastructural projects of the Government which are completed either by direct funding or by public private partnership mode.

NMET (National Mineral Exploration Trust) can be treated as an authority because of the reasons stated below:

- In exercise of the powers conferred by sub-sections (2), (3) and (4) of section 9C and section 13 of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), the Central Government has created NMET. Thus, it can be stated that it is a statutory body created under statute.
- The object of the Trust is to carry out regional and detailed exploration for minerals.
- Expenditure of the said Trust is made in funding special studies and projects designed to identify, explore, extract, beneficiate and refine deep-seated or concealed mineral deposits; undertaking studies for mineral development; facilitating exploration activities in such a manner that areas explored can be taken up for grant of mineral concessions in accordance with the provisions of the Act and the rules made thereunder; facilitating geophysical, ground and aerial, survey and geochemical survey of obvious geological potential areas and rest of India; using the Trust Fund for such other purposes that the Governing Body may decide, or authorise the Executive Committee, to be necessary or expedient in the interest of conservation, development and exploitation of mineral resources of India, not inconsistent with the provisions of the Act.

Therefore, both the Trusts can be construed as Other Authorities as per the above decision of the Supreme Court.



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Control and management of municipal or local fund

The term 'Local fund' is not defined under any statute.

- 'Local' means pertaining to position in space or belonging to a place, confined to a place.
- The ordinary meaning of the word 'fund' may mean actual cash resources of a particular kind. It connotes actual payment, by taking money out of the drawer or drawing a cheque on the bank. A sum of money on which some enterprise is founded or expense supported, a supply or source of money, a store laid-up, money available to an organisation for a project etc.

'Local fund' would therefore mean the actual cash resources or the payments by way of taking the money out of the drawer pertaining to a specified position or belonging to a place which is inhabited by public and localised to the area.

Tax has been interpreted to mean compulsory acquisition of property by the State for the purposes of providing protection, security and other amenities for the vital interests of the Society. 'Local fund' as referred to in Section 3(31) of the General Clauses Act would amount to a tax, fee and cess but would not cover the charges paid for the service rendered.

The abovementioned definition is very wide, but for a better understanding and to make things more specific in relation to the State of Chhattisgarh, the definition given in **THE MADHYA PRADESH TREASURY CODE VOLUME I**, has to be taken into consideration.

For ready reference Subsidiary Rule 600 of the Madhya Pradesh Treasury Code is reproduced below:-

"600.The expression "**Local Fund**" denotes----



- (i) revenue administered by bodies which by law or rule having the force of law come under the control of the Government, whether in regard to the proceedings generally, or to specific matters such as the sanctioning of their budgets, sanction to the creation or filling up of particular appointments, the enactment of leave, pension or similar rules;
- (ii) the revenues of anybody which may be specially notified by the State Government as such.

The transactions of the Local Funds are not included in the accounts of revenue and expenditure of the State.”

From the abovementioned definition the following can be termed as essentials for considering a fund to be a Local Fund:-

1. Revenue should be administered by bodies.
2. The said revenue should be under the control of Government by law or rule having the force of law.
3. In regard to the proceedings generally, or to specific matters.

Administered by local bodies

DMF and NMET are both independent bodies which are created by statute. According to the DMF Trust Rules, 2015, the trustees who are appointed by the Secretary, Mineral Resources Department shall administer the DMF Trust and State Level Monitoring Committee which is headed by Chief Minister is empowered to monitor the Trust Fund. The Contribution Fund shall be maintained by the Managing Committee of the Trust.

Under Rule 6 of the National Mineral Exploration Trust Rules, 2015 Executive Committee of the Trust is given power to manage the National Mineral Exploration Trust Fund.

Under the control of Government by law or rule having force of Law

- **DMF**

All the members of the Trust or Committee or any other body in the DMF Trust Act, 2015 are appointed by the Settlor. The definition of Settlor is given under Rule 2(n). It states that settlor means the Government of Chhattisgarh represented by the Secretary, Mineral Resources Department. From the above it is clear that every authority which is appointed under this act is under the control of Government.

Moreover, the object of the District Mineral Foundation Trust is to work for the interest and benefit of persons and areas affected by mining or mining related operations in such manner as specified in these Rules.

According to Rule 19, Contribution Fund which comprises of the funds collected through contribution from the holders of a mining lease or a composite licence in the case of Minor Minerals in the District shall be maintained by Managing Committee of the Trust. The head of the Managing Committee is Collector.



Therefore, from the above it can be inferred that DMF is under the control of Government. Example can be given of Rule 22 of the DMF Trust Rules, 2015 which specifically indicates that overall development of the area affected by the mining operations would be done by the Governing Council of the Trust, like Drinking water supply, Environment preservation and pollution control measures, Health care, Education, Physical infrastructure, Irrigation, Energy and Watershed Development, etc.

- **NMET**

According to Rule 6 of the National Mineral Exploration Trust Rules, 2015 Executive Committee of the Trust is given power to manage the National Mineral Exploration Trust Fund.

According to Rule 3 of the said rules, the Executive Committee is empowered to manage, administer and supervise the Trust and also to monitor and review the expenditure of the Trust fund at regular intervals.

Moreover, Chairperson of the Executive Committee of the National Mineral Exploration Trust established under sub-section (1) of section 9C of the Act.

Therefore, from the abovementioned paras it is stated that NMET is under the control of Government.

Observation:

By going through the objectives of both the Rules and by the expenditure pattern, it is inferred that the activities undertaken by the trusts are under the control of the **District Administration and different Government departments** entrusted to it by the State Government in respect of the DMF and the Central Government in respect of the NMET respectively.

5.6 Section 2(98) of CGST Act, 2017 stipulates regarding liability to pay tax under reverse charge, meaning therein that the liability to pay tax shall be on the recipient of goods/services rather than the supplier of goods/services.

Section 2(98), supra reads as under:-

“reverse charge” means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or subsection (4) of section 5 of the Integrated Goods and Services Tax Act;



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Further, Reverse Charge Mechanism is applicable for certain notified services as mentioned in Notification No. 13/2017 - Central Tax (Rate) dated 28.06.2017. As per Sl. No. 5 to the said Notification, services supplied by the Central Government, State Government, Union territory or local authority to a business entity attracts GST under reverse charge basis by the recipient of such services. Thus, entry No. (5) of the said notification states that the services supplied by the Central Government/State Government to a business entity will come under Reverse Charge Mechanism.

In view of the deliberations and discussions as above, we pass the following order:-

ORDER

(Under section 101 of the Chhattisgarh Goods and Services Tax Act,2017)

No.STC/AAAR/01/2019

Raipur, Dated 04/06/2019



The ruling so sought by the Appellant is accordingly answered as under:-

In view of the above, there appears no merit in the appeal filed by the appellant & thus the ruling of the AAR, Chhattisgarh is upheld.

Place: - Raipur

Date:- 04/06/19

Seal:-


Reena Baba Saheb Kangale
(Member)
MEMBER
APPELLATE AUTHORITY FOR
ADVANCE RULING, CHHATTISGARH


Vinod Kumar Saxena
(Member)
MEMBER
APPELLATE AUTHORITY FOR
ADVANCE RULING, CHHATTISGARH

Copy to:-

1. Appellant,
2. The Commissioner, (SGST)
3. The Chief Commissioner, (CGST)
4. The jurisdictional officer, Jagdalpur Circle-2.