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Body

AUTHORITY FOR ADVANCE RULING No. GST-ARA-57/2021-22/B-59, Dated 04th May, 2022

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai - 400010,  
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax. (Member)

ARN No.		AD270122021750O
GSTIN Number, if any/ User-id		27AAJCB4681Q1ZW
Legal Name of Applicant		M/s. BARANJ COAL MINES PRIVATE LIMITED
Registered Address/Address provided while obtaining user id		1st Floor, Plot No. 7, Gawande Lay Out, Khamla Ring Road, Nagpur 440015, Maharashtra
Details of application		GST-ARA, Application No. 57 Dated 17.01.2022
Concerned officer		NAG-VAT-C-038, NAGPUR
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)(As per applicant)	The Applicant is a Mine Developer and Operator ("MDO") and is presently engaged in the developing and operating a Coal mine at Kiloni, District Chandrapur, Maharashtra. This mine has been allotted to Karnataka Power Corporation Limited ("KPCL") for mining of coal and to be used only for captive purpose in generation of power.
issue/s on which advance ruling required		> Classification of goods and /or services or both > Determination of time and value of supply of goods or services or both > Determination of the liability to pay tax on any goods or services or both > Whether any particular thing done by the applicant with respect any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term
Question on which advance ruling required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(under section 98 of the Central Goods and Services Tax Act, 2017 and  
the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act 2017 and the Maharashtra Goods and

Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s. BARANJ COAL MINES PRIVATE LIMITED, the applicant, seeking an advance ruling in respect of the following questions:

**Question 1** - Whether the activity carried out by the Applicant under the Agreement is supply of Goods or is a supply of Service and should accordingly be subject to GST under HSN 2701 (chargeable @ 5% as supply of coal) or under HSN 9986 (chargeable @ 18% as Support Services to Mining)?

**Question 2:** Since, in terms of Article 24.3 of the Agreement, the right and ownership on the Coal mined by the Applicant always vests in and remains with KPCL and the Applicant is only responsible for excavation, transport and delivery, and as such cannot transfer ownership to the coal, whether the applicant should raise an invoice under MGST/CGST or under IGST in as much as the Applicant is of the view that the entire activity takes place in the State of Maharashtra only.

**Question 3:** Can the present contract be treated as a single consolidated contract or a divisible contract in view of the fact that four components of the contract (viz. Excavation of Coal, Transport Service, Handling Charges (incl. Additional Handling Charges) and Restoration and Rehabilitation charge] are clearly distinguishable and separately identifiable and therefore the tax treatment under GST shall also be different and separate?

If the contract is treated as divisible, should:-

(a) In so far as Excavation of coal is concerned, whether the Applicant should raise a separate invoice on KPCL Karnataka for mining support services under HSN 9986 or under any other head and charge GST under MGST and CGST each or charge IGST keeping in mind that entire excavation activity takes place in Maharashtra.

(b) In so far as Transport Service is concerned, whether the Applicant should raise a separate invoice as Goods Transport Services under HSN 9965 or HSN 9967 or under any other head within the State of Maharashtra on KPCL Karnataka and charge GST under MGST and CGST each or charge IGST keeping in mind that this charge relates to transport of mined coal from the mining site to the loading point which happens entirely in the State of Maharashtra.

(c) In so far as Handling Charges (incl. Additional Handling Charges) are concerned, whether the applicant should raise a separate invoice as Business Support Service under HSN 9985 or under any other head within the State of Maharashtra on KPCL Karnataka and charge GST MGST and CGST each or charge IGST keeping in mind that this charge relates to services towards transport of coal from the loading point in Maharashtra to the delivery point (in Karnataka) whereby rail freight for this segment is paid directly by KPCL to railway and the Applicant provides necessary support and monitoring services to facilitate transport of coal.

(d) In so far as Restoration and Rehabilitation charge is concerned, whether the Applicant should raise a separate invoice as Business Support Service under HSN 9985 or under any other head within the State of Maharashtra on KPCL Karnataka and charge GST MGST and CGST each or charge IGST keeping in mind that this charge relates to work done towards rehabilitating people affected because of the mining operations and restoring the environmental impact caused due to mining which gets carried out entirely in the State of Maharashtra.

**Question 4:** There are certain other components like Royalty, MMDR, DMF Fund, Cess, Stowing Excise Duty, Reserve Price, etc. which are levied on the coal excavated from the Mine which is payable directly by KPCL to the Government of India and the State Government of Maharashtra. The Applicant neither has any liability to pay nor does it makes any payment of such amount. Under the circumstances, is the Applicant required to consider such amounts/payments for the purpose of determining the transaction price in any of the situation as enumerated above?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

## **2.FACTS AND CONTENTION - AS PER THE APPLICANT FACTS:**

2.1 The Applicant, M/s. Baranj Coal Mines Pvt. Ltd., a company with its registered office in State of West Bengal is a Mine Developer and Operator ("MDO") and is presently engaged in the developing and operating a Coal mine at Kiloni, District Chandrapur, Maharashtra ("the Mine"). This mine has been allotted to Karnataka Power Corporation Limited ("KPCL") by the Govt. Of India, for mining of coal and to be used only for captive purpose in generation of power BY KPCL.

2.2 Vide an Agreement dated 19.03.2021, the Applicant has been tasked by KPCL with developing and operating the Mine & excavating coal & delivering it to KPCL for generation of power. The Agreement lays down detailed guidelines & terms & conditions which governs the rights of KPCL & Applicant and also lays down various parameters of performance of the Applicant. It is this activity of the Applicant and the Agreement which is the basis for the subject issues.

2.3 KPCL has been allotted Baranj I-IV, Manoradeep and Kiloni Coal Blocks (hereinafter referred to as 'mines' situated in Chandrapur district of Maharashtra. Applicant has been appointed as the operation & Maintenance contractor to undertake development & Operation of above mentioned coal mines for 25 years & is required to excavate coal & deliver it to KPCL's Karnataka power plant.

2.4.1 The scope of the project includes : Development of Mines on the Sites, Operation & maintenance of Mines ; Excavation, Washing (if required) & Delivery of Coal; & Performance & fulfilment of all other obligations of the Mine Operator in accordance with provisions of impugned Agreement and matters incidental thereto, for which KPCL has appointed the applicant, as the mine operator. For the purposes of the Mines Act, 1952, KPCL shall be the Owner of the Mines.

2.4.2 KPCL is also responsible for undertaking all Rehabilitation & Resettlement (R&R) Obligations, including procuring approval of the plan for

rehabilitation & resettlement of PAPs (Project Affected Persons) & applicant has to undertake all such activities in relation to R&R Obligations on behalf of KPCL including employing of PAPs in accordance with the R&R agreement dt 15.12.2016 between the prior allottee & the Govt of Maharashtra, as per R&R Policy & other Applicable Laws.

2.4.3 The applicant shall ensure transportation of the Coal to the Delivery Points and undertake all necessary precautions in relation to ensuring the safety and quality of the Coal in transit.

2.4.4 As per the Agreement, KPCL shall pay, all Taxes and levies, duties, Royalties including demands, if any, cesses and all other statutory charges payable in respect of excavation and delivery thereof directly to the Government since the entire Coal, is the property of KPCL and the right, title and interest in the Coal vests in KPCL.

2.4.5 All costs and expenses in relation to the transportation of the excavated Coal is done by KPCL and applicant is to be paid excavation charge per Ton of Coal Delivered by the applicant to KPCL. The price of Coal, in respect of excavation of Coal, Washing of Coal and Delivery thereof, payable by KPCL is exclusive of all Taxes and all applicable Taxes (except GST) to be paid by KPCL directly to the Government. GST paid by the applicant is to be reimbursed by KPCL upon submission of supporting documents evidencing payment by the applicant.

2.5 Post signing of the Agreement, applicant started developing the mine & the first coal was mined & delivered to KPCL in March 2021 & Applicant raised its first invoice on 21.04.2021 for the period 20.03.2021 to 31.03.2021 for Rs. 77,76,106.71 towards mining of 3944 MT of Coal including I GST of Rs. 2,95,166.99 @5% under HSN 2701200 as Supply of Coal, since KPCL informed the Applicant vide its email dated 03.03.2021 that the instant delivery of coal was sale and supply of Coal and the Applicant should raise its invoice as sale of coal under HSN 2701 charging IGST @ 5%.

2.6 The Applicant conveyed to KPCL that, the instant delivery of mined coal to KPCL is not supply-sale of coal but is provision of mining support services. However, KPCL has stated that the impugned supply by the Applicant to KPCL is sale of coal and should be subject to GST under HSN 2701.

2.7 Applicant submits that, the title of KPCL on the coal is absolute & exclusive & the Govt of India has allotted the Mine to KPCL for mining coal only for its captive use in the Thermal Power Plant. Any coal mined & supplied to KPCL in excess of its requirement shall be sold by KPCL to Coal India Ltd.

2.8 The relationship between KPCL & Applicant is of a service recipient & a service provider & not of a buyer-seller in as much as KPCL always remains the owner of the coal and remains in complete Control over the mines and its operations. All that applicant has undertaken is to render service to KPCL in excavating and delivering coal from mines to KPCL's site.

2.9 Applicant relies on the observation made by the Rajasthan Authority for Advance Ruling vide Ruling No. RAJ/AAR/2020-21/03 dated 14.05.2020, in the case of M/s KSC Buildcon Private Limited.

2.10 The very intention of the parties to the impugned Agreement was to treat the contract as a service contract & not a sales contract. Hence, Applicant feels that the instant contract may be considered as a contract of service under HSN 9986 - being mining support service chargeable to GST @ 18%.

2.11 The impugned Agreement is a divisible contract whereby separate considerations are mentioned for different responsibilities of the applicant which are clearly identifiable & distinguishable i.e. Excavation of coal from the mines; Transport of coal from site (in Maharashtra) to loading point (in Maharashtra); Handling Charges in relation to transport of coal from loading point to delivery point; Restoration and Rehabilitation charge (entire work done is in Maharashtra).

2.12 Applicant submits that the agreement is such that each of the above element has been negotiated separately, separate consideration is mentioned for the same and separate responsibilities are also earmarked for it. It is a settled principle of law that if there are different components of a single agreement which are independent of each other and have been negotiated separately, the same should be dealt with separately under the relevant fiscal statute.

2.13 The Applicant therefore submits that the instant Agreement be considered as a divisible agreement and all the four components of consideration as laid down in the Agreement may be treated separately under the GST Statute.

#### **Additional submission dated 28.03.2022-**

The Applicant has reiterated its submissions made earlier and have further submitted as under:-

2.14 Pursuant to Hon'ble Supreme Court's order 24.09.2014, allocation of all coal blocks in the country were cancelled. Applicant's Holding Company was working under Joint Venture Arrangement for Eight (8) coal blocks which also stood cancelled. Entire investment made by the Applicant in various coal blocks went down the drain. From 2014 till 2021, the Applicant was bleeding and has incurred losses in thousands of crores. Appointment of the Applicant as the MDO for the instant coal block of KPCL provided some breather to the Applicant and rekindled a hope for its survival. Accordingly, when the Mining Agreement was being negotiated, KPCL informed the Applicant vide its email dated 03-03-2021 that the instant delivery of coal by the Applicant to KPCL is sale and supply of Coal and the Applicant should raise its invoice as sale of coal under HSN 2701 charging IGST (a) 5%.

2.15 To obtain certainty on the issue, the Applicant conveyed to KPCL its stand that the instant delivery of mined coal to KPCL is not supply sale of coal but is provision of mining support services and requested to opt for an Advance Ruling on the matter.

2.16 It is under these circumstances that invoices were raised by the Applicant, under protest, as supply of coal and not as mining support services. The Applicant is of the view that the activities carried out by it squarely falls under the Mining Support Services and should be taxable to

18% GST since the impugned Contract is for supply of services (mining support services)

2.17 The Applicant submits that the Hon'ble Bench to examine the relevant clauses of the impugned agreement, a perusal of which, reveals that the relationship between KPCL and the Applicant is of a service recipient and a service provider and not of a buyer-seller.

**APPLICANT SUBMISSION DATED 11.04.2022**

**Query raised during the course of hearing held on 29-03-2022**

2.18 The jurisdictional officer has submitted that the invoices raised by the Applicant also reflects amounts towards Royalty, MMDR, DMF Fund and Reserve Price and therefore these amounts are includible in the transaction value in light of Section 15 of the CGST Act, 2017.

2.19 In this connection, the Applicant submits as under:-

2.19.1 The amounts towards Royalty, MMDR, DMF Fund & Reserve Price are shown in the invoices only as directed by KPCL. None of these amounts are paid to Applicant because they are not due to the Applicant. The said amounts are payable to the Govt of Maharashtra by KPCL and are accordingly paid directly by KPCL in view of Article 29.1.2 of the Mining Agreement. KPCL insisted to show the aforesaid amounts so that the entire transaction can be shown as supply of coal and not supply of services. The reason why these amounts find mention in the invoice raised by the Applicant has already been explained in detail in earlier submissions. The Applicant want to be on the right side of the law in paying its taxes and would not like to be saddled with litigation in future due to less payment of taxes.

2.19.2 Applicant submits sample challans towards payment of Royalty by KPCL to the Department of Geology & Mining. Charges like Royalty (ad valorem on value of coal), MMDR (ad valorem on Royalty), DMF Fund (ad valorem on Royalty) & Reserve Price (fixed rate of Rs. 100 per MT) is paid in single challan to the Department of Geology & Mining, by KPCL directly, without any involvement or recourse to the Applicant. The amounts towards Royalty, MMDR, DMF Fund and Reserve Price are neither receivable nor are received by the Applicant and therefore there is no question of GST liability on the Applicant on Royalty, MMDR, DMF Fund and Reserve Price.

2.19.3 Since the aforesaid amounts are neither receivable nor received by the Applicant, there is no charge for the same in the Applicant's books of accounts. However, since the invoices contain these aforesaid charges, all the Components of Govt Payments (as is collectively called) i.e. Royalty, MMDR, DMF Fund and Reserve Price are recorded at the first instance while recording the Invoice being raised upon KPCL by the applicant, but on the same day a simultaneous reversal entry is also taken in the books to repudiate the liability of Govt Payments since such liability is being discharged by KPCL and more so it is not the liability of the Applicant at all.

2.19.4 As per the ledger account of KPCL as maintained in the books of the Applicant for F.Y. 2021-22 neither have the said amounts been received by us nor have the said amounts shown as receivables in our books. It is reiterated that, the said amounts are not due to us and are neither being claimed by us presently nor will be claimed at any time in future. Further, no liability on account of any of the aforesaid Govt.

Payments are recognised in the books of the Applicant.

2.19.5 In this context, the Applicant relies on Section 15 (1) of the CGST Act as per which, the transaction value (value of supply) on which tax is required to be paid is the price payable or actually paid to the supplier of service (applicant) by the recipient of service (KPCL).

2.19.6 In the instant case the amounts towards Royalty, etc. as mentioned above are payable and paid by KPCL to the Govt of Maharashtra. The said amounts are neither payable nor paid to the Applicant. Therefore, the said amounts cannot and should not be included in the transaction value for taxable purposes in view of Section 15 of the CGST Act.

**03 CONTENTION - AS PER THE CONCERNED OFFICER:**

The jurisdictional Officer made Submissions vide letter dated 28.03.2022 which are as under:-

3.1 As per Registration record of the applicant, the service mentioned is 'Support Services to other Mining' with Service Accounting Code as 998622.

**3.2 Question No. 1:**

3.2.1 The impugned Coal Mine, where excavation is carried out by the applicant is allotted to the Karnataka Power Corporation Limited (KPCL) by the Govt of India. As per the Mining Agreement, the applicant is acting as the 'Mine Operator' and is responsible for the excavation of coal from the Mine, transportation of the excavated coal to the Delivery Point and loading/ Delivery of the coal on the Railway Rakes/ Waggon for supply exclusively to the KPCL (Clause 21.3). Also responsible for services, ancillary or incidental thereto. (Clause 2.1 in the Mining Agreement)

3.2.2 The Transportation of Coal from the Mine to the Railway Depot is a part of service to be provided by applicant to KPCL, while transportation of the coal from Railway depot to the KPCL is responsibility of the KPCL. The railway transportation charges are paid by the KPCL itself (Clause 24.2 of the Mining Agreement).

3.2.3 Therefore, it is obvious that applicant has not been allotted lease of the coal mine and therefore has no right over the Coal mined. Moreover, as per clause 24.3 of the impugned Agreement, the right, title & interest in the coal mined by applicant always vest in & remains with KPCL. Thus, the applicant's impugned activity is purely in the nature of services or supportive services for mining. Hence the activity carried out by the applicant falls under services with Service Accounting Code 9986, and attracts GST at the rate of 18% (IGST 18%, CGST 9% and SGST 9%).

**3.3 Question No 4:**

3.3.1 The copy of sample Invoice sought from the applicant shows that the invoice value is split into three parts viz;

Sub total (A) -, includes: Base Excavation Charges; Base Transportation Cost; Handling Charges; Additional Handling Charges; and R & R Charges

Sub total (B)- includes: Royalty (@14% on the value of G-9 Grade coal); MMDR 2% on Royalty; DMF Fund 10% on Royalty; and Reserve Price

Sub total(C)- includes: IGST @5% and Clean Energy Cess (GST Compensation Cess)

3.3.2 As provided under Section 15 (2) of the CGST Act, 2017, the value of supply includes all taxes, duties, cesses, fees & Charges levied under any law for the time being in force (Excluding SGST, UTGST and the GST (Compensation to States) Act, if charged separately by the supplier;), & hence the Royalty & other charges mentioned under subtotal (B), are part of value of supply & taxable.

3.3.3As per clause 6.1.3 of the impugned agreement, it has been agreed that KPCL, shall pay directly to the Govt., all taxes, levies, duties Royalties, including all statutory charges In respect of excavation & delivery thereof. However, Applicant being Mine Operator, undertakes actual excavation of coal on behalf of KPCL & possess rights for actual excavation by virtue of the Mining Agreement with KPCL & therefore bears liability to pay royalty & other charges.

3.3.4Moreover, Clause (b) of subsection (2) of Section 15 provides that 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 whether or not included in the price shall be the part of Value of Supply. Therefore, components like Royalty, MM DR, DM F fund Cess, Stowing Excise duty, Reserve Price, etc. are required to be considered for determining the transaction price.

#### **04 HEARING**

4.1Preliminary e-hearing was held on 08.03.2022. The applicant's Authorized representative, Shri. Ayan Sinha, AGM and Shri. Dipankar Mukherjee, AGM Finance were present. Jurisdictional officer Shri. P. S. Wagh, STO-NAGPUR-VAT-C-038 was also present. The authorized representatives made submissions for admission of their application. The applicant was informed that Question No.2 & 3 are not covered under the scope of Advance Ruling and so, the same were withdrawn by the applicant.

4.2The Application was admitted and called for final e-hearing on 29.03.2022. The applicant's Authorized representatives, Shri. Sandip Khemka, CA & Shri. Ayan Sinha, AGM were present. The Jurisdictional officer Shri. P.S. Wagh, STO, Nagpur-VAT-C-038, was also present.

4.3The matter was heard.

#### **05. OBSERVATIONSAND FINDINGS:**

5.1 We have considered the facts of the matter, documents on record and submissions made by both the applicant as well as the jurisdictional officer.

5.2 Karnataka Power Corporation Limited ("KPCL") has been allotted Baranj I-IV, Manoradeep and Kiloni Coal Blocks (hereinafter referred to as 'Mines') situated in Chandrapur district of Maharashtra. The subject coal mines, has been allotted by the Government of India to Karnataka Power Corporation Limited ("KPCL") for mining of coal to be used only for captive purpose in generation of power by KPCL.

5.3The Applicant, M/s. Baranj Coal Mines Pvt. Ltd., is a Mine Developer and Operator ("MDO"), and has been contracted by KPCL to develop and operate the said Coal mine, vide an Agreement dated 19th March 2021. The Applicant has been tasked with developing and operating the Mine and excavating coal and delivering it to KPCL. The Agreement lays down detailed guidelines and terms & conditions which governs the rights of KPCL and the Applicant and also lays down various parameters of performance of the Applicant. It is this activity of the Applicant and the impugned Agreement which is the basis for the subject issues raised by the applicant.

5.4The scope of the project is mentioned in the submissions made by the applicant and is not reproduced for the sake of brevity. Further, KPCL is also responsible for undertaking all Rehabilitation & Resettlement (R&R) Obligations, including procuring approval of the plan for rehabilitation & resettlement of PAPs (Project Affected Persons) and applicant has to undertake all such activities in relation to R&R Obligations on behalf of KPCL including employing of PAPs in accordance with the R&R agreement dated 15.12.2016 between the prior allottee and the Government of Maharashtra, as per the R&R Policy and other Applicable Laws.

5.5The first question raised by the applicant is whether the impugned activity carried out by the Applicant under the subject Agreement is supply of Goods or is a supply of Service and whether the said activity should accordingly be subject to GST under HSN 2701 (chargeable @ 5% as supply of coal) or under HSN 9986 (chargeable @ 18% as Support Services to Mining).

5.5.1The applicant has submitted the impugned agreement dated 19.03.2021. From a reading of clause 3.1.1 of the Agreement, we find that, the applicant has been appointed as the mine operator to develop and operate and maintain the Mines and to excavate Coal for Delivery thereof, to KPCL for a period of 25 (twenty five) years commencing from the Appointed Date.

5.5.2The scope of applicant's work/activity finds mention in Article 2.1 of the impugned Agreement and includes : Development of Mines on the specified Sites while conforming to the Specifications and Standards and the Revised Mining Plan set forth in Schedule-D of the agreement; Operation and maintenance of Mines in accordance with the provisions of the Agreement; Excavation, Washing (if required) and Delivery of Coal in accordance with the provisions of the agreement; Establishing and maintaining a Washery, if applicable; etc. From a detailed reading of the Agreement, it is explicit that the applicant has to perform all services, right from excavation of the coal to the delivery of the same to M/s KPCL.

The impugned agreement does not envisage the sale of any goods, including the coal which has been mined by the applicant to KPCL.

5.5.3The coal, as goods, belongs to the Mine Owner i.e. the Government of India and the Government of India has allotted the Mines to Karnataka Power Corporation Limited ("KPCL") for mining of coal, to be used only for captive purpose in generation of power by the KPCL. The fact that the KPCL has been given the authority as the owner of the Mines is reflected in Article 5.7.1 of the impugned Agreement which states that, "Subject to the provisions of this Agreement, the Authority (i.e. KPCL) shall be the Owner of the Mines for the purposes of the Mines Act, 1952. Thus, the said Article of the Agreement clearly proves that the owner of the coal is KPCL and not the applicant. Therefore, there is no supply of coal by the applicant, purely because the applicant neither has any ownership rights on the coal nor has any rights to sell the coal that has been excavated by

it. Hence, the applicant is involved in supply of services in the instant case (as seen from the 'Scope of Supply' in the Agreement) and there is no supply of coal by the applicant.

5.5.4 Thus we hold that, the impugned activity carried out by the applicant is supply of services and not supply of goods. Now that we have held that the impugned supply is a 'supply of services' the next issue to be decided is under which Service Accounting Code (SAC) does the impugned supply fall under.

5.5.5 Notification No. 11/2017 - Central Tax (Rate) dated 28.06.2017 notifies the rate of tax for supply of services under the CGST Act, 2017. The relevant provision of the said notification is reproduced as under:

Sr. No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
1	2	3	4	5
24	Heading 9986	(i) .....	NIL	--
		(ii) Support services to mining, electricity, gas and water distribution	9	--

The impugned services, related to mining (mining of coal), was covered under Sr No 24 (ii) of Notification No. 11/2017 - Central Tax (Rate) dated 28.06.2017.

5.5.6 The said Sr No 24 (ii) of Notification No. 11/2017 - Central Tax (Rate) dated 28.06.2017 was amended vide Notification No. 01/2018 - Central Tax (Rate) dated 25.01.2018 and the relevant Sr. No. 24 (ii) read as under:

Sr. No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
1	2	3	4	5
24	Heading 9986	(i) .....	NIL	--
		(ii) Service of exploration, mining or drilling of petroleum crude or natural gas or both.	6	--
		(iii) Support services to mining, electricity, gas and water distribution other than (ii) above.	9	

5.5.7 In view of the amendment made to Sr. No. 24 (ii) and since the impugned services cannot be considered as Service of exploration, mining or drilling of petroleum crude or natural gas or both, the impugned service is not covered under Sr. No. 24 (ii) of the amended Notification No. 11/2017 - Central Tax (Rate) dated 28.06.2017.

We also find that a new entry Sr. No 24 (iii) was introduced vide the said amendment which covers Support services to mining, electricity, gas and water distribution other than Sr. No 24 (ii).

In view of the amendment, we therefore find that the impugned services related to mining of coal, is covered under Sr. No. 24 (iii) with effect from the date of the amendment i.e. 25.01.2018, attracting 18% GST.

5.6 Question No. 2 & 3 were withdrawn by the applicant during the course of the Final Hearing held on 29.03.2022. Therefore we now take up Question No. 4 raised by the applicant wherein it is asked whether the Applicant required to consider other components like Royalty, MMDR, DMF Fund, Cess, Stowing Excise Duty, Reserve Price, etc. (which are levied on the coal excavated from the Mine and is payable/paid directly by KPCL to the Government of India and the State Government of Maharashtra and which the Applicant neither has any liability to pay nor does it makes any payment of such amount), for the purpose of determining the transaction price.

5.6.1 From the submissions and documents presented before us by the applicant we observe that even though the amounts towards Royalty, MMDR, DMF Fund and Reserve Price are shown in the invoices as directed by KPCL, these amounts are not paid to the applicant. We also observe that these amounts are due from KPCL to the concerned Governmental Authority and are accordingly paid by KPCL to the Department of Geology & Mining. Further, Article 6.1.3 of the impugned Agreement clearly states that KPCL "shall pay, at all times, during the subsistence of the impugned Agreement, all Taxes and levies, duties, Royalties including demands, if any, cesses and all other statutory charges payable in respect of excavation and delivery thereof directly to the Governmental Instrumentality.

5.6.2 The applicant does not show any liability on account of any of the aforesaid Government Payments (Royalty, MMDR, DMF Fund and Reserve Price) in its books. As per Article 5.6 of the Agreement, the applicant shall pay all GST and cess payable in respect of supply of goods (or) services under the impugned Agreement directly to the Government instrumentality and which shall be reimbursed by KPCL to the applicant.

5.6.3 Thus, from a reading of Articles 6.1.3 and 5.6 of the Agreement it is crystal clear that, GST is payable by KPCL to the applicant while all other

taxes are payable and paid by the KPCL to the concerned Governmental Authority.

5.6.4 In this connection, we also refer to Article 29.1.2 of the Mining Agreement which clearly mentions that the KPCL shall directly pay Taxes and Duties other than GST and Compensation Cess, to the Government Instrumentality.

5.6.5 The jurisdictional officer has submitted that, the Value of supply is defined u/s 15(1), and 15(2) of the MGST/CGST Act 2017 and as provided under subsection 2 of Section 15, the value of supply includes all taxes, duties, cesses, fees and Charges levied under any law for the time being in force (Excluding the SGST, the UTGST and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;), and hence the Royalty and other charges mentioned under subtotal (B), are part of value of supply and therefore taxable.

5.6.6 We therefore reproduce the provisions of Section 15 of the CGST Act, 2017 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) value of supply shall include-

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) Interest or late fee or penalty for delayed payment of any consideration for any supply; and (e) Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.-For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

5.6.7 As per Section 15 (1) mentioned above: firstly, the value of a supply of goods or services or both shall be the transaction value; secondly the transaction value is the price actually paid or payable for the said supply of goods or services or both; thirdly the supplier and the recipient of the supply are not related; and fourthly the price is the sole consideration for the supply.

5.6.8 In the subject case, we find that the applicant (supplier of service) and KPCL (recipient of service) are not related persons and price is the sole consideration for the supply.

5.6.9 Further, from Article 6.1.3 and Article 29.1.2 of the Mining Agreement it is clear that the amounts towards Royalty, MMDR, DMF Fund and Reserve Price are payable by KPCL directly to Government of Maharashtra and which is being paid accordingly by KPCL. Therefore, the said amounts are not payable by KPCL to the applicant. From the submissions we also find that the said amounts are not paid by KPCL to the applicant. Thus the amounts towards Royalty, MMDR, DMF Fund and Reserve Price are neither payable nor paid to the applicant by KPCL. Hence the provisions of Section 15 (1) are not satisfied in the subject case.

5.6.10 From the submissions we also find that there is no amount that the supplier i.e the applicant, is liable to pay in relation to the impugned supply which has been incurred by the recipient i.e. KPCL of the supply and not included in the price actually paid or payable for the services.

5.6.11 We therefore find that, none of the provisions of Section 15 are attracted in the subject case with respect to amounts towards Royalty, MMDR, DMF Fund and Reserve Price, payable and paid by KPCL directly to the concerned Governmental Authority of Maharashtra and therefore the said amounts are not includible in the value of supply for the purpose of levy of GST.

5.7.1 The jurisdictional officer has submitted that Clause (b) of subsection (2) of Section 15 provides that 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 whether or not included in the price shall be the part of Value of Supply. Therefore, components like Royalty, MMDR, DMF fund Cess, Stowing Excise duty, Reserve Price, etc. are required to be considered for determining the transaction price.

5.7.2 We do not agree with the jurisdictional officer on this count. A perusal of the impugned agreement (relevant Articles discussed above), reveals that the components like Royalty, MMDR, DMF fund Cess, Reserve Price are not at all liable to be paid by the supplier of service, in this case, the applicant and further, the said components are liable to be paid exclusively by KPCL who is the recipient of the impugned supply. Thus KPCL is incurring the expenses towards the said components on its own behalf and not on behalf of the applicant as is seen from the relevant clauses of the impugned agreement.

5.8 In view of the above we hold that the amounts towards Royalty, MMDR, DMF Fund and Reserve Price, payable and paid by KPCL directly to the concerned Governmental Authority of Maharashtra are not includible in the Value of Supply for the purpose of levy of GST. However, in future if it is agreed between the applicant and KPCL to make payable and pay, the amounts towards Royalty, MMDR, DMF Fund and Reserve Price by KPCL to the applicant, in such a case, the amounts will be included in the Value of Supply of the impugned services and will be taxed at 18% GST.

06 In view of the above discussions, we pass an order as under:

**ORDER**

**(Under Section 98 of the Central Goods and Services Tax Act, 2017 and  
the Maharashtra Goods and Services Tax Act, 2017)**

For reasons as discussed in the body of the order, the question is answered thus -

**Question 1:** Whether the activity carried out by the Applicant under the Agreement is supply of Goods or is a supply of Service and should accordingly be subject to GST under HSN 2701 (chargeable @ 5% as supply of coal) or under HSN 9986 (chargeable @ 18% as Support Services to Mining)?

**Answer:-** The impugned activity carried out by the Applicant under the Agreement is supply of service and Will be chargeable @ 18% as Support Services to Mining under Heading 9986.

**Question 2.:** Since, in terms of Article 24.3 of the Agreement, the right and ownership on the Coal mined by the Applicant always vests in and remains with KPCL and the Applicant is only responsible for excavation, transport and delivery, and as such cannot transfer ownership to the coal, whether the applicant should raise an invoice under MGST/CGST or under IGST in as much as the Applicant is of the view that the entire activity takes place in the State of Maharashtra only.

**Answer: -** Not answered in view of the fact that the said question has been withdrawn by the applicant.

**Question 3:** Can the present contract be treated as a single consolidated contract or a divisible contract in view of the fact that four components of the contract (viz. Excavation of Coal, Transport Service, Handling Charges (incl. Additional Handling Charges) and Restoration and Rehabilitation charge] are clearly distinguishable and separately identifiable and therefore the tax treatment under GST shall also be different and separate?

**Answer: -** Not answered in view of the fact that the said question has been withdrawn by the applicant

**Question 4:-** There are certain other components like Royalty, MMDR, DMF Fund, Cess, Stowing Excise Duty, Reserve Price, etc. which are levied on the coal excavated from the Mine which is payable directly by KPCL to the Government of India and the State Government of Maharashtra. The Applicant neither has any liability to pay nor does it makes any payment of such amount. Under the circumstances, is the Applicant required to consider such amounts/payments for the purpose of determining the transaction price any of the situation as enumerated above?

**Answer: -** Answered in the negative in view of the discussions made above.

PLACE:- Mumbai

DATE:- 04/05/2022

RAJIV MAGOO

(MEMBER)

T. R. RAMNANI

(MEMBER)

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