THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICE TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009
Advance Ruling No. KAR ADRG 69/ 2019
Dated: 21st September, 2019

Present:

1. Sri. Harish Dharnia,
   Addl. 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 N M D C LIMITED, Admin Building, Donimali Township, Donimalai, Sandur, Ballari District
2.	GSTIN or User ID	29AAACN7325A1ZR
3.	Date of filing of Form GST ARA-01	27.08.2018
4.	Represented by	Sri K. Sivarajan, Chartered Accountant
5.	Jurisdictional Authority – Centre	Commissioner of Central Tax, Belagavi
6.	Jurisdictional Authority – State	LVO-500, Hospete
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of 1. Rs.5,000/- under CGST Act vide CIN SBIN18082900050573 dated 08.08.2018 2. Rs.5,000/- under KGST Act vide CIN SBIN18082900050520 dated 08.08.2018 and SBIN18012900325975 dated 22.01.2018

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

1. M/s N.M.D.C Ltd, (called as the 'Applicant' hereinafter), Donimalai Township, Donimalai, Sandur Taluk, Ballari District, having GSTIN number 29AAACN7325A1ZR, has filed an application for Advance Ruling under Section 97 of CGST Act, 2017, KGST Act, 2017 & IGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs.5,000-00 each under the CGST Act and the KGST Act.

2. The Applicant is a Limited Company and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:

a) Whether the royalty paid in respect of Mining Lease can be classified as "Licensing services for Right to use minerals including its exploration and evaluation falling under the heading 9973 attracting GST at the same rate of tax as applicable on supply of like goods involving transfer of title in goods?
b) Whether statutory contributions made to District Mineral Foundation (DMF) and National Mineral Exploration Trust (NMET) as per MMDR Act, 1957 amounts to "Supply" and whether the same is liable for GST under reverse charge.

3. The applicant furnishes some facts relevant to the stated activity:

a. The applicant states that they are a State-controlled mineral producer of Government of India. It is owned by the Government of India and is under the administrative control of the Ministry of Steel. It has operations in Karnataka, Chhattisgarh and Madhya Pradesh.

b. Since its inception they are engaged in the exploration of wide range of minerals including iron ore, copper, rock phosphate, limes stone, dolomite, gypsum, bentonite, magnesite, diamond, tin, tungsten, graphite, beach sands, etc. The applicant also operates Donimalai Iron Ore Mine in Donimalai in Ballari District and also operates a pellet plant adjacent to Donimali Iron Ore Mine in Karnataka.

3. The applicant states that Government of Karnataka has issued in principle approval to NMDC Ltd (Donimalai) for renewal of ML No. 2396 for a period of 20 years w.e.f. 04.11.2008 for an area of 608 ha (597.54 ha as per CEC). Royalty is in the nature of periodical payments to be made by the lessee under their covenants in consideration of the various benefits granted by the lessor. Royalty is collected by the State Government from the business entities for right given to them to extract mineral and is payable based on quantum mineral removed or consumed.

4. The applicant is of the view that payment of royalty will be classified under the Heading 9973 – Licensing or rental services with or without operator and sub-category 997337 – Licensing services for the right to use minerals including its exploration and evaluation.

5. The applicant wishes to submit the following grounds for classification of royalty under SAC 997337:

a. Royalty is required to be paid as per Section 9(1) of Mines and Mineral (Development and Regulation) Act, 1957 (MMDR Act) which is as under:

"The holder of a mining lease granted shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any [mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee] from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that minerals"

b. Further as per Section 9(2) of MMDR Act *"The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any [mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lease] from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral."*

c. The term "Royalty" is not defined in the MMDR Act. However, the meaning of the word "royalty" has been considered in some judicial decisions. Many of these judicial decisions have been summed up in the judgement delivered by the Supreme Court in the case of 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 defined explicitly, 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 as also to the mineral won from the mine under a contract by which royalty is payable on the quantity of the mineral extracted.

d. The applicant also mentions the sectoral FAQ published by the CBEC wherein it is categorically stated that Royalty payment is made towards Licensing services for exploration of natural resources. 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."

Therefore, the payment of royalty is for license given to extract minerals and the amount of royalty paid is based on the quantum of mineral extracted.

e. Further, the applicant has referred to the note on "Mineral Roylaties" published by Indian Bureau of Mines, in which the concept of royalty is explained as under:
"A lessee is a person who is granted mineral concessions. The lessee is required to pay a certain amount in respect of the mineral extracted in proportion to the quantity extracted. Such payment is called royalty. The royalties is respect of mining leases is specified in Section 9 of the MMDR Act, 1957. Royalty is a variable return and it varies with the quantity of minerals extracted or removed."

The applicant has also referred to certain dictionary meaning of the word "royalty"

f. Without prejudice to the above, the applicant also draws reference to the meaning of the word "renting" in common parlance which indicates "allowing", "permitting or granting access", "use", "entry", "occupation", "use or any such facility" which infers enjoyment of immoveable property on "as is" basis. The expression "renting" cannot be extended to activities like "exploration", "extraction" etc. Therefore, according to the applicant, the mining land which is used for purpose of extraction of minerals and by which the immoveable property cannot be used on "as is" basis, will not fall within the ambit of "renting of immovable property".

g. Upon harmonious reading from the above, what is intended to be transferred is the right and title to the interest over immovable property (i.e Mineral). Such an interest over immovable property cannot be equated with "Renting of immovable property".

h. Further, the applicant also quotes "Section 65 (105) (zzz) of Finance Act, 1994, which defines "immovable property" in relation of "Renting of immovable property". As per the said section, immovable property did not include "vacant land solely used for agriculture, farming, forestry, animal husbandry, mining purposes."

i. The applicant states that in a nutshell, that royalty is a charge by the owner of a mineral in consideration of the exploitation of mineral resources by the lessee. In any case, it cannot be considered as payment made for renting of immovable property. The payment of royalty is a statutory levy as per MMDR Act and the same is as well categorically exphasised in the Mining Lease Agreement. Therefore, it is against Licensing Services by the Government for right to extract minerals.

j. The applicant states that since the services are covered under the Service Code Classification 997337, reference was made to Notification No.11/2017 – Central Tax (Rate) dated June 28th, 2017. Heading 9973 covers the various types of leasing, rental, licensing services. The group under the heading 99737 largely appears to cover right to use intangible property. Entry No. 997337 covers the licensing services for the right to use minerals including its exploration and evaluation.

k. The applicant states that it is pertinent to note that for every entry for the Heading in Notification No.11/2017, the last description of service in the heading states "Other than the above". This means any service at 6-digit level of the annexure not specified in the 4-digit level in Notification will fall in the residual clause of that particular heading.

l. The entries prescribing the rate of tax for the service code 9973 does not specifically cover the Licensing services for the right to use minerals including its exploration and evaluation and therefore it will be covered under the residuary entry "leasing or rental services, with or without the operator, other than (i), (ii), (iii)m (iv) or (v) above", with applicable tax rate as the same rate of tax as applicable on the supply of like goods involving transfer of title in goods. Accordingly, in such cases, the relevant tax rate as applicable on the natural resource on the underlying natural resource would be applicable on the amount of royalty paid.

6. Regarding the determination of liability to pay tax on the contribution made to District Mineral Foundation (DMF) and National Mineral Exploration Trust (NMET) as per MMDR Act, 1957, the applicant states as under –

a. The District Mineral Foundation (DMF) is a trust set up as a non-profit body, in those districts where mining operations are carried out. The objective of the District Mineral Foundation is 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. It is funded through the contributions from miners.

b. The holder of a mining lease granted before 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 an amount of 30% of royalty.

c. As per Notification No.13/2017 – Central Tax (Rate), Services supplied by the Central Government, State Government, Union Territory or Local Authority to a business entity excluding the specified services are chargeable to tax under reverse charge. Therefore the applicant wishes to seek clarification on liability to pay tax under reverse charge on such contributions made to the funds.

d. The Assessee states that as per Section 7, "supply" includes –
   (a) All forms of supply of goods or services or both such as sale, transfer, barter, exchange, licensee, rental, lease or disposal made for a consideration by a person in the course or furtherance of business."

e. Therefore, it is to be noted that liability to pay will result only if all the following conditions are satisfied:
   i. There is a supply in terms of Section 7
   ii. The supply is in the course of or furtherance of business
   iii. The supply is not exempt under section 7(2) or section 11(1).

f. The assessee argues that in order to determine whether tax is payable on payment to District Mineral Foundation following has to be tested:
   i. Whether there is supply of goods or services by the trust to which such payment is made
   ii. If at all there is a supply, whether such supply is in the course of or furtherance of business of the trust?

iii. Whether such supply is exempt under Section 7(2) or Section 11(1)?

7. The applicant states that there is no supply made by the trust to the applicant in return of payment made to such trust (i.e. as a quid pro quo for the service received). As stated above, the objective of the trust is to work for the interest and benefit of persons, and areas affected by mining related operations. There is no service / supply made to the payee. The payment made by the applicant is purely in the nature of contribution and cannot be regarded as consideration.

8. The applicant states that as seen in Section 7, whether the supply is in the course of business is to be evaluated. The Trust is a non-profit body organisation and not involved in the course of any business, trade or commerce. Based on the above, there is no supply made in terms of section 7 therefore liability to pay tax does not arise.

9. Without prejudice to the above, the applicant states that the liability to pay tax under reverse charge on the said payments will arise only if such trust / fund falls under the definition of Government or local authority. The Trust is neither the State Government or Central Government or Local Authority and hence the trust established under Section 9B (1) of the MMDR Act does not fall under the definition of Government and the same is an independent non-profit body to carry out operations entrusted to it. Since the payment is not made to the Government, there is no requirement of payment of GST under reverse charge in terms of Notification 13/2017-Central Tax (Rate).

10. Similarly, the National Mineral Exploration Trust (NMET) is a trust which was set up as a non-profit body for the purpose of detailed exploration of minerals that would facilitate high growth in the mining sector. As per Section 9C(2) of MMDR Act, the object of the Trust shall be to use the funds accrued to the Trust for the purposes of regional and detailed exploration in such manner as may be prescribed by the Central Government. The funds accumulated with the NMET will be utilized to step up exploration activities. The holder of a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 shall, pay to the Trust, a sum equivalent to two percent of the royalty paid in terms of the Second Schedule.

Hence the applicant seeks clarity on the liability to pay tax on the contribution made to the funds under reverse charge as the Trust is not a

Government nor the transaction is a supply between the applicant and the Trust.

11. The applicant has added one more question to be ruled by the Authority as to whether the royalty paid is regarded as "Supply" in terms of Section 7 of the CGST Act, 2017 and argues as under:

11.1 As per the applicant the payment of royalty is not a supply under the GST and is not liable to GST. For a transaction to be supply of goods or services, there must be specific activities for a consideration.

11.2 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 subject to the levy of GST.

11.3 As per Section 9 of Mines and Minerals (Development & Regulation) Act, 1957, Royalty is required to be paid @ certain percentage of average sale price on ad valorem basis. Therefore royalty is in the nature of sharing of profit arising out of such rights in immovable property.

11.4 The applicant has placed reliance on the decision of Apex Court in the case of Titaghur Paper Mills Company v. State of Orissa and Other [1985- VIL – 01-SC] wherein it was held that,

"The subject matter of a profit a prendre, namely the substance which the owner of the right is by virtue of the right entitled to tax, may consist of animals, including fish and fowl, which are on the land, or of vegetable matter growing or deposited on the land by some agency other than that of man, or of any part of the soil itself, including mineral accretions to the soil by natural forces. The right may extend to the taking of the whole of such animal or vegetable matters or merely a part of them. Rights have been established as profits a prendre to take acorns and beech mast, brakes, fern, heather and litter, thorns, turf and peat, boughs and branches of growing trees, rushes, fresh water fish, stone, sand and shingle from the sea-shore and ice from a canal; also the right of pasture and of shooting pheasants. There is, however, no right to take sea coal from the foreshore. The right to take animals ferae naturae while they are upon the soil belongs to the owner of the soil, who may grant to others as a profit a prendre a right to come and take them by a grant of hunting, shooting, fowling and so forth.

A profit a prendre is a servitude for its burdens the land or rather a person's ownership of land by separating from the rest certain portions or fragments of the right of ownership to be enjoyed by persons other than the owner of the thing itself (see Jowitt's Dictionary of English Law, Second Edition, Volume 2, page 1240, udner the heading "Servitude"). "Servitude" is a wider term and includes both easements and profit a prendre (see Halsbury's Laws of England, Fourth Edition, Volume 14, paragraphs 3, page 4). The distinction between a profit a prendre and an easement has been thus stated in Halsbury's Laws of England, Fourth Edition, paragraph 43 at pages 21 to 22:

"The chief distinction between an easement and a profit a prendre is that whereas an easement only confers a right to utilize the servient tenement in a particular manner or to prevent the commission of some act on that tenement, a profit a prendre confers a right to take from the servient tenement some part of the soil of that tenement or minerals under it or some part of its natural produce or the animals ferae naturae existing upon it. What is taken must be capable of ownership, for otherwise the right amounts to a mere easement.

Clause (26) of section 3 of the General Clause Act, 1897 defines "immovable property" as including inter-alia "benefit to arise out of land". The definition of "immovable property" in clause (f) of section 2 of the Registration Act, 1908 illustrates a benefit to arise out of land by stating that immovable property "includes . . . rights to ways, lights, ferries, fisheries, or any other benefit to arise out of land."

In addition to the right to enter upon the land for the above purpose, there are other important rights flowing from the bamboo contract which we have already summarized earlier and which make it clear that what the bamboo contract granted was a benefit to arise out of land which is an interest in immovable property. The attempt on the part of the State Government and the officers its Sales Tax Department to bring to tax the amounts payable under the bamboo contract was, therefore, not only unconstitutional but ultra vires the Orissa Act."

12. The applicant has also taken reliance on the judgment of the Andhra Pradesh High Court in the case of Andhra Pradesh Paper Mills [1988-ViL-01-AP] and in the case of Bhadrachalam Paper Boards Division [20140VIL-369-AP].

13. Placing reliance on the above judgements, the applicant states that the Apex Court has held that such profit is in the nature of "Profit a Prendre" and cannot be viewed as "sale" and not subject to VAT. Drawing similar analogy from the above, Royalty paid to the Central Government based on certain percentage of average sale price on ad valorem basis, is "profit a prendre' and no 'service' element is involved therein in the absence of any activity carried out by the Government. Accordingly, it can be said that service tax is not applicable on Royalty paid to the Government.

14. The applicant submits that the levy of GST on payment of royalty is bad as grant of mining lease and its execution by the Central Government or the State Government, as the case may be is a statutory act and not a supply of service. The payment of royalty by a lessee is also a statutory obligation and it is to be paid in proportion to the mineral excavated for sale, use or consumption. Therefore, the transaction cannot be regarded as supply as per section 7(1) of the CGST Act.

15. The Learned representative was heard and he has submitted additional details as under:

a. Mining Lease is a right vested in immovable property and hence not taxable and Royalty is "profit a pendre", that is share of profit received from land which is not taxable under GST.

b. Even if Royalty is treated as a service, it is in relation to the mining rights and therefore falls under the head 9973 as residuary entry. It will fall under "Licensing services for the right to use minerals including its exploration and evaluation falling under the heading 997337". If royalty is considered as Renting of Immovable Property service, then the same would be taxable under forward charge upto January 2018.

c. The sectoral FAQs published by CBEC categorically stated that Royalty payment is made towards licensing services for exploration of natural resources.

d. DMF and NMET are trusts set up as a non-profit body for the objective for the interest and benefit of persons, and areas affected by mining related operations and exploration activities.

e. The payment towards DMF and NMET is purely in the nature of contribution and cannot be regarded as consideration;

f. There is no supply made in terms of section 7 therefore liability to pay tax does not arise

g. The trust established under section 9B and 9C of the MMDR Act does not fall under the definition of Government.

16. In addition to the above submission, the applicant has quoted the decision of the Haryana Authority on Advance Ruling 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. Based on the above, the applicant submits that the entries prescribing the rate of tax for service code 9973 does not specifically cover the Licensing services for the right to use minerals including its exploration and evaluation and therefore it will be covered under the residual entry "leasing or rental services, with or without operator, other than (i), (ii), (iii), (iv), and (v) above" with applicable tax rate as the same rate as applicable in the supply of like goods involving transfer of title in goods. Accordingly, in such cases, the relevant tax rate as applicable on the underlying natural resource would be applicable on the amount of royalty paid. Since Iron ore attracts 5% GST Rate, royalty paid for mining Iron Ore will attract 5% GST Rate.

17. The applicant has submitted that Section 9B and 9C of MMDR Act, 1957 mandates that NMDC shall contribute 30% of royalty to District Mineral Foundation and 2% of Royalty to National Mineral Exploration Trust. The applicant submits that in no manner such contribution made to DMF/NMET can be regarded as payment towards service by way of royalty or right to use minerals. Had such contribution been towards mining rights, the same would be retained by State Government. The said sum is towards benefit of the interest and benefit of persons and areas affected by mining related operations, exploration activities and cannot be considered as consideration towards mining right. Further, the applicant states that in case the applicant fails to pay the amount of DMF and NMET, the bulk permit issued by the Government of Karnataka is kept on hold. The mining rights are not taken away from the lessee, nor are mining lease revoked. Therefore, one cannot say that the contribution is towards mining rights.

18. The applicant reiterates the same points and again submits that services provided by Governmental authority is not covered under reverse charge and therefore the supplier is liable to charge GST and remit to the credit of Government and not the applicant, in case DMF and NMET contribution is held to be a supply of service.

19. Section 15 of the CGST Act, 2017 does not mention to include value paid to third party in the transaction value of supply. Section 15(b) states as under:

"Value of supply shall include 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"

In the instant case, the Government is not liable to incur the cost of development of people near mining area. The cost has to be borne by mining lease holder. There is no diversion of cost by supplier of royalty service to the recipient i.e lessee. At the first place contribution to trusts is not for obtaining mining rights but is towards interest and benefit of affected people and for exploration activities. Therefore, the payment made to trust cannot be linked to mining rights and cannot be included in the valuation of royalty.

Further, it is submitted that even the Sectoral FAQs only talk about royalty paid under "Licensing services for the right to use minerals including its exploration and evaluation". Contribution to DMF / NMET Trusts is not mentioned under such services in FAQ. Therefore the same is not liable to GST under reverse charge.

20. FINDINGS AND DISCUSSION

We have considered the submissions made by the applicant in their application for advance ruling as well as the additional submissions made by Sri. K Sivarajan, CA, during the personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts. At the outset, we would like to state that the provisions of both the CGST Act and the KGST 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 KGST Act.

20.1 The arguments made by the applicant and the documents in support of the claims were verified and the following are noted:

20.2 Regarding the additional issue raised by the applicant after the filing of the application, that the royalty is profit a prendre and hence not liable to tax under the GST Act cannot be accepted for the following reasons:

(a) The Lease is for mining of minerals and the main product of the mining is the mineral ore. The extraction of mineral ore being the main activity and product and the royalty is paid on the activity of extraction and usage of the mineral ore so extracted, this does not amount to an additional benefit out of the main transaction being something else and hence the royalty would

not amount to profit a prendre. The judgements relied by the applicant have no application to the transactions of the applicant as the main activity is extraction of mineral ore for which royalty is paid.

(b) Section 9(1) of Mines and Mineral (Development and Regulation) Act, 1957 (MMDR Act) is referred to as under:
"The holder of a mining lease granted shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that minerals"

Further as per Section 9(2) of MMDR Act,
"The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lease from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral."

This makes it very clear that the royalty is payable in respect of any mineral removed or consumed by the applicant from the leased area. Therefore the royalty is only payable for the service obtained if mineral is removed from the land and hence this is not profit a prendre.

(c) Even the applicant has submitted in his application and argued that tax is payable on the royalty albeit at the rate applicable to goods extracted and taken the support of the judgement delivered by the Supreme Court in the case of 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 defined explicitly, 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 as also to the mineral won from the mine under a contract by which royalty is payable on the quantity of the mineral extracted.

Hence, royalty amounts to the consideration payable by the applicant for the activity undertaken by him and is a supply.

20.3 Regarding the nature of supply, the royalty payment is clearly towards the licensing services for exploration of natural resources. The consideration is payable in the form or royalty and 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.

21. Regarding the classification of service received by the applicant the following points are noted:

21.1 The Annexure to Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017, which prescribes the Service Accounting Code for each type of services, details the following services which are relevant to the transaction of the applicant. They are:

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 9973 or Group 99732. We therefore look at the services covered under Group 99733 or else by any other group.

21.2 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

On a cursory glance, it is seen the nature of service received by the application is covered under the Service Accounting Code 997337 - 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 to the Government for the same.

21.3 Though it is not binding, the sectoral FAQ published by the CBEC, on which the applicant himself has placed reliance in their application, 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."*

21.4 Therefore, the payment of royalty is for license given to extract minerals and the amount of 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.

22. 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:

Sl.No.	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 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.

22.1 Serial No.17 is concerned the 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.No.	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 1st 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 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	-

22.2 Serial no.17 of Notification no. 11/2017 – Central Tax (Rate) dated 28.06.2017was further amended by Notification No. 1/2018 – Central Tax (Rate) dated 25-01-2018 and after the amendment the entries look as under:

Sl.No.	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 1st 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 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	-

22.3 Serial no.17 of Notification no. 11/2017 – Central Tax (Rate) dated 28.06.2017, was yet again amended by Notification No. 27/2018 – Central

Tax (Rate) dated 31-12-2018 and after the amendment the entries look as under:

Sl.No.	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 1st 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 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	-

22.4 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 was fixed at the rate of tax which was applicable on supply of like goods involving transfer of title in goods. In this case there was a transfer of title in goods involved in the activities of the applicant and that was of the extracted mineral ore on which the royalty was paid and hence the tax rate applicable on the service is the same rate of tax as applicable on the mineral ore. In this regard we also draw attention to Entry 2(a) of Schedule II of the CGST Act, 2017. It reads as under:

2. *Land and Building*

(a) any lease, tenancy, easement, licence to occupy land is supply of services

The applicant, therefore, is in receipt of supply of service on account of leasing of land by the government.

22.5 After the amendment of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 vide Notification No. 27/2018 – Central Tax (Rate) dated 31.12.2018, a leasing or renting of goods has been placed under item no. (viia) and a separate item no. (viii) was carved out for leasing or renting services. Leasing or renting of goods was made taxable at the rate of tax applicable on supply of like goods involving transfer of title in goods and all other leasing or rental services were 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 involved the 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.

22.6 Similarly, for the same reasons, the transactions were taxable under SGST at 9% on or after 01.01.2019 and at the rate applicable to the mineral ore extracted earlier to 31.12.2018.

23. Regarding the question who is liable to pay the above tax, Notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017 stipulates at 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	Services supplied by the Central Government, State Government, Union Territory or Local Authority to a business entity, excluding – (1) renting of immovable property, and (2) services specified below – (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; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transportation of goods or passengers	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.

24. Regarding the issue of DMF and NMET Contribution, the following are observed:

24.1 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."*

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

*"**9C. National Mineral Exploration Trust.** – (1) The Central Government shall, by notification, establish a Trust, as a non-profit body, to be called the National Mineral Exploration Trust.*

(2) The object of the Trust shall be to use the funds accrued to the Trust for the purposes of regional and detailed exploration in such manner as may be prescribed by the Central Government.

(3) The composition and functions of the Trust shall be such as may be prescribed by the Central Government.

(4) The holder of a mining lease or a prospecting licence-cum-mining lease shall pay to the Trust, a sum equivalent to two percent of the royalty paid in terms of the Second Schedule, in such manner as may be prescribed by the Central Government.

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

24.4 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 of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(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 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.

24.5 Plain reading of Section 15 of the CGST / SGST Act along with Rule 27, shows 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 to DMF and NMET are on account of supply made and are directly linked to the royalty payable and also computed as a fixed percentage of royalty.

24.6 Further, it is also an admitted fact by the applicant that in case of non-payment of DMF and NMET, the mineral permits would not be issued to the applicant and hence he would not be able to use the mineral ore 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 fact that 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 mineral ore and also the right to use such minerals extracted is a single service where the consideration is payable under three 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

mineral ore so extracted. Hence it forms the value of the supply under Section 15 and the charges for DMF and NMET being compulsory payments, would only amount to application of the amounts paid and still would form the value of the taxable services.

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

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

RULING

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 which is taxable at the rate applicable on supply of like goods involving transfer of title in goods upto 31.12.2018 and taxable at 9% CGST and 9% SGST from 01.01.2019 onwards under the residual entries of Serial No.17 of the Notification No.11/2017-Central Tax dated 28.06.2017.

2. The statutory contribution made to District Mineral Foundation (DMF) and National Mineral Exploration Trust (NMET) as per MMDR Act, 1957 are also part of the consideration payable for the Licensing services for right to use minerals including exploration and evaluation.

3. The supply is of Licensing services for right to use minerals including exploration and evaluation and the value of such supply of services includes royalty, DMF and NMET contributions.

4. Since the supply of services by the Government to a business entity located in the taxable territory, are covered under Serial No.5 of Notification No.13/2017- Central Tax dated 28.06.2017, the liability to pay tax is on the recipient of such services on reverse charge mechanism as the Licensing services for right to use minerals including exploration and evaluation are provided by the State Government to a business entity, i.e., the applicant.

21.09.2019

(Harish Dharnia)
Member

(Dr. Ravi Prasad M.P.)
Member

Authority For Advance Ruling Karnataka, Bengaluru

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, Belagavi.
4. The Asst. Commissioner, LVO-500, Hospete.
5. Office Folder.