

**THE AUTHORITY ON ADVANCE RULINGS IN
KARNATAKA GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009
Advance Ruling No. KAR ADRG 65/ 2019**

Dated : 21st September, 2019

Present:

1. Sri. Harish Dharnia,
Additional Commissioner of Central Tax, Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of Commercial Taxes . Member (State Tax)

1.	Name and address of the applicant	M/s. Naren Rocks and Mines Private Limited, No.24, Old No.56B/34, Lower Palace Orchards, Bangalore-560003.
2.	GSTIN or User ID	29AADCN1012B1Z6
3.	Date of filing of Form GST ARA-01	06.09.2018
4.	Represented by	Sri. K. Shivarajan, Authorised Representative
5.	Jurisdictional Authority - Centre	The Commissioner of Central Tax, North, HMT Bhawan, Bengaluru-560032
6.	Jurisdictional Authority - State	LGSTO-130, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000-00 under CGST Act and Rs.5000 under SGST Act vide CIN No. 18082900380926 dated 28.08.2018

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

1. M/s. Naren Rocks and Mines Private Limited, No.24, Old No.56B/34 Lower Palace Orchards, Bangalore- 560003 having a GSTIN: 29AADCN1012B1Z6, is a private limited company filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and Section 97 of the KGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.



2. M/s. Naren Rocks and Mines Private Limited, is engaged in the business of developing, owning, hiring, leasing or otherwise acquiring or disposing off any rights in any mines, stone quarry lands, and exploring, drilling, processing etc., of all types of products derived from such mines and stone quarry lands. The applicant is quarrying building stones and sells it to the customers. Building stones attracts GST at 5% under Heading 25169020 in Schedule I.

3. The Applicant has entered into Quarrying lease/license agreement for "building stones" with the Government of Karnataka (Department of Mines and Geology) and is required to pay royalty @ Rs 60 per MT of building stones as per the Mines and Minerals (Development & Regulation) Act, 1957 ("MMDR Act") read with Karnataka Minor Mineral Concession Rules, 1994 ("KMMC Rules"). The Applicant is also contributing 30% of royalty amount to District Mineral Foundation ("DMF") as per the MMDR Act read with Karnataka District Mineral Foundation Rules, 2016 ("KDMF Rules"). The applicant has been paying GST on reverse charge under heading 997337 at 18% on payments made towards royalty and DMF as per Notification 13/2017 Central Tax (Rate) dated June 28, 2017, i.e. Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding the specified services, which are chargeable to tax under reverse charge.

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

- I. Whether royalty payments in respect of quarrying /mining lease as per the MMDR Act read with the KMMC Rules would amount to supply of goods or service under the Central Goods and Service Tax Act, 2017 (CGST Act) and the Karnataka Goods and Service Tax Act, 2017 (KGST Act)?
- II. Where it is clarified that quarrying /mining royalty is taxable under CGST Act, whether royalty payment in respect of quarrying/mining lease as per the MMDR Act read with KMMC Rules is in the nature of "Licensing services for the right to use minerals falling under the heading 9973 attracting GST at the same rate of tax as applicable on supply of like goods involving transfer of title in goods or renting of immovable property under the heading 9972 attracting GST at the rate of 18% or residual entry "other services nowhere else classified-999799?"
- III. Applicability of GST and reverse charge implication on contributions to DMF as per the MMDR Act read with KDMF Rules.

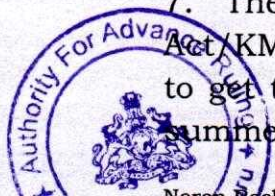
Grounds for Application / Interpretation of law

5. The Applicant submitted that as per Section 7(1) of the CGST Act, the expression "supply" includes –
- a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
 - b) import of services for a consideration whether or not in the course or furtherance of business;
 - c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
 - d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

From the above provision, the applicant submitted that transaction to be treated as supply of goods or services there must be specific activities for a consideration, whereas in this case while executing quarrying / mining lease no service/activity is rendered either by the State Government or the quarrying/mining lease holder, as such, no question arises to levy GST. The payment of royalty by a lessee is also a statutory obligation and is paid in proportion to the mineral exploited for sale, use or consumption. Hence, it cannot be treated as a 'consideration' for any service/activity. In either case, the royalty does not come into ambit of "supply". The Royalty is 'profit a pendre', that is, share of profit received from land which is not taxable under GST. Sharing of profit will not be a supply from one person to another subjected to levy of GST. Therefore, in their view, royalty payment is not subject to GST since there is no 'supply'.

6. The applicant further submitted that payment of royalty as per MMDR Act read with KMMC Rules is not for service of renting of immovable property, but it is licensing service for right to extract minerals. The payment of royalty, even if it is taxable, should be classified as licensing service for right to extract minerals and taxed at 5% (being the rate of tax for supply of Building stones). Royalty is in the nature of periodical payments to be made by the lessee under his covenants in consideration of the various benefits which he is granted by the lessor. Royalty on quarrying / mining is collected by the State Government for right given to the applicant to extract mineral and is payable based on quantum mineral removed or consumed.

7. The applicant submitted that the term 'Royalty' is not defined in MMDR Act/KMMC Rules. However, applicant has referred some judicial decisions to get the meaning of royalty. Many of these judicial decisions have been summed up in the judgment delivered by the Supreme Court in the case of



the India Cement Ltd., etc. V. State of Tamil Nadu, etc. (AIR 1990 SC 85). The case was primarily on the legality of the cess on royalty. However, the meaning and concept of royalty has also been discussed in the judgement in an incidental manner. Although royalty has not been explicitly defined, the Supreme Court held that **royalty is separate and distinct from land revenue and that it is not related to land as a unit. On the other hand, royalty is payable on a proportion of the minerals extracted and it has relationship to mining.**

8. Further, the applicant has drawn reference to the Sectoral FAQ's published by Central Board of Indirect Taxes and Customs ("CBIC") relating to 'Mining', wherein it is categorically stated that Royalty payment is made towards Licensing services provided by the Government. The extract of the same is produced 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 right 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"

Further, as also stated above, it is confirmed by CBIC that Royalty payment is chargeable to tax under Reverse charge. Therefore, in our view, royalty payment is classifiable as Licensing services for the right to use minerals.

Sl. No.	Heading	Description of Service	Rate %	Condi tions
17	Heading 9973 (Leasing or rental services, with or without operator	(i)Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of goods other than Information Technology software.	6	-
		(ii)Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of Information	9	-

		Technology software. (Please refer to Explanation no.(v)).		
		(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) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof.	Same rate of central tax as on supply of like goods involving transfer of title in goods	
		(v) 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.	2.5	Provided that credit of input tax charged on goods used in supplying the service has not been taken.
		(vi) Leasing or rental services, with or without operator other than (i), (iii), (iv) and (v) above.	Same rate of central tax as applicable on supply of like goods involving transfer of title in goods.	

9. Further applicant submitted that the Government has clarified that licensing services provided for exploration of natural resources would be covered under reverse charge mechanism. Services by the Government in the nature of "Renting of Immovable property" is under the exclusion list of Notification 3/2017 – Central Tax (Rate) dated 28th June, 2017, and is taxable under forward charge. Therefore, Royalty payment cannot be treated to be service in the nature of renting of Immovable property as the same is chargeable to tax under forward charge. Therefore, licensing services cannot be treated as Renting of Immovable property which falls under the heading 9972 attracting GST at the rate of 18%.



10. The applicant further submitted that the Quarrying lease/mining lease provided by the Government to the applicant falls under the service heading 997337 since the quarrying / mining lease has been granted for the right to use the minerals. Serial No. 17 of Notification No.11/2017 Central Tax (Rate) dated June 28, 2017 provides for the rate of tax in respect of services falling under the Heading 9973 as under:

Thus, the services pertaining to "licensing services for the right to use minerals including its exploration and evaluation" which falls under the Group 9973 i.e., "Leasing or rental services" but does not fall under any of the referred Clauses (i) to (v) of group 9973 but would be subject to GST under the residual clause i.e. Clause (vi). Further, Clause (vi) provides for the rate of GST to be the same tax as applicable on supply of like goods involving transfer of title in goods. In the present case, license is for the right to use 'minerals' i.e. Building Stone and hence the GST rate for transfer of title in minerals would be applicable for the said services i.e. GST at 5% (2.5% CGST + 2.5% SGST). Thus, GST is liable to paid on royalties at 5% (2.5% CGST + 2.5% SGST) on reverse charge basis which is the rate equal to rate of GST at which the Building stone extracted are liable when supplied as supply of goods.

11. The applicant further submitted that DMF is a trust set up as a non-profit body, in those districts affected by the quarrying/mining works, to work for the interest and benefit of persons and areas affected by quarrying/mining related operations in such manner as may be prescribed by the State Government. It is funded through the contributions from miners. There is no activity or supply of any goods or services being undertaken by the said District Mineral foundation to the Applicant, the amount paid as DMF shall not qualify as consideration as such amount has not been paid in respect of any supply of goods or services. Being so, mere payment of a statutory amount to the District Mineral Foundation shall not qualify as supply of goods or services under GST Act. Once there is no supply of goods or services, question of levying any CGST or SGST does not arise as the taxable event itself has not occurred in this case. The trust established does not fall under the definition of Government as it is an independent body established by Government. Hence, contribution to DMF would not be subject to reverse charge in the hands of the Applicant.

12. Further the applicant made the additional submission regarding the consequence of non-payment to District Mineral Foundation ('DMF') in this regard applicant submitted that the payment to DMF is governed by Section 15 A of the Mines and Minerals (Development and Regulation) Act 1957

('MMDR Act') and Section 25 of the MMDR Act provides that any sum due to the government will be recovered as arrears of land revenue. Also, Section 15(4) of the Act empowers the State Government to make rules for regulating the manner in which the DMF shall work. In exercise of the said powers, Karnataka Government has formulated the District Mineral Foundation Rules, 2016 ('the Rules') to set up a non-profit trust to collect the contribution from the holders of minor mineral concession. The rules do not provide for any consequence for non-payment of contribution to DMF. However, authorities have the power to recover the sum due (contribution amount) as arrears of land revenue.

13. Further the applicant made additional submission regarding whether payment to DMF is in the nature of tax and applicant submitted that Section 15(2) of the CGST Act, 2017 where the value of supply shall include-

Any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the goods and Services Tax (Compensation to States) Act, if charged separately by the supplier.

In the present scenario, the supplier of licensing service is Government of Karnataka and no amount apart from royalty is charged separately by Government of Karnataka to the applicant.

Therefore, it is clear that the applicant is liable to pay only royalty to Government of Karnataka and Government of Karnataka does not charge any other amount from the applicant for the mining lease. Hence contribution to DMF is in the nature of tax or otherwise, the same is not liable to be included in the value for the supply of service as per Section 15 of the CGST Act, 2017.

FINDINGS AND DISCUSSION

14. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri. Sivarajan, authorised signatory, during the personal hearing proceedings on 19.11.2018 before this authority and we have also considered the additional submissions made on 04.01.2019. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law.

15. The applicant is engaged in the business of developing, owning, hiring, leasing or otherwise acquiring or disposing off any rights in any mines, stone quarry lands, and exploring, drilling, processing etc., of all types of

products derived from such mines and stone quarry lands. The applicant is quarrying building stones and sells it to the customers. The Applicant has entered into Quarrying lease/license agreement with the Government of Karnataka (Department of Mines and Geology) for quarrying "building stones" and paying royalty @ Rs 60 per MT of building stones as per the Mines and Minerals (Development & Regulation) Act, 1957 ("MMDR Act") read with Karnataka Minor Mineral Concession Rules, 1994 ("KMMC Rules"). The Applicant is also paying 30% of royalty to District Mineral Foundation ("DMF") as per the MMDR Act read with Karnataka District Mineral Foundation Rules, 2016 ("KDMF Rules") and applicant had sought Advance Ruling as mentioned above.

16. The applicant has obtained Government land on lease for quarrying Building Stone and in turn applicant pays Royalty along with payment made to District Mineral Foundation of the district and National Mineral Exploration Trust as specified by the Government. 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/ KGST 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 narrated 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 mining is a supply of service to the applicant.

17. Further, Government has provided the land on lease to the applicant and applicant in turn pays royalty along with the amount paid to the District Mineral Foundation of the district and as well as to the National Mineral Exploration Trust as specified by the Government. Applicant makes these payments under the statutory requirements of the Mines and Minerals (Development and Regulation) Act, 1957. The question is whether the amount paid as royalty and amount paid to the District Mineral Foundation of the district and amount paid to the National Mineral Exploration are to be included in the value of the service provided. In this regard it is clearly mentioned in clause (a) of subsection (2) of the section 15 of the CGST/ KGST Act, 2017 which is narrated as under.

15(2): The value of supply shall include

*a. any taxes, duties, cesses, fees and charges levied **under any law** for the time being in force other than Central Goods and Services Tax Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*

18. In view of the above provision the value of the taxable supply of service includes the amount paid as taxes, duties, cesses, fees and charges levied under any law. Therefore the royalty paid @ Rs 60 per MT of building stones as per the Mines and Minerals (Development & Regulation) Act, 1957 ("MMDR Act") read with Karnataka Minor Mineral Concession Rules, 1994 ("KMMC Rules") and amount paid to District Mineral Foundation ("DMF") equal to 30% of royalty as per the MMDR Act read with Karnataka District Mineral Foundation Rules, 2016 ("KDMF Rules") to the Government are to be included in the value of the service provided to the applicant as these payment are made under the statutory requirements of the Mines and Minerals (Development and Regulation) Act, 1957 which is taxable under GST.

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 997337 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 28.06.2017 is verified and found that the entries related to SAC 9973 are as under:

S.N	Chapter,	Description of Service	Rate (percent)	Condi
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o.	Section or Heading			tion
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 ore 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, 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 28.06.2017 was amended by Notification No. 31/2017 -Central Tax (Rate) dated 13.10.2017 and after the amendment the entries look as under:

Sl.N o.	Chapter, Section or Heading	Description of Service	Rate (percent)	Condi tion
17	Heading 9973 (Leasing or rental	(i)		

	services, with or without operator)			
		(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 1 st July, 2017	65 percent 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 1 st 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 28.06.2017, Serial No.17 was further amended by Notification No. 1/2018 – Central Tax (Rate) dated 25-01-2018 and after the amendment the entries look as under:

Sl.N o.	Chapter, Section or Heading	Description of Service	Rate (percent)	Condition
17	Heading 9973	(i)		
		(ii)		
	(Leasing or rental services, with or without	(iii) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for	Same rate of central tax as on supply of like goods involving transfer of title in goods	-



	operator)	cash, deferred payment or other valuable consideration.		
		(iv)		
		(v)		
		(vi) Leasing of motor vehicles purchased or leased prior to 1 st July, 2017	65 percent 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 1 st 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 28.06.2017, Serial No.17 was again amended by Notification No. 27/2018 – Central Tax (Rate) dated 31-12-2018 and after the amendment the entries look as under:

Sl.N o.	Chapter, Section or Heading	Description of Service	Rate (percent)	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 1 st July, 2017	65 percent 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 1 st 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 ore 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 ores and that is not covered by any specific entries in the serial no. 17 of the Notification and hence falls under the residual entry. Upto the amendment of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 by the Notification No. 27/2018 – Central Tax (Rate) dated 31.12.2018, the tax rate for the above service is fixed at the rate of tax which was applicable on supply of like goods involving transfer of title in goods. In the pertinent case, there was a transfer of title in goods involved in the activities of the applicant and that was of the extracted building stone on which the royalty was paid and hence the tax rate applicable on the service is that rate of tax applicable on the building stone, the transfer of title of which was happening in the transaction.

19.6 But after the amendment of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 by the Notification No. 27/2018 – Central Tax (Rate) dated 31.12.2018, leasing or renting of goods and leasing or rental services have been placed under separate item numbers under serial number 17 of the Notification. Accordingly the leasing or renting of goods was made taxable at the rate of tax which was applicable on supply of like goods involving transfer of title in goods and all other leasing or rental services have been made taxable at 9% CGST. Since the transaction of the applicant

is not leasing of goods but license to extract and use mineral ore, which involves leasing of land, the transaction is covered under the residual entry (viii) of Serial Number 17 of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended by the Notification No. 27/2018 – Central Tax (Rate) dated 31.12.2018 and is taxable at 9% CGST.

19.7 Similarly, for the same reasons, the transactions are taxable under SGST at 9% on or after 31.12.2018 and at the rate applicable to the mineral ore extracted prior to 31.12.2018.

20. Regarding the question who is liable to pay the above tax, Notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017 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

Since the transaction is between the State Government and the applicant and the services are supplied by the state government to the applicant which is a business entity, and the transaction being a supply 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 28.06.2017.



21. Regarding the issue of DMF Contribution, the following are observed:

21.1 Section 9B of the Mines and Minerals (Development and Regulation) Act, 1957 as amended from time to time reads as under:

“9B. District Mineral Foundation –

(1) In any district affected by mining related operations, the State Government shall, by notification, establish a trust, as a non-profit body, to be called the District Mineral Foundation.

(2) The object of the District Mineral Foundation shall be to work for the interest and benefit of persons, and areas affected by mining related operations in such manner as may be prescribed by the State Government.

(3) The composition and functions of the District Mineral Foundation shall be such as may be prescribed by the State Government.

(4)

(5) The holder of a mining lease or a prospecting licence cum mining lease granted on or after the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount which is equivalent to such percentage of the royalty paid in terms of the Second Schedule, not exceeding one-third of such royalty, as may be prescribed by the Central Government.

(6) The holder of a mining lease granted before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount not exceeding the royalty paid in terms of the Second Schedule in such manner and subject to the categorization of the mining leases and the amounts payable by the various categories of lease holders, as may be prescribed by the Central Government.”

21.2 On perusal of the above section related to DMF it is seen that these payments are payable by a lessee in addition to the royalty and the calculations are made on the basis of royalty.

21.3 Section 15 of the CGST Act, 2017 which is related to the determination of the value of supply reads as under:

"15. Value of taxable supply

- (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*
- (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;*
- (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;*
- (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and*
- (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.*

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

Rule 27: Value of supply of goods or services where the consideration is not wholly in money:

- (a) be the open market value of such supply*
- (b) If the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply.*



21.4 On plain reading of section 15 of the CGST / SGST Act along with the rule 27, it says that any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient is includible. Further, in section 15(2) of the CGST Act, it is clearly seen that any amount of any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than the GST related Acts are includible in the value of supply. There is no doubt that the amount payable by way of DMF is on account of supply made and is directly linked to the royalty payable and is also computed as a fixed percentage of royalty.

21.5 Further, it is also an admitted fact by the applicant that in case of non-payment of DMF the mineral permits would not be issued to the applicant and hence he would not be able to use land for mining and thus there would be no supply at all. Though the ultimate beneficiaries are the trusts set up by the State Government and Central Government respectively, it is, like royalty, payable under the same Act. The payments are made to different persons does not mean that they are different suppliers, as the amounts paid are classified on the basis of the purpose for which the amounts are applied. The service provided is only the license to extract building stone and also the right to use such goods extracted is a single service where the consideration is payable under different heads and in case any one of the payments is not made, the service provider, that is the Government would not issue the permit to use the building stone so extracted. Hence it forms the value of the supply under section 15 and the charges for DMF being compulsory payment, would only amount to application of the amounts paid and still would form the value of the taxable services.

21.6 It is also inferred that the service is a single service as discussed above, there are no separate service providers for royalty and DMF and in all cases the Government, which has provided the license to mine and permitted the use of such building stone mined, would be the person who has supplied the service.

25. In view of the foregoing, we rule as follows

R U L I N G

1. The royalty paid in respect of Mining Lease is a part of the consideration payable for the Licensing services for right to use minerals including exploration and evaluation falling under the Head 9973.

2. The royalty paid in respect of Mining Lease is a part of the consideration payable for the Licensing services for right to use minerals including exploration and evaluation falling under the Head 9973, which is taxable at the rate applicable on supply of like goods involving transfer of title in goods up to 31.12.2018 and taxable at 9% CGST and 9% SGST from 01.01.2019, under the residual entries of Serial No.17 of the Notification No.11/2017-Central Tax dated 28.06.2017 as amended by Notification No. 27/2018 – Central Tax (Rate) dated 31-12-2018.
3. The statutory contribution made to District Mineral Foundation (DMF) as per MMDR Act, 1957 is also part of the consideration payable for the Licensing services for right to use minerals including exploration and evaluation.


(Harish Dharnia)
Member


(Dr. Ravi Prasad M.P.)
Member

Place: Bengaluru,
Date: 21.09.2019

To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, Bangalore-North.
4. The Asst. Commissioner, LGSTO-130, Bengaluru.
5. Office Folder.