APPELLATE AUTHORITY FOR ADVANCE RULING, RAJASTHAN
GOODS AND SERVICES TAX
NCR BUILDING, STATUE CIRCLE, C-SCHEME
JAIPUR – 302005 (RAJASTHAN)
Email : aaarjpr@gmail.com

Before the AAAR comprising of :

1. Sh. Mahendra Ranga, Member (Central Tax)
2. Dr. Ravi Kumar Surpur, Member (State Tax)

ORDER NO. RAJ/AAAR/ 8/2023-24 DATED 19.12.2023

Name and address of the Appellant	M/s L&T Hydrocarbon Engineering Limited, Flat No. D 236 and 237, SDC Monark Building, Amrapali Marg, Vaishali Nagar, Jaipur-302021
GSTIN/ UID of the Appellant	08AABCL5967D1ZE
Issues under Appeal	Classification of any goods or services or both
Date of Personal Hearing	11.01.2022 & 13.09.2023
Present for the Appellant	Shri Rohit Jain, advocate Shri Rahul Khurana, advocate
Details of Appeals	Appeal No. RAJ/AAAR/APP/09/2021-22 against Advance Ruling No. RAJ/AAR/2020-21/18 dated 13.09.2021

(Proceedings under Section 101 of the Central GST Act, 2017 read with Section 101 of the Rajasthan GST Act, 2017)

At the outset, we would like to make it clear that the provisions of both the Central GST Act, 2017 and the Rajasthan GST Act, 2017 are same barring a few exceptions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central GST Act, 2017 would also mean a reference to corresponding provisions of Rajasthan GST Act, 2017.

The present appeal has been filed under Section 100 of the Central Goods & Services Tax Act, 2017 (hereinafter also referred to as 'the CGST Act') read with Section 100 of the Rajasthan Goods & Services Tax Act, 2017(hereinafter also referred to as 'the RGST Act') by the Appellant on the portal on 19.10.2021 against AAR, Rajasthan Ruling Order No. RAJ/AAR/2021-22/18 dated 13.09.2021. As per the Appellant, the Order of the AAR was communicated to them on 21.09.2021.

BRIEF FACTS OF THE CASE

1. M/s L&T Hydrocarbon Engineering Limited, Flat No. 236 and 237, SDC Monark Building, Amrapali Marg, Vaishali Nagar, Jaipur- 302021 (herein after referred as Appellant) is a company registered under the Indian Companies Act, 1956. It is a subsidiary of L&T Limited, an Indian technology, engineering, construction, manufacturing and financial services conglomerate. The Appellant are engaged in the business of engineering, procurement fabrication, construction and project management providing integrated solutions to the Hydrocarbon Industry. The Appellant carries out construction of refinery, petrochemical, chemical project, gas gathering stations, crude oil & gas terminals, etc. on turnkey basis. The Appellant are registered under the Rajasthan Goods and Service Tax Act, 2017 ('**RGST Act**') having registration number 08AABCL5967D1ZE.

2. The Appellant have informed that Cairn (Vedanta's upstream Oil & Gas vertical) is the operator of Onshore RN-ON-90/1 block which is located in Barmer basin and having various oil and gas discoveries, including Mangala, Bhagyam and Aishwariya fields, collectively known as MBA field, as the major producing field along with marginal producing satellite fields. The productions from various well pads of MBA & other satellite fields are processed at the Mangala Processing Terminal ("MPT") at Barmer district of Rajasthan.

3. With a view to further augment facilities and infrastructure for enhancing the liquid handling capacity from 800 KBLPD to 1300 KBLPD at MPT based on the projected production scenarios & expected increase in total liquid, the Appellant have entered into an Engineering, Procurement and Construction Contract ("EPC contract") with Vedanta Limited in January, 2019 for construction of customized additional infrastructure facilities under Vedanta's Mangala Upgradation Project Stage 2 – EPC – 2 or "MUPS2-EPC2" Project at Mangala wells ("subject services"). The Appellant have provided a copy of the relevant extract of the EPC contract outlining the Scope of work.

4. **SCOPE OF WORK – AUGMENTATION OF FACILITIES & INFRASTRUCTURE UNDER MUPS2-EPC2 PROJECT**

Under the MUPS2-EPC2 Project, the Appellant are required to undertake designing, planning, development, construction, installation, test run, final commissioning and hand over of various infrastructure facilities as under:

a. **Augmentation of Liquid handling capacity**
b. **Augmentation of Produced water treatment facility**
c. **Augmenting existing Injection Water System capacity**
d. **New Back Wash System**
e. **New LP Steam & condensate system at MPT**
f. **Augmenting Instrument Air & Nitrogen Capacity**
g. **Augmentation of other facilities including New Chemical injection skid at MPT, Flare System and Drain System & Potable water**

5. SCOPE OF WORK – EXECUTION UNDER THE CONTRACT

The Appellant submitted that their Scope of work under the MUPS2 - EPC2 Project includes design & detail engineering. This includes FEED verification post bid during detailed engineering, procurement & supply, fabrication, manufacturing, assembly, inspection & testing, delivery & unloading at site, storage & preservation, erection & installation, facilities construction. It also includes Hook-ups with the existing & proposed facilities, testing, pre-commissioning & commissioning, RFSU, test runs, training of Vedanta personnel, Project Management, Construction, Logistical, Site & Stakeholder Management, Regulatory Compliance, Site Restoration handover to Vedanta.

5.1 The Appellant are required to deploy resources (including manpower, tools & tackles, equipment, etc.) for execution of the scope of work. The Appellant are also responsible for arranging any external assistance/ support, if required, at its own cost & risk.

5.2 The Appellant's obligation is to cover at their expense the works mentioned in the above two Para. In addition to the supply of mandatory spare parts included in the contract, the Appellant would also supply spare parts required for the operation and maintenance of the facilities for the period specified as per specifications.

6. RESPONSIBILITIES OF APPELLANT UNDER THE SCOPE OF WORK

6.1 General Responsibilities

Under the EPC contract, the Appellant have the following general responsibilities in relation to the design, construction and installation of customized infrastructure facilities:

a) Providing & mobilizing all project management resources for performance of works.

b) Providing and mobilizing all engineering & procurement resources for execution of project.

c) Providing and mobilizing all construction resources for execution of project. The construction team is primarily responsible for performing pre-construction activities, review of all the construction/ fabrication drawings prior to start of site construction and updating same as per actual site conditions etc.

d) Appraisal and taking cognizance of site-conditions, Government rules & regulations, bye-laws, applicable codes & standards, requirements of authorities having jurisdiction over the work site(s), environmental & pollution concerns including conditions/ stipulations laid downs by concerned authorities etc.

e) Obtaining all necessary approvals & work permits from concerned authorities for performing the work, including shifting/ relocation of existing facilities & other utilities, etc.

f) Coordinating with vendors, suppliers, fabricators & to perform all activities including expediting, inspection & testing, transportation, loading/ unloading, storing, shifting & liaison with the authorities, etc.

g) Identifying & planning access to sites as may be required for construction of project facilities.

6.3 Design & Engineering - The Appellant submitted that in relation to the customized design and engineering, its scope of work for the facilities forming part of this project broadly include, but not be limited to the following:-

- Pre-bid engineering
- Detailed Design & Engineering
- Engineering for procurement
- Engineering for Construction / Installation

6.4 **Procurement & Supply** - The Appellant are solely responsible for timely estimating, resourcing, ordering, arranging, expediting, inspection, transportation, handling, etc. of all material of all sizes as per the requirements of the contract.

6.5 Construction of Customized facilities as per the SOW - The scope of work for construction includes the following:

(a) Mobilization/ demobilization
(b) Site survey & Preparation
(c) Arranging the materials at site
(d) Construction of facilities

6.5 Testing & Pre-Commissioning
6.6 Commissioning
6.7 Clean-up & Restoration
6.8 Test Runs

7. The Appellant have been providing the subject services in the State of Rajasthan and classifying such services under SAC Heading 9954. However, vide Notification No. 20/2019 – Central Tax (Rate) dated 30.09.2019, Entry No. 24(ii) of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 has been amended to include within its ambit, support services to, inter alia, mining activities, and Entry No. 21(ia) thereof has been newly inserted to cover within its ambit professional, technical and business services relating to petroleum operations, both taxable at 12% GST rate. Post the introduction of these more specific entries, the Appellant decided to re-evaluate their current position to cover the subject services.

8. The Appellant submitted that they are of the considered view that the subject services are appropriately classifiable under the Heading 9986 [Sr. No. 24(ii)] (*viz.*, "Support services to exploration, mining or drilling of petroleum crude or natural gas or both") or alternatively under the SAC Heading 9983 [Sr. No. 21(ia)] (viz., "Other professional, technical and business services relating to exploration, mining or

drilling of petroleum crude or natural gas or both") and are liable to attract 12% GST under the CGST Act. By filing the application under Section 97(1) of the RGST Act/ CGST Act before the AAR, Rajasthan, the Appellant had sought to confirm this classification.

9. The AAR, Rajasthan have answered the questions of the Appellant, vide their Ruling dated 13.09.2021 as under:

Question 1 - Whether the services provided by the applicant are classified under Sr. No. 24 (ii) of heading 9986 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as 'Support services to exploration, mining or drilling of petroleum crude or natural gas or both' and attracts GST @ 12%.

Answer: - No

Question 2 - Whether the services provided by the applicant are classified under 'Professional, Technical or Business Service relating to exploration, mining, or drilling of petroleum crude or natural gas or both' under Sr. No. 21(ia) (Professional, Technical or Business Service to Mining) of the Rate Notification. and attracts GST @ 12% or Sr. No. 21(ia) of Heading 9983 of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 and attracts GST @ 12%.

Answer – No.

Question – 3 - Further, if the subject services are not classified under any of the aforesaid entry, what would be the appropriate classification for the same and what rate GST would be imposable?

Answer - The activities of supply, designing & engineering, installation, Commission of project under EPC contract by the Appellant shall attract GST @18% under S. No. 3 Heading 9954 (ii) of the Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017.

10. Being aggrieved with the Ruling pronounced by the AAR, Rajasthan, the Appellant have filed appeal before this authority and their grounds of appeal are as under.

GROUNDS OF APPEAL

Submission I: The Impugned Ruling has been issued based upon erroneous presumptions as to the facts and law

11.1 The Appellant submitted that the impugned Ruling, at Para 5 states that, *"From the explanatory note, it reveals that Support services shall include the services to be provided for exploration, once the infrastructure/ facility for exploration is built & complete in all respect and ready to start exploration. But it does not include the services to be provided before creating the infrastructure/ facility. Under the EPC contract, the Appellant have to undertake activities from designing, engineering, procurement, construction of customized facility, commissioning of permanent facility, test run and hand over of complete facility so designed, constructed, tested and commissioned. Thus, it cannot be treated as support services to oil & gas extraction."*

11.2 In view of the Appellant, a perusal of the aforesaid basis given by the Authority for Advance Ruling would reveal that the AAR, Rajasthan has made an incorrect presumption of the support services envisaged under SAC Heading No. 9986 in the following manner:

(a) That support services do not include the services provided for creating the infrastructure/ facility for exploration; and
(b) it includes services which are provided once the infrastructure/ facility for exploration is built & complete in all respect and ready to start exploration.

11.3 That the Appellant submitted that the above presumptions by the AAR, Rajasthan are outrightly incorrect, bad in law and without any basis. The findings recorded by the AAR, Rajasthan with respect to the classification of the subject services are wholly misconceived and shows lack of understanding of the activities required to be performed by the Appellant under the EPC Contract. It is a trite law that decisions based on presumption and surmises have no place in the eyes of law. In this regard, reliance has been placed upon by the appellant on the following decisions wherein it has been held that an order based on presumption, surmises and conjectures is liable to be quashed:

- *Commissioner v. Sree Ganesar Textile Mills Ltd, 2015 (321) E.L.T. A270 (S.C.);*
- *Commissioner v. Bihariji Manufacture Co. Pvt. Ltd., 2015 (323) E.L.T. A23 (S.C.);*
- *Commissioner v. Modern Denim Ltd., 2006 (199) E.L.T. A181 (S.C.);*
- *Kirloskar Oil Engines Ltd. v. Commissioner of Central Excise, Nashik, 2017 (349) E.L.T. 299 (Tri. -Mumbai);*
- *Wolters Kluwer India Ltd v. Commissioner of Service Tax, 2014 (36) S.T.R 396 (Tri.-Del.);*
- *Industrial Filter & Fabrics Pvt. Ltd. v. Commr. of C. Ex., Indore, 2014 (307) E.L.T. 131 (Tri. - Del.)*

11.4 That the Appellant submitted that Vedanta has decided to undertake a project for up-gradation of the MPT wherein, as part of increasing the overall liquid handling capacity at the processing terminal, various infrastructure facilities are required to be upgraded at the processing terminal and well pads. For this purpose, the Appellant have entered into contract to undertake infrastructure augmentation.

11.5 The Appellant set out the relevant text of the Heading 9986 as figures in the Rate Notification:

> *"Support services to exploration, mining or drilling of petroleum crude or natural gas or both."*

As per the appellant, a look at the aforesaid provision would reveal that it includes support services which are related to exploration, mining or drilling of petroleum crude or natural gas or both.

11.6 The Appellant also referred to the Rules of Interpretation falling under Chapter III of the United Nations Central Product Classification ("**UNCPC**"). The

UNCPC gains significance for the purpose of classification under the GST law because the Explanatory Notes to the Scheme of Classification of Services ("**Scheme**") is itself based on the UNCPC - as stated by the CBIC in Circular No. 114/33/2019-GST dated 11.10.2019. The interpretative rules for classification of services under the UNCPC are aligned with the above-mentioned settled principle of classification.

11.7 The Appellant further submitted that the Circular clarified the scope of the aforesaid entry as follows:

"This service code includes derrick erection, repair and dismantling services; well casing, cementing, pumping, plugging and abandoning of wells; test drilling and exploration services in connection with petroleum and gas extraction; specialized fire extinguishing services; operation of oil or gas extraction unit on a fee or contract basis.

This service code does not include geological, geophysical and related prospecting and consulting services, cf. 998341"

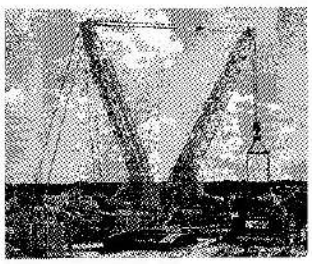
11.8 As per the appellant ,a reference to the aforesaid Explanatory Note would show that it provides certain support services which are classifiable under the SAC Heading No. 998621. The explicit list of activities includes:

(a) derrick erection, repair and dismantling services;
(b) well casing, cementing, pumping, plugging and abandoning of wells;
(c) test drilling and exploration services in connection with petroleum and gas extraction;
(d) specialized fire extinguishing services;
(e) operation of oil or gas extraction unit on a fee or contract basis

11.9 The Appellant submitted few of the services included in the aforesaid scope:

(a) Derrick erection, repair and dismantling:

A derrick is a lifting device composed at minimum of one guyed mast, as in a gin pole, which may be articulated over a load by adjusting its guys. A pictorial representation of derrick is set out below:

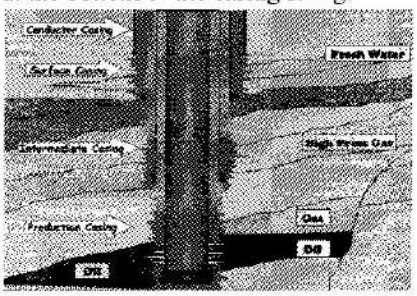


Derricks are used for moving materials vertically and horizontally, comprised of a hoisting mechanism and pulleys or sheaves to create a mechanical advantage to lift large loads.

The Appellant submitted that Heading 9986 includes these kinds of derricks erection, their repair and dismantling services.

(b) Well casing, cementing, plugging & abandoning of wells;

Well casing is a tubular structure placed in the drilled well to maintain the well opening, while well cementing is performed by circulating a cement slurry through the inside of the casing and out into the annulus through the casing shoe at the bottom of the casing string.



Well plugging and abandoning is carried out when a well is no longer economically producing oil and natural gas, the well is evaluated for retirement and will undergo a process called 'plug and abandonment.

These kinds of services are also covered in Heading 9986.

(c) Test drilling and exploration;

Test drilling and exploration are carried out to identify and discover possible areas where wells can be drilled for the purpose of carrying out mining.

(d) Fire extinguisher services;

Extinguishers are installed as part of petroleum extraction infrastructure to ensure safety from spreading fire during extraction. Exploration drilling and fire extinguisher services are also covered within the scope of Heading 9986.

11.10 The Appellants submitted that a cumulative reading of the detailed nature of activities covered within the scope of Heading 9986 as per the Scheme would reveal that it covers diverse nature of activities ranging from test drilling and exploration, to casing and cementing of wells and derrick erection for the purpose of moving heavy material on the oil fields.

11.11 The Appellant submitted that the impugned Ruling, while denying the benefit of SAC Heading No. 9986 to the Appellant, stated that SAC Heading No. 9986 covers only those activities which are provided once the infrastructure/ facility for exploration is built & complete in all respect and ready to start exploration.

11.12 The Appellant denied such interpretation of the classification entry at SAC Heading No. 9986 adopted by the AAR, Rajasthan, for it not only appears absurd and lacks any credible basis in law, it is also directly in the teeth of the established principle of law that classification entries should be derived from literal meaning and no addition of words or expressions should be made into it. In the case of *Oswal Agro Mills Ltd. &Ors. v. Collector of Central Excise &Ors., 1993 (66) E.L.T. 37 (S.C.)*, the Hon'ble Apex Court held as follows:

"The ordinary rule of construction is the provision of a statute must be construed in accordance with the language used therein unless there are compelling reasons, such as, where a literal construction would reduce the provision to absurdity or prevent manifest intention of the legislature from being carried out"

11.13 They submitted that this view was also supported by the Hon'ble in *ITC Ltd. v. Commissioner of Central Excise, New Delhi, 2004 (171) E.L.T. 433 (S.C.).*

11.14 The Appellant submitted that derrick erections help move heavy materials across the oil field, whereas well casing and cementing is done to ensure smooth surface around the well wall to ensure optimum extraction and transport of oil. These facilities are primarily implemented before initiating the mining operations at the oil field to prepare the well pads and related infrastructure for extraction.

11.15 The Appellant submitted that a mere reading of the title of SAC Heading No. 998621 in the scheme of classification, which states, "*Support services to oil and gas extraction*", would reveal that the scope of the SAC Heading No. 998621 is not limited to exploration, but includes a wider term "extraction". In fact, test drilling and exploration is just one of the activities covered therein and the heading includes a host of other activities which form part of the oil and gas extraction.

11.16 As stated above by the Appellant, the Heading 9986, *inter alia*, includes within its ambit, services in the nature of derrick erection and repair, well casing, cementing etc. It also covers "test drilling and exploration services". If the contention of the AAR, Rajasthan that Heading 9986 would only cover services which are provided after creation of infrastructure and facility of exploration, is to be accepted, it would apparently lead to absurdity since Heading 9986 itself covers test drilling and exploration within its ambit. Therefore, by stressing on its exclusion, the AAR, Rajasthan is clearly going against the established principle of interpretation that one cannot go beyond the words of the statute. In this regard, reliance is placed on the following decisions wherein it has been held that one should adhere as closely as possible to the literal meaning of the words used:

a) *Commercial Taxes Officer v. Bombay Machinery Store, 2020 (36) G.S.T.L. 161 (S.C.)*
b) *Union of India v. Ind-Swift Laboratories Ltd., (2011) 4 SCC 635*
c) *Bansal Wire Industries Ltd. v. State of Uttar Pradesh, (2011) 6 SCC 545*
d) *CIT v. Calcutta Knitwears, 2014 (6) SCC 444*

11.17 In the light of the above, the Appellant submitted that the AAR, Rajasthan has adopted a narrow view while deciding the purview of Heading 9986, in respect of which, even Circular 114 itself states that, *"Most of the activities associated with exploration, mining or drilling of petroleum crude or natural gas fall under heading 9986".*

11.18 Without prejudice, the Appellant submitted that if at all the contention of the AAR, Rajasthan, that Heading 9986 shall include the services to be provided for

exploration, once the infrastructure/ facility for exploration is built & complete in all respect and ready to start exploration, is to be accepted, still the finding held by the AAR, Rajasthan will not hold good.

11.19 Appellant reiterated the Appellant have been contracted by Vedanta to augment the infrastructure/ facility at the MPT and well pads to cater to the increased liquid handling capacity. The Appellant have to perform activities to augment the facility and infrastructure to manage the increased liquid handling capacity.

11.20 The Appellant submitted that since in terms of the phases of oil extraction, the exploration has already been completed and the well pads have now been built to extract and mine the oil and natural gas, it is clear that all the performance of its responsibilities by the Appellant under the contract would be having relation to the production and extraction of oil/natural gas and not exploration.

11.21 The Appellant submitted that even if AAR, Rajasthan's contention, that Heading 9986 covers only post exploration related activities on the field, is to be accepted, even on that count, the activities of the Appellant under the contract squarely falls within the purview of SAC Heading No. 9986.

11.22 The Appellant submitted that in view of the above, the impugned Ruling pronounced by the AAR, Rajasthan is liable to be set aside.

Submission II: The services rendered by the Appellant under the contract are inextricably linked to petroleum operations.

11.23 The Appellant submitted that the impugned Ruling has been pronounced without appreciating the facts of the case and the responsibilities of the Appellant under the EPC Contract.

11.24 The Appellant submitted that under the EPC Contract, their scope of work involves up-gradation of various liquid handling facilities at Mangala oil field. Such scope includes the following activities to be performed/ installations to be done:

a) Augmentation of Liquid handling capacity
b) Augmentation of Produced water treatment facility
c) Augmenting existing Injection Water System capacity
d) New Back Wash System
e) New LP Steam & condensate system at MP
f) Augmenting Instrument Air & Nitrogen Capacity
g) Augmenting of other facilities

11.25 The Appellant submitted that a perusal of the aforesaid activities would reveal that they are essentially part of the overall development of the oil field wherein the catering to the increased liquid handling facility is squarely in relation to that purpose.

11.26 In view of the above, it can be seen that the activities performed by the Appellant under the EPC contract are directed towards up-gradation of the processing terminal and well pads are indelibly linked to the petroleum operations carried out by Vedanta at the RJ block.

11.27 The Appellant reiterated that the impugned Ruling, at *Para 5* states that, *".....Support services shall include the services to be provided for exploration, once the infrastructure/ facility for exploration is built & complete in all respect and ready to start exploration. But it doesn't include the services to be provided before creating the infrastructure/ facility. Under the EPC contact, the Appellant have to undertake activities from designing, engineering, procurement, construction of customized facility, commissioning of permanent facility, Test run and hand over of complete facility so designed, constructed, tested and commissioned. Thus, it cannot be treated as support services to oil & gas extraction."*

11.28 In this regard, the Appellant submitted that one of the reasons contended by the AAR, Rajasthan for rejecting the classification Heading 9986 for the subject services is that Heading 9986 does not include services provided before creating the infrastructure/ facility for exploration.

11.29 The Appellant submitted that the AAR, Rajasthan further stated that the Appellant are carrying out EPC contract wherein it is required to undertake designing, engineering, procurement, construction of customized facility, commissioning of permanent facility, Test run and hand over of complete facility so designed. They further stated that since these activities involved designing, engineering and construction, those are in the form related to the creation of infrastructure facility, and hence cannot be treated as support services to petroleum extraction.

11.30 The Appellant submitted that the services rendered by them are linked to, and in connection with, the petroleum operations. This fact has never been disputed by the AAR, Rajasthan. They added that the only contention raised by the AAR, Rajasthan to deny the benefit of SAC Heading No. 9986 to the Appellant is that SAC Heading No. 9986 does not cover creation of infrastructure/ facility, which the Appellant vehemently opposed and found without any credible basis in the law.

11.31 The Appellant submitted that the facilities are being developed by them to support the petroleum operations carried out by Vedanta as the enhanced liquid handling capacity will enable Vedanta to manage and cater to the increased extraction and production of oil. The support services by the Appellant are necessary and aid in the extraction of petroleum operations and therefore should be classified under SAC Heading No. 9986. According to them, the impugned Ruling also clearly missed the fact that the ultimate end use of the activities performed by the Appellant for Vedanta is its use in the increase in production capacity of the oil field.

11.32 In the light of the above, given that the activities performed by the Appellant are inextricably linked to the petroleum operations, the Impugned Ruling pronounced by the AAR, Rajasthan lacks the legal and factual basis, and accordingly is liable to be set aside.

Submission III: Specific description should prevail over general description

11.33 The Appellant submitted that, without prejudice, if at all the activities performed by them appear to fall under SAC Heading No. 9954 as against SAC Heading No. 9986, still, in terms of the Rules of Interpretation, the classification entry giving more specific description to the activities performed by the Appellant shall apply over the entry providing a more general description.

11.34 The Appellant submitted that the reference is made to the Rules of Interpretation falling under the UNCPC which gains significance for the purpose of classification under the GST law because the Explanatory Notes to the Scheme itself is based on the same.

11.35 The relevant extract of the interpretative rules enshrined under the UNCPC provides thus:

> *"56. In the CPC, the classification of products other than transportable goods, mainly services, shall be determined according to the terms of the categories as described in the divisions, groups, classes or subclasses in Sections 5 to 9 of CPC. When services are, prima facie, classifiable under two or more categories, classification shall be effected as follows, on the understanding that only categories at the same level (Sections, divisions, groups, classes or subclasses) are com parable:*
>
> *(a)* ***The category that provides the most specific description shall be preferred to categories providing a more general description;***
>
> *(b) Composite services consisting of a combination of different services which cannot be classified by reference to (a) shall be classified as if they consisted of the service which gives them their essential character, in so far as this criterion is applicable;*
>
> *(c) When services cannot be classified by reference to (a) or (b), they shall be classified under the category that occurs last in numerical order among those that equally merit consideration"*

11.36 The Appellant submitted that in the light of the above, it can be seen that the subject services are customized in nature and considering the above, it is reiterated that the services supplied by them merit classification under SAC Heading 9986 which is a specific entry for services which support the petroleum operations.

11.37 The Appellant submitted that it is the cardinal rule to be applied for classification of any goods or services that in case of two competing headings, the

heading which provides the most specific description shall be preferred to headings providing a more general description.

11.38 As per the Appellant, the AAR, Rajasthan proceeded to classify the subject services under the SAC Heading No. 9954 without considering their submissions. The Appellant submitted that SAC Heading No. 9954 is a general entry which is applicable for Works Contract Services. Even if it is to be assumed that the services supplied under the EPC contract is a composite supply in the nature of a works contract, the service will still merit classification under heading 9986 which is a specific entry for services that support the activity of mining of natural gas.

11.39 The Appellant placed reliance on the following decisions wherein the aforesaid cardinal principle on classification of goods/ services has been followed and it has been stated that a specific description overrules a general description:

- *Ascent Meditech Ltd. v. CCE, Vapi [2014 (309) E.L.T. 712 (Tri. - Ahmd.)] [Affirmed in 2015 (320) ELT A281 (Supreme Court)]*
- *Pepsico India Holdings Pvt. Ltd. v. Dy. Commercial (A) IV, Commercial Taxes, Jaipur [2018(16) G.S.T.L. 249 (Raj.)]*
- *Dabur India Ltd. v. CCGST [2020(34) G.S.T.L. 9(All.)]*
- *Sanwar Agarwal v. Commissioner of Customs (Port) [2016 (336) E.L.T. 42 (Cal.)]*

11.40 The Appellant submitted that without prejudice to the above submission that heading 9986 provides a more specific description when compared to the general entry under heading 9954 that even in case where the headings merit equal consideration, resort must be taken to clause (c) of the general interpretative rules. They submitted that an application of clause (c) of the interpretative rules quoted above also warrants classification under Heading 9986.

11.41 The Appellant submitted that as per the said rule, when services are classifiable *prima facie* under two headings, the same should be classified under the heading which occurs last in the numerical order. The Appellant therefore are of the view that as heading 9986 appears later to the SAC Heading No. 9954 in the numerical order, the services are classifiable under heading 9986.

11.42 In this regard, the Appellant have placed reliance on the following decisions:

- *Biomax Life Sciences Ltd. v. Commissioner of Customs, C.Ex. & S.T. [2021(375) E.L.T. 263 (Tri. – Hyd.)*
- *Commissioner of Customs (Port) v. Praman International [2019(365) E.L.T. 846 (Tri.-Kolkata)]*
- *Paswara Impex Ltd. v. Commissioner of Customs [2013(292) E.L.T. 562 (Tri.-Ahmd)]*
- *Kamal Kachola v. CCE [2004(174) E.L.T. 87 (Tri.-Mumbai]*

11.43 The Appellant submitted that they have been classifying the subject services provided to Vedanta under SAC Heading No. 9954 - 'General construction services' and are paying GST @ 18% under Sr. No. 3 of the Rate Notification. Given the scope

of work involved in the project and further by virtue of the amendment made in the Notification effective from October 1, 2019 wherein a specific amendment was made in Sr. No. 24 (ii) of the Rate Notification which attracts GST @ 12%, the Appellant stated that the subject services should merit classification under Sr. No. 24 (ii) as 'support services to exploration, mining or drilling of petroleum crude or natural gas or both'

11.44 The Appellant submitted that in view of the above, the activities performed by the Appellant under the EPC Contract are more directly related to the petroleum operations carried out by Vedanta at the Rajasthan Block and therefore, in terms of the legal principles enunciated above, the impugned Ruling is liable to be rejected.

Submission IV: The Impugned Ruling has been issued based upon a non-existent provision of the law

11.45 The Appellant submitted that the impugned Ruling pronounced by the AAR, Rajasthan is entirely based upon a provision which was not even in existence at the time when the transaction, in respect of which the Ruling has been sought, was undertaken.

11.46 The Appellant submitted that the impugned Ruling, at Para 13, states that, *"... services provided under the EPC contract awarded to the Appellant by M/s Vedanta for setting up of a project broadly ranging from designing, engineering, ... pre-commissioning & commissioning training, etc. and satisfactory hand over of complete various infrastructure facilities all customized as per contract, it is a "work contract" of composite supply. The composite supply is a mixed of goods & services and would be taxed accordingly under S. No. 3 Heading 9954(ii) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 and GST @ 18% (9% CGST & 9% SGST) is payable."*. They submitted that, the AAR, Rajasthan proceeded to rule on the subject services as classifiable under Heading 9954(ii).

11.47 The Appellant also submitted that the AAR, Rajasthan failed to apply the applicable provisions of the Rate Notification and missed the relevant provisions in force for the period in respect of which the present Ruling was sought.

11.48 The Appellant submitted that the AAR, Rajasthan has approached the entire issue with a premeditated mind and with the singular objective of rejecting the benign rate of GST on the services provided by them in as much as the impugned Ruling seeks to classify the services under a classification entry which was not even in force during the period for which the Ruling was sought.

11.49 The Appellant set out the relevant provisions of the SAC Heading No. 9954 (ii) as follows:

"(ii) Composite supply of works contract as defined in clause 119 of Section 2 of Central Goods and Services Tax Act, 2017."

11.50 The Appellant submitted that the aforesaid provision existed in the statue books since 28.06.2017. Thereafter, *vide* Notification No. 03/2019-Central Tax (Rate) dated 29-03-2019 w.e.f. 01-04-2019, the said clause was omitted from the Rate Notification. Therefore, the said provision existed in the statute books during the period from 28.06.2017 to 31.03.2019 and post that date, it was omitted.

11.51 The Appellant submitted that the relevant period for classification of the subject services before the AAR, Rajasthan was 01.10.2019 onwards. Given that the Heading 9954(ii) was non-existent for the relevant period for which the Ruling was sought, there is no basis of law to Rule that the subject services rendered by the Appellant to Vedanta under the EPC contract merits classification under Heading 9954(ii) of the Rate Notification, evidently when such provision of law was not even existent at the relevant time.

11.52 As per the Appellant it is an established principle of law that the provision of law, on the basis of which any action has been taken by an Authority or a decision or Ruling has been pronounced, must be in force at the time of the applicable case. In this regard, reliance has been placed on the following judgments:

(a) Carrier Point v. Commissioner of Central Excise, Jaipur, 2018 (10) G.S.T.L. 213 (Raj.)

(b) Pillar Inductions (I) Ltd. v. Commissioner of Central Excise, Chennai, 2004 (166) E.L.T. 43 (Tri.-Chennai)

(c) Commissioner of Customs, Chennai v. Madras Aluminium Co. Ltd., 2016 (339) E.L.T. 295 (Tri. – Chennai)

11.53 As per the Appellant, the impugned Ruling is liable to be set aside as the AAR, Rajasthan vide the impugned Ruling have proceeded to classify goods under an entry which does not even exist.

Submission V: The scope of the activities covered under Heading 9986 is inclusive in nature and not exhaustive

11.54 The Appellant submitted that the AAR, Rajasthan while pronouncing the impugned Ruling has completely disregarded the provisions of the law, and more specifically, failed to properly analyze the Scheme annexed to the Rate Notification.

11.55 The Appellant further submitted that the AAR, Rajasthan has erred in concluding that services supplied by the Appellant are not covered under the explanatory notes for SAC heading 998621 in as much as the scope of service under the contract nowhere covers the services specified in the explanatory notes.

11.56 The Appellant reiterated that Scheme of classification defines the scope of Heading 9986 as follows:

"998621 Support services to oil and gas extraction

*This service code **includes** derrick erection, repair and dismantling services; well casing, cementing, pumping, plugging and abandoning of wells; test drilling and exploration services in connection with petroleum and gas extraction; specialized fire extinguishing services; operation of oil or gas extraction unit on a fee or contract basis*

This service code does not include:
geological, geophysical and related prospecting and consulting services, cf. 998341"

11.57 The Appellant submitted that on a reference to the above, it can be seen that the aforesaid services include, *"well casing, cementing, pumping, plugging and abandoning of wells, test drilling and exploration services in connection with petroleum and gas extraction."* According to the Appellant, a look at the nature of services covered in the aforesaid entry reveals that it includes services relating to oil wells which include its cementing, pumping, casing, plugging and abandonment. Further, the entry also includes, *inter alia*, test drilling in connection with the petroleum and gas.

11.58 The Appellant further stated that the relevant Explanatory Note uses the expression *"includes"* which means that the activities which are provided in Heading 9986 are merely indicative in nature and it can include more such services which are of similar nature or ilk. In this regard, the Appellant added that the said phrase has a very wide connotation, thereby giving the Chapter Heading an extensive scope.

11.59 The Appellant also submitted that the said phrase used in the Explanatory Note clearly shows that the Heading is to be construed in the exhaustive sense and not *per se* in a restrictive sense. Reference in this regard is made to **Tetragon Chemie Private Limited and Ors Vs CCE and Ors [2001 (138) ELT 0414 Tri-LB]**, wherein in the context of interpretation of an inclusive Chapter Note, the Delhi Tribunal, *inter alia*, held that the Chapter Heading is to be given a wide connotation and is not to be restricted to the illustrations provided in the Chapter Note.

11.60 The Appellant also referred to the decision of **Stove Kraft Pvt. Ltd. Vs State of Karnataka [2006(2) TMI 603]** wherein on the aspect of classification of goods, Karnataka High Court, *inter alia*, held that the word *'includes'* is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. According to them, when it is so used, these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import, but also things which the interpretation clause declares that they shall include. As per the Appellant, words used in an inclusive definition denote extension and cannot be treated as restricted in any sense.

11.61 The Appellant submitted that the Hon'ble Apex Court in the case of **Bharat Coop. Bank (Mumbai) Ltd Vs Coop Bank Employees Union [2007(4) SCC 685]** observed that the term *'includes'* used in a legislature is enumerative but not exhaustive, to extend the scope so as to bring within it matters, which in its ordinary meaning may or may not comprise. Similarly, the Apex Court in the case of

Regional Director Employees's State Insurance Corporation Vs High Land Coffee Works of Pfx. Saldanha & Sons [1991(7) TMI 367] had, *inter alia,* held that the word *'include'* in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction.

11.62 The Appellant stated that therefore, all such activities which are inextricably linked to mining operations ought to be covered within the scope of the Heading 9986. The mining and petroleum operations include a wide range of inter-related and inter-dependent activities which are indelibly linked to each other and help forming a coherent value chain.

11.63 The Appellant reiterated that under the EPC Contract, their scope of work involves up gradation of various liquid handling facilities at Mangala oil field. Such scope includes the following activities to be performed/ installations to be done:

- Augmentation of Liquid handling capacity
- Augmentation of Produced water treatment facility
- Augmenting existing Injection Water System capacity
- New Back Wash System
- New LP Steam & condensate system at MP
- Augmenting Instrument Air & Nitrogen Capacity
- Augmenting of other facilities

From this, the Appellant find it evident that they are providing support services to Vedanta by carrying out the up-gradation of the processing terminal and well pads.

11.64 Therefore, according to the Appellant, construction of such facilities forms an indispensable part of the support activities for mining and petroleum operations and the inclusive list provided in the Explanatory Note must be seen in that context.

11.65 The Appellant also reiterated the following from the Circular 114 issued by CBIC wherein it has been specifically stated as follows:
"Most of the activities associated with the exploration, mining or drilling of petroleum crude or natural gas fall under heading 9986".

11.66 According to the Appellant it is beyond doubt that their responsibility under the EPC Contract involves a wide range of activities which are clearly associated with the exploration, mining and drilling of petroleum crude.

11.67 The Appellant also submitted that a perusal of various terms of the contract would make it evident that there is a clear nexus between the functions and activities that are required to be performed by the Appellant under the EPC contract and the activities of Vedanta at the Rajasthan Block.

11.68 The Appellant also submitted that it is noteworthy that the explanatory notes referred by the AAR, Rajasthan are an *inclusive* definition and hence the scope is not

exhaustive (but merely indicative) or limited to only the above specified services. An inclusive definition is expansive in nature and would cover all transactions possessing similar features.

11.69 The Appellant are of the view that the above submission finds support from the interpretative rules for the explanatory notes under the UNCPC which explains the non-exhaustive nature of the list of services mentioned therein. The relevant extract of interpretative rules under the UNCPC reads:

> *"62. It should be noted that the explanatory notes are not intended to present an exhaustive list of all the products under each heading; **they should be regarded only as lists of examples to illustrate the subclass content**."*

11.70 In light of the above, the Appellant submitted that the AAR, Rajasthan has ignored the interpretative rules mentioned in the UNCPC and arrived at erroneous conclusions based on its own assumptions and presumptions

11.71 The Appellant submitted that in view of the 'inclusive' nature of the Explanatory Note which seeks to cover support services in relation to the petroleum operations within SAC Heading 9986, the Note ought to be offered its natural play to cover all such activities which are essential to the petroleum operations and in support of it.

11.72 The Appellant submitted that in view of the above, it is evident that the basis on which the impugned Ruling has been pronounced by the AAR, Rajasthan is incorrect, and without any legal basis. Clearly, the nature of activities performed by the Appellant are covered within the scope of Heading 9986, and therefore, the impugned Ruling is liable to be set aside

Submission VI: The scope of the Heading 9986 does not exclude works contract services.

11.73 The Appellant submitted that the entire basis of the impugned Ruling seems to rest on the fallacious understanding of the kind of services and activities which are covered within the Heading 9986 and the activities performed by the Appellant under the EPC contract.

11.74 As per the Appellant, the impugned Ruling, at Para 7, states that,
"The contract is for the engineering, procurement & commissioning of MUPS2-EPC-2 project including various infrastructure facilities, all commissioned. What would be transferred is the project including the civil work and land involved in the project. Various civil structure would be created & various equipment would be installed.. In case of this contract the said project cannot be shifted anywhere; it is essentially of the nature of immovable property. The project after completion at the time of transfer will be immobile property. It is thus we are of the considered view that the work specified in the EPC contract qualifies as "work contract" and will be taxed accordingly."

11.75 The Appellant submitted that the impugned Ruling incorrectly rejects their arguments on the ground that the services supplied by the Appellant under the aegis of an EPC contract, are in the nature of a works contract falling under the SAC Heading No. 9954 of the Rate Notification and therefore taxable at the rate of 18%. As per the Appellant, in coming to this conclusion, the AAR, Rajasthan has failed to apply the settled principles on classification to the present facts of the matter.

11.76 The Appellant submitted that Section 2(119) of the CGST Act, 2017 defines "Works contract" as follows:

"(119) "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;"

The Appellant submitted that a look at the aforesaid definition would reveal that works contract includes within its ambit, inter alia, services relating to construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property.

11.77 The Appellant submitted that by concluding that the services performed by them are outside the purview of Heading 9986 merely because it is a 'works contract' service, the impugned Ruling seems to have misread the law and tried to read something which does not exist. It is an established principle of law that one cannot go beyond the words used in a statue. In this regard, the following cases may be noted:

(a) *Commercial Taxes Officer v. Bombay Machinery Store, 2020 (36) G.S.T.L. 161 (S.C.)*
(b) *Union of India v. Ind-Swift Laboratories Ltd., (2011) 4 SCC 635*
(c) *Bansal Wire Industries Ltd. v. State of Uttar Pradesh, (2011) 6 SCC 545*
(d) *CIT v. Calcutta Knitwears, 2014 (6) SCC 444.*

11.78 The Appellant submitted that it is not in doubt that the activities performed by them under the contract are in relation to the petroleum operations carried out by Vedanta at the Rajasthan Block. Further, *vide* Circular 114, it is also beyond doubt that most of the support services which are associated with, *inter alia*, petroleum operations are covered under Heading 9986.

11.79 The Appellant submitted that one of the basis on which the AAR, Rajasthan denied the benefit of Heading 9986 to the activities performed by them is that its activities are in the nature of works contract services which are not covered under Heading 9986. The Appellant reiterated that in terms of Circular 114, which defines the scope of the Heading 9986, the following services are included within its ambit:

(a) derrick erection, repair and dismantling services;
(b) well casing, cementing, pumping, plugging and abandoning of wells;

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(c) test drilling and exploration services in connection with petroleum and gas extraction;
(d) specialized fire extinguishing services;
(e) operation of oil or gas extraction unit on a fee or contract basis

11.80 According to the Appellant, a reading of the aforesaid list of indicative services would reveal that many of the aforesaid services are in the nature of works contract. Services like well casing, cementing, pumping and abandoning of wells, derrick erection, etc. are such services which requires labor services as well as supply of relevant material for providing the same. These services involve civil work as well as supply of material as part of performance of such activities and can very well take the shape of works contract.

11.81 The Appellant submitted that to bring such services as above, out of the purview of Heading 9986 is clearly a result of misreading of the law and lack of understanding of the industry in which petroleum operations are carried out.

11.82 As per the Appellant, many of the services which can be considered as work contract are clearly covered within the scope of the Heading 9986, therefore, there is no merit in the argument that the Heading 9986 does not cover activities which are in the nature of works contract.

11.83 Therefore, according to the Appellant, on this ground alone, the impugned Ruling is liable to be set aside.

Submission VII: Alternatively, the subject services should be classified as 'other professional, technical and business services under heading 9983

11.84 The Appellant submitted that the impugned Ruling, at *Para 5* states that, *"...Other professional, technical & business services are classified under Heading 9983. The heading covers other professional, technical and business services relating to exploration, mining or drilling of petroleum crude of natural gas or both. This heading covers "pure services" of other Professional, technical & business related and not the services provided under the EPC contract which include engineering, procurement & construction. As discussed in Para 5 above, the Appellant have to undertake designing, engineering, procurement, construction of customized facility, commissioning of permanent facility, test run & hand over of complete facility so designed, constructed, tested & commissioned. Thus, it cannot be classified as other professional, technical & business services relating to exploration, mining or drilling of petroleum crude or natural gas or both."*

11.85 Without prejudice to the above submissions, the Appellant submitted that the subject services may merit classification as 'Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both' under Sr. No. 21(ia) of Heading 9983 of the Rate Notification.

11.86 The Appellant submitted that Sr. No. 21 of Rate Notification provides the rate of tax leviable on the services that merits classification under the Heading 9983. The relevant portion of the said entry is reproduced herein below:

S.No.	Heading	Description of services	Rate
21	Heading 9983 (Other professional, technical and business services)	(ia) Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both	12%

11.87 The relevant portion of Heading 9983 as prescribed under the Scheme of Classification is as follows:

S. No.	Chapter, Section Heading, or Group	Service Code (Tariff)	Service Description
(1)	(2)	(3)	(4)
296	Heading 9983		Other professional, technical and business services

11.88 The Appellant submitted that on a bare reading of the aforesaid heading and corresponding service description, it is seen that the said entry is broad in its entirety, as it includes business services. The term 'business' has been defined under Section 2(17) of the CGST Act, which is reproduced herein below for ease of reference:

'(17) 'business' Includes—

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

(f) admission, for a consideration, of persons to any premises;

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) activities of a race club including by way of total is at or or a license to book maker or activities of a licensed book maker in such club; and

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;'

11.89 The Appellant submitted that the aforesaid definition of 'business' is an inclusive definition. That it is a settled law that the term 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute. The said word is succeeded by the phrase *'any trade, commerce, manufacture, profession, ... whether or not it is for a pecuniary*

benefit'. The definition of the word 'business' under the CGST Act makes it amply evident that it covers within its ambit, a wide range of activities. The Appellant add that the said definition would also include operational administrative, consulting and management services.

11.90 The Appellant further submitted that Entry at Sr. No. 21 (ia) was inserted *vide* Rate Notification with effect from October 1, 2019. The aforesaid entry was introduced by the Government in order classify particular services such as management and consultancy services relating inter alia mining, and which do not merit classification as support services to mining under Heading 9986.

11.91 The Appellant find it pertinent to note that Entry at Sr. No. 21(ia) of the Rate Notification uses the phrase 'relating to', which signify that any professional, technical and/or business services provided relating to mining, would merit classification under the said entry. The phrase 'relating to' or 'in relation to' is a very broad expression and has a wide ambit. The Hon'ble Supreme Court in **Doypack Systems(P) Ltd Vs. UOI, [1988 (36) E.L.T. 201 (SC)]** has held that the term 'in relation to' is a very broad expression, which pre-supposes another subject matter. The Appellant are of the view that these are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context. They add that term 'relating to' has been held to be equivalent to or synonymous with 'concerning with' and 'pertaining to'. Therefore, they submitted that entry (ia) of Sr. No. 21 includes a broad range of services which pertain or concern with the activity of mining.

11.92 The Appellant submitted that the services provided by them are in relation to the mining activity of Vedanta, as stated above in detail. Hence, in the present case, they submitted that the supply of services by the Appellant to Vedanta in relation to the mining activities under the project merits classification under Heading 9983. According to the Appellant, by virtue of Sr. No. 21(ia) of the Rate Notification, it is submitted that the said activity may alternatively get covered within the broad ambit of 'Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both' and consequently attract GST @12%.

11.93 The Appellant submitted that in addition to the above, it is also relevant to note that the *Para 2* of the Circular 114 specifies that most of the activities associated with exploration, mining or drilling of petroleum crude or natural gas fall under Heading 9986 of the Rate Notification. Further, they add that it has clarified that certain services such as technical and consulting services in relation to exploration would merit classification under Heading 9983 of the Rate Notification. The relevant extract of the Circular is reproduced herein below:

'2. The matter has been examined. Most of the activities associated with exploration, mining or drilling of petroleum crude or natural gas fall under heading 9986. A few services particularly technical and consulting services relating to exploration also

fall under heading 9983. Therefore, following entry has been inserted under heading 9983 with effect from 1st October 2019 vide Notification No. 20/2019- Central Tax (Rate) dated 30.09.2019; -

'(ia) Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both'

11.94 The Appellant submitted that the aforesaid Circular clearly states that technical and consulting services relating to exploration also fall under Heading 9983 and would also get classified under Sr. No. 21(ia) of Rate Notification as other professional, technical and business services relating to inter alia mining. The Appellant find it pertinent to note that since the wordings used under the Heading 9983 of the Rate Notification is broad in nature, various services which are provided in relation to exploration, mining or drilling would fall within its ambit and attract GST @ 12%.

11.95 The Appellant submitted that Circular 114 thereafter clarifies that 'Geological and geophysical consulting services' and 'Mineral exploration and evaluation' which do not merit classification under Heading 9986, would also get covered under the broad Heading 9983, as 'Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both', and resultantly, attract GST @ 12%. According to the Appellant the said Circular has not provided an exhaustive list of services which would merit qualification under Sr. No. 21(ia) of Rate Notification. It has merely clarified that certain technical and consulting services which are not specifically covered under the Heading 9986, would get covered within the Heading 9983.

11.96 The Appellant submitted that without prejudice to the submissions made above the supply of services made by them to Vedanta, in relation to the mining, would merit classification under Heading 9983 and attract GST @ 12% in terms of Sr. No. 21(ia) of Rate Notification. Therefore, according to the Appellant, on these grounds as well, the impugned Ruling pronounced by the AAR, Rajasthan is liable to be dismissed.

PERSONAL HEARING

12. A virtual hearing in the matter was held on 11.01.2022. Sh. Rohit Jain, Advocate and Sh. Rahul Khurana, Advocate, Authorized Representatives of the Appellant attended the hearing. They reiterated the submissions already made under grounds of appeal. Further vide letter dated 18.01.2022, the Appellant also submitted following additional grounds in support of their appeal:

12.1 The Appellant submitted that the impugned Order seeks to classify the services provided by the Appellant under Entry no. (ii) of SAC Heading No. 9954 of Notification No. 11/2017 – Central Tax (Rate)dated 28.06.2017 **("Rate Notification")**which provided a rate of tax for "composite supply of works contract as defined in clause 119 of Section 2 of Central Goods and Services Tax Act, 2017".

According to them the Entry (ii) stands omitted vide Notification No. 03/2019 – Central Tax (Rate) dated 29.03.2019, effective from 01.04.2019 as under:

"(b) against serial number 3, -
a. item (ii) and the entries relating thereto in columns (3), (4) and (5) shall be omitted;"

12.2 It is settled principle of law that the basis of a Ruling or a decision must be in accordance with the provisions of law as it stood at the relevant time. See ***Carrier Point v. CCE [2018(10) G.S.T.L. 213 (Raj.)], Pillar Inductions (I) Ltd. v. CCE [2004(166) E.L.T. 43 (Tri.-Chennai)], CC v. Madras Aluminium Co. Ltd. [2016(339) E.L.T. 295 (Tri.-Chennai).*** Given that Entry (ii) under SAC Heading No. 9954 did not exist in statute book during the relevant period for which the Ruling is sought, the Ruling is bad in law and hence is liable to be set aside on this ground alone.

12.3 The Appellant submitted that the only contention raised in the impugned Order is that SAC Heading 9986 does not cover creation of infrastructure/facilities which are in nature of works contract. They added that the Appellant are providing services such as up-gradation of various liquid handling facilities at Mangala oil field.

12.4 The Appellant submitted that Order has glossed over the fact that such EPC services are ultimately used to increase/aid in the extraction and production of oil and hence should be classified under heading 9986. It is undisputed that the services supplied by the Appellant are linked to or in connection with the petroleum operations.

12.5 The Appellant submitted that the relevant Explanatory Notes for heading 9986 use the expression *"includes"* which means that the activities listed therein are merely indicative and would include services which are of similar nature or ilk. The Notes read:

"998621 Support services to oil and gas extraction

*This service code **includes** derrick erection, repair and dismantling services; well casing, cementing, pumping, plugging and abandoning of wells; test drilling and exploration services in connection with petroleum and gas extraction; specialized fire extinguishing services; operation of oil or gas extraction unit on a fee or contract basis*
This service code does not include: geological, geophysical and related prospecting and consulting services, cf. 998341"

As per the Appellant the use of the term "includes" implies an expansion in scope of the term and should be given a wide connotation. See ***Tetragon Chemie Private Limited and Ors v. CCE and Ors [2001 (138) ELT 0414 Tri-LB], Stove Kraft Pvt. Ltd. v. State of Karnataka [2006(2) TMI 603], Bharat Coop. Bank (Mumbai) Ltd v. Coop Bank Employees Union [2007(4) SCC 685], Regional***

Director Employees's State Insurance Corporation v. High Land Coffee Works of Pfx. Saldanha & Sons [1991(7) TMI 367]

12.6 The Appellant submitted that the expansive scope of entry 998621 is re-iterated in the CBIC Circular No. 114/33/2019-GST dated 11.10.2019 which specifically states that "*Most of the activities associated with the exploration, mining or drilling of petroleum crude or natural gas fall under heading 9986*".

12.7 The Appellant submitted that the findings in the impugned Order at Para 5 are that the classification of support services to oil and gas extraction under Heading 9986 is only applicable when the exploration/production had started and the support services do not include services supplied before the creation of the infrastructure for production, suffers from fallacy and complete non-consideration of facts. Without prejudice and even assuming this contention to be valid, the Order has utterly failed to appreciate the fact that the contract was awarded during the year 2018/2019 and the original production of oil and gas in the oil field had in fact started in the year 2010. Being one of the largest onshore oil discoveries in India, the information is readily available in the public domain.

12.8 The Appellant submitted that in terms of the Explanatory Notes, several support services including *well casing, test drilling and exploration services, cementing* etc. which are undertaken before commencement of production, also fall under the scope of the Heading 998621. Therefore, the findings in the Order that SAC Heading No. 998621 would only cover services which are provided after creation of infrastructure and facility of exploration is without any basis in law and ought to be rejected outright. Thus, the Order which is based on presumption, surmises and conjectures is liable to be quashed.

12.9 The Appellant submitted that without prejudice to any of the other submissions that if at all the services performed by the Appellant appear to fall under SAC Heading No. 9954 as against Heading 9986, still, in terms of the cardinal rule of interpretation for purposes of classification of goods and services, the classification entry giving a more specific description to the activities performed by the Appellant shall apply over the entry providing a more general description. In this regard, the Appellant submitted that, the Preface to the Explanatory Notes to the Scheme of Classification of Services issued by the CBIC reads thus:

The explanatory notes indicate the scope and coverage of the heading, groups and service codes of the Scheme of Classification of Services. These may be used by the assessee and the tax administration as a guiding tool for classification of services. However, it may be noted that where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.

12.10 According to the Appellant, the impugned Order has failed to consider the submission that SAC Heading No. 9954 is a general entry which is applicable for works contract services. They added that even if it is to be assumed that the supply of

services under the EPC contract is a composite supply in the nature of a works contract, the service will still merit classification under SAC Heading No. 998621 which is a specific entry for services that support the activity of oil and gas extraction. They have placed reliance upon ***Ascent Meditech Ltd. v. CCE, Vapi [2014 (309) E.L.T. 712 (Tri. - Ahmd.)] [Affirmed in 2015 (320) ELT A281 (Supreme Court)], Pepsico India Holdings Pvt. Ltd. v. Dy. Commercial (A) IV, Commercial Taxes, Jaipur [2018(16) G.S.T.L. 249 (Raj.)], Dabur India Ltd. v. CCGST [2020(34) G.S.T.L. 9(All.)], Sanwar Agarwal v. Commissioner of Customs (Port) [2016 (336) E.L.T. 42 (Cal.)].***

12.11 The Appellant submitted that even in case where the headings merit equal consideration, resort must be taken to clause (c) of the general interpretative rules which states that when services are classifiable *prima facie* under two headings, the same should be classified under the heading which occurs last in the numerical order. The Appellant are of the considered view that as Heading 9986 appears later to the SAC Heading No. 9954 in the numerical order, the services are classifiable under Heading 9986. Reliance has been placed on ***Biomax Life Sciences Ltd. v. CC. [2021(375) E.L.T. 263 (Tri. – Hyd.)], CC (Port) v. Praman International [2019(365) E.L.T. 846 (Tri.-Kolkata)], Paswara Impex Ltd. v. CC [2013(292) E.L.T. 562 (Tri.-Ahmd)], Kamal Kachola v. CCE [2004(174) E.L.T. 87 (Tri.-Mumbai].***

12.12 The Appellant submitted that by concluding that the services performed by the Appellant are outside the purview of Heading 9986 merely because it is a 'works contract' service, the impugned Order seems to have misread the law and tried to read something which does not exist.

12.13 The Appellant submitted that a plain reading of the Explanatory Notes to SAC Heading No. 998621 shows that it includes services such as well casing, cementing, pumping and abandoning of wells, derrick erection, etc. which requires labor services as well as supply of goods for providing the same. They added that these services involve civil work as well as supply of goods as part of performance of such activities and can very well take the shape of works contract. In view of the Appellant, to bring such works contract services out of the purview of Heading 9986 is clearly a result of misreading of the law and lack of understanding of the oil and gas industry.

12.14 The Appellant submitted that alternatively, the services supplied by them would also merit classification as "*Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both*" under Entry No. 21(ia) of Heading 9983 of the Rate Notification. The use of the term "*business services*" and a plain reading of the definition of "business" under Section 2(17) of the CGST Act implies a wide connotation given to the Entry.

12.15 The Appellant submitted that they provide services by way of proper management of the project right from the detail design and planning of the project till its final test run, commission and hand over in fully functional form. As per the

Appellant, the CBIC Circular clearly states that any technical and consulting services relating to exploration and extraction of oil and gas which are not specifically covered under the Heading 9986, would fall under Heading 9983 under Sr. No. 21(ia) of Rate Notification and attract 12% GST.

13. Further, the Appellant vide email dated 16.03.2022 have also submitted additional submission which is brief of ground already submitted during appeal and additional submissions already submitted by them. Nothing extra has been added.

14. Due to change of Members of AAAR, another personal hearing was held on 13.09.2023, in which Sh. Rohit Jain, Advocate and Sh. Rahul Khurana, Advocate, authorized Representatives of the Appellant appeared & attended the hearing. They reiterated the submissions already made under grounds of appeal and the submissions made by them vide letters dated 18.01.2022 & 16.03.2022. During the hearing, Counsels provided executive summary of the submissions dated 13.09.2023, which is a brief of grounds already submitted during appeal and additional submissions already made by them.

15. The Counsel vide letter dated 19.09.2023 (received on mail on 20.09.2023) made additional submissions which are already submitted by them and nothing extra has been added.

DISCUSSION AND FINDINGS

16. We have carefully gone through the entire material available on record, appeal papers filed by the Appellant, Ruling pronounced by the AAR Rajasthan, additional written submissions dated 18.01.2022, 16.03.2022 & 19.09.2023 made on behalf of the Appellant and oral submissions made by the authorized representatives of the Appellant at the time of personal hearing held on 11.01.2022 as well as on 13.09.2023.

17. Before proceeding to decide the appeal, we need to first decide as to whether the appeal has been filed within stipulated period (i.e. thirty days from the date on which the Ruling sought to be appealed against is communicated to the Appellant) prescribed under Section 100 (2) of CGST Act, 2017 or not. We find that as the the Appellant, the date of communication of the Order of AAR, Rajasthan to the Appellant was 21.09.2021 and the appeal was filed on the portal on 19.10.2021.

Thus, we find that the Appellant have filed the appeal within statutory period of 30 days of date of communication of the Order of the AAR. Therefore, we may proceed to decide the appeal.

18. We find that the Appellant have sought Advance Ruling in respect of the activities undertaken by them for M/s Vedanta Limited which as per their version involved provision of service including supply of material amounting to transfer of property in goods. The Appellant had sought Advance Ruling to clarify as to whether the activities undertaken by them are/were classifiable either under SAC Heading No.

9986 eligible for rate of tax prescribed vide entry serial number 24(ii) or alternatively under SAC Heading No. 9983 eligible for rate of tax prescribed vide entry serial number 21(ia) of Notification No. 11/2017-CT(R), dated 28.06.2017. The AAR for Rajasthan has pronounced the Advance Ruling holding that the activity undertaken by the Appellant by way of supply, survey, designing, installation and commissioning of project under EPC contract shall be classifiable under SAC Heading No. 9954 eligible for rate of tax prescribed vide entry serial number 3(ii) of Notification No. 11/2017-CT(R) dated 28.06.2017. The instant appeal seek to challenge the Order of the AAR for Rajasthan with prayer to set aside the Order and declare that the activity undertaken by the Appellant is classifiable under SAC Heading No. 998621 or, alternatively, under SAC Heading No. 9983.

19. After having gone through the submissions made by the Appellant both in the application seeking advance Ruling and in the instant appeal vis-a-vis the Advance Ruling pronounced by the AAR for Rajasthan we deem it appropriate to examine the matter at length based on the documents submitted by the Appellant in order to arrive at a finding in accordance with the legal provisions governing the subject. To facilitate analysis, the detailed examination and findings based thereon have been divided into the following Sections:-

Section	Sub-Section	Description
A.		**Activity in brief as narrated by the Appellant**
B.		**Appellant's understanding of law on the subject**
	B.1.	Main Contention as to classification of supply
	B.2.	Alternate classification suggested
C.		**Appellant's analysis of the activity for classification**
	C.1.	Classification under support service of business- Heading 9986
	C.2.	Classification under other professional, technical & business services- Heading 9983
D.		**Ruling pronounced by the AAR**
	D.1.	Classification suggested under SAC Heading No. 998621 rejected
	D.2.	Classification suggested under Heading 9983, in the alternate, also rejected
	D.3.	What is the correct classification
E.		**Analysis of classification and rate of tax suggested by AAR**
F.		**Appellant's arguments against Ruling of AAR**
	F.1.	Non-existing entry suggested by AAR
	F.2.	Nature of activity undertaken not appreciated
	F.3.	Rules of classification not referred
	F.4.	Alternates suggested
G.		**Questions for determination**
	G.1.	Classification under Heading 998621
	G.2.	Classification under Heading 9983
	G.3.	Classification under Heading 9954

	G.4.	AAR's ruling- classification vis-a-vis rate of tax
H.		**Examination of submissions and analysis of evidence**
	H.1.	Nature of activities as per EPC contract
	H.2.	Ingredients of services classifiable under Heading 998621
	H.3.	Ingredients of services classifiable under Heading 9983
	H.4.	Construction services under Heading 9954
I.		**Some specific arguments**
J.		Reliance on Ruling of Maharasthra, AAR Order No. MAH/AAAR/DS-RM/14/2022-23 dated 03.01.2023
K.		**Conclusion and findings**

A. Activity in brief as narrated by the Appellant:

As can be seen from the submissions made by the Appellant in the appeal papers, the Appellant are stated to be engaged in providing services to M/s Vedanta Limited, which is stated to be a globally diversified natural resources company engaged in exploration and mining of various natural resources. As stated by the Appellant:-

(i) Cairn, Vedanta's upstream Oil & Gas Division, is the operator of Onshore RJ-ON-90/1 block, on behalf of themselves and their joint partners, Cairn Energy Hydrocarbons Limited and Oil and Natural Gas Corporation, located in Barmer District in the state of Rajasthan;

(ii) The RJ-ON 90/1 Block contains 38 major oil & gas discoveries including Mangala, Bhagyam and Aishwariya fields, with significant gas potential in the southern area;

(iii) Raageshwari Deep Gas (RDG), discovered in 2003, is a tight gas field situated in the southern area and is under production since 2010 with significant infrastructure in place.

(iv) Eighteen well pads are operational in the Mangala Field. A number of wells have been drilled in the aforementioned fields for exploration, development & production of hydrocarbons.

(v) The oil & gas produced from these fields are collected and transported to a central processing facility at Mangala through a network of existing in-field pipelines. The central processing facility is also termed as Mangala Processing Terminal (MPT). The existing pipeline corridor at Mangala Field, between MPT and various well pads, has various exiting pipelines running through it.

With a view to further augment facilities and infrastructure for enhancing the liquid handling capacity from 800 KBLPD to 1300 KBLPD at MPT based on the projected production scenarios & expected increase in total liquid, the Appellant have entered into an Engineering, Procurement and Construction Contract ("EPC contract") with Vedanta Limited in January, 2019 for construction of customized additional infrastructure facilities under Vedanta's Mangala Up-gradation Project Stage 2 – EPC – 2 or "MUPS2-EPC2" Project at Mangala wells

B. Appellant's understanding of law on the subject:

The Appellant have referred to the rules of interpretation of the United Nations Central Product Classification as also CBIC's Circular No. 114/33/2019-GST, dated 11.10.2019 and argued that the services they supply can be defined as support services to oil and gas extraction deserving classification under Heading 998621.

B.1. Main contention of the Appellant is that the activities performed by them in accordance with their contract with M/s Vedanta Limited deserve to be classified under SAC Heading No. 998621 as most of the activities associated with exploration, mining or drilling of petroleum crude or natural gas fall under Heading 9986 as per Circular No. 114.

B.2. In the alternate it has been contended that the subject services can also be classified as 'other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both under Heading 9983.

C. Appellant's analysis of the activity for classification:

The Appellant have analysed the activities proposed to be carried out by them in pursuance of the EPC Contract and found that based on the ingredients of the activities as discussed in detail in the contract, the same merit classification under SAC Heading No. 998621 or in the alternate under Heading 9983.

C.1. Classification under support service of business- Heading 9986

The Appellant have submitted that under the terms of the EPC Contract, the scope of work assigned to the Appellant involves augmentation of various facilities and infrastructure at Mangala Processing terminal. Such scope includes augmentation of liquid handling capacity, produced water treatment facility, Injection Water System capacity, New LP Steam & condensate system and Instrument Air & Nitrogen Capacity along with piping, civil structure, electrical, instrumentation etc. It has further been submitted that the aforesaid activities are essentially part of the development of the MPT wherein the surface facilities and infrastructure will be augmented and such up-gradation in infrastructure is squarely in relation to that purpose.

C.2. Classification under other professional, technical and business services- Heading 9983

The Appellant have submitted that the activities carried out by them can in the alternate be classified as other professional, technical and business services under Heading 9983 as the Appellant provide services by way of proper management of the project right from the detail design and planning of the project till its final test run,

commission and hand over in fully functional form and it is also, *inter alia*, required to review, monitor, manage and control all aspects of the execution of the project along with the day-to-day administration and logistics, such as, procurement, performance, HSE, quality and schedule management, among others, on behalf of M/s Vedanta Limited.

D. Ruling pronounced by AAR:

The AAR for Rajasthan has pronounced Rulings vide order dated 13.09.2021 rejecting the classification as sought by the Appellant under SAC Heading No. 998621 or under Heading 9983 and held that the supplies proposed to be undertaken by them are classifiable under Heading 9954.

D.1. Classification sought under SAC Heading No. 998621 was rejected :

The first question of the Appellant as to whether the services provided by the appellant are classifiable under Sr. No. 24 (ii) of heading 9986 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as 'Support services to exploration, mining or drilling of petroleum crude or natural gas or both' and attracts GST @ 12%. has been answered by the AAR in negative

D.2. Classification sought under heading 9983, in the alternate was also rejected:

The question of the Appellant as to whether the services provided by the applicant are classified under 'Professional, Technical or Business Service relating to exploration, mining, or drilling of petroleum crude or natural gas or both' under Sr. No. 21(ia) (Professional, Technical or Business Service to Mining) of the Rate Notification. and attracts GST @ 12% or Sr. No. 21(ia) of Heading 9983 of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 and attracts GST @ 12% has also been answered by the AAR in negative.

D.3. What is the correct classification:

The AAR, Rajasthan pronounced in their Ruling that the activities of supply, designing & engineering, installation, Commission of project under EPC contract by the Appellant shall attract GST @18% under S. No. 3 Heading 9954 (ii) of the Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017.

E. Analysis of classification and rate of tax pronounced by AAR:

We note that the Ruling as pronounced by the AAR classified the supplies involved in survey, designing, installation and commissioning of project under EPC contract by the Appellant under SAC Heading No. 9954 which relates to construction services. Second part of the Ruling concerns the rate of tax applicable on the said supplies by the Appellant and it has been ruled that the supplies, which are in the nature of works contract, will attract GST @ 18% in terms of Sl. No. 3 (ii) of Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017.

F. Appellant' arguments against Ruling of AAR:

The Appellant have challenged the Ruling pronounced by AAR mainly on three counts, one of them being classification under a non-existing entry in the rate notification while the other grounds concern nature of activity undertaken by the Appellant not appreciated and also the rules of classification not referred.

F.1. Non-existing entry suggested by AAR:

The Appellant have submitted that the impugned order seek to classify the services provided by the Appellant under Entry Sl. No. 3(ii) of SAC Heading No. 9954 of *Notification No. 11/2017–Central Tax (Rate),* dated 28.06.2017 which provided a rate of tax for *"composite supply of works contract as defined in clause 119 of Section 2 of Central Goods and Services Tax Act, 2017"* but the said entry (ii) stands omitted *vide Notification No. 03/2019–Central Tax (Rate),* dated 29.03.2019, effective from 01.04.2019 and, therefore, the Ruling has classified the supplies under a non-existing entry of the rate notification.

F.2. Nature of activity undertaken not appreciated:

The Appellant have also contended that the findings in the impugned order of AAR to the effect that the classification of support services to oil and gas extraction under Heading 9986 is only applicable when the exploration/production had started and the support services do not include services supplied before the creation of the infrastructure for production, suffers from fallacy and complete non-consideration of facts in as much as the contract was awarded during the year 2018/2019 and the original production of oil and gas in the oil field had in fact started in the year 2010 itself.

F.3. Rules of classification not referred:

We also observe that the Appellant have contended that the rules of classification as per the explanatory notes require that if at all the services performed by the Appellant appear to be falling under SAC Heading No. 9954 as against Heading 9986, still, in terms of the cardinal rule of interpretation for purposes of classification of goods and services, the classification entry giving a more specific description to the activities performed by the Appellant shall apply over the entry providing a more general description. It is their contention that SAC Heading No. 9954 is a general entry which is applicable for works contract services while even if the services supplied under the EPC contract are considered to be a composite supply in the nature of a works contract, the service will still merit classification under SAC Heading No. 998621 which is a specific entry for services that support the activity of oil and gas extraction.

F.4. Alternates suggested

The Appellant have primarily sought classification under SAC Heading No. 998621 which according to them includes services such as well casing, cementing, pumping and abandoning of wells, derrick erection etc. which require labor services

as well as supply of goods for providing the same. It has been submitted by the Appellant, that these services, involve civil work as well as supply of goods as part of performance of such activities and can very well take the shape of works contract and bringing such works contract services out of the purview of Heading 9986 is clearly a result of misreading of the law and lack of understanding of the oil and gas industry. Alternatively it has been suggested that the services supplied by the Appellant would also merit classification as "*other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both*" under Entry No. 21(ia) of Heading 9983 of the Rate Notification.

G. Questions for determination:

In view of the submissions made by the Appellant in the appeal and the Rulings pronounced by the AAR, we observe that the issues for determination before us are as follows:-

G.1. Classification under Heading 998621:

Whether the supplies proposed by the Appellant in pursuance of the EPC contract with M/s Vedanta Limited are classifiable under SAC Heading No. 998621 of the Scheme of classification of services?

G.2. Classification under Heading 9983:

Whether the alternate suggestion of the Appellant seeking classification of the proposed supplies in question under Heading 9983 is acceptable in view of the nature of supplies proposed to be made by them?

G.3. Classification under Heading 9954:

Whether the classification as pronounced by the AAR under SAC Heading No. 9954 is sustainable and what is the effect of AAR's Ruling pronouncing tax rate as prescribed vide entry Sl. No. 3(ii) of Notification No. 11/2017-CT(R), dated 28.06.2017 which stood deleted at the material point of time ?

G.4. AAR's Ruling- Classification vis-a-vis rate of tax:

What is the correct classification of the supplies proposed to be made by the Appellant in pursuance of the EPC Contract entered with M/s Vedanta Limited?

H. Examination of submissions and analysis of evidence:

In view of the questions framed by us for determination in these proceedings, we find that the nature of activities carried out by the Appellant in terms of the EPC Contract with M/s Vedanta Limited is required to be analysed and the submissions of the Appellant need to be examined in the light of the EPC Contract in question as the determination of the questions depend upon the true nature of the activities proposed to be carried out by the Appellant.

H.1 Nature of activities as per the EPC Contract:

(i) We observe that in the appeal dated 19.10.2021 praying for setting aside of the Ruling dated 13.09.2021 pronounced by the AAR, the Appellant have stated that with a view to further augment facilities and infrastructure for enhancing the liquid handling capacity to 1300 KBLPD at MPT based on the projected production scenarios & expected increase in total liquid, the Appellant have entered into an Engineering, Procurement and Construction Contract (**"EPC contract"**) with Vedanta Limited in January, 2019 for construction of customized additional infrastructure facilities under Vedanta's Mangala Upgradation Project Stage 2 – EPC – 2 or "MUPS2-EPC2" Project at Mangala wells (**"subject services"**). It has been stated in the appeal in Para- 1.7 that for outlining the scope of work, relevant extract of the EPC contract has been provided as Appendix-II.

(ii) We further observe that at Appendix-II of the appeal is a document titled Exhibit A- Contract No. 46000009410. The said document submitted by the Appellant are an integral part ranging from page 402 to 439. Thus, the Appellant have submitted only a part of the EPC Contract which describes in detail the scope of services proposed to be supplied by the Appellant to M/s Vedanta Limited. Since we have to decide the question of classification of the supplies proposed to be made by the Appellant in terms of the said EPC Contract, we are mainly concerned with the provisions of the EPC Contract governing the scope of work assigned to the Appellant.

(iii) With a view to deciding the classification of supplies proposed to be made by the Appellant in the context of their claim of classification under Heading 998621 as 'support services to exploration, mining or drilling of petroleum crude or natural gas or both' or the alternate claim of classification under Heading 9983 as 'other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both', we deem it appropriate to examine the nature of the activities proposed to be undertaken by the Appellant for effecting the supplies in terms of the EPC Contract. Some of the salient features of the EPC Contract relevant to the issues at hand, as contained in clause 7 titled 'Scope of work of contractor', referred to by the Appellant as containing the scope of services, are reproduced below:-

> **(A)** The scope of Contractor includes, but is not limited to, pre-bid engineering, Site Surveys, verification of soul and topography data, Design and Detail Engineering including FEED verification, Procurement & supply, Fabrication, Manufacturing, Assembly, Inspection & Testing, Packing, Shipping, Site establishment, Delivery and Unloading at site, Storage and Preservation, **Complete Erection and Installation, Insulation , Painting, Facilities Construction,** , Insulation, Painting, Dismantling, removal and disposal of existing facilities, Hooks-ups, Site Acceptance Testing, Pre-Commissioning & Commissioning, RFSU, Performance Guarantee Test

Run(s) (PGTR), Training of Company's Commissioning and Operations personnel, Project and Construction Management, Interface Management (Internal & External) by Interface Management Team(IMT) and **satisfactory handover to company of the facilities forming an integral part of Mangla upgradation** with applicable hook-up & tie-in with the existing & proposed facilities.

(B) Contractor's scope also include **providing & mobilizing all project management resources and all construction resources, as required,**

(C) Contractor shall deploy all resources (including manpower, tools & tackles, equipments etc.) for execution of the work. Contractor shall supply labour, materials, equipments, spare parts and accessories, construction equipment, construction utilities and supplies, temporary materials, structures and facilities.

(D) Contractor shall deploy requisite resources for design & engineering, procurement & supply, fabrication & installation, construction, testing, inspection & pre-commissioning and commissioning of the facilities.

(E) Contractor shall be responsible for performing the design & detailed engineering including FEEd verification of the facilities proposed to be installed as part of EPC-2 project.

(F) Various documents proposed to be prepared and submitted by the contractor during Design & detailed engineering shall broadly include process, Piping, civil & structural, electrical, Mechanical equipment, Instrumentation & controls, HSE, Operation & Control.

(G)The contractor shall be responsible for performing engineering for procurement.

(H)Contractor shall be responsible for performing construction & installation engineering including reports, operation and maintenance manual, waste management plan etc.

Some of the other features of the scope of services as per the EPC Contracts which are relevant to the issues at hand may also need reproduction for ease of reference but the same shall be discussed later on at appropriate places where the claimed classifications are examined with reference to the nature of the activities.

H.2 Ingredients of services classifiable under Heading 998621:

(i) The Appellant have mainly contended that the supplies proposed to be made by them deserve classification under SAC Heading No. 998621 as support services to exploration, mining or drilling of petroleum crude or natural gas or both. It has been

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stated that the contention is based on the Rules of Interpretation falling under Chapter-III of the United Nations Central Product Classification (UNCPC) as the Explanatory Note to the Scheme of Classification of Services is itself based on the UNCPC as stated by CBIC in Circular No.114/33/2019-GST dated 11.10.2019.

(ii) In this regard, we observe that the broad Heading 9986 in the Explanatory Notes is titled as 'support services to agriculture, hunting, forestry, fishing, mining and utilities' and the sub-heading 99862 is titled as 'support services to mining'. SAC Heading No. 998621 has been described as follows:-

> ***"998621 Support services to oil and gas extraction***
> *This service code includes derrick erection, repair and dismantling services; well casing, cementing, pumping, plugging and abandoning of wells; test drilling and exploration services in connection with petroleum and gas extraction; specialized fire extinguishing services; operation of oil or gas extraction unit on a fee or contract basis*
> *This service code does not include:- geological, geophysical and related prospecting and consulting services, cf. 998341"*

(iii) As can be seen from the language of the heading of the service, the service in question has to be in the nature of support to the main activity which is that of oil and gas extraction. There is no denying the fact that the activity of oil and gas extraction can be undertaken by using the infrastructure which is already in place. It, therefore, follows that there are three distinct successive stages in the entire gamut of oil and gas extraction which contribute to completion of the work of oil and gas extraction. For the services to be eligible to classification under the instant SAC Heading No. 998621, it is required that the service should support the main activity of oil and gas extraction by the infrastructure put in place for the purpose.

Before we proceed further to examine the scope of services to be supplied by the Appellant, we may make it clear that the narration under the said SAC Heading No. 998621 seeks to enlarge the scope of the service by declaring that some of the activities shall also be included in the scope of the support services. Inclusion clause, therefore, expands the scope of the service which has to be understood by the words employed to describe it. Hence, it is evident that any service that supports the activity of oil and gas extraction comes within the purview of the instant SAC Heading No. 998621 and the activities specified in the inclusion clause will also form part of the support service, whether they seem to be, or not, strictly in the nature of such service.

(iv) We further observe that as claimed by the Appellant, the CBIC has also issued a clarification on the scope of support services to exploration, mining or drilling of petroleum crude or natural gas or both through a Circular No. 114/33/2019-GST, dated 11.10.2019 with reference to the entry at Sl. No. 24(ii) of Heading 9986 in Notification No. 11/2017-CT(R) dated 28.06.2017. It has been specifically mentioned in the Circular that Explanatory Notes to the Scheme of Classification of Services adopted for the purposes of GST, which is based on the United Nations Central Product Classification describe succinctly the activities associated with exploration, mining or drilling of petroleum crude or natural gas under heading 9983

and 9986. Para-4 of the circular relevant to the instant issue reads as follows:-

> *"4. It is hereby clarified that the scope of the entry at Sr. 24 (ii) under heading 9986 of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 shall be governed by the explanatory notes to service codes 998621 and 998622 of the Scheme of Classification of Services."*

We, therefore, observe that the scope of services provided by the Appellant needs to be examined in terms of the description of services given in the Explanatory Notes which have already been discussed above.

H.2.1 Details of EPC contract w.r.t classification under Heading 998621

(i) We observe that the EPC Contract which has been submitted by the Appellant describes the nature of activities undertaken by the Appellant in detail. Explaining the scope of the said document (EPC Contract), it has been mentioned in the introductory part that MPT is currently operational with 3 Oil processing Trains having overall liquid handling capacity of the oil trains is 800 KBLPD. To increase liquid handling at MPT, Mangla Upgradation Projects to be implemented in stages. MUP Stage-2 EPC-2 related to augmentation of facilities & infrastructure at MPT & well pads executed through this ITT. As further described, company plans to increase the liquid handling capacity at PMT to 1300 KBLPD based on the projected production scenarios & expected increase in total liquid. We may usefully refer to some of the provisions as contained at different pages are as follows:-

(A) Page-408.

4.1 Augmentation of Liquid Handling capacity:

- The production fluid from cluster "D" shall be routed to a new slug catcher V-240 to handle 420 KBLPD & 17 MMSCFD of liquids and gas respectively form the wells. The separated oil is pumped by new oil slug catcher shall be operating at 3.5 barg. A Piping bypass across the existing HIPPS systems shall also be installed to reduce the pressure drop in the existing system. A new HIPPS Z-204 shall be installed before the new slug catcher.

(B) Page-409.

4.2 Augmentation of Produced Water Treatment facility:

- The total water handling capacity of existing produced water treatment system is – 1200 KBWPD (skim tanks + Retrofitted depurators + converted Export Oil tanks). De-oiled water pumps & skim oil pumps of the existing facility had been relocated elsewhere in the plant. Hence, new Skimmed Oil pumps P-408J/K/L & De oiled water Transfer Pumps P 406J/K/L are required and shall be located at the existing location and hooked up with the existing piping and shall be executed as part of this scope.

4.3 Augmenting Existing Injection Water System Capacity:

- The Injection water system consists of IW tanks, IW Booster Pumps, IW Heater, IW filters, Iw Pumps & Power Fluid pumps.
- The overall injection Water requirements is 780 KBWPD and Power Fluid requirement is -400 KBWPD. Thus the combined requirement of IW+PF is – 1180 KBWPD.
- This increase in IW and PF requirement necessitates augmentation of existing injection water & power fluid system. The Power Fluid stream is currently not filtered at MPT. Hence , new filters beds are envisaged for filtering the Power fluid.

(C) Page-410

4.4 New Back Wash system:

- The existing system has been found ineffective in the plant. Hence heated fresh water will be now used for filter backwashing purpose

4.5 New LP steam and condensate system at MPT:

- Condensate from the flash drum shall be pumped by new LP condensate pumps to the existing Air Coolers to cool it down to 90 deg C and subsequently routed to the BFW tanks.

(D) Page-411

4.6 Utilities at MPT:

- As per preliminary estimates, the new requirement of IA can be met by adding the equipment. This shall be verified and augmentations, if any, shall be incorporated by contractor.

4.7 New Chemical Injection skid at MPT.

4.8 Flare system.

4.9 Drain System.

4.10 Portable and treated water shall be extended from existing facilities.

4.11 Modification of well pads.

(ii) From the detailed scope of work as mentioned in the EPC Contract, brief extracts of which have been reproduced above, we observe that M/s Vedanta Limited has planned to undertake major expansion in their production and processing capacity with consequent increase proposed in the sales and the instant EPC Contract has been awarded to the Appellant with mandate to establish the required infrastructure for the expansion proposed. Augmentation of Liquid handling capacity, augmentation of produced water treatment facility, augmenting existing injection water system facility are indicative of the fact that new facilities, in addition to the existing facilities, are being created by M/s Vedanta Limited for enhancement of oil and gas production and sales.

(iii) After analyzing the broad outlines of the contract awarded to the Appellant,

we find it appropriate to examine the nature of work assigned to the Appellant under the EPC Contract in question. We observe that the Appellant have not denied the fact that supply of service under the EPC Contract in question also involves transfer of property in goods. The only contention by the Appellant in this regard is that the scope of Heading 9986 does not exclude Works Contract Service. As can be seen from the appeal as also from the EPC Contract submitted by the Appellant, the Appellant have been assigned the work related to establishment of infrastructure for the proposed expansion in the production and processing capacity. As mentioned in Para-9.5 titled Construction of process Facilities at MPT/Well pads- construction of the new facilities shall be performed after proper survey, designing, ground scanning, leveling of site including cutting /filling of land, fencing, barricading, display of appropriate warning, construction of all types of buildings/sheds/control rooms/ sub-stations buildings, cross over platform, drainages, roads, boundary walls, fencing gates etc.

(iv) From the provisions of the EPC Contract as discussed above we find that the Appellant have been tasked with installation and construction of the proposed facilities concerning the augmentation of Liquid Handling capacity along with various infrastructure which is aimed at capacity expansion of MPT.

(v) From perusal of the said scope of work we observe that the Appellant are obliged by the contract for satisfactory handover of complete enhancing liquid handling capacity including Non Process Buildings, including roads and drains within MPT, Pipeline and approach roads to M/s Vedanta Limited, complete with applicable hook-up & tie-in with the existing & proposed facilities. This provision of the contract makes it amply clear that the Appellant have been assigned the work of establishment of new facilities for oil and natural gas extraction alongside the already existing facilities at the MPT.

(vi) Coming to the proposed classification under Heading 998621 we observe that the said heading covers 'support services to oil and gas extraction' which is self explanatory in as much as the services proposed to be classified under this heading provide support to the main activity of oil and gas extraction and such activity of extraction eventually requires the infrastructure facilities established. These three parts of the entire gamut of oil and gas extraction are clearly distinguished from each other. Support service has to be essentially distinct from the main activity of oil and gas extraction. And establishment of infrastructure facilities in the form of liquid handling, pipelines, sub-stations, switchyards and flare systems, drain system, to illustrate a few, is clearly a distinct feature of the activity of oil and gas extraction. Hence, support service to oil and gas extraction is clearly distinguishable from establishment of infrastructure facilities for oil and gas extraction and the former cannot be confused with the latter.

H.2.2 We observe that the description of the service in the explanatory notes as 'support services to oil and gas extraction' has been defined to include some

activities specifically which are also to be considered in the nature of support to the main activity of oil and gas extraction. Analysis of the said activities, included in the service code, would reveal that these activities are such as can help the main activity of oil and gas extraction. These activities of repair and dismantling services, well casing, cementing, pumping, plugging and abandoning of wells or fire extinguishing services are, in one way or the other connected to the main activity of oil and gas extraction. But none of these activities can be said to be related to establishment of the infrastructure facilities for oil and gas extraction.

Since, the Appellant have been tasked with establishment of infrastructure facilities for oil and gas extraction, the activities undertaken by the Appellant in pursuance of the EPC Contract cannot, by any stretch of imagination, be said to be support services to oil and gas extraction. The distinction between the activities undertaken by the Appellant in terms of the EPC contract and the activities included in the definition of SAC Heading No. 998621 is strikingly clear. Therefore, we hold that the activities undertaken by the Appellant in pursuance of the EPC Contract cannot be classified under SAC Heading No. 998621 as these are not in the nature of support services to oil and gas extraction.

H.3. Ingredients of services classifiable under Heading 9983:

(i) We also observe that the Appellant have, in the alternate, claimed classification of the supplies proposed to be made by them under Heading 9983 as 'Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both' as also covered by entry at Sl. No. 21(ia) of the Rate Notification. It is their contention that the said entry uses the phrase 'relating to' which signifies that any professional, technical and/or business services provided relating to mining, would merit classification under the said entry and the said entry includes a broad range of services which pertain to or concern with the activity of mining.

To buttress their argument, the Appellant have further claimed that they provide services by way of proper management of the project right from the detailed design and planning of the project till its final test run, commission and hand over in fully functional form and it is also *inter alia* required to review, monitor, manage and control all aspects of the execution of the project along with the day-to-day administration and logistics, such as, procurement, performance, HSE, quality and schedule management, among others, on behalf of M/s Vedanta. The Appellant have also referred to and relied upon the CBIC Circular to claim that the wordings used under the Heading 9983 of the Rate Notification is broad in nature, various services which are provided in relation to exploration, mining or drilling would fall within its ambit and attract GST @ 12%.

(ii) On going through the explanatory notes, and as also clarified vide the CBIC Circular dated 11.10.2019 referred to above, we observe that the services relating to exploration, mining or drilling of petroleum crude or natural gas are described under Heading 9983, which are reproduced below:-

"998341: Geological and geophysical consulting services:

This service code includes provision of advice, guidance and operational assistance concerning the location of mineral deposits, oil and gas fields and groundwater by studying the properties of the earth and rock formations and structures; provision of advice with regard to exploration and development of mineral, oil and natural gas properties, including pre-feasibility and feasibility studies; project evaluation services; evaluation of geological, geophysical and geochemical anomalies; surface geological mapping or surveying; providing information on subsurface earth formations by different methods such as seismographic, gravimetric, magnetometric methods & other subsurface surveying methods.

This service code does not include- test drilling and boring work, cf. 995432."

"998343: Mineral exploration and evaluation:

This service code includes mineral exploration and evaluation information, obtained on own account basis.

Note: This intellectual property product may be produced with the intent to sell or license the information to others."

(iii) On analysis of the contents of the explanatory notes above, we observe that so far as SAC Heading No. 998343 is concerned, the same has a very narrow scope/limited coverage of mineral exploration and evaluation information which is certainly not the activity proposed to be undertaken by the Appellant in pursuance of the instant EPC Contract as already discussed at length above. Thus, we find it difficult to agree to the suggestion that the activities undertaken by the Appellant fall under the said SAC Heading No. 998343. However, SAC Heading No. 998341 covers a wide range of activities which include provision of advice, guidance and operational assistance concerning the location of oil and gas fields including feasibility studies. But, we observe that the Appellant have not proposed to undertake any such activity rather the Appellant have proposed to undertake establishment/ creation/ construction of infrastructure facilities for oil and gas extraction which are quite different and distinct from the advice concerning location of gas fields.

Further, the provision of advice with regard to exploration and development of oil and natural gas properties or feasibility studies is also not the activity that the Appellant are obliged to undertake in pursuance of the EPC Contract. Strictly speaking, as observed earlier, the scope of the current contract for the Appellant under MUPS2- EPC2 project comprises of facilities for augmentation of existing Liquid Handling capacity along with various infrastructure facility. These aspects of the contract of the Appellant cover such activities which do not answer the description of geological or geophysical consulting services or mineral exploration and evaluation services. This will be more clearly analyzed in the latter part of our analysis when the issue will be examined with reference to construction services.

H.4: Construction Services under Heading 9954:

(i) We observe that in response to the query by the Appellant as to what would be the correct classification of the supplies proposed to be undertaken by them in pursuance of the EPC Contract, the AAR has pronounced the Rulings dated

13.09.2021 declaring that the activities of supply, survey, designing, installation and commissioning of project under the EPC contract to be undertaken by the Appellant shall attract GST @ 18% under Sl. No. 3(ii), Heading No. 9954, of Notification No. 11/2017-CT(R), dated 28.06.2017. However, the Appellant have challenged the said classification mainly on the ground that the supplies proposed to be undertaken merit classification under SAC Heading No. 998621 as support services to oil or gas exploration or in the alternate, under Heading 9983 as other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both.

It has also been contended that the Ruling has been issued based upon non-existent provision of law in as much as entry at Sl. No. 3(ii) of Notification No. 11/2017-CT(R), dated 28.06.2017 stood deleted with effect from 01.04.2019. The Appellant have also claimed that for deciding classification of a supply, the category that provides the most specific description shall be preferred to categories providing a more general description and therefore, even if it is assumed that the supply of services provided under the EPC Contract is a composite supply in the nature of a Works Contract, the service will still merit classification under Heading 9986 which is a specific entry for services that support the activity of mining of natural gas.

(ii) The Ruling pronounced by the AAR has been contested by the Appellant that it is based on a non-existent provision of law. We deem it appropriate to first examine the Ruling vis-a-vis the contention accordingly. On examination of the Ruling, we observe that the Ruling consists of three different parts. Fist part of the Ruling declares that the supplies proposed to be undertaken by the Appellant answer to the description of works contract service. Second part of the Ruling suggested classification of the supplies under Heading 9954. And according to the third part of the Ruling, the supplies proposed to be undertaken by the Appellant attract GST @ 18% in terms of entry at Sl. No. 3(ii) of Notification No. 11/2017-CT(R), dated 28.06.2017.

(iii) We observe that there is no denying the fact that Notification No. 11/2017-CT (R), dated 28.06.2017 was amended vide Notification No. 3/2019-CT(R), dated 29.03.2019 whereby entry at Sl. No. 3(ii) of Notification No. 11/2017-CT (R), dated 28.06.2017 was omitted with effect from 01.04.2019. Admittedly, entry at Sl. No. 3(ii) did not exist in the rate notification when the application seeking Advance Ruling was filed or when the Ruling was pronounced. Hence, the rate as prescribed vide the said entry was not available to the Appellant at the relevant point of time. However, we observe that the omission of the given entry from the rate notification in question by itself does not make the instant supply eligible to lower rate of tax until other aspects of the Ruling concerning the description of the supply based on its nature and classification under the given heading are examined to determine the appropriate rate of tax. Hence, we observe that it is important to examine the other aspects of the Ruling with reference to the true nature of the supplies as given in the EPC Contract.

(iv) We observe that the AAR has pronounced classification of the supply under the SAC Heading No. 9954 relating to construction services with the observation that the supply being composite in nature and covered under the description of work contract as defined under clause (119) of Section 2 of the CGST Act, 2017. The Appellant have opposed the Ruling mainly on the ground that the said category of service i.e. construction service provides only a general description of the supply while support service to exploration, mining or drilling of petroleum crude or natural gas or both is a specific description of the supplies proposed to be undertaken by them. Though there is no denying the fact that transfer of property in goods is involved in the execution of the instant EPC Contract, some of the main provisions of the EPC Contract need to be reproduced, even at the cost of repetition, to examine as to whether the proposed supplies invoke provision of construction services.

(v) On going through the relevant portion of the EPC Contract which has been submitted with the appeal, we observe that the following activities have been assigned to the Appellant which form the core of the entire supply under the contract:-

(A) Complete Erection and Installation, Facilities Construction, Pipeline laying, Pre-Commissioning & Commissioning, Project and Construction Management;

(B) Satisfactory handover of complete Liquid handling capacity, produced water treatment facility, new customized filters beds for filtering the power fluid etc along with Pipelines, roads, building and infrastructure.

(C) Providing & mobilizing all project management resources for performance of works. The project management team is to be fully equipped with planning/ scheduling software and analysis tools & manned with competent and experienced manpower complete with sound project management, reporting, and project control system.

(D) Performing construction activities, review of all the construction/ fabrication drawings prior to start of site construction and updating same as per actual site conditions, etc.

(E) Appraisal and taking cognizance of site-conditions, government rules & regulations, bye-laws, applicable codes & standards, requirements of authorities having jurisdiction over the work site(s), environmental & pollution concerns including conditions/ stipulations laid downs by concerned authorities, etc as per Contract SOW

(F) Obtaining all necessary approvals & work permits from concerned authorities for performing the work like shifting/ relocation of existing facilities & other utilities, etc.

(G) Ensure safe and acceptable testing.

(H) Surplus/waste material are to be removed from sites.

(I) Conduct a performance guarantee test run for the complete system prior to handing over the plant to Vedanta.

From perusal of the provisions of the EPC Contract which have been summarized above, we observe that the Appellant have been assigned the task of construction of various facilities which are integral to the proposed Oil and gas production capacity enhancement from the MPT. Buildings, shades, control rooms/ sub stations building etc., are some of such constructions which form part of the contract. The contract clearly provides that the Appellant are responsible for satisfactory hand over of complete system with Buildings, shades, control rooms/ sub stations building etc. The entire scope of activities to be carried out by the Appellant relates to construction of all the facilities which have been proposed to be created for enhancement of production and processing capacity at the MPT and the Appellant are required to hand over the facility complete in all respects after the design, construction, commissioning etc. are completed.

(vi) In view of what has been observed by us in the preceding paragraphs, it is necessary to examine the issue with reference to the relevant explanatory notes of the scheme of classification of services independent of the issue of composite supply which can be addressed later on. We observe that SAC Heading No. 9954 of the Scheme of Classification covers the overall construction services with SAC Heading No. 995425 the general construction services of mines and industrial plants. The explanatory notes clarify that the said service code includes construction services for mining and related facilities associated with mining operations. Since, oil and gas exploration is also a form of mining; therefore, the construction services proposed to be supplied by the Appellant for constructing facilities for handling the increased production capacity are appropriately classifiable under the SAC Heading No. 9954.

(vii) We further observe that based on the stipulations of the EPC Contract under consideration, the AAR had also classified the supplies proposed to be undertaken by the Appellant under SAC Heading No. 9954 and therefore, Ruling of the AAR to that extent is legally valid and omission of a specific entry in the rate notification does not have a bearing on such Ruling in so far as classification under SAC Heading No. 9954 is concerned. Since, the nature of supply justifies its classification as construction services of mining, we observe that there is no conflict suggesting preference to specific description under SAC Heading No. 998621 to general description under SAC Heading No. 9954 because the nature of activities clearly indicates that the supply is classifiable under SAC Heading No. 9954.

(viii) We further observe that the instant matter in hand does not simply involve supply of services only, rather as mentioned in the EPC contract and as also admitted

by the Appellant in the appeals, supply of goods is also involved in the contract and such goods have been used in the execution of the EPC contract as the Appellant are required to construct the Complete Pipeline Network/System and its handover along with buildings, road, pipelines etc. We are, therefore, in agreement with the AAR in holding that the composite supply of construction services and goods involved in the execution of the contract amount to supply of works contract service. Hence, we may refer to clause (119) of Section 2 of the CGST Act, 2017 which reads thus:-

> *"(119) "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;"*

(ix) We observe that the supplies involving both services and goods as proposed to be undertaken by the Appellant are, thus, covered by the definition of works contract which being composite supply, is treated as supply of services in terms of the provisions of Para-6 of Schedule-II of the CGST Act, 2017, which read as under:-

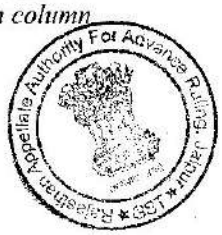
> *"6. Composite supply*
> *The following composite supplies shall be treated as a supply of services, namely:—*
> *(a) works contract as defined in clause (119) of Section 2; and"*

(x) Thus, we observe that so far as classification of the supplies proposed to be undertaken by the Appellant are concerned, the composite supply in the instant cases shall be treated as supply of service defined as works contract and the pronouncement of the AAR, therefore, needs no interference up to that extent.

(xi) As already observed by us, entry Sl. No. 3(ii) of Notification No. 11/2017-CT (R), dated 28.06.2017 was omitted with effect from 01.04.2019 and, therefore, the supplies proposed to be undertaken by the Appellant could not have been eligible for the rate prescribed therein. However, we observe that up to Notification No. 3/2019-CT (R), dated 29.03.2019, major changes have been made in the said entry under Sl. No. 3 of the basic Notification No. 11/2017-CT (R), dated 28.06.2017 to provide for different rates of tax for supplies under the categories of supply of construction services or supply of works contract services.

On examination of the various items covered by the said entry at Sl. No. 3, we observe that different rates of tax have been provided in respect of different types of supplies of construction services or works contract services under items (i), (ia), (ib), (ic), (id), (ie) and (if) or items (iii), (iv), (v), (va), (vi), (vii), (viii), (ix), (x), (xi) and (xii) of the said entry at Sl. No. 3. The supplies proposed to be undertaken by the Appellant are not covered by any item other than item at Sl. No. (xii) of the said entry at Sl. No. 3 which provides as under:-

> *"(xii) Construction services other than (i), (ia), (ib), (ic), (id), (ie), (if), (iii), (iv), (v), (va), (vi), (vii), (viii), (ix), (x) and (xi) above.*
> *Explanation. - For the removal of doubt, it is hereby clarified that, supply by way of services specified at items (i), (ia), (ib), (ic), (id), (ie) and (if) in column*



(3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5) and shall not be levied at the rate as specified under this entry."

(xii) We observe that the said item (xii) of entry at Sl. No. 3 of Notification No. 11/2017- CT (R), dated 28.06.2017, as amended up to Notification No. 3/2019-CT (R), dated 29.03.2019 prescribes Central Tax @ 9% on the supplies proposed to be undertaken in terms of the EPC Contract and therefore, the supplies proposed to be undertaken by the Appellant attract tax at the rate of 18%. The Ruling pronounced by the AAR, therefore, needs to be modified up to that extent.

I. Some specific arguments

In view of what has been discussed above, we observe that the issues involved stand addressed in the light of legal position which applies to the supplies proposed to be undertaken by the Appellant under the EPC Contract. However, before concluding the matter, we deem it appropriate to discuss some points which have specifically been raised by the Appellant. These points are discussed as follows:-

(i) The Appellant have argued in their written submission dated 18.01.2022 that the instant EPC Contract was awarded in January, 2019 whereas the original production of oil and gas in the oil field had started in the year 2009. Thus, the Ruling by the AAR suffers from fallacy in as much as the same has rejected classification under the category 'support services to oil and gas extraction' on the ground that support services shall include services to be provided for exploration, once the infrastructure/ facility for exploration is built and complete in all respect and ready to start exploration.

In this regard, we observe that according to the EPC Contract, the Appellant have been assigned the work of construction and installation of the entire facility and the proposed infrastructure being installed is aimed at capacity expansion as has been mentioned by the Appellant in the appeal that the with a view to further augment facilities and infrastructure for enhancing the liquid handling capacity from 800 KBLPD to 1300 KBLPD at MPT based on the projected production scenarios & expected increase in total liquid, the Appellant have entered in EPC contract. The contract obliges the Appellant to handover the complete system including Non Process Buildings, road, drains, Pipeline, after completing the construction, erection, installation and commissioning work.

Thus, we observe that the supplies proposed to be undertaken by the Appellant relate to the new facilities being awarded by M/s Vedanta Limited for enhancement of capacity and production. Therefore, the existing capacity or production from the existing facilities cannot be taken to be related to the expansion being undertaken under the instant EPC Contract.

(ii) The Appellant have also argued that Ruling to the effect that Heading 9986 covers only those activities which are provided once the infrastructure/

facility for exploration is built and complete in all respect and ready to start exploration, is an interpretation which lacks credible basis in law. It has been argued that classification entries should be derived literal meaning without addition or deletion of words. The Appellant have impressed upon the fact that test drilling and exploration services and derrick erection are some of the activities that are also part of Heading 998621 and these activities are carried out before installation of the infrastructure and facility for exploration. In this regard, we observe that classification of the supplies depends upon the scope of the work assigned to the Appellant which has already been discussed at length in the above Paras.

As can be seen the contract in the instant case is an Engineering, Procurement and Construction (EPC) Contract awarded by M/s Vedanta Limited for provision of services for augmentation of Liquid handling capacity along with Surface Facilities at MPT within RJ-ON-90/1 block and the Appellant have been assigned the responsibility to develop the infrastructure for surface facilities. The scope of the work described in details in the contract clearly established that the supplies relate to construction of new facilities/ infrastructure for oil gas extraction which are quite distinct from the support services to oil and gas extraction. What has been included in the support services under Heading 998621 by way of inclusion clause has to be viewed with reference to support services and cannot be so interpreted to relate it to construction services.

In that view of the matter, whether it be derrick erection or repair and dismantling services, well casing, cementing pumping, plugging and abandoning of well, all these activities have to be understood in the nature of support services only and none of them relates to creation of infrastructure or facilities for oil and gas extraction by way of construction, erection and commissioning of the new facility. The Appellant have not been assigned activity of type mentioned in Heading 998621 rather the contract is for enhancement of new facility and infrastructure for extraction of oil and gas. Hence, we do not find force in the arguments advanced by the Appellant.

The Appellants have also placed reliance upon various case laws pronounced by the Hon'ble Courts. We observed that each case has different facts. When Appellants' cases have already been discussed in detail as above, in our opinion, there is no need to discuss the cases relied upon by the Appellants separately.

J. **Ruling of the Maharashtra Appellate Authority for Advance Ruling Order No. MAH/AAAR/DS-RM/14/2022-23 dated 03-01-2023 is squarely applicable in the instant matter:**

(i) The Maharashtra Appellate Authority for Advance Ruling in respect of appeal filed by M/s Worley Services India Pvt Ltd, New energy House Ramkrishna Mandir Road, J B Nagar Kondivita, Andheri East Mumbai on the same issue has held similar

view. Vedanta Limited had entered into separate agreements dated 29.05.2018 and 10.01.2019 with Worley Services in relation to two projects for supply of PMC services. The PMC services were customized and tailor made to suit the requirements of Vedanta Limited and further require extensive technical and sound expertise. As per the agreements, Worley Services India Pvt Ltd was required to continuously review, monitor manage and control all aspects of the execution of the Projects on behalf of Vedanta Limited to complete it with quality, on time and within the approved cost. Worley Services was appointed to manage the projects right from details to designing to commissioning and close out of Projects with Vedanta Limited.

Worley Services India Pvt Ltd approached the MAAR seeking Advance Ruling on the following questions:

(1) Whether the services provided by the Appellant are classified under SI No. 24(ii) of heading 9986 of the Rate Notification as Support services to exploration, mining or drilling of petroleum crude or natural gas or both' under SAC 998621 and attracts GST @ 12% in terms of SI. No. 24(ii) of Rate Notification.

(2) Alternatively, whether the services provided by the Appellant are classified under S. No. 21(ia) of heading 9983 of the Rate Notification as 'Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both' and attracts GST @ 12% in terms of SI. No. 21(ia) of Rate Notification.

(3) Further, if the subject services are not classifiable under the aforesaid entry, what would be the appropriate classification for the same and at what rate GST would be imposable?

(ii) Thereafter, the MAAR passed the Order No. GST-ARA-27/2020-21/B-38 dated 31.03.2022 and held that the services provided by Worley Services are neither covered under SI. No. 24(ii) nor under SI. No. 21(ia) of Rate Notification on the following grounds:

• The service code 998621 includes services provided to the oil and gas mining sector by way of actual participation in the mining activity and in the subject case, it is actually the EPC contractor who is giving support services to VEDANTA LIMITED by being responsible for all the engineering, procurement and construction activities to deliver the completed Projects. In view of this the impugned services are not covered under S. No. 24(ii) of the Rate Notification

• The Explanatory Notes to service code 998341 is restricted to geological and geophysical consulting services and the Notes to service code 998343 is restricted to mineral exploration and evaluation and the impugned services cannot be considered as being connected to either geological and geophysical consulting services or mineral exploration and evaluation services. In view of this the impugned services are not covered under SI. No. 21(ia) of the Rate Notification

• The said professional, technical and business services supplied by the Appellant to Vedanta Limited are clearly covered under the residual entry No. 21(ia) of the Rate Notification, attracting tax at the rate of 18%

(iii) When Worley Services preferred an appeal against the above Order, the MAAAR upheld the MAAR Order No. GST-ARA-27/2020-21/B-38 dated 31.03.2022 wherein it was held that the services provided by Worley Services India Pvt Limited are neither covered under Sl. No. 24(ii) nor under SI. No. 21(ia) of the Rate Notification.

As regards the classification of the impugned services, it is held that the impugned services of project management consultancy services provided the Appellant would merit classification under the SAC 998349 bearing description "Other technical and scientific services nowhere else classified, attracting GST at the rate of 18% (CGST @9%+SGST @9%).

K. **Conclusion and findings:**

In view of these observations we hold that:-

(i) Based on the analysis of activities, the Appellant are required to carry out in pursuance of the EPC Contract and keeping in view the true nature of supplies proposed to be undertaken by the Appellant, the proposed supplies are appropriately classifiable under SAC Heading No. 9954 answering to description 'Construction Services' which are in the nature of composite supply defined as works contract.

(ii) The proposed supplies are specifically covered by SAC Heading No. 9954 and the claim that 'Construction Services' of SAC Heading No. 9954 is a general description of the supplies and 'support services' of SAC Heading No. 998621 is more specific to describe the proposed supplies is not supported by the EPC Contract as discussed above.

(iii) The proposed supply is covered by the scope of 'Construction Services' of SAC Heading No. 9954 and neither the inclusions given under SAC Heading No. 998621 for Support Services nor the description of Heading 9983 covers the scope of the proposed supply, Hence, the claim for classification under SAC Heading No. 998621 or alternatively under Heading 9983 is not sustainable.

(iv) The proposed supplies, therefore, attract tax at the rate of 9% in terms of item (xii) of entry at Sl. No. 3 of Notification No. 11/2017-CT (R), dated 28.06.2017 as amended and 9 % in terms of Notification issued under the RGST Act, 2017.

ORDER

In view of the above discussion and findings, we hold that the Ruling dated 13.09.2021 of the AAR for Rajasthan in respect of the Appellant needs no interference up to the extent mentioned in item (i) to (iii) above and the same are hereby modified to the extent mentioned in item (iv) above of Para K of this order. The appeal is disposed of accordingly.

(Mahendra Ranga)
Member (Central Tax)

(Mahendra Ranga)
Member, AAAR (Central Tax)

19.12

(Dr. Ravi Kumar Surpur)
Member (State Tax)

(Dr. Ravi Kumar Surpur)
Member, AAAR (State Tax)

SPEED POST

To
M/s L&T Hydrocarbon Engineering Limited
C/o Shri Rahul Khurana
Economic Laws Practice
Railway Station, 801A, 8th Floor,
Connectus Tower, Bhavbhuti Marg,
Opp. A, Ajmeri Gate, New Delhi, Delhi 110002

F. No. IV (16)09/AAAR/RAJ/2021-22/1362 Date. 20.12.2023

Copy to:-

1. The Chief Commissioner of CGST (Jaipur Zone), NCR Building, Statue Circle, Jaipur.
2. The Chief Commissioner of SGST, Rajasthan, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
3. The Principal Commissioner, CGST Commissionerate, Jaipur
4. The Commissioner, CGST Commissionerate, Jodhpur.
5. The Member, Rajasthan Authority for Advance Ruling, Goods and Service Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
6. Assistant Commissioner, CGST Division-E, Pali, Ground Floor, TDM Office Campus, BSNL, Mahavir Nagar, Pali – 306 401
7. Assistant Commissioner, Circle – C, Jaipur Zone – III, SGST (Sales Tax Office) Jhalana Institutiona Area, Jhalana Doongri, Jaipur - 302004
8. M/s L&T Hydrocarbon Engineering Limited, Flat No.D 236 and 237, SDC Monark Building, Amrapali Marg, Vaishali Nagar, Jaipur-302021.
9. The web-manager - www.gstcouncil.gov.in
10. Guard File.