

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

4, Vibhuti Khand, Gomti Nagar, Lucknow

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

Sub:- GST ACT, 2017 – Advance Ruling U/s 98 – liability to tax under GST Act in respect to application dated 03.02.2020 from M/s Ajay Kumar Singh, Village- Kajiyapur, Shop 1, Ram Nagar, Barabanki, U.P.- 225 304- Order- Reg.

1) M/s Ajay Kumar Singh, Village- Kajiyapur, Shop 1, Ram Nagar, Barabanki, Uttar Pradesh – 225 304 (here in after called the applicant) is a registered assessee under GST having GSTN: 09CHMPS9167D3ZL.

2) The applicant is engaged in the business of sand mining and have been granted mining lease for extraction of sand at Basti District. The said product is classifiable under tariff heading 2505, leviable to GST @5%. During the lease period of five years the applicant has to pay lease rent as per mutually agreed terms and conditions.

3). Accordingly, the applicant has sought an advance ruling on the following questions:-

- i. What shall be the classification of service provided by the Government of Uttar Pradesh to M/s Ajay Kumar Singh in accordance with the Notification No. 11/2017-CT (Rate) dated 28.06.2017 read with annexure thereof.
- ii. Whether the said service can be classified under Chapter number 9973 as “Licensing services for the right to use minerals including its exploration and evolution” or any other service under the said chapter.
- iii. What shall be the rate of GST on given services provided by the Government of Uttar Pradesh to M/s Ajay Kumar Singh for which royalty is being paid.

4). As per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending in any proceedings nor decided in any proceedings in the applicant’s case, under any of the provisions of the ACT.

5). The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer his comments/views on the matter as well as to inform that whether any proceeding, on the questions raised in the application, under any of

the provisions of the Act, is pending or decided in the applicant's case. The Divisional reply was received in this office vide letter C. No. V(30)517/Tech/Div. LKO_IV/BBK/Misc./2019 dated 06.03.2020, wherein it has been reported that "the services for the right to use minerals (sand) including its exploration and evolution, as per Sr. No. 257 of the annexure appended to Notification No. 11/2017-CT(Rate) dated 28.06.2017 is included in the group 99733 under heading 9973." Further, as regard to the rate of GST it has been reported that "The services for the right to use sand minerals including its exploration and evolution, as per Sr. No. 257 of the annexure appended to Notification No. 11/2017-CT (Rate) dated 28.06.2017 is included in the group 99733 under heading 9973. Hence, it attracts the same rate of tax as on supply of the like goods involving transfer of title in goods. As per Notification No. 11/2017-CT (Rate) dated 28.06.2017 under the CGST Act, 2017, the sand (mineral) extracted by the applicant attracts 5% GST (2.5 % CGST+2.5% SGST) as covered under HSN 2505 (at sl. No. 113 of the Notification)." As regard to any proceeding pending or decided on the questions raised in the application, nothing has been reported by the Divisional Officer. Accordingly it is deemed that that no proceedings, on question raised in the application, is pending or decided under any of the provisions of the Act, against the applicant.

6). The applicant was granted a personal hearing on 26th June 2020. Shri Rajesh Kumar Tiwari, Advocate/ Authorized representative of the applicant appeared for hearing. During the course of personal hearing, he reiterated the submissions already made vide their application dated 03.02.2020 and requested to grant another hearing on 29th June 2020 to submit additional documents. However he failed to submit the said additional documents till date.

DISCUSSION AND FINDING

7). At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST 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 UPGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act'.

8). We have gone through the submissions made by the applicant and have examined the explanation submitted by them. At the outset, we find that the issue

raised in the application is squarely covered under Section 97(2)(a) of the CGST Act 2017 being a matter related to classification of any goods or service or both. We therefore, admit the application for consideration on merits.

9) We observe that the Government provides license to various companies for exploration of natural resources. For this, the licensee company is required to pay the consideration to the Government in the form of annual licensing fee, lease charge, royalty, dead rent etc. In the State of Uttar Pradesh the mining lease is governed by the **U.P. Minor Minerals (Concession) Rules, 1963**. Rule 13 of the said Rules deals with "Security Deposit", Rule 21 deals "Royalty" and Rule 22 deals "Dead Rent". This activity of payment of lease charge/dead rent/royalty is towards the supply of service i.e. Licensing service for the right to use minerals including exploration and evolution, wherein the Government of Uttar Pradesh is supplier and the applicant is recipient. The liability of payment of GST liability on the amount of royalty paid to the Government is on the Service recipient i.e. the applicant in the instant case, in terms of Sl. No. 5 of Notification No. 13/2017-Central Tax (Rate) dated 28-06-2017.

| Table 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 by way of speed post, express parcel post, life insurance, and | Central Government, State Government, Union territory or local authority | Any business entity located in the taxable territory. |

Further, as per Sectoral FAQs on mining issued by CBIC,

| | Question | Answer |
|----|--|---|
| 22 | Whether GST is payable on royalty (to be paid to Government) for Mining Lease granted by State Govt. | Yes, on royalty GST will apply under reverse charge mechanism. Further, such payment of GST under reverse charge mechanism would be eligible as ITC in the hands of the recipient of supply for payment of GST. |

10). Now coming to the question number 1st and 2nd, regarding classification of the service, we observe that as per the "**Explanation notes to the scheme of classification of Service**" :-

"997337 Licensing services for the right to use minerals including its exploration and evaluation- This service code includes licensing services for

the right to use, mineral exploration and evaluation information, such as mineral exploration for petroleum, natural gas and non-petroleum deposits.” We also observe that the Applicant has been awarded with a lease of the area specified in the lease agreement and conferred the right to extract the minerals lying underneath for appropriation. We feel that the right so conferred is not limited to using the minerals over the lease period but rather to appropriate the minerals extracted during the lease period. Of course, extraction of minerals and the Government, does not continue to enjoy title over the minerals extracted by the lessee. Rather the applicant enjoys the title over the minerals extracted from the lease hold area and accordingly appropriates the property in the minerals by way of sale or otherwise. Thus, in such case of mining lease service granted by Government, on payment of royalty as applicable, there is transfer of right to exploit the minerals lying under the lease hold area and to appropriate the exploit. On examining the aforesaid nature of the service being received by the applicant vis-a-vis classification of service, the impugned service received by the Applicant from the State Government merits classification under the head “Licensing services for the right to use minerals including its exploration and evaluation” at Serial No. 257, Heading 9973, Group 99733.

11). Now coming to the third question as “what shall be the rate of GST on given services provided by the Government of Uttar Pradesh to applicant for which royalty is being paid” we observe that Sl. No. 17 Notification 11/2017-Central Tax (Rate) dated 28-06-2017 specify the rates for heading 9973, which is as under:

| Sl No. | Chapter, Section or Heading | Description of Service | Rate (per cent.) | Condition |
|--------|---|--|------------------|-----------|
| (1) | (2) | (3) | (4) | (5) |
| 17 | Heading 9973 (Leasing or rental services, with or without operator) | (i) Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of goods other than Information Technology software. | 6 | - |
| | | (ii) Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of Information Technology software. [Please refer to Explanation no. | 9 | - |

| | | | | |
|--|--|--|---|--|
| | | (v)] | | |
| | | (iii) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration. | Same rate of central tax as on supply of like goods involving transfer of title in goods | |
| | | (iv) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof. | Same rate of central tax as on supply of like goods involving transfer of title in goods | - |
| | | (v) Leasing of aircrafts by an operator for operating scheduled air transport service or scheduled air cargo service by way of transaction covered by clause (f) paragraph 5 of Schedule II of the Central Goods and Services Act, 2017. Explanation.- (a) "operator" means a person, organization. | 2.5 | Provided that credit of input tax charged on goods used in supplying the service has not been taken [Please refer to Explanation no. |
| | | (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 | |

Further as per Notification No. 31/2017- Central Tax (Rate) dated 13.10.2017, the following amendment has been done,

"(g) against serial number 17, for item (vi) in column (3) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely: - (3) (4) (5)

| (3) | (4) | (5) |
|--|--|-----|
| "(vi) Leasing of motor vehicles purchased and leased prior to 1st July 2017; | 65 per cent. 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 | -"; |

Further, as per Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018; the following amendment has been done,

"(e) against serial number 17, for item (viii) in column (3) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely: -

| (3) | (4) | (5) |
|---|---|-----|
| “(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 | ”; |

12). We observe that the Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018 have been issued on the recommendations of the GST Council consequent upon decisions of the 31st GST Council meeting held on 22.12.2018. In this connection, for proper understanding of the issue, we have gone through the Agenda for 31st GST Council Meeting proposals recommended by Fitment Committee and Minutes of the Meeting of the Council available in GST council website. Sl. No '18' of Annexure – II of Agenda item 6, which is relevant to the issue, is reproduced below.

| SI. No | Proposal | Comments | | | | | | | | | | | | | | | | |
|---|--|---|---|-----------------|------------------------|-----------------|---|--|--|--|---|---|-------------------------------------|---|--|--|--|----|
| 18 | To clarify the GST rate applicable on right to use Intellectual property and similar products other than IPR | <p>recommendation: It is proposed that to bring clarify the residuary rate entry for Heading 9973 in Notification no. 11/2017-Central Tax (Rate) dated 28.06.2017 may be split in two parts as follows.</p> <table><thead><tr><th>Description of Service</th><th>Rate (per cent)</th><th>Description of Service</th><th>Rate (per cent)</th></tr></thead><tbody><tr><td colspan="4">SI 17 Heading 9973 (Leasing or rental services, with or without operator)</td></tr><tr><td>(vii) Leasing or rental services, with or without operator, other than (i), (ii), (iii), (iv), (v), (vi) and (vii) above.</td><td>Same rate of central tax as on supply of like goods involving transfer of title in goods.</td><td>“(viia) Leasing or renting of goods</td><td>Same rate of central tax as on supply of like goods involving transfer of title in goods.</td></tr><tr><td></td><td></td><td>(viii) Leasing or rental services, with or without operator, other than (i), (ii), (iii), (iv), (v), (vi), (vii) (viia) above.</td><td>18</td></tr></tbody></table> | Description of Service | Rate (per cent) | Description of Service | Rate (per cent) | SI 17 Heading 9973 (Leasing or rental services, with or without operator) | | | | (vii) 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 on supply of like goods involving transfer of title in goods. | “(viia) Leasing or renting of goods | Same rate of central tax as 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) (viia) above. | 18 |
| Description of Service | Rate (per cent) | Description of Service | Rate (per cent) | | | | | | | | | | | | | | | |
| SI 17 Heading 9973 (Leasing or rental services, with or without operator) | | | | | | | | | | | | | | | | | | |
| (vii) 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 on supply of like goods involving transfer of title in goods. | “(viia) Leasing or renting of goods | Same rate of central tax as 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) (viia) above. | 18 | | | | | | | | | | | | | | | |

Discussion 1. Heading 9973 of scheme of classification of services under GST includes "Group 99733; the licensing services for the right to use intellectual property and similar products". However, the rate notification No. 11/2017-CT (R) dated 28.06.2017, prescribes rate only for transfer or permitting the use or enjoyment of Intellectual Property Rights (IPR) No rate has been prescribed for transfer of intellectual property and similar products other than IPR. IPR, as held in several decisions of the Tribunal and the Courts, refers to rights in intellectual property protected by the relevant IPR law in force, intellectual property not protected by IPR law in force cannot be termed as IPR.

2. The residuary entry for the Heading 9973, i.e. entry SI. No. 17(viii) prescribes GST rate as "same rate of Central Tax as on supply of like goods involving transfer of title in goods". However, the intellectual property does not have underlying goods and thus the prescribed rate does not apply to transfer of intellectual property and similar products other than IPR.

We also observe that as per the minutes of the 31st GST Council Meeting held on 22nd December, 2018, against the aforesaid proposal, it has been observed that:-

"Annexure – II

14 41. The Council agreed to the proposals contained in S.Nos. 1 to 19 of Annexure II, recommended by Fitment Committee in its meeting of 14th and 15th December, 2018."

13). From the aforementioned proposal, it may be appreciated that amendment of Entry SI No. 17 (viii) was approved merely to clarify the GST rate applicable to the right to use Intellectual Property and similar products other than IPR which are covered under Group 99733. As per discussion in point no 1 no rate has been prescribed for transfer of intellectual property and similar products other than IPR and in discussion Point No 2 it has also been made clear that GST rate "Same rate of Central Tax as on supply of like goods involving transfer of title in goods" does not apply to transfer of intellectual property and similar products other than IPR, since the intellectual property does not have underlying goods.

14). The underlying principle behind the above referred agenda item is transfer of intellectual property and similar products other than IPR is not like lease and rental of goods in which case, title over the goods always remains with the lessor and the lessee merely enjoys the right to use the goods during the lease period Thus, the rate of GST applicable on lease of goods may have been prescribed as the rate of GST applicable to supply of like goods involving transfer of title over the goods, but the rate of GST prescribed for lease of goods can't be made applicable for leasing of mining area conferring the right to extract and appropriate the minerals The lease by Government not being a lease of any

goods, the conditional rate of tax applicable to sale of like goods cannot be imported for prescribing the rate of GST applicable to leasing of mining area

On a conjoint reading of the notification no. 27/2018-Central Tax (Rate) dated 31.12.2018, Minutes / Agenda / Proposal/ Discussion of the GST council, we are of the view that amendments have been carried out vide the aforesaid notification to clarify the legislative intent as well as to resolve the unintended interpretations. It is well settled that the legislative intent cannot be defeated by adopting interpretations which is clearly against such interpretations. In view of this we are of the opinion that the service received by the applicant from State Government is liable to be taxed @ 18%.

15). We also observe that Rajasthan Authority for Advance Ruling, in its Order No. RAJ/AAR/2018-19/34 dated 15.02.2019, in the case of M/s Aravali Polyart (P) Ltd , has ordered that the “the activity undertaken by the applicant attracts 18%GST (9% CGST + 9% SGST). Further the said order has been upheld by the Rajasthan Appellate Authority for Advance Ruling, vide Order No. RAJ/AAAR/03/2019-20 dated 30.05.2019.

16). Similarly in the case of M/s Penguin Trading And Agencies Limited, the Appellate Authority for Advance Ruling, Odisha, in its Order No. 03/ODISHA-AAAR/2019-20 dated 05.11.2019 has ordered that “....the licensing services for the right to use minerals including its exploration and evaluation received by the applicant is taxable @18% (9% CGST and 9% SGST) during 07/2017 to 12/2018...”

17). We also observe that the Commissioner, SGST, Uttar Pradesh, vide their letter पत्रांक: जी .एस.टी./2017-18/1718091/1406/वाणिज्य कर dated 15.02.2018, has also clarified that the rate of GST on the royalty received by the State Government would be at the rate of 18%.

18). In view of the above discussions, we, both the members unanimously rule as under;

RULING

19). The advance Ruling on question posed before the Authority is answered as under:

19.1) The service under the question would be classifiable under “Licensing services for the right to use minerals including its exploration and evaluation” at Serial No. 257, Heading 9973, Group 99733, sub heading 997337 of “annexure: Scheme of Classification of Service” to the Notification

No. 11/2017-C.T. (Rate) dated 28.06.2017 (as amended) and attracts 18% GST (9% CGST + 9 % SGST).

20). This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.



(Ajay Kumar Misra)

Member of Authority for Advance
Ruling



(Dinesh Kumar Verma)

Member of Authority for Advance
Ruling

To,

M/s Ajay Kumar Singh,
Village- Kajiyapur, Shop 1,
Ram Nagar, Barabanki,
U.P.- 225 304

AUTHORITY FOR ADVANCE RULING – UTTAR PRADESH

Order No. 62

Date: 07.07.2020

Copy to-

1. The Chief Commissioner , CGST & Central Exise, Lucknow, Member, Appellate Authority of Advance Ruling.
- ✓ 2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & Central Exise , 7-A Ashok Marg, Lucknow Uttar Pradesh.
4. The Assistant Commissioner, CGST & Central Exise, Division- Lucknow-IV, Barabanki, Amar Villa, Shri Ram Colony, Barabanki Uttar Pradesh.
5. Through the Additional Commissioner, Gr-1, Commercial Tax Ayodhya, Uttar Pradesh to jurisdictional tax assessing officers.

Note: An Appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Services Tax, 4 , Vibhuti Khand Gomti Nagar, Lucknow-226010, within 30 days from the date of service of this order.