


<p align="center">GUJARAT AUTHORITY FOR ADVANCE RULING</p> <p align="center">GOODS AND SERVICES TAX</p> <p align="center">A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,</p> <p align="center">AHMEDABAD – 380 009.</p>	
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ADVANCE RULING NO. GUJ/GAAR/R/2020/09

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/66)

Date: 19.05.2020

Name and address of the applicant	:	M/s Raj Quarry Works Tulsi Gam, Taluka:Savali, Vadodara.
GSTIN/ User Id of the applicant	:	24AADFR5577N1ZN
Date of application	:	08.12.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	i) Classification of goods and/or services or both. v) Determination of the liability to pay tax on any goods or services or both: vii) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results to a supply of goods or services or both, within the meaning of that term.
Date of Personal Hearing	:	12.03.2020
Present for the applicant	:	Ms. Jigna Shah (Autho.Representative)

1. M/s. Raj Quarry Works, Tulsi Gam, Taluka Savali, Vadodara having a GSTIN : 24AADFR5577N1ZN, is a partnership company filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and Section 97 of the GGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the SGST Act.

2. M/s. Raj Quarry Works, is carrying out mining activity on a plot of land leased from the government of Gujarat. The applicant is quarrying “BLACK TRAP” products used for concrete mixing and sells it to the customers. BLACKTRAP material attracts GST at 5% under Heading 2517 in Schedule-I.

3. The Applicant has entered into Quarrying lease/license agreement for “BLACKTRAP” material with the Government of Gujarat. The lease was granted vide Collector, Panchmahal’s Order No. AGG/QL/16750/1583 to 1587 dated 11.03.2010. The said order is pursuant to Lease Agreement signed between the applicant and Govt. of Gujarat. The said lease is operative for 10 years from 19.06.2010 to 18.06.2020. The applicant lease holder as per the terms and condition is required to pay Rent of Rs. 2,62,147/- per year or Royalty @ Rs. 250/- per Metric Ton , whichever is higher to the Govt. Of Gujarat.

4. The Applicant seeks Advance Ruling on the following questions :

The applicant vide their letter dated 18.01.2019 has submitted re-drafted question on which seeks Advance Ruling and said questions are as under :

- (i) What is the classification of service provided in accordance with Notification No. 11/2017-CT (Rate) dated 28.06.2017 read with annexure attached to it, issued by the State Government to M/s Raj Quarry Works, for which royalty is being paid. Whether said service can be classified under Tariff Heading 9973, specifically under 997337 as Licensing services for the right to use minerals including its exploration and evaluation or as any other service?
- (ii) What is rate of GST on given services provided by State of Gujarat to M/s Raj Quarry Works for which Royalty is being paid?
- (iii) Whether services provided by the State Government is governed by applicability of Notification No 13/2017-CT(Rate), dated 28.06.2017 under entry number 5 and whether M/s Raj Quarry Works is taxable person in this case to discharge GST under reverse charge mechanism or whether given service is covered by exclusion clause number (1) of entry no 5 and State Government is liable to discharge GST on same?

Grounds for application/interpretation of law :

5. The applicant submitted that he is carrying out mining activity on a plot of land leased from the government of Gujarat, paying dead rent / royalty for the same. The applicant understands that this payment of dead rent / royalty to the Government of Gujarat is for the purpose of service of granting “Right to Use” minerals.

6. Further, applicant submitted that in exercise of power conferred under section 9(1) of the CGST Act, 2017, Notification No. 11/2017-CT (Rate) dated 28/06/2017 has been issued which notifies the Central tax, on intra state supplies of service description along with Tariff heading in accordance with the

scheme of classification is specified which are subject to specific conditions. Along with said Notification No. 11/2017-CT(Rate), dated 28/06/2017 an annexure has also been appended with it, in which serial no. 257 specify that the Group 9733 includes sub heading 997337 which is for- "Licensing services for the right to use minerals including its exploration and evaluation."

7. The applicant submitted that in the instant case since the Lease Agreement is for mining, the classification of such services in accordance with Not. No. 11/2017-CT (Rate) dated 28.06.2017, is covered at Sr. No. 17 of the notification.

8. The applicant further submitted that services of right to use natural resources gets classified under tariff 9973 and since description of services under serial no. 17(i) to (v) does not cover such services of right to use minerals therefore, it would fall under the residuary entry at serial no. 17(viii). Being so, rate of tax applicable on such services, as provided therein, shall be the same rate of tax as applicable on supply of goods involving transfer of title in goods.

9. The applicant submitted that in view of the above, service charge by way of annual dead rent or royalty paid for services of granting of use minerals would attract GST rate as applicable on supply of minerals which is being extracted through such mining and same is to be paid by them as per RCM provision.

10. The applicant further submitted that therefore they understood that tax on Right to use service provided by the State government for exploration & mining of the minerals "BLACKTRAP"-material used for concrete mixing, that are classified under Tariff heading 2517 and GST leviable @ 5% (2.5%+2.5%).

10. The applicant has relied upon the decision of Haryana Authority on Advance Ruling reported in 2018 (18) GSTL 58 (AAR GST) in the case of M/s. Pioneer Partners wherein it was held that royalty paid towards mining rights of "stone boulders" taxable at 5% under reverse charge.

11. The applicant further submitted that Govt. Of India has issued a new Notification No. 27/2018-CT(Rate) dated 31.12.2018 interalia amending the earlier Notification No. 11/2017 dated 28.06.2017.

Findings and Discussion

12. We have considered the submissions made by the Applicant in their application for advance ruling as well as the additional submissions made by authorised signatory, during the personal hearing proceedings on 10-01-2019 before this authority and we have also considered the additional submissions made on 31.05.2019. We also considered the issue involved, on which advance

ruling is sought by the applicant, relevant facts & the applicant's interpretation of law. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the SGST Act.

13. The applicant is engaged in the business of mining activity on a plot of land leased from the government of Gujarat and exploring, drilling, processing etc., of products derived from such mines and stone quarry lands. The applicant is quarrying "BLACK TRAP" products used for concrete mixing and sells it to the customers. BLACKTRAP material attracts GST at 5% under Heading 2517 in Schedule-I.

14. The Applicant has entered into Quarrying lease/license agreement for "BLACKTRAP" material with the Government of Gujarat. The lease was granted vide Collector, Panchmahal's Order No. AGG/QL/16750/1583 to 1587 dated 11.03.2010. The said order is pursuant to Lease Agreement signed between the applicant and Govt. Of Gujarat. The said lease is operative for 10 years from 19.06.2010 to 18.06.2020. The applicant lease holder as per the terms and condition is required to pay Rent of Rs. 2,62,147/- per year or Royalty @ Rs. 250/- per Metric Ton, whichever is higher to the Govt. Of Gujarat. The applicant had sought Advance Ruling as mentioned above.

15. The applicant has obtained Government land on lease for quarrying BLACK TRAP Material and in turn applicant pays Royalty to the Government of Gujarat. The leasing of the Government land to the applicant is considered as supply of service as per sub-section (1) of Section 7 of the CGST Act, 2017, which is narrated as under:

7. (1) For the purposes of this Act, the expression "supply" includes :

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- (b) import of services for a consideration whether or not in the course or furtherance of business; and
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration.

(1A) where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

Further, the activities mentioned in the Entry No. 2 of the Schedule II relate to the

activities to be treated as supply of goods or supply of services with regard to the Land and Building which is given as under:

- (a) Any lease, tenancy, easement, license to occupy land is supply of service

Therefore, from the above leasing of the Government land to the applicant to carry out the activity of the quarrying is a supply of service to the applicant.

16. Regarding the classification of service received by the applicant Annexure to the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 have been referred. The said Annexure prescribes the Service Accounting Code for each type of services, details of the following services which are relevant to the transaction of the applicant is as under:

Heading 9973 Leasing or rental services with or without operator

Group 99731	Leasing or rental services concerning machinery and equipment with or without operator
Group 99732	Leasing or rental services concerning other goods
Group 99733	Licensing services for the right to use intellectual property and similar products

The service received by the applicant is not covered under Group 99731 or Group 99732. We therefore look at the services covered under Group 99733 or else by any other group.

The Group 99733 consists of the following Headings

Service Code (Tariff)	Service Description
997331	Licensing services for the right to use computer software and databases
997332	Licensing services for the right to broadcast and show original films, sound recordings, radio and television programme and the like
997333	Licensing services for the right to reproduce original art works
997334	Licensing services for the right to reprint and copy manuscripts, books, journals and periodicals
997335	Licensing services for the right to use research and development products
997336	Licensing services for the right to use trademarks and franchises
997337	Licensing services for the right to use minerals including its exploration and evaluation
997338	Licensing services for right to use other natural resources including telecommunication spectrum
997339	Licensing services for the right to use other intellectual property products and other resources nowhere else classified

From the above, it is seen that the nature of service received by the application is covered under the Service Accounting Code 9973 37 - Licensing services for the right to use minerals including its exploration and evaluation. The Government has been providing the service of licensing services for the right to use minerals

after its exploration and evaluation to the applicant and applicant has to pay a consideration in the form of rent/ royalty to the Government for the same.

17. The Sectoral FAQ published by the C.B.E. & C. {<https://cbic-gst.gov.in/sectoral-faq.html>} in reply of Q. No. 30 of “Government Services” it is categorically state that royalty payment made towards Licensing services for exploration of natural resources is treated as supply of services. The extract of the same is as under:

“The Government provides license to various companies including Public Sector Undertakings for exploration of natural resources like oil, hydrocarbons, iron ore, manganese, etc. For having assigned the rights to use the natural resources, the licensee companies are required to pay consideration in the form of annual license fee, lease charges, royalty, etc. to the Government. The activity of assignment of rights to use natural resources is treated as supply of services and the licensee is required to pay tax on the amount of consideration paid in the form of royalty or any other form under reverse charge mechanism.”

18. Therefore, payment of rent/royalty is for license given to extract minerals and the amount of rent/royalty paid is based on the quantum of mineral extracted. Hence it is covered under Service Accounting Code 997337 - Licensing services for the right to use minerals including its exploration and evaluation, as it is a license to extract mineral ore and also the right to use such minerals extracted.

19. The applicability of GST rate for the aforementioned service is based on the classification of service. In the present case, the mining rights so granted is covered under the sub-heading 9973 37 that specifies - ‘Licensing services for the right to use minerals including its exploration and evaluation’

19.1 Regarding the rate of tax applicable on the above supply Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 is referred and found that the entries related to SAC 9973 are as under :

Sl. No.	Chapter Section or Heading	Description of Service	Rate (per cent)	Conditions
17	Heading 9973 (Leasing or rental services, with or without operator)	(i)		
		(ii)		
		(iii) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.	Same rate of central tax as on supply of like goods involving transfer of title in goods	-
		(iv)		
		(v)		
		(vi) Leasing or rental services, with or without operator, other than (i), (ii), (iii), (iv) and (v) above.	Same rate of central tax as applicable	-

			on supply of like goods involving transfer of title in goods	
35	Heading 9997	Other services (washing, cleaning and dyeing services; beauty and physical well-being services; and other miscellaneous services including services nowhere else classified).	9	-

Since the services covered under the license to extract mineral and also the right to use such minerals extracted is not covered under any of the sub-entries (i) to (v) of Serial No. 17 as such these entries covers the services other than leasing of mine i.e. entry (i) & (ii) cover the service of “Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of goods other than Information Technology software” and “in respect of Information Technology software”, entry (iii) cover the Service of “Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration”, entry (iv) cover the service “Any transfer of right in goods or of undivided share in goods without the transfer of title thereof” and entry(v) cover the service “Leasing of aircrafts by an operator for operating scheduled air transport service or scheduled air cargo service by way of transaction covered by clause (f) paragraph 5 of Schedule II of the Central Goods and Services Act, 2017”, the service received by the applicant is not at all leasing of goods but rather “Licensing services for the right to use minerals including its exploration and evaluation accordingly, it needs to be seen whether the same is covered under Entry No. (vi) of Serial No. 17 attracting the tax rate which is same as that applicable on the supply of like goods involving transfer of title in goods or under the Serial No. 35 which is related to the other miscellaneous services including services nowhere else classified.

19.2 Serial No. 17 of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 was amended by Notification No. 31/2017-Central Tax (Rate), dated 13-10-2017 and entry no. (vi) was inserted, then after the amendment the entries look as under :

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
17	Heading 9973 (Leasing or rental services, with or without operator)	(i)		
		(ii)		
		(iii) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.	Same rate of central tax as on supply of like goods involving transfer of title in goods	-
		(iv)		
		(v)		

		(vi) Leasing of motor vehicles purchased or leased prior to 1st July, 2017	65 per cent of the rate of central tax as applicable on supply of like goods involving transfer of title in goods Note: Nothing contained in this entry shall apply on or after 1st July, 2020.	-
		(vii) Leasing or rental services, with or without operator, other than (i), (ii), (iii), (iv), (v) and (vi) above.	Same rate of central tax as applicable on supply of like goods involving transfer of title in goods	-
35	Heading 9997	Other services (washing, cleaning and dyeing services; beauty and physical well-being services; and other miscellaneous services including services nowhere else classified).	9	-

19.3 Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017, Serial No. 17 was further amended by Notification No. 1/2018-Central Tax (Rate), dated 25-1-2018 and entry No. (vii) was inserted, then after the amendment the entries look as under :

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
17	Heading 9973 (Leasing or rental services, with or without operator)	(i)		
		(ii)		
		(iii) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other Valuable consideration.	Same rate of central tax as on supply of like goods involving transfer of title in goods	-
		(iv)		
		(v)		
		(vi) Leasing of motor vehicles purchased or leased prior to 1st July, 2017	65 per cent of the rate of central tax as applicable on supply of like goods involving transfer of title in goods Note : Nothing contained in this entry shall apply on or after 1st July, 2020.	-
		(vii) Time charter of vessels for transport of goods.	2.5	Provided that credit of input tax charged on goods (other than on ships, vessels including bulk carriers and tankers) has not been taken (please refer to Explanation no. (iv))
		(viii) Leasing or rental services, with or without operator, other than (i), (ii), (iii), (iv), (v), (vi) and (vii) above.	Same rate of central tax as applicable on supply of like goods involving transfer of title in goods	-
35	Heading 9997	Other services (washing, cleaning and dyeing services; beauty and physical well-being services; and other miscellaneous services including services nowhere else classified).	9	-

19.4 The Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017, Serial No. 17 was again amended by Notification No. 27/2018-Central Tax (Rate),

dated 31-12-2018 and entry No. (viia) was inserted, then after the amendment the entries look as under :

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
17	Heading 9973 (Leasing or rental services, with or without operator)	(i)		
		(ii)		
		(iii) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.	Same rate of central tax as on supply of like goods involving transfer of title in goods	-
		(iv)		
		(v)		
		(vi) Leasing of motor vehicles purchased or leased prior to 1st July, 2017	65 per cent of the rate of central tax as applicable on supply of like goods involving transfer of title in goods Note : Nothing contained in this entry shall apply on or after 1st July, 2020.	-
		(vii) Time charter of vessels for transport of goods	2.5	Provided that credit of input tax charged on goods (other than on ships, vessels including bulk carriers and tankers) has not been taken (please refer to Explanation No. (iv))
		(viia) Leasing or renting of goods	Same rate of central tax as applicable on supply of like goods involving transfer of title in goods	-
		(viii) Leasing or rental services, with or without operator, other than (i), (ii), (iii), (iv), (v), (vi), (vii) and (viia) above.	9	-
35	Heading 9997	Other services (washing, cleaning and dyeing services; beauty and physical well-being services; and other miscellaneous services including services nowhere else classified).	9	-

19.5 Coming to the issue whether the license to extract mineral and also the right to use such minerals extracted is a leasing or rental service, it is clear that what is supplied by the Government is the lease of the right to extract and use mineral and that is not covered by any specific entries in the Serial No. 17 of the Notification and hence falls under the residual entry. We find that the applicant in its application has relied upon the notified rate against Sl. No. 17 of item (vi), as it stood prior to its amendment, for the entire period 1-7-2017 to 31-12-2018. Since, the service received by the applicant is not at all leasing of goods but rather “Licensing services for the right to use minerals including its exploration and evaluation”, the transaction is appropriately covered under the residual entry of Sl. No. ‘17’ of the aforesaid notification. The aforesaid description of service received by the applicant has subsequently been classified against item no. ‘vii’

[From 13-10-2017 to 24-1-2018] and item no. ‘viii’ from 25-1-2018 onwards. The rate prescribed in the relevant notification against aforesaid item is ‘same rate of Central tax as applicable on supply of like goods involving transfer of title in goods’ till 31-12-2018 and 9% thereafter. We also find that the GST rate so prescribed at Sl. No. 17(vi) or at clause (vii) or (viii) after amendment is not implementable due to the absence of any underlying goods.

19.6 On examining the Notification No. 27/2018-Central Tax (Rate), dated 31-12-2018 which has been issued on the recommendations of the GST Council to further amend the Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017, we find that the same has been issued consequent upon decisions of the 31st GST Council meeting held on 22-12-2018. In this connection, for proper understanding of the issue, we have gone through the Agenda for 31st GST Council Meeting. Proposals recommended by Fitment Committee and Minutes of the Meeting of the Council available in GST Council website. Sl. No.‘18’ of Annexure-II of Agenda Item 6, which is relevant to the issue, is reproduced below:

Sl. No.	Proposal	Comments			
18.	To clarify the GST rate applicable on right to	Recommendation : - It is proposed that to bring clarity, the residuary rate entry for Heading 9973 in notification No. 11/2017-C.T. (R), dated 28-6-2017 may be split in two parts as follows.			
	use Intellectual Property and similar products other than IPR	Existing		Proposed	
		Description of Services	Rate (%)	Description of Services	Rate (%)
		Sl. 17 Heading 9973 (Leasing or rental servies with or without operator)			
		(viii) Leasing or rental services, with or without operator other than (i), (ii), (iii), (iv), (v), (vi) and (vii) above.	Same rate of Central Tax as on supply of like goods involving transfer of title in goods.	(viia) Leasing or renting of goods.	Same rate of Central Tax as on supply of like goods involving transfer of title in goods.
				(viii) Leasing or rental services, with or without operator other than (i), (ii), (iii), (iv), (v), (vi), (vii) and (viia) above.	18
		<p>Discussion : 1. Heading 9973 of scheme of classification of services under GST includes “Group 99733 : the licensing services for the right to use intellectual property and similar products”. However, the rate notification No. 11/2017-C.T. (R), dated 28-6-2017, prescribes rate only for transfer or permitting the use or enjoyment of Intellectual Property Rights (IPR). No rate has been prescribed for transfer of intellectual property and similar products other than IPR. IPR, as held in several decisions of the Tribunal and the Courts, refers to rights in intellectual property protected by the relevant IPR law in force. Intellectual property not protected by IPR law in force cannot be termed as IPR.</p> <p>2. The residuary entry for the Heading 9973, i.e. entry Sl. No. 17(viii) prescribes GST rate as “same rate of Central Tax as on supply of like goods involving transfer of title in goods”. However, the intellectual property does not have underlying goods and thus the prescribed rate does not apply to transfer of intellectual property and similar products other than IPR.</p>			

19.7 On thoroughly examining the recommendation of the 31st GST Council it is observed that amendment of Entry Sl. No. 17(viii) was approved merely to clarify the GST rate applicable to the right to use Intellectual Property and similar products other than IPR which are covered under Group 99733. The impugned service received by the applicant is appropriately covered under description 'Licensing services for the right to use minerals including its exploration and evaluation' which is classifiable under SAC 9973 37 under Group 99733. From perusal of Point No. 1 of the Discussion, it is very much clear that the impugned Service is not classifiable under entry No. (iii) and (iv) of the Notification No. 11/2017-Central Tax (Rate). Perusal of Point No. 2 of the Discussion makes it clear that the rate under pre-revised Entry No. (viii) does not apply to "Licensing services for the right to use intellectual property and similar products other than IPR". Since the impugned Service is also the "Licensing services for the right to use intellectual property and similar products other than IPR", the rate under pre-revised Entry No. (viii) is not applicable on it. Since the rate under newly created entry No. (viiia) is same as that of pre-revised entry No. (viii), the impugned Service would not attract this rate and so would also not merit classification under the entry No. (viiia). It is crystal clear that neither entry No. (iii) nor (iv) nor (viiia) would cover the impugned Service. Point No. 2 ibid clearly mentions that for this Service (Licensing services for the right to use intellectual property and similar products other than IPR), the GST Council has carved out a new entry No. (viii) with the Service description "Leasing or rental services, with or without operator, other than (i), (ii), (iii), (iv), (v), (vi), (vii) and (viiia) above" with rate of tax as 18%.

20. The rate of GST applicable on lease of goods may have been prescribed as the rate of GST applicable to supply of like goods involving transfer of title over the goods but the rate of GST prescribed for lease of goods can't be made applicable for leasing of mining area conferring the right to extract and appropriate the minerals. The lease by Government not being a lease of any goods, the conditional rate of tax applicable to sale of like goods cannot be imported for prescribing the rate of GST applicable to leasing of mining area. Therefore, in view of the above discussion of GST Council it is clear that amendments have been carried out vide the aforesaid notification No. 27/2018-CT (Rate) Dated 31.12.2018 to clarify the legislative intent as well as to resolve the unintended interpretations. It is well settled that the legislative intent cannot be defeated by adopting interpretations which is clearly against such interpretations.

21. We rely on the decision of the Hon'ble Supreme Court of India in the case of W.P.I.L. Ltd. v. Commissioner of Central Excise, Meerut, U.P. [2005 (181) E.L.T. 359 (S.C.)] which is also applicable to the present case, wherein a '3' Judges

Bench of the Hon'ble Supreme Court while interpreting applicability of exemption notifications have observed in Paras 15 and 16 as follows :

"15. The Learned Counsel for the appellant is also right in relying upon a decision of this Court in Collector of Central Excise, Shillong v. Wood Craft Products Ltd. [(1995) 3 SCC 454]. In that case, this Court held that a clarificatory notification would take effect retrospectively. Such a notification merely clarified the position and makes explicit what was implicit. Clarificatory notifications have been issued to end the dispute between the parties.

16. In view of the consistent policy of the Government of exempting parts of power driven pumps utilized by the factory within the factory premises, it could not be said that while issuing Notification No. 46/94 of March 1, 1994, the exemption in respect of said item which was operative was either withdrawn or revoked. The action was taken only with a view to rescinding several notifications and by issuing a composite notification. The policy remained as it was and in view of demand being made by the Department, a representation was made by the industries and on being satisfied, the Central Government issued a clarificatory Notification No. 95/94 on April 25, 1994. It was not a new notification granting exemption for the first time in respect of parts of power driven pumps to be used in the factory for manufacture of pumps but clarified the position and made the position explicit which was implicit.

21.1 The ratio of the aforesaid decision of the Hon'ble Supreme Court of India is squarely applicable to the instant case in as much as the amendment of the Notification No. 11/2017-(Rate)- Central Tax dated 28.06.2017 vide Notification No. 27/2018 (Rate)- Central Tax dated 31.12.2018 is of clarificatory notification and therefore impugned service 'Licensing services for the right to use minerals including its exploration and evaluation' which is classifiable under SAC 9973 37 will be covered under residual entry No. (viii) of the Notification No. 11/2017-(Rate) Central Tax dated 28.06.2017 as amended vide Notification No. 27/2018-CT (Rate) dated 31.12.2018. Since the insertion of entry (viiia) and (viii) vide said amendment Notification was being nature of clarification of the GST rate in respect of "right to use Intellectual Property and similar products other than IPR", the applicability of said residual entry (viii) would be from the date of Not. No. 11/2017-(Rate) Central Tax as the same view is held by Hon'ble Supreme Court of India. Accordingly, impugned service 'Licensing services for the right to use minerals including its exploration and evaluation' which is classifiable under SAC 9973 37 will be covered under residual entry No. (viii) of the Notification No. 11/2017-(Rate) Central Tax dated 28.06.2017 and would attract GST rate 18% {9% CGST+9% SGST } from the period of July, 2017 onwards.

22. The applicant has referred to Advance Ruling in the case of M/s. Pioneer Partners reported in 2018 (18) GSTL 58 (AAR-GST), wherein the Haryana Authority for Advance Ruling held that "The services for the right to use minerals including its exploration and evaluation, as per Sr. No. 257 of the annexure appended to Notfn. No. 11/2017-C.T. (Rate), dated 28-6-2017 is included in Group 99733 under Heading 9973. Hence it attracts the same rate of tax as on

supply of the like goods involving transfer of title in goods. The said Authority have passed their rulings without properly appreciating the consequences of amendments made vide Notification No. 27/2018-Central Tax (Rate), dated 31-12-2018. Further, as per Section 103 of the CGST Act, any Advance Ruling is binding on the Applicant who has sought it and on the concerned officer or the jurisdictional officer in respect of the Applicant. Accordingly, AARs Ruling as cited above can't be relied upon in the present case of the Appellant.

23. Regarding the question who is liable to pay the above tax, Notification No. 13/2017-Central Tax (Rate), dated 28-6-2017 stipulates in Serial No. 5, that the tax leviable under Section 9 of the CGST Act shall be paid on reverse charge basis by the recipient of such services, and the entry reads as under:

Sl. No.	Category of Supply of Services	Supplier of Service	Recipient of Service
5	<p>Services supplied by the Central Government, State Government, Union Territory or Local Authority to a business entity, excluding -</p> <p>(1) renting of immovable property, and</p> <p>(2) services specified below -</p> <p>(i) services by Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union Territory or local authority;</p> <p>(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) transportation of goods or passengers</p>	Central Government, State Government, Union Territory or local authority	Any business entity located in the taxable territory

23.1 The answer of the applicant question whether they are covered under exclusion clause (1) of entry No.5 of the said Notification is that their service is “Licensing services for the right to use minerals including its exploration and evaluation” whereas entry No. 1 is “renting of immovable property”. The applicant has taken a mine on lease for quarrying minerals from the Govt. Of Gujarat and said service is not service of Renting of immovable property therefore applicant does not fall under exclusion entry No. 1 of the said Notification. The transaction/service i.e. “leasing of mines” is between the State Government and applicant and the services are supplied by the State Government to the applicant which is a business entity. The subject transaction/service being a supply is not covered under the exceptions, the applicant being the recipient of such service shall have to pay tax on the said supply under reverse charge mechanism as per Notification No. 13/2017-Central Tax (Rate), dated 28-6-2017. Hence the applicant is liable to pay GST under reverse charge mechanism

24. In view of the foregoing, we rule as follows:

RULING

- (i) What is the classification of service provided in accordance with Notification 11/2017-CT (Rate) dated 28.06.2017 read with annexure attached to it, issued by the State Government to M/s Raj Quarry Works, for which royalty is being paid. Whether said service can be classified under Tariff Heading 9973, specifically under 997337 as Licensing services for the right to use minerals including its exploration and evaluation or as any other service?

Ans. The activity undertaken by the applicant is classifiable under Heading 9973 (Leasing or rental services, with or without operator), as mentioned in the annexure at Serial No. 257 (Licensing services for the right to use minerals including its exploration and evaluation) sub-heading 997337 of Notification Number 11/2017-C.T. (Rate), dated 28-6-2017

- (ii) What is rate of GST on given services provided by State of Gujarat to M/s Raj Quarry Works for which Royalty is being paid?

Ans. The activity undertaken by the applicant attracts 18% GST (9% CGST+ 9% SGST).

- (iii) Whether services provided by the State Government is governed by applicability of Notification No 13/2017-CT(Rate), dated 28.06.2017 under entry number 5 and whether M/s Raj Quarry Works is taxable person in this case to discharge GST under reverse charge mechanism or whether given service is covered by exclusion clause number (1) of entry no 5 and State Government is liable to discharge GST on same?

Ans. The applicant is not covered under exclusion clause 1 of Sr. No. 5 of the Notification. Therefore, applicant is liable to discharge tax liability under reverse charge mechanism vide Notification No. 13/2017-C.T. (Rate), dated 28-6-2017 (as amended from time to time) of the CGST Act, 2017.

(SANJAY SAXENA)

(MOHIT AGRAWAL)

MEMBER

MEMBER

Place: Ahmedabad

Date: 19.05.2020.