



**HARYANA AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX, HARYANA
VANIJYA BHAWAN, PLOT NO I-3, SECTOR 5,
PANCHKULA-134151 (HARYANA)**



ADVANCE RULING NO.HAR/HAAR/R/2018-19/36 dated 08.01.2019


(In Application No.: 36 dated 12.10.2018)

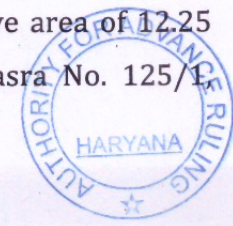
Name & Address of the Applicant	: M/s KAYDEN INFRA ENGINEERING PRIVATE LIMITED Village - Ramalwas, Charkhi Dadri, Bhiwani, Haryana-127021
GSTIN of the Applicant (if registered)	: 06AAFCK6916K1Z9
Date of Application	: 12.10.2018
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	: (b) Applicability of a notification issued under the provisions of this Act; and (e) Determination of the liability to pay tax on any goods or services or both.
Date of Personal Hearing	: 24.12.2018
Present for the Applicant	: Sh. Yogesh Singh, Director of Company Sh. Ganesh Kanodia, CA

ORDER UNDER SUB-SECTION (4) OF SECTION 98 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND SUB-SECTION (4) OF SECTION 98 OF THE HARYANA GOODS AND SERVICES TAX ACT, 2017

Factual Background

1. As per submission of the facts, M/s Kayden Infra Engineering Private Limited [hereinafter referred to as the "Applicant"] is a private limited company and is registered under the provisions of Haryana Goods and Services Tax Act, 2017 and Central Goods and Services Tax Act, 2017 with GSTIN-06AAFCK6916K1Z9.
2. The applicant is engaged in the business of mining of minerals (Stones along with associated minor minerals) in the State of Haryana. The applicant has been awarded with one mining contract from the Haryana State Government in respect of mineral mines of "Stone along with associated minor minerals" at "Ramalwas" having tentative area of 12.25 hectares in Tehsil Dadri, District Bhiwani, falling in Khasra No. 125/1 Haryana.


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3. As submitted by the applicant, he has to pay Royalty or Dead Rent, whichever is higher, to the Haryana Government against securing the mineral extraction rights on monthly basis. Royalty is calculated based upon the quantum of aggregate stone extracted and Dead Rent is the fixed rent (based upon the area on which extraction is permitted) payable by the company irrespective of the quantum of minerals extracted.
4. That in light of the above, the applicant wants to understand what is the applicable rate of GST on the mineral mining rights in lieu of which Royalty is being paid by the applicant. The applicant has framed the following questions for ruling by the Advance Ruling Authority:-
- (a) Since, the applicant is the person responsible to pay GST on the Mineral mining rights in lieu of which Royalty is being paid, at what GST rate should it discharge its GST liability whether at the rate of 5% (Rate applicable on extracted raw material) or 18% (Residual category)?
 - (b) In case the applicable GST rate is 5%, whether the applicant could adjust its future GST liability, out of excess GST paid on such Mineral Mining Rights at the rate of 18% in the past?

Comments of the concerned Officer under sub-section (1) of section 98 of the CGST/HGST Act, 2017

5. The DETC (ST), Bhiwani has submitted his comments on 05/12/2018 on the questions raised by the applicant. It has been stated that the applicant is engaged in the business of mining of bouldering and extraction of the minor minerals in the Village Ramalwas, Distt. Bhiwani under tariff heading 2516 and supply the same @5% GST (i.e. 2.5% CGST + 2.5% HGST). It is stated by the officer that as per section 9(3) of the CGST/HGST Act, 2017, GST is payable on the royalty amount under RCM by the recipient of such services.
6. The concerned officer further stated that as per advance ruling in the case of M/s Pioneer Partners, Pichopa Kalan (Bhiwani), the services for the right to use minerals including its exploration and evaluation, as per serial number 257 of the annexure appended to notification No. 11/2017-Central Tax (Rate), dated 28.06.2017 is included in group 99733 under head 9973. Hence, as per relevant entry of the said notification No. 11/2017-Central

Tax (Rate), dated 28.06.2017, it attracts same rate of tax as on supply of the like goods involving transfer to title of goods which as per entry 124 of schedule -I of the notification No. 01/2017-Central Tax (Rate), dated 28.06.2017 read with corresponding notification under HGST Act, is 5% GST (2.5%CGST + 2.5%HGST).

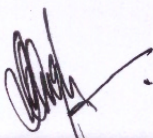
Record of Personal Hearing

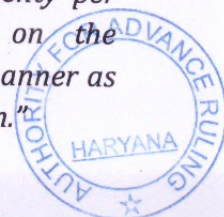
7. The applicant was accorded the opportunity of personal hearing on 24.12.2018. Sh. Yogesh Singh, Director of the Company and Sh. Ganesh Kanodia, CA appeared on behalf of the applicant. Department was represented by Sh. R. K. Lamba, ETO from the office of DETC (ST), Bhiwani. The question put forth regarding applicable rate of tax on mining rights being covered under section 97(2) was admitted for ruling. However, the second question, regarding allowing the benefit of already paid excess GST (at the rate of 18%) on such Mineral Mining Rights against applicant's future GST liability, being out of the scope of authority as not covered by any of the provisions of section 97(2) of CGST/HGST Act, was rejected.
8. As regards the merits of first question, it was observed that the question is squarely covered by the facts of an earlier ruling dated 29.06.2018 by the authority in case of M/s Pioneer Partners, Pichopa Kalan, Bhiwani. After detailed discussion with all present, decision was reserved, that is being released today.

Discussion and Findings of the Authority

9. Section 9 of the CGST Act, 2017 and the HGST Act, 2017 is charging section of Goods and Services Tax. The sub section (1) of section 9 of the CGST Act, 2017 states that:-

"Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person."


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10. The term "Services" has been defined under section 2(102) of the CGST Act, 2017, as under:-


"Services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged."

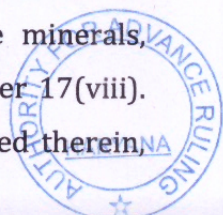
11. In exercise of powers conferred under sub section (1) of section 9 of the CGST Act, 2017, notification No. 11/2017-CT (Rate) dated 28.06.2017 has been issued which notifies the Central Tax, on intra state supplies of service description along with tariff heading in accordance with the scheme of classification as specified, which are subject to specific conditions. Along with the said notification, an annexure has also been appended with it, which at serial number 257 specifies that the Group 99733 includes sub heading 997337 which is for:-

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

Royalty or Dead Rent paid by the applicant to Government is nothing but an amount paid for getting right to use the minerals granted to it for a specified period as per terms of the lease.

12. In the given transaction, mining contract has been awarded to the applicant for right to use minerals namely "Stone along with associated minor minerals". Hence, it is argued that the services received by the applicant from state government in respect of grant mining contract are classifiable under sub heading 997337 as covered under entry 257 of the annexure appended to the notification No. 11/2017-CT (Rate) dated 28.06.2017. Further, GST on the said supply of services is payable according to the entry at sr. no. 17 of the table in said notification.
13. Since a perusal of classification of services of right to use natural resources classify under tariff 9973 and since description of services under serial No. 17 (i) to (vii) does not cover such services of right to use minerals, therefore, it would fall under the residual entry at serial number 17(viii). Being so, the rate of tax applicable on such services, as provided therein,


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shall be the same rate of tax as applicable on supply of like goods involving transfer of title in goods.

14. As stated by the concerned officer, the goods i.e. "Stone along with associated minor minerals" mined by the applicant are classifiable under tariff heading 2516. Accordingly, GST @ 5% is applicable on the services of *licensing services for the right to use minerals* as received by the applicant from State Government.
15. On the basis of above, it is evident that service charge by way of annual dead rent or royalty paid for services of granting right to use mineral would attract GST rate as applicable on supply of mineral which is being extracted through such mining.
16. Further, in view of entry at sr. no. 5 of the CGST notification no. 13/2017-CT (Rate) dated 28.06.2017, GST is payable on reverse charge basis by the recipient of above services i.e. the applicant in the present case.

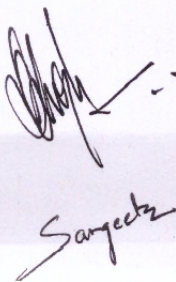
Advance Ruling under section 98 of the CGST/HGST Act, 2017

17. In the backdrop of above discussions and findings, subject to the provisions of Section 103 of the CGST/HGST Act, 2017 the advance ruling on the question admitted for ruling is pronounced as under:-

- (a) Since, the applicant is the person responsible to pay GST on the Mineral mining rights in lieu of which Royalty is being paid, at what GST rate should it discharge its GST liability whether at the rate of 5% (Rate applicable on extracted raw material) or 18% (Residual category)?

Ruling

The services for the right to use minerals including its exploration and evaluation, as per Sr. No. 257 of the annexure appended to notification no. 11/2017-CT (Rate) dated 28.06.2017 is included in group 99733 under heading 9973. The royalty/dead rent paid/payable to the Government by the applicant is consideration against the transfer of right to use minerals including its exploration and evaluation as per the lease granted by the Government to the applicant. Further, the said services being covered in entry at Sr. No. 17 (viii) of the table in notification no.


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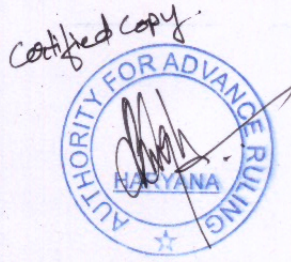
11/2017-CT (Rate) dated 28.06.2017. Being so, the rate of tax applicable on such services, as provided therein, shall be the same rate of tax as applicable on supply of like goods involving transfer of title in goods. The goods involved being classifiable under tariff heading 2516, GST @ 5% (2.5% Central Tax + 2.5% State Tax) is payable on the said goods and likewise on the services involved in question.

- (b) In case the applicable GST rate is 5%, whether the applicant could adjust its future GST liability, out of excess GST paid on such Mineral Mining Rights at the rate of 18% in the past?

Ruling

As discussed above, the second question, being not covered in any of the provisions of section 97(2) of CGST/HGST Act, was rejected. It does not warrant ruling from the authority being out of its scope.

Ordered accordingly.
To be communicated.
Dated: 08.01.2019
Panchkula.



Sangeeta
(Sangeeta Karmakar)
Member CGST

[Signature]
(Vijay Kumar Singh)
Member SGST

Regd. AD/Speed Post

M/s KAYDEN INFRA ENGINEERING PRIVATE LIMITED
Village - Ramalwas, Charkhi Dadri, Bhiwani, Haryana-127021

Copy to

1. Commissioner of CGST, Near Jat Bhavan, Delhi By-pass, Rohtak.
2. The Deputy Excise & Taxation Commissioner (ST), Bhiwani
3. The Assistant Commissioner, CGST, City Centre Huda, Bhiwani.