

Body

AUTHORITY FOR ADVANCE RULING TSAAR Order No.31/2022, A.R.Com/05/2020, Dated 07th June, 2022

TELANGANA STATE AUTHORITY FOR ADVANCE RULING

CT Complex, M.J Road, Nampally, Hyderabad-500001.

(Constituted under Section 96(1) of TGST Act, 2017)

Present:

Sri B. Raghu Kiran, IRS, Additional Commissioner (Central Tax)

Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Tax)

**[ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE
TELANGANA GOODS AND SERVICES TAX ACT, 2017.]**

1.M/s. The Singareni Collieries Company Limited, Head Office, Kothagudem Collieries, Kothagudem, Badradri, Telangana, 5071014(36AAACT8873F1Z1) has filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules.

2.At the outset, it is made clear that the provisions of both the CGST Act and the TGST 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 TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.

3.It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- for SGST and Rs. 5,000/- for CGST towards the fee for Advance Ruling The concerned jurisdictional officer also raised no objection to the admission of the application. The application is therefore, admitted

4.Brief facts of the case:

M/s. Singareni Collieries Company Limited is entering into contracts with a host of vendors/suppliers for extraction of coal. The applicant is of the opinion that these contracts are for leasing or renting of goods and are desirous of ascertaining the rate of tax applicable to the royalty paid. Hence this application.

5.Questions raised:

1.Whether royalty paid in respect of Mining Lease can be classified under "Licensing services for the right to use minerals including its exploration and evaluation falling under the heading 9973 attracting GST at the same rate of tax as applicable on supply of like goods involving transfer of title in goods"?

2.Determination of the liability to pay tax on contributions made to District Mineral Foundation (DMF) and National Mineral Exploration Trust (NMET) as per MMDR Act, 1957.

6.Personal Hearing:

The Authorized representatives of the unit namely Sri S. Anantha Narayanan, CA & AR and Sri B. Sridhar, DGM Finance attended the personal hearing held on 16-02-2022. The authorized representatives reiterated their averments in the application submitted and raised new contentions other than those raised in the application:-

1.That, in their view tax rate on royalty should be the same as the tax rate on the goods which are mined. That, they would like ruling for the prospective period from the date of modified application, i.e., 01.01.2019 only.

2.That, a percentage of royalty earned by them is paid to District Mineral Foundation and National Mineral Exploration Trust as compulsory Contribution prescribed under MMDR Act' 1957. That, in their view no tax is payable on such contribution on reverse charge by them.

3.That, they have reached this conclusion on point no.2 above for the following reasoning:-

a)That, reverse charge is payable on the consideration paid to State/Central Government or Local bodies only.

b)That, these two organizations are neither government nor local bodies but classified as governmental authorities under Notification No.32/2017.

7.Discussion & Findings:

The applicant M/s. Singareni Collieries Company Ltd., (SCCL) operates mines in the State of Telangana and is allotted 44 renewable mining leases covering an area of 1,50,000 acres by the Government under an agreement. The SCCL is required to pay royalty to the Government at the rate of 14% on sale price of coal extracted by them. As seen from the material paper submitted by the applicant the contract results in rights to SCCL in the soil of the Government to profit from it.

It is the contention of the applicant that 'Royalty' is same as the service enumerated at Serial No. 17(via) of Notification No. 11/2017 as amended vide Notification No. 27/2018 dated: 31.12.2018. The said entry and its rate description in column no. 3 & 4 read as follows:

S.No	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
1	2	3	4	5

17	Heading 9973 (Leasing or rental services without operator)	(viiia) Leasing or renting of goods	Same rate of central tax as applicable on supply of like goods involving transfer of title in goods.	-
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The moot question in the issue raised is whether lease of land for mining constitutes 'leasing or renting of goods' as argued by the applicant. The Hon'ble Supreme Court of India in the case of State of H.P & Ors Vs Gujrat Ambuja Cement Limited & Ors. (2005) 142 STC 1 in a (3) member Judge Order has held that

"A mining lease is an interest in immovable property. The extraction and removal of minerals is essentially an extension of the enjoyment of immovable property. As noted in Titagarh Paper Mill's case (1985) 3 SCR 26, the right conferred by the lease deed to extract and remove the minerals is a 'profit a prendre'.

The Hon'ble Supreme Court of India in this case cited certain paras in Halsbury's Laws of England (Fourth Edition) 2003 for elucidating the meaning and content of a mining lease. The same is reproduced as under:

"Para 321: Nature of mining lease : A lease may be granted of land or any part of land, and since minerals are a part of the land it follows that a lease can be granted of the surface of the land and the minerals below, or of the surface alone, or of the minerals alone. It has been said that a contract for the working and getting of minerals, although for convenience called a mining lease, is not in reality a lease at all in the sense in which one speaks of an agricultural lease, and that such a contract, property considered, is really a sale of a portion of the land at a price payable by installments, that is, by way of rent or royalty, spread over a number of years.

Para 322: Statutory definitions of 'mining lease'. In the Law of Property Act, 1925, 'mining lease' means a lease for mining purpose, that is, the searching for, winning, working, getting, making merchantable, carrying away or disposing of mines and minerals, or connected purposes, and includes a grant or licence for mining purposes; and 'lease' includes an underlease or other tenancy.

In the Settled Land Act 1925 and the Landlord and Tenant Act 1927, 'mining lease' means a lease for any mining purpose or connected purposes, and 'mining purposes' includes the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away and disposing of mines and minerals, in or under land, and the erection of buildings and the execution of engineering and other works suitable for those purposes. 'Mining lease' is also defined for the purposes of the Opencast Coal Act 1958, whilst 'coal-mining lease', 'lease' and 'mine of coal' were all defined for the purposes of the Coal Act 1938.

Para 323: Rents and royalties- An agreement for a lease usually contains stipulation as to the dead rents and other rents and royalties to be, reserved by, and the covenants and provisions to be inserted in the lease, but the omission to provide for the payment of a dead rent does not render the agreement so inequitable as to be unenforceable. Rent and royalties are true rents in the sense that they are incident to the reversion, but periodical payments under a lease of mines for a specific period may amount to personal debts only. A lessee who goes into possession and works minerals before completion of the lease may be ordered on interim application to pay into Court the amount of royalties due in respect of minerals raised.

Para 324: Usual provisions in leases- The statutory formalities regarding the disposition of an interest in land will apply to a contract for a mining lease. In a contract for a lease for working a mine, time is of the essence of the contract even if not expressly stated to be so. Mining leases usually contain clauses providing for the reference of dispute to arbitration or determination by an expert where the value of the minerals gotten is in dispute."

In the above case, the Hon'ble Apex Court relied on their judgment in D.K. Trivedi & Sons and Ors. v. State of Gujarat and Ors. MANU/SC/0636/1986 : [1986]1SCR479 and held that their order in this case...

"is a complete answer to the plea raised by learned counsel for the appellate-State. It was, inter alia, held in that case as follows: (The relevant paras are quoted).

"39. In a mining lease the consideration usually moving from the lessee to the lessor is the rent for the area leased (often called surface rent), dead rent and royalty. Since the mining lease confers upon the lessee the right not merely to enjoy the property as under an ordinary lease but also to extract minerals from the land and to appropriate them for his own use or benefit, in addition to the usual rent for the area demised, the lessee is required to pay a certain amount in respect of the minerals extracted proportionate to the quantity so extracted. Such payment is called "royalty". It may, however, be that the mine is not worked properly so as not to yield enough return income, whether the mine is worked properly so as not to yield enough return to the lessor in the shape of royalty. In order to ensure for the lessor a regular income, whether the mine is worked or not, a fixed amount is provided to be paid to him by the lessee. This is called "dead rent". "Dead rent" is calculated on the basis of the area leased while royalty is calculated on the quantity of minerals extracted or removed. Thus, while dead rent is a fixed return to the lessor, royalty is a return which varies with the quantity of minerals extracted or removed. Since dead rent and royalty are both a return to the lessor in respect of the area leased, looked at from one point of view dead rent can be described as the minimum guaranteed amount of royalty payable to the lessor but calculated on the basis of the area leased and not on the quantity of minerals extracted or removed. In fact, Clause (ix) of Rule 3 of the Rajasthan Minor Mineral Concession Rules, 1977, defines "dead rent" as meaning "the minimum guaranteed amount of royalty per year payable as per rules or agreement under a mining lease". Stipulations providing for the lessee's liability to pay surface rent, dead rent and royalty to the lessor are the

usual covenants to be found in a mining lease.

54. As pointed out earlier, since dead rent is the minimum guaranteed amount of royalty and partakes of the nature of royalty, what, therefore, applies to royalty must necessarily apply or should be made applicable dead rent also".

Thus in view of the judgment of (3) member bench of Hon'ble Supreme Court of India in the case of State of Himachal Pradesh v. Gujarat Ambuja Cement Ltd.(2005) 142 STC 1:-

a.Mining lease is an interest in immovable property and therefore does not constitute lease of goods.

b.The right conferred by the lease deed to extract and remove the minerals is a 'profit a prendre'.

c.A consideration of mining is the rent for the areas leased i.e., dead rent and royalty.

d.Royalty is the payment made towards minerals extracted in proportionate to the quantity so extracted.

Therefore the contract for mining lease cannot be classified as 'Leasing or Renting of goods'. Further the CGST Act or rules made there under or Notifications issued do not create a legal fiction for mining to be classified as 'Leasing or Renting of goods'.

At Serial no. 17 of the Notification No. 11/2017 chapter heading no. '9973' of SAC enumerates 'leasing or rental services without an operator'. This entry was modified by removing 'with' operator vide Notification No. 27/2018 dated: 31.12.2018. According to explanation to this notification any reference to chapter, section or heading shall be with respect to scheme of classification of services annexed to the notification. In this annexure, the service leasing or renting of goods is enumerated under group head '99732'. As against the above entry in the annexure to Notification No. 11/2017 the group head '99733' enumerates leasing services for right to use intellectual property and similar products. Under this group, the tariff item '997337' enumerates 'licensing services for the right to use minerals including its exploration and evaluation'. This is the appropriate entry concerning royalty on mining. Hence the rate of tax of the residual entry is attracted on the royalty paid for mining at the rate of 9% CGST & 9% SGST.

Further the holder of mining lease shall also pay, to the District Mineral Foundation of the district in which the mining operations are carried under Section 9B of the MMDR Act, 1957 a sum in addition to the royalty either 1/3rd of such royalty or any other such amount in terms of Second Schedule of the MMDR Act.

Similarly the holder of the mining lease shall also pay an amount of 2% of the royalty payable to the National Mineral Exploration Trust under Section 9C of the MMDR Act, 1957.

Both these amounts are paid in addition to the royalty payable and in a proportion to the royalty paid for extracting minerals from a contract of mining lease. Therefore they are consideration for the service of right to use minerals including its exploration and evaluation which is enumerated as tariff item '997337', this is same as royalty and hence attract tax at the rate of 9% CGST & SGST each.

8.The ruling is given as below:

In view of the above discussion, the questions raised by the applicant are clarified as below:

Questions	Ruling
1. Whether royalty paid in respect of Mining Lease can be classified under "Licensing services for the right to use minerals including its exploration and evaluation falling under the heading 9973 attracting GST at the same rate of tax as applicable on supply of like goods involving transfer of title in goods"?	The entry '997337' is not enumerated at Serial No. 17(viia) and therefore is a different tariff item attracting tax at the rate of 9% CGST & SGST each.
2. Determination of the liability to pay tax on contributions made to District Mineral Foundation (DMF) and National Mineral Exploration Trust (NMET) as per MMDR Act, 1957.	The tax rate applicable for entry '997337' is applicable to DMF & NMET.

S. V. Kasi Visweshwar Rao

B. Raghu Kiran

ADDL. COMMISSIONER (State Tax)

ADDL. COMMISSIONER (Central Tax)

[Under Section 100(1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this Order]

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