

AUTHORITY FOR ADVANCE RULING – CHHATTISGARH
3rd & 4th Floor, Vanijyikar GST Bhawan, North Block Sector-19,
Atal Nagar, District-Raipur (C.G.) 492002
Email ID – gst.aar-cg@gov.in

PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING
U/s. 98 OF THE CHHATTISGARH GOODS AND SERVICES TAX ACT, 2017

Members Present are

Smt. Sonal K. Mishra
Joint Commissioner
O/o Commissioner, State Tax
(CGGST), Raipur, Chhattisgarh.

Shri Rajesh Kumar Singh,
Additional Commissioner,
O/o Principal Commissioner,
CGST & Central Excise, Raipur (C.G)

Subject :-Chhattisgarh GST Act, 2017 – Advance Ruling U/s 98 Chhattisgarh GST Act, 2017 –

Advance Ruling U/s 98 sought by M/s Shanti Enggicon Private Limited, ,Shanti Niwas, Opposite Agrasen Bhawan, Korba, Chhattisgarh, a registered Service provider and contractor, GSTIN- 22AAKCS0035Q1Z8, as to whether GST is required to be paid by the Applicant on Royalty amount under RCM or not and whether Royalty amount is also required to be added in the value of supply of Service as per Section 15 and GST is to be paid on royalty amount, considering the same as part of supply of value.

Read :-Application dated 04-07-2020 from M/s Shanti Enggicon Private Limited, ,Shanti Niwas, Opposite Agrasen Bhawan, Korba, Chhattisgarh (GSTIN- 22AAKCS0035Q1Z8)

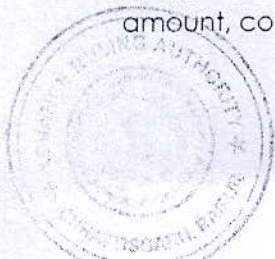
PROCEEDINGS

[U/s 98 of the Chhattisgarh Goods & Services Tax Act, 2017 (herein- after referred to as CGGST Act, 2017)]

No.STC/AAR/09/2020

Raipur Dated 25/11/2020

M/s Shanti Enggicon Private Limited, ,Shanti Niwas, Opposite Agrasen Bhawan, Korba, Chhattisgarh [hereinafter also referred to as the applicant] has filed an application U/s 97 of the Chhattisgarh Goods & Services Tax Act, 2017 seeking advance ruling as to whether GST is required to be paid by the Applicant on Royalty amount under RCM or not; and whether Royalty amount is also required to be added in the value of supply of Service as per Section 15 and GST is to be paid on royalty amount, considering the same as part of supply of value.



2. Facts of the case:-

M/s NTPC Ltd., had invited a tender through RITES Ltd. for "Execution of Earthwork, in formation, Construction of Minor Bridges, Blanketing, P. way linking works including supply of P-way fittings, Track Ballast, PSC Sleeper, and Points & Crossings in connection with construction of Railway Infrastructure from Kotailia Station to 3/771 Km LP, Proposed CKRU, CKRD lines including Proposed CKR Station, POR Section form Ch. 1/00Km. to 6/449 Km except POR Portion and 100 metre approach bank on either side, Both Y-conn. (North and South) and Kotarila Station to 13/280 KM TM of NTPC Railway Siding. M/s KCC-MBBL (Joint Venture) (hereinafter referred to as the "Main Contractor") participated in above tender work and received the above contract work. The Main Contractor has awarded the above work on back to back basis to the Applicant with all the terms and conditions and specification of the original tender. All the purchases and execution of the above work is being done by the applicant M/s Shanti Enggicon Private Limited.

2.1 The Government of Chhattisgarh Mining Department vide Notification No. F7-29/2012/12 dtd. 05.03.2018 has imposed royalty on Soil used in earthwork and also charged the royalty rate structures of certain minerals like aggregate, sand and mourm to be applicable from 01.04.2018. This notification has two impact, first there is change in rate of royalty of certain minerals and secondly imposition of new royalty on soil used in earthwork. The tender has been awarded prior to 01.04.2018, i.e. the date of notification of the Chhattisgarh State for imposition of Royalties on Earth/ Soil, whereby not only substantial enhancement in royalty of other minerals has been effected but also new royalties has been imposed on earth being used in commercial purpose. When the tender was floated there was no royalties on earth/ soil and it was an exempted mineral and accordingly the rates had been quoted by the contractors/bidders, on the basis of the existing 'rates as well as minerals on which royalties was applicable' and if there is any increase or imposition of royalties on any new minerals is enacted, it was to be reimbursed to the contractor as per clause 38 of the general condition of the contract. Thus, in compliance of the Clause 38 of the General Conditions of contract, the employer has given consent to reimburse the royalty on actual basis after submission of original challan in proof of the royalty payment. As the work has been subcontracted to the applicant on back to back basis with all the responsibilities for the execution of all the work along with procurement of all the materials, thus the responsibility for payment of Royalty is also inferred to the applicant. But as per the government rules the Royalties clearance is required to be made only in the name of the main contractor i.e. KCC- MBPL (JV), so the applicant is bound to deposit the challan in the name of Main contractor but payment even though the cost has been borne by the applicant. Thus, during the execution of above work the Applicant paid Royalty to Chhattisgarh Government by selecting name of Tax Payer as Main Contractor, as the tender work is allotted to main contractor. The Applicant also raise invoice / debit note for royalty reimbursement charges to main contractor and accordingly recover the royalty amount from main contractor who further raised bill to the employer.



3. Contentions of the Applicant:- The applicant's contention are as under :-

In the present case the work of "Execution of Earthwork, in formation, Construction of Minor Bridges, Blanketing, P. way linking works including supply of P-way fittings, Track Ballast, PSC Sleeper, and Points & Crossings in connection with construction of Railway Infrastructure from Kotarlia Station to 3/771 Km LP, Proposed CKRU, CKRD lines including Proposed CKR Station, POR Section from Ch. 1/00Km. to 6/449 Km except POR Portion and 100 metre approach bank on either side, Both Y-conn. (North and South) and Kotarlia Station to 13/280 KM TM of NTPC Railway Siding" has been allotted to the applicant on back to back basis with all the responsibilities to complete the work and thus applicant paid the royalty to State Government from his bank account by selecting the Tax Payer name of Main Contractor (Since the tender is allotted to main contractor). All the cost for getting royalty clearance from the Mining office is borne by the applicant. In such a case, the project work is executed by the Applicant and also engaged in earthwork formation work. The applicant is also paying the royalty challan from its bank account and accordingly it was their contention that it will be deemed that it is the applicant who has received services from the Government and GST shall be paid under RCM by the applicant on such royalty charges, to be reimbursed by the main contractor. Section 15 of Central Goods and Service tax Act, 2017 provides that the value of supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier. Thus it has also been the contention of the applicant that in the present case royalty fee on soil is levied under Chhattisgarh Mining Act and that applicant also recover the royalty amount from the main contractor, thus the said royalty fee amount is required to be added in the value of supply of service and liable for payment of GST. On the basis of the above facts and law the applicant's desired ruling on the aforesaid aspect.

4. Personal Hearing:-

Keeping with the established principles of natural justice, personal hearing in the matter was extended to the applicant through virtual mode and accordingly their authorized representative Shri Mithilesh Kumar, CA appeared online before the authority for hearing on 21/10/2020 and reiterated their contention.

5. The legal position, Analysis and Discussion:-

At the very outset, we would like to make it clear that the provisions for implementing the CGST Act and the Chhattisgarh GST Act, 2017 [hereinafter referred to as "the CGST Act and the CGGST Act"] are similar and thus, 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 CGGST Act, 2017. Now we sequentially proceed to discuss the issues involved in the ruling so sought by the applicant and the law as applicable in the present case.

5.1 We find that the applicant is seeking advance ruling on the issues regarding liability to GST on Royalty amount paid under RCM and whether Royalty amount is also required to be added in the value of supply of Service as per Section 15 for payment of GST, considering the same as part of supply of value.

5.2 In the instant case, as the afore mentioned work has been allotted to the applicant on back to back basis with all the responsibilities to complete the work and the applicant is admittedly paying the royalty to State Government from his bank account by selecting the Tax Payer name of Main Contractor as the tender is allotted to main contractor and all the cost for getting royalty clearance from the Mining office is borne by the applicant.

In the present case, the mining right so granted for mining of soil is covered under the sub heading 997337 which specifies — 'Licensing services for the right to use minerals including its exploration and evaluation'. It is further seen that this gets covered under entry no. 17 of Notification No. 11/2017 — Central Tax (Rate) dated 28.06.2017, though the aforementioned service is not covered in any of the specifically mentioned descriptions of entry no 17, resultantly it qualifies being categorized in the residual clause / serial number of entry no 17, wherein it has been specified that the rate applicable for such service should be of same rate as applicable for the supply of like goods involving transfer of title in goods.

Annexure to Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017, prescribing therein the Service Accounting Code for each type of services, reads as under:-

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

Here in the instant case, the services received by the applicant merits classification under 99733. Further the Group 99733 consists of the following Headings

Service (Tariff)	Code	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



[Handwritten signature]

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

From the above it gets abundantly clear that the service received by the applicant is squarely covered under the Service Accounting Code 997337 -Licensing services for the right to use minerals including its exploration and evaluation. The State Government has been providing the service of licensing services for the right to use minerals after its exploration and evaluation and for this a consideration has to be paid to the Government.

5.3 Section 2(98) of CGST Act, 2017 stipulates regarding liability to pay tax under reverse charge, meaning therein that the liability to pay tax shall be on the recipient of goods/services rather than the supplier of goods/services.

Section 2(98), supra reads as under:-

"reverse charge" means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or subsection (4) of section 5 of the Integrated Goods and Services Tax Act;

Further, Reverse Charge Mechanism is applicable for certain notified services as mentioned in Notification No. 13/2017 — Central Tax (Rate) dated 28.06.2017. As per Sl. No. 5 to the said Notification, services supplied by the Central Government, State Government, Union territory or local authority to a business entity attracts GST, under reverse charge basis by the recipient of such services. The applicability thereof of GST rate for the aforementioned service is to be based on the classification of service. In the present case, as discussed above the mining rights so granted is covered under the sub heading 997337 that specifies — 'Licensing services for the right to use minerals including its exploration and evaluation', covered under entry no. 17 of Notification No. 11/2017 — Central Tax (Rate) dated 28.06.2017 attracting the same rate as applicable



for the supply of like goods involving transfer of title in goods. On perusal of the abovementioned provisions, it is evident that the business entities availing mining rights including its exploration and evaluation shall be charged to GST at the rate of tax as applicable on supply of like goods being mined.

5.4 In the aforesaid context, it is also seen that the sectoral FAQ published by the CBEC, categorically state that Royalty payment made towards licensing services for exploration of natural resources is treated as supply of services. For the sake of brevity, the extract of the same is reproduced here 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."

5.5 Thus in the instant case as the applicant is admittedly availing mining rights including its exploration and evaluation of soil used in earthwork on payment of a consideration to the Government of Chhattisgarh applicable with effect from 1.4.2018 GST is payable on reverse charge basis by the applicant on the consideration so paid to the Government, at the rate of supply of like goods being mined, on account of availing the said mining rights. Accordingly we come to the considered conclusion that the services for the right to use minerals including its exploration and evaluation, as per the Notification No. 11/2017-CT (Rate), dated 28.06.2017 as amended is included in sub heading 997337, attracting GST rate @18 % [9% + 9%]. Further, 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 28-6-2017, the liability to pay tax gets transferred to the recipient of such services viz. applicant under reverse charge mechanism as the services for right to use minerals (soil) including exploration and evaluation are provided by the State Government to the applicant's business entity.

5.6 Now coming to the second issue in hand regarding inclusivity of Royalty amount in the value of supply of Service as per Section 15 for payment of GST, considering the same as part of supply of value for supply of the aforesaid services / activity rendered by the applicant to the main contractor, we would like to refer to the provisions of Section 15 of CGST Act, 2017 which reads as under:-

SECTION 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.

5.7 Thus as clause (2) to Section 15 of the Act supra provides that the value of supply shall include any tax, duties, cesses, fees and charges levied under any law other than GST Act, the royalty amount so paid by the applicant is includible while arriving at the transaction value for payment of applicable GST on the supply of the aforesaid services /activity rendered by the applicant to the main contractor.

6. Having regard to the facts and circumstances of the case and discussions as above, we pass the following order:-

ORDER

(Under section 98 of the Chhattisgarh Goods and Services Tax Act, 2017)

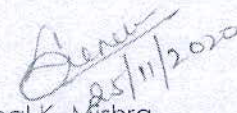
No.STC/AAR/09/2020

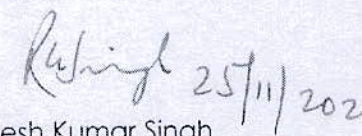
Raipur Dated ...25/11.2020

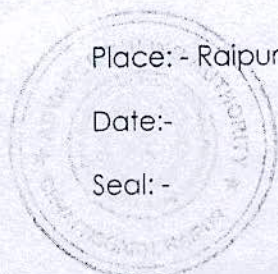
The ruling so sought by the Applicant is accordingly answered as under:

RULING

- i. Yes, GST at the applicable rate is payable by the applicant on the royalty amount under Reverse charge mechanism.
- ii. Royalty amount is also includible while arriving at the transaction value for payment of applicable GST on the supply of aforesaid services rendered by the applicant to the main contractor, as stipulated under section 15 of CGST Act, 2017.


Sonal K. Mishra
(Member)



Rajesh Kumar Singh
(Member)



TRUE COPY


MEMBER
ADVANCE RULING AUTHORITY
CHHATTISGARH, RAIPUR

TRUE COPY


MEMBER
ADVANCE RULING AUTHORITY
CHHATTISGARH, RAIPUR