



RAJASTHAN AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX, KAR BHAWAN, AMBEDKAR CIRCLE,
NEAR RAJASTHAN HIGHCOURT
JAIPUR – 302005 (RAJASTHAN)



ADVANCE RULING NO. RAJ/AAR/2024-25/08

Mahipal Singh Additional Commissioner	:	Member (Central Tax)
Mahesh Kumar Gowla Additional Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s DECCAN CEMENTS LIMITED, 6-3-666/B, Deccan Chambers, 4 th Floor, Somajiguda, Telangana-500082, Hyderabad
GSTIN of the applicant	:	Un-registered
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	(b) applicability of a notification issued under the provisions of the Act (c) determination of time and value of supply of goods or services or both (d) Admissibility of input tax credit of tax paid or deemed to have been paid (e) determination of the liability to pay tax on any goods or services or both (f) whether applicant is required to be registered under the Act
Date of Personal Hearing	:	30.04.2024
Present for the applicant	:	Mr. M Ramchandra Murthy and Mr. Raghava Chary Daruri(C.F.O.)
Date of Ruling	:	26.06.2024

Note 1: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling, constituted under Section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

Note 2: At the outset, we would like to make it clear that the provisions of both the CGST Act and the SGST 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 provision under the SGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / SGST Act would be mentioned as being under the "GST Act".

The issue raised by M/s DECCAN CEMENTS LIMITED, 6-3-666/B, Deccan Chambers, 4th Floor, Somajiguda, Telangana-500082, Hyderabad(hereinafter "*the applicant*") is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2)(a) given as under:

- (b) applicability of a notification issued under the provisions of the Act
- (c) determination of time and value of supply of goods or services or both
- (d) Admissibility of input tax credit of tax paid or deemed to have been paid

- (e) determination of the liability to pay tax on any goods or services or both
- (f) whether applicant is required to be registered under the Act

A. SUBMISSION OF THE APPLICANT(in brief):-

1. The applicant is a Limited Company incorporated in India under the Companies Act, 1956 and is in the business of manufacturing and selling cement in south India having Corporate Registered Office at 6-3-666/B, Deccan Chambers, Somajiguda, Hyderabad. The applicant is having its manufacturing plant in the State of Telangana.
2. To expand its business activities in manufacturing and trading in cement throughout India, the applicant intended to start manufacturing unit in the State of Rajasthan. For this purpose, the applicant participated in Tender process for E Auction of Mining lease for Lime Stone Block at Tata Mandha – 1A (RM-1A), Tehsil ShriMohangarh District, Jaisalmer in the State of Rajasthan, invited by Department of Mines & Petroleum, Government of Rajasthan, Directorate of Mines & Geology, Udaipur.
3. Applicant is selected as Preferred Bidder in that process and Government of Rajasthan issued Letter of Intent (LOI) bearing No. P.3 (1) Mine/Group—2/2022 dated 08.03.2023 in the process of allotment of mining lease.
4. Relevant portion of the Tender Document relating to the process of Allotment of Mining Lease is extracted below for ready reference.

“10. Declaration of Successful Bidder and grant of mining lease

Pursuant to Rule 10 of the Auction Rules, the mining lease shall be granted to the Successful Bidder in the following manner:

10.1 Issuance of letter of intent:

A letter of intent shall be issued by the State Government to the Preferred Bidder upon payment of the first installment of the Upfront Payment which is INR 9,22,56,984.00 (Indian Rupees Nine Crore Twenty-Two Lakh Fifty-Six Thousand Nine Hundred Eighty-Four Only).

10.2 Declaration as a Successful Bidder:

The Preferred Bidder shall be considered to be the “Successful Bidder” upon,-

- (a) continuing to be in compliance with all the terms and conditions of eligibility;
- (b) payment of the second installment of the Upfront Payment which is INR 9,22,56,984.00 (Indian Rupees Nine Crore Twenty-Two Lakh Fifty-Six Thousand Nine Hundred Eighty-Four Only).
- (c) furnishing the Performance Security pursuant to the Auction Rules, valid for the period specified in the MDP, for an amount equal to INR 46,12,84,920.00 (Indian Rupees Forty-Six Crore Twelve Lakh Eighty-Four Thousand Nine Hundred Twenty Only) Pursuant to sub- rule (1) of rule 12 of the Auction Rules, the Performance Security shall be adjusted every five years so that it continues to correspond to 0.50% of the reassessed value of estimated resources including the value of any newly discovered mineral that may be included in the mining lease deed on its discovery determined in accordance with the Auction Rules. In such case, bank guarantee constituting the Performance Security shall be substituted with another bank guarantee of the same value issued in accordance with this Clause 10.2,

which is for the revised amount or if the Performance Security has been provided through a security deposit, additional amount towards security deposit shall be provided;

(d) satisfying the conditions specified in clause (b) of sub-section (2) of section 5 of the Act with respect to a mining plan; and

(e) [satisfying such other conditions as may be specified by the State Government with the prior approval of the Central Government.]

10.3 Execution of Mine Development and Production Agreement:

The State Government and the Successful Bidder shall enter into the MDPA upon the Successful Bidder having obtained all consents, approvals, permits, no-objections and the like as may be required under applicable law for commencement of mining operations.

10.4 Grant of mining lease:

Subsequent to execution of the MDPA, the Successful Bidder shall pay the third installment of the Upfront Payment which is INR 27,67,70,952.00 (Indian Rupees Twenty-Seven Crore Sixty-Seven Lakh Seventy Thousand Nine Hundred Fifty-Two Only). Upon such payment the State Government shall grant a mining lease to the Successful Bidder within a period of 30 days from the date of payment. The date of the commencement of the period for which a mining lease is granted shall be the date on which a duly executed mining lease is registered.

Provided that no Mining Lease Deed shall be executed on expiry of a period of three years from the date of the letter of intent, and the letter of intent shall be invalidated leading to annulment of the entire process of auction with forfeiture of equivalent amount of bid security from available performance security.

Provided further that the State Government may allow a further period of two years for execution of the Mining Lease Deed if the reasons for delay were beyond the control of the preferred bidder.

5. As per the process mentioned in the Tender Document, for the purpose of allotment of Mining Lease, being a Preferred Bidder and to be considered as 'Successful Bidder', the applicant paid first installment of Upfront Payment which is Rs.9,22,256,984/-through E challan No. GRN 0057213672 and 0057214627 dated 03.01.2022 and thereafter the Government of Rajasthan issued LOI bearing No. P.3 (1) Mine/Group—2/2022 dated 08.03.2003 in favour of the applicant. As per the compliances of LOI, the applicant have to submit Performance Security and Undertaking, which are given by letter bearing No.DCL:SV:RJB:2023-24:168 dated 29.08.2023.
6. Followed by the terms and conditions of Tender Document para 10.2 (b) applicant has also paid 2nd installment of upfront payment of Rs.9,22,56,984/-through E challan No. GRN 0080189779 and 0080189290 dated 04.09.2023
7. As per 10.3 of the Tender document, the State Government and the Successful Bidder shall enter into the MDPA upon the Successful Bidder having obtained all the consents, approvals, permits, no-objections and the like as may be required under applicable law for commencement of mining operations. As per 10.4 of the Tender Document, subsequent to execution of MDPA, the successful bidder shall pay third

installment of the upfront payment and upon such payment the State Government shall grant a mining lease to the successful bidder within a period of 30 days from the date of payment, the date of the commencement of the period for which a mining lease is granted shall be the date on which a duly executed mining lease is registered.

B. INTERPRETATION AND UNDERSTANDING OF APPLICANT ON QUESTION RAISED (IN BRIEF)

At the outset it is made clear that a reference to the provisions of the CGST Act, 2017 (for brevity, Act) and the Notification issued there under would mean reference to similar provisions under the RGST Act, 2017 and the Notification issued there under, wherever applicable, unless specified otherwise.

1. According to Section 9 (1) of the CGST Act, 2017 tax shall be levied on all intra State supplies of goods or services or both on the value determined under Section 15 and at such rates as may be notified by the Government and collected in such manner as prescribed. According Section 9 (3) of the CGST Act, 2017, the Government may, on recommendation of the Council, by notification, specify categories of supply of goods or services or both on which the tax shall be paid on reverse charge basis by the recipient.
2. It is submitted that subheading 997337 of SAC covers, Licensing services for the right to use minerals including its exploration and evaluation, covered under no.17 in Notification No.11/2017 Central Tax (rate) dated 28.06.2017 modified from time to time and attracts the same rate as applicable for supply of goods involving transfer of title in goods. Hence in this case GST is to be paid @ 18%.
3. According to serial no.5 in Notification No.13/2017 Central Tax (rate) dated 28.06.2017 modified from time to time, 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 the 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) transport of goods or passengers to any business entity located in the taxable territory are liable to be paid by the recipient of services under reverse charge mechanism. Accordingly, Royalty amount paid to State Government towards mining lease is liable to GST under reverse charge mechanism and accordingly GST is to be paid at applicable rate of tax.
4. However, payment of royalty amount to the Government will be coming in to effect only after entering in to the Mining Lease Agreement with the Government of Rajasthan. The lessor and lesee relationship will be coming in to effect only after entering the lease agreement. The payments made as per the conditions in the Tender Documents prior to issue of Letter of Intent in the capacity of Preferred Bidder and payment made after issue of LOI but before entering in to the Mining Lease agreement as Successful Bidder cannot be considered as Advance payments for supply of services and GST is not liable to be paid at the time of making payment by considering the same as Advance payments for supply of services.

5. According to Section 13 of the CGST Act, the liability to pay tax on services shall arise at the time of supply and as per subsection (3) of this Section, in case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be earlier of the following dates:
- (a) The date of payment as entered in the books of account of the recipient or the date on which the payment debited in his bank account, whichever is earlier; or
 - (b) The date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier.
6. It is submitted that the time of supply provisions relating to supply of services in Section 13 of the CGST Act, 2017 is not applicable to the upfront payment made by the applicant as per the terms and conditions of the Tender Document as these payments are made to entering in to mining lease agreement with the Government. The question of payment of royalty to Government arises only after entering in to the mining lease agreement and hence the upfront amount cannot be considered as advance toward payment of royalty as by the time of payment, there is no supply agreement between the supplier and recipient of services. Any payment made subsequent to entering in to mining lease agreement but before providing the supply of services can be considered as advance payment for supply of services and for these payments only the provisions relating to time of supply under Section 13 of the CGST Act is applicable. Hence applicant is of the view that the upfront amounts paid prior to entering in to mining lease agreements are not liable to GST at that point of time of payment but are liable to GST only after the mining lease come in to effect.
7. In this regard the applicant relies on the Advance Ruling given in the case of M/s. Essel Mining & Industries Ltd by the Authority for Advance Rulings, Madhya Pradesh (Reported in (2021) 133 Taxmann.com 408). Copy the said ruling is enclosed herewith (Attachment 4).
8. With regard to GST registration, as per Section 24 (1) (iii) of the Rajasthan GST Act, 2017 persons who are required to pay tax under reverse charge are liable to be registered in the State in which they are receiving the services. Since GST is liable to be paid under RCM on royalty amount, applicant is liable to get registration as a taxable person under the GST Act in the State of Rajasthan after all the conditions in the Tender Documents are complied with for entering in to mining lease agreement and after entering in to the Mining Lease agreement with the Government of Rajasthan coming in to effect.

C. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT:-

- Q1. Whether the applicant is liable to pay any GST on the Mining Lease payments (applicability of GST on the Royalty payment of Mining Lease to Government of Rajasthan under Reverse Charge Mechanism).
- Q2. If the applicant is liable to pay GST on the above, what will be the applicable rate of GST.

Q3. If GST is applicable, whether the applicant is liable to pay GST on the payment of Upfront Payments as per the Tender Documents which are paid in installments much before issuing LOI and after issuing LOI but before entering in to the Lease Agreement.

Q4. If GST is applicable, whether the applicant can pay GST from the State of Telangana or to apply for registration in the State of Rajasthan and pay GST.

Q5. Whether the GST paid is eligible to be claimed as Input Tax Credit or not.

D. PERSONAL HEARING: -

In the matter, personal hearing was granted to the applicant on 30.04.2024. Mr. M Ramchandra Murthy and Mr. Raghava Chary Daruri(C.F.O.) Authorized Representative appeared for personal hearing. They reiterated the submission already made by them.

E. COMMENTS OF THE JURISDICTIONAL OFFICER: -

Applicant is unregistered with the department so no comments has been sought from field formations.

F. FINDINGS, ANALYSIS & CONCLUSION:

- 1) We have carefully examined the statement of facts, supporting documents filed by the applicant along with the application, oral and written submissions made at the time of hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.
- 2) The Applicant is a Limited Company incorporated in India under the Companies Act,1956 and involved in activities of manufacturing and selling of cement in south India having Corporate Registered Office at 6-3-666/B, Deccan Chambers, Somajiguda, Hyderabad. The applicant is having its manufacturing plant in the State of Telangana.
- 3) To expand its business activities in manufacturing and trading in cement throughout India, the applicant intended to start manufacturing unit in the State of Rajasthan. For this purpose, the applicant participated in Tender process for E Auction of Mining lease for Lime Stone Block at Tata Mandha – 1A (RM-1A), Tehsil Shri Mohangarh District, Jaisalmer in the State of Rajasthan invited by Department of Mines & Petroleum, Government of Rajasthan, Directorate of Mines & Geology, Udaipur.
- 4) Following the screening process, the applicant is selected as a Preferred Bidder in that process. The Government of Rajasthan vide letter No. P.3 (1) Mine/Group— 2/2022 dated 08.03.2023 has issued Letter of Intent (LOI) in the process of allotment of mining lease.
- 5) For the purpose of allotment of Mining Lease, the Applicant being a Preferred Bidder and in compliance with the Tender Process has deposited Upfront Payment at different stages along with Performance Security.
- 6) The details of questions on which Advance Ruling is sought by the Applicant are as under-

(i) Whether the applicant is liable to pay any GST on the Mining Lease payments (applicability of GST on the Royalty payment of Mining Lease to Government of Rajasthan under Reverse Charge Mechanism).

(ii) If the applicant is liable to pay GST on the above, what will be the applicable rate of GST.

(iii) If GST is applicable, whether the applicant is liable to pay GST on the payment of Upfront Payments as per the Tender Documents which are paid in installments much before issuing LOI and after issuing LOI but before entering in to the Lease Agreement.

(iv) If GST is applicable, whether the applicant can pay GST from the State of Telangana or to apply for registration in the State of Rajasthan and pay GST.

(v) Whether the GST paid is eligible to be claimed as Input Tax Credit or not.

7) The first and the foremost question raised by the Applicant is whether GST is payable on the royalty amount payable to the Govt. of Rajasthan under RCM.

In this regard, on perusal of Serial No.17 of Notification No.11/2017-Central Rate dated 28.06.2017 as amended from time to time, we find that Licensing services for the right to use minerals including its exploration and evaluation is covered under SAC 997337 is subject to levy of GST. The relevant portion and notification is as under:-

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
17	Heading 9973 (Leasing or rental services [***] 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.	9	-]
		(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	-
		***	***	***
		[(vi) Leasing of motor vehicles purchased and leased prior to 1 st July 2017;	65 per cent. of the rate of state 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.	
	***	***	***
	[[viiia) Leasing or renting of goods	Same rate of Statetax as applicable on supply of like goods involving transfer of title in goods	
	[{(viii) Leasing or rental services, without operator, other than (i), (ii), (iii), (iv), (vi), and (viiia) above.	9	-]

Section 9(3) of CGST Act, 2017 provides that the Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

In term of Serial No.5 of Notification No.13/2017-Central Rate dated 28.06.2017, the Applicant being recipient of service is liable to pay GST under RCM. The relevant notification is summarized as under:-

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
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 the Department of Posts [and the Ministry of Railways (Indian Railways)] 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;	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.

As discussed above the Applicant is liable to pay GST on Mining Lease Payments including Royalty, to be paid to the Govt. of Rajasthan under RCM.

- 8) In respect of question no.2, as discussed above the Applicant is liable to pay GST @ 18% (SGST 9% & CGST 9%).
- 9) The third question is whether they are liable to pay GST on the Upfront Payments as per the Tender Documents which are paid in installments much before issuing LOI and after issuing LOI but before entering in to the Lease Agreement.

The Applicant is of the opinion that payment of royalty amount to the Government will be coming in to effect only after entering in to the Mining Lease Agreement with the Government of Rajasthan. The lessor and lessee relationship will be coming into effect only after entering the lease agreement. The payments made as per the conditions in the Tender Documents prior to issue of Letter of Intent in the capacity of Preferred Bidder and payment made after issue of LOI but before entering into the Mining Lease agreement as Successful Bidder cannot be considered as Advance payments for supply of services and GST is not liable to be paid at the time of making payment by considering the same as Advance payments for supply of services.

In order to reach at the right conclusion, let us examine certain definitions which are relevant in the matter.

Section 2(31) of CGST Act, 2017 stipulates that

"consideration" in relation to the supply of goods or services or both includes-

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

To determine the time of supply of services **Section 13 (3) of the CGST Act, 2017** stipulates that:-

In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be earlier of the following dates:

(a) The date of payment as entered in the books of account of the recipient or the date on which the payment debited in his bank account, whichever is earlier; or

(b) The date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier.

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be date of entry in the books of account of the recipient of supply.

Now we examine the terms and conditions of tender documents:-

Point 13.1 of subject Tender Document provides that-

Upfront Payment

The Successful Bidder shall make monthly payments on the basis of the Final Price Offer (the "Monthly Payment"). The Monthly Payment shall be computed on the basis of the Value of Mineral Dispatched or the value of the minimum production requirement as specified in Clause 8, whichever is higher.

The upfront Payment paid by the Successful Bidder shall be adjusted in full at the earliest against the amount to be paid under sub-rule (3) of rule 8 of Auction Rules on commencement of production of mineral.

Sub Rule (3) of Rule 8 of Mineral (Auction) Rules, 2015 stipulates that

(3) The bidders shall quote, as per the bidding parameter, for the purpose of payment to the State Government, a percentage of value of mineral dispatched equal to or above the reserve price and the successful bidder shall pay to the State Government, an amount equal to the product of,- (i) percentage so quoted; and (ii) value of mineral dispatched.

We further observe that there is difference between advance payment and advance deposit amount. The advance payment is adjusted towards goods or services or both to be supplied. On the other hand, advance deposit money is received only as security. Generally, it is not used by the supplier in the course of supply of goods or services. It is forfeited in case of violations of terms and conditions as mentioned in tender document. As per point 13.1 of Tender Document, the upfront payment paid by the Successful Bidder shall be adjusted in full at the earliest against the amount to be paid under sub-rule (3) of rule 8 of Auction Rules on commencement of production of mineral which shows that advance payment made by the Applicant shall be adjusted towards future payments to be made by them. Hence Section 2(31) of CGST Act, 2017 is not applicable in the instant case.

Secondly, it is evident from the tender documents that nowhere there is clause of refund of upfront payment after allotment of mines on lease, therefore upfront payment made to the State Govt. is no more deposit but advance which shall be adjusted towards future payments of revenue share amount.

In view of the above, we find that the Applicant is liable to pay GST on the upfront payments made to the State Govt. under Reverse Charge Mechanism (RCM) in term of Serial No.5 of Notification No.13/20317-Central Rate Dated 28.06.2017.

- 10) The next question is if GST is payable, whether they can pay GST from state of Telangana or to apply for registration in the state of Rajasthan for payment of GST.

In this context, the legal provisions are stipulated in **Section 24 of the CGST Act, 2017** which are reproduced as under:-

Compulsory registration in certain cases-*Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,-*

(i).....

(ii).....

(iii) persons who are required to pay tax under reverse charge;

We observe that in term of Section 24(iii) of CGST Act, 2017 read with corresponding provisions of SGST Act, 2017, the person who is required to pay tax under RCM, is liable to be registered in the state in which they would be receiving the services. In the instant case, the Applicant is required to pay GST in the state of Rajasthan as the royalty amount shall be paid to the Govt. of Rajasthan.

- 11) The last question is whether they are eligible to avail ITC of the GST paid by them under RCM. The input tax is defined under section 2(62) of CGST Act, 2017 which is as under: -

"input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes-

(a) the integrated goods and services tax charged on import of goods;

(b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;

(c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act; or

(d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the Central Goods and Services Tax Act,

but does not include the tax paid under the composition levy;

The eligibility of input tax credit is provided in section 16 of CGST ACT, 2017 the relevant portion is as under: -

Section 16 of CGST Act, 2017 provides that-

Eligibility and conditions for taking input tax credit-

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

¹[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;

(b) he has received the goods or services or both.

As discussed above, the tax payable under the provisions of sub-section (3) and (4) of Section 9 is included in input tax and the credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger and so the applicant is eligible to avail ITC of GST paid by them under RCM subjected to fulfillment of conditions laid down under section 16 of CGST ACT, 2017.

In view of the above discussion, we rule as under:-

RULING

Q1. Whether the applicant is liable to pay any GST on the Mining Lease payments (applicability of GST on the Royalty payment of Mining Lease to Government of Rajasthan under Reverse Charge Mechanism).

Ans 1-The Applicant is liable to pay GST on Mining Lease Payments including Royalty, to be paid to the Govt. of Rajasthan under RCM.

Q2. If the applicant is liable to pay GST on the above, what will be the applicable rate of GST.

Ans 2-The applicable rate of GST is 18%(SGST 9% & CGST 9%).

Q3. If GST is applicable, whether the applicant is liable to pay GST on the payment of Upfront Payments as per the Tender Documents which are paid in installments much before issuing LOI and after issuing LOI but before entering in to the Lease Agreement.

Ans 3-Yes, the Applicant is liable to pay GST on Upfront Payments as per the Tender Documents.

Q4. If GST is applicable, whether the applicant can pay GST from the State of Telangana or to apply for registration in the State of Rajasthan and pay GST.


Ans 4-No, the Applicant cannot pay GST from the state of Telangana for the services received in Rajasthan. They are required to pay GST under RCM in the state of Rajasthan.

Q5. Whether the GST paid is eligible to be claimed as Input Tax Credit or not.

Ans 5-Yes, Applicant is eligible to avail ITC of the GST paid by them under RCM subjected to fulfillment of conditions laid down under section 16 of CGST ACT, 2017.


(Mahipal Singh)
MEMBER
CENTRAL TAX




(Mahesh Kumar Gowla)
MEMBER
STATE TAX

F. No. AAR/SF/2024-25/ 66-70

Date: 02/07/2024

SPEED POST

M/s DECCAN CEMENTS LIMITED
6-3-666/B, Deccan Chambers, 4th Floor, Somajiguda
Telangana-500082, Hyderabad

Copy to: -

1. The Chief Commissioner, CGST and Central Excise (Jaipur Zone), NCRB, Statue Circle, Jaipur, Rajasthan-302005
2. The Chief Commissioner, State Tax, KarBhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme, Jaipur-302005.
3. The Commissioner, CGST and Central Excise Commissionerate, JODHPUR, Rajasthan.
4. The Deputy Commissioner, Divisional Kar Bhawan, JODHPUR-2nd, JODHPUR, Rajasthan.

