



सत्यमेव जयते

**RAJASTHAN AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX**

**KAR BHAWAN, AMBEDKAR CIRCLE, NEAR
RAJASTHAN HIGH COURT
JAIPUR – 302005 (RAJASTHAN)**



ADVANCE RULING NO. RAJ/AAR/2020-21/03


J.P.Meena Additional Commissioner	:	Member (Central Tax)
Hemant Jain Additional Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s KSC Buildcon Private Limited, 114 Piith Simalwara, Khirkaiyan, Dungarpur- 314001
GSTIN of the applicant	:	Unregistered
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	(a) Classification of any goods or services or both; (f) Whether applicant is required to be registered;
Date of Personal Hearing	:	19.3.2020
Present for the applicant	:	Shri Ankit Sapra (Authorized representative)
Date of Ruling	:	14.05.2020

Note: 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.

- At the outset, we would like to make it clear that the provisions of both the CGST Act and the RGST 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 RGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / RGST Act would be mentioned as being under the "GST Act".
- The issue raised by M/s KSC Buildcon Private Limited, 114- Piith Simalwara, Khirkaiyan, Dungarpur- 314001 (hereinafter the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2) (a) & (f) given as under: -
 - (a) Classification of any goods or services or both;
 - (f) Whether applicant is required to be registered;
- Further, the applicant being an un-registered person as per the declaration given by him in Form (ARA-01) the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. Based on the above observations, the applicant is admitted to pronounce advance ruling.

A. SUBMISSION AND INTERPRETATION OF THE APPLICANT:

1. As per the said work order, applicant have signed a contract agreement for development work of mines including the earthwork of drilling, excavation, removal, transportation of green marble/serpentine and dumping of waste material. Also, we need to build the roads for the movement of vehicles and are also responsible for safe maintenance of the haul roads and have to deploy necessary personnel from our own or through some external agency for the same. If required, we may also purchase the land other than that in possession for further mining operations at our own expenses. We also need to deploy necessary



mining machinery viz IR, Poclain, JCB, Loader, Trucks along with operation & maintenance personnel and complete labour including skilled & unskilled manpower, Certified Mines Engineer, Site Accountant and if required, a qualified Cost & Works Accountant also. The consideration of the above said works is fixed at Rs. 400 per MT on a target based production basis which shall be subject to raising of undistributed bills on monthly basis and that shall be the full & final consideration including all the above said described words. There shall also be a penalty for short production. The above said consideration will be subject to TDS deduction u/s 194C of Income Tax Act, 1961;

2. that as per the SAC 9973, we have not entered into any rent or lease agreement. We have not supplied only machines with operator rather than undertaken the whole project of mines development, drilling, excavating of stone & supply of skilled & unskilled manpower including Qualified Site Engineers, Cost & Work Accountants etc. In fact, the machineries are actually Special Purpose Vehicles including JCB & trucks;
3. that as described above, we have supplied complete manpower for development and working of mines & not only operator of machines. In fact, a qualified & RTA Licensed commercial motor vehicle driver is required to run those Special Purpose Vehicles;
4. that as per our interpretation of Law and considering all the relevant facts, the equipments or vehicles used for carrying out mining operations are not categorized as "Machinery" as per the GST Act. The word machinery is nowhere defined in the GST Act, Rather than we found an explanation of the word "Plant and Machinery" in CGST Act which is stated as "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports. From the above, it is

clear that we have not supplied any machinery rather used the Special Purpose Vehicles for the execution of the mining work;

5. that we have entered into a Contract Agreement & not a lease/rent agreement;
6. that we have supplied complete manpower for carrying out the mining operations and not merely operator of machines;
7. that we have not found any other Chapter head other than SAC 9954 i.e. Composite supply of Work Contract Services to classify the above said work allotted to us;
8. that we seek clarification regarding applicability of SAC for a work allotted to us whose heading reads as "*ALLOTMENT OF WORK FOR HIRING MINING MACHINERY ALONG WITH MANPOWER TO PRODUCE APPROXIMATELY 2,00,000 MT PER MONTH ON OUTPUT PER TON BASIS*";
9. that if we go through the complete scope of work, the said relates to *COMPOSITE SUPPLY OF WORK CONTRACT AS DEFINED IN CLAUSE 119 OF SEC.2 OF CGST ACT, 2017 INVOLVING PRE DOMINANTLY EARTH WORK rather than merely a hiring or leasing contract involving development of mines, drilling, excavating of stone & supply of skilled and unskilled manpower*. The above as per our interpretation of law falls under SAC-9954 & we have found 2 notifications of Central Tax (rate) in this regard which are as under: -

Notification No.	Heading & Serial No.	Description	Rate %
11/2017-Central Tax	Heading 9954 Sl. No. 3.	3(ii) Composite Supply of Work Contract as defined in clause 119 of Section 2 of CGST Act, 2017.	9 %
31/2017- Central Tax	Heading 9954 SERIAL 3	3(vii) Composite Supply of Work Contract as defined in clause 119 of Section 2 of	2.5%

		CGST Act, 2017 provided to a government entity.	
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10. that we had sought a question in our ARA-01 on difference between operator and manpower as per GST provisions, as we have to supply special purpose vehicles including Poclain, TRUCKS & JCBs which as per the motor vehicle act requires a commercial licensed driver to drive & we have to supply skilled and unskilled manpower including qualified site engineers, Cost & work accountants etc. but our money consideration for the same is through raising of undistributed bills on output per ton basis;

11. that we have attached a list of Special purpose vehicles along with our ARA-01 which we have to use for the execution of our work and are tabulated as below also. We seek to ask whether the said are categorised as machinery as per GST provisions: -

Name of Special Purpose Vehicles	Description
I R	Crawling vehicle generally used for drilling and loading at mining site.
POCLAIN	Special Purpose moving vehicle for excavating at the mining site.
POCLAIN WITH ROCK BREAKER	Special Purpose moving vehicle for excavating and breaking the rocks at the mining site.
TRACTOR	Special Purpose Motor Vehicle used for transportation of goods
JCB	Special Purpose Vehicle for Excavation & Loading purpose.
Loader	Special Purpose Heavy Motor Vehicle
Other Trucks	Heavy Motor Vehicle for Goods Transportation.

12. that also we would like to mention here that as per the terms of our contract, our consideration for the work will be on an OUTPUT per TON basis subject to levy of penalty for short production & the payment shall be released on per ton basis rather than any fix monthly rent, also the petrol & maintenance expenses are on our account & TDS shall be deducted under section 194 C of Income Tax Act. We have also found a copy of ORDER OF APPEAL OF INCOME TAX APPELLATE TRIBUNAL, PUNE BENCH describing nature of such payments as "WORK CONTRACT" and not "RENT". The copy of the same is attached herewith.

B. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT

1. Applicability of SAC and Classification of the said work contract in either of the two codes viz. SAC 9973 - Leasing or rental services concerning machinery & equipment with or without operator or SAC 9954 – Composite supply of Work contract services?
2. What is the difference between operator and manpower as per GST Provisions?
3. Whether the Special Purpose Vehicles in the above work order are classified as "Machinery"?

C. PERSONAL HEARING

In the matter personal hearing was granted to the applicant on 19.3.2020 at Room no. 2.29 NCRB, Statue Circle, Jaipur. On behalf of the applicant Shri Ankit Sapra, (Authorized Representative) appeared for PH. During the PH, he reiterated the submissions already made in the application and submitted additional submission along with a copy of Advance Ruling Order No. JHR/AAR/2018-19/01 dated 02.08.2018.

D. COMMENTS OF THE JURISDICTIONAL OFFICER

Comments from the CTO, Circle- Durgarpur vide letter dated 18-2-2020 received in this office are reproduced as under:-

आवेदक मैसर्स केएससी बिल्डकॉन प्रा. लि. (अपंजीकृत) को AMP मिनरल्स प्रा. लि. द्वारा जारी कार्यादेश के अनुसार मुख्य कार्य “Supply of mining machinery and manpower for production of 200000 Metric ton of Green marble/Serpentine stone per month from Dungarpur mining site, Simalwara, Rajasthan” एक वर्ष की अवधि के लिये कार्यादेश आवंटित किया गया है। जिसकी सिक्युरिटी राशि 01 करोड़ वांछित प्रारूप में AMP मिनरल्स प्रा. लि. के पक्ष में LOI जारी होने के तीन माह में प्रस्तुत करनी होगी। अतः इस दृष्टि से आवेदक का टर्नओवर जीएसटी में सेवा प्रदाता के पंजीकरण के लिये निर्धारित टर्नओवर से ज्यादा प्रतीत होने के कारण पंजीयन होना आवश्यक है।

1. चूंकि प्रधान सेवा ग्रीन मार्बल/सरपेन्टाइन स्टोन के उत्खनन कर मार्बल ब्लॉक के उत्पादन के लिए प्रदान की जानी है जिसमें सप्लाय ऑफ माइनिंग मशीनरी एवं सप्लाय ऑफ मेन पॉवर दोनों बन्डल्ड सप्लाय ऑफ सर्विसेज है। अतः नोटिफिकेशन क्रमांक 11/2017/सीजीएसटी टेक्स रेट दिनांक 28.06.2017 द्वारा मिनिस्ट्री ऑफ फाइनेंस, डिपार्टमेंट ऑफ रेवेन्यू, गवर्नमेंट ऑफ इंडिया के अनुसार SAC 9954 के तहत CGST ACT 2017 के सेक्शन 2(119) में परिभाषित कम्पोजिट सप्लाय ऑफ वर्क्स कॉन्ट्रैक्ट में शुमार किया जाना उचित होगा।
2. प्रश्न क्रमांक 2 के सम्बन्ध में सप्लाय ऑफ मेन पॉवर को SAC 998513 – 15- 16 -17 के तहत Nature of Service के अनुरूप विभाजित किया हुआ है। ऑपरेटर सहित एवं बिना ऑपरेटर अन्य मशीनरी एवं इक्यूपमेंट सम्बन्धी लिजिंग या रेंटल सर्विसेज को HSN 997314 के क्लॉज 6 में वर्णित किया गया है।
3. स्पेशल परपज व्हीकल का उद्देश्य जारी कार्यादेश में वर्णित कार्य के अनुरूप माइनिंग (खनन) से सम्बन्धित है। अतः इसके लिए सीजीएसटी एक्ट के अध्याय 98 के HSN Code No. 9801 में माइनिंग हेतु मशीनरी उपकरणों का वर्णन किया गया है।

E. FINDINGS, ANALYSIS & CONCLUSION:

1. While going through the submissions made by the applicant in ARA-01 and an agreement letter dated 23.12.2019 (hereinafter ‘the agreement’) between the applicant and M/s AMP Minerals Pvt. Ltd. (hereinafter ‘M/s AMP’ for sake of brevity), we find that the applicant has been tasked to extract 2 lakh MT of Serpentine/Green Marble (hereinafter ‘the mineral’) per year at M/s AMP’s Dungarpur mining site located at Simalwara, Rajasthan. In the agreement, the applicant has also been asked to deploy some earthmoving vehicles and manpower at the mining site. The applicant has to produce at least 8000MT Serpentine/Green Marble per day, otherwise he shall be charged a penalty for non-achievement of target. The applicant will get consideration at the rate of Rs. 400 per ton of the mineral extract.

2. We find that the applicant has not taken lease of the mining land, in fact, whatever material is extracted, be it mineral or overburden material, is owned by M/s AMP. It seems that M/s AMP has engaged applicant mainly to do mining work on his behalf and extract the minerals against which applicant will receive consideration. The applicant has to develop infrastructure viz. site office, workers stay facility etc. as per his convenience and as per his need, M/s AMP has nowhere in the agreement stated that he requires or mandates the applicant to construct such facilities on the mining site. M/s AMP's sole focus in the agreement is on achievement of extraction target of the mineral.

3. In view of Para 1 and Para 2, we observe that, the applicant is providing a support to M/s AMP in extraction of mineral and therefore it is a kind of supplying support Service. Whereas the supply cannot be categorized as that of goods due to the fact that minerals and mining site both are under the ownership of M/s AMP throughout agreement and post-agreement too. The applicant is just facilitating/supporting M/s AMP in extraction of the mineral. Thus the activity undertaken by the applicant is a 'Service' under CGST Act, 2017. The Section 2(102) defines Services as following—

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

The Section 2(52) defines Goods as following—

(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

Whereas, the mineral extracted by the applicant from the mining site is no doubt a 'goods' which is extracted from the land but since the applicant do not have any ownership of the said mineral and land before the agreement, in duration of agreement and post agreement, therefore the activity is just a service to M/s AMP.

4. In view of above, we find that the applicant is providing supporting service related to mining. The said service is classifiable under HSN 998622. The rate of GST on the said service is 18% (CGST 9% + SGST 9%) as provided under the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (as amended). The relevant portion of the said Notification is as under—

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
24	Heading 9986	[(iii) Support services to mining, electricity, gas and water distribution other than (ii)]	9	-

5. Further, the Explanatory Notes on Classification of Services which are based on United Nations Central Product Classification (UN CPC) and equally mandated by CBIC in determination of Classification of Services, describes HSN 998622 as following-

998622 Support services to other mining n.e.c.

*This service code includes draining and pumping of mines; **overburden removal and other development and preparation services of mineral properties and sites**, including tunneling, except for oil and gas extraction; test drilling services in connection with mining operations, except for oil and gas extraction; **operation of other mining units on a fee or contract basis***

This service code does not include:

- mineral exploration and evaluation services, cf. 998343

- geophysical services, cf. 998341

6. We further find that it is mentioned in the agreement that the applicant is supplying manpower and some special purpose vehicles like earthmovers to facilitate extraction of mineral from the mining site. Further, this extracted mineral is also dispatched to M/s AMP although the same has not been explicitly mentioned in the agreement.

We find that the applicant is misconstruing the facts because nowhere in the agreement, M/s AMP asks the applicant to lease manpower and vehicles. In fact, the supply of manpower and vehicles is for the own benefit of the applicant, these supplies are not made to M/s AMP but to himself. Therefore, both these supplies cannot be categorized as independent supplies made to M/s AMP.

Furthermore, the applicant is receiving a single consideration of Rs. 400 per ton of the mineral and no separate consideration other than this is earmarked in the agreement which shows that the supply of vehicle and manpower is no way related to M/s AMP.

7. The applicant has also submitted that he have to purchase/lease land in nearby incase target fixed by M/s AMP is not achieved. This is an ambiguous fact, because firstly, purchase of land is beyond the scope of GST. Secondly, if applicant here is referring to mining land of the said mineral then too, it will be a lease of that mining site which is a different kind of service viz. *'leasing or rental services with or without operator under Chapter heading 9973'*.
8. Further, the contention of the applicant that it is either a Leasing or rental service of machinery with or without operator or a Works Contract Service is not tenable on following grounds—

a. The final output or basis of consideration is quantum of mineral extracted, whereas, supply of machinery is not done with M/s AMP but to he himself (as discussed *supra* point 5);

b. Works Contract Services (hereinafter WCS) as defined in Section 2(119) of CGST Act, 2017 is “a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract,”. Thus, the foremost conditions of WCS are that it leads to creation of an immovable property and then transfer of the said property in goods, whereas in the instant case, no immovable property is created and question of transfer is does not arises as ownership of the property and minerals is with M/s AMP.

9. Further, the contention raised by the applicant that his issue is similar to matter discussed in advance ruling order passed by Jharkhand Authority for Advance Ruling (JAAR) vide Order No. JHR/AAR/2018-19/01 dated 02.08.2018 is also not tenable on the ground that the order passed by JAAR is related to a partnership firm which is engaged in providing works contract services to a government entity whereas in the instant case, both facts are non-existing.

10. Section 97(2) of CGST Act, 2017 delineates clauses under which an applicant can sought advance ruling, which are as following—

(2) *The question on which the advance ruling is sought under this Act, shall be in respect of, —*

(a) *classification of any goods or services or both;*

(b) *applicability of a notification issued under the provisions of this 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;*
- (g) *whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.*

We find that the issue raised by the applicant in question 2 and 3 are beyond the scope of this authority as it is not covered under section 97(2) of the CGST Act, 2017.

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

RULING


- ❖ The work undertaken by the applicant is a 'Support Service to Mining', covered under HSN 998622 and attracts GST @ 18% (CGST 9% + SGST 9%) as provided under the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (as amended).
- ❖ Question 2 & 3 are beyond the scope of mandate given to this authority as per Section 97(2) of CGST Act, 2017, therefore, no ruling is given.


(J.P. MEENA)
MEMBER
CENTRAL TAX

SPEED POST

M/s KSC Buildcon Pvt. Ltd.,
114, Piith Simalwara, Khirkaiyan,
Dungarpur- 314001 (Raj)




(HEMANT JAIN)
MEMBER
STATE TAX

o/c

F. No. AAR/KSC/2019-20/17-21

Date: 18/05/20

Copy to:-

1. The Chief Commissioner, CGST and central Excise, (Jaipur Zone), NCRB, Statue Circle, Jaipur, Rajasthan 302005
2. The Commissioner, State Tax, KarBhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
3. The Commissioner, CGST and Central Excise Commissionerate Udaipur, 142-B, Hiran Magri, Udaipur-313002
4. The Commercial Tax officer, State Tax, Circle- Dungarpur, Shastri Colony, Opp. Govt. Collage, Dugarpur-314001 (Raj).

o/c