



**HARYANA AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
HARYANA VANIJYA BHAWAN, PLOT NO I-3, SECTOR 5,
PANCHKULA-134151 (HARYANA)**



ADVANCE RULING NO.HAR/HAAR/R/2018-19/ 03

(In Application No.: 2/2018-19, dated 12.04.2018)

Name & Address of the Applicant	:	M/s Poiner Partners, Mining Plot No.2, Pichopa Kalan, Bhiwani.
GSTIN of the Applicant	:	06AAQFP0711K1Z6
Date of Application	:	12.04.2018
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	:	(e) Determination of the liability to pay tax on any goods or services or both. (g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
Date of Personal Hearing	:	20.06.18
Present for the Applicant	:	Sh. Yash Dhadda, CA.

Factual Background

1. As per submission of facts, M/s Pioneer Partners is a partnership firm under the provisions of the Partnership Act 1932 and is also registered under the provisions of the Central Goods and Services Tax Act 2017 read with the provisions of the Haryana State Goods and Services Tax Act 2017 (hereinafter known as the "Assessee/Applicant").
2. That applicant is engaged in business of mining of Red Boulder, Soft Boulder and GSB in the State of Haryana. The said products are classifiable under Tariff Heading 2516 and are leviable to GST on their supply at the rate of 5%.
3. That the applicant has been granted a mining lease for extracting "Stone along with associated minor minerals" at village "Pichopa Kalan", Distt. Bhiwani, Haryana by the State Government on various terms and conditions as per the LOI and Lease deed (Annexure-4).
4. That further in accordance with the Part-III ("Covenants of the Lessee") in para 3(a) of the Lease deed it has been agreed that the bid amount of Rs 16.46 cr shall become "annual dead rent" as amount agreed to be paid by lessee and the rate of same shall increase depending upon the terms of auction. Further, 3rd proviso to para 3(a) of Part-III of the executed lease deed provide:-
"Provided further that lessee/lessees shall be liable to pay the dead rent or royalty in respect of each mineral, whichever is higher but not both."
5. That under para 5 to part-III of the executed lease deed the "Mode of payment of dead rent/royalty and surface rent" has been decided wherein it has been agreed that
 - a. The applicant shall deposit one advance instalment of dead rent before commencement of mining operations.

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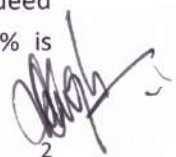


- b. Royalty on the mineral excavated and dispatched at the rate specified in the first schedule or dead rent, whichever is more and not both on monthly basis.
6. That in compliance to the said lease agreement the applicant has paid annual dead rent or royalty as the case maybe.
7. That in accordance to the said lease deed the applicant is required to deposit a monthly and an annual return in specified format i.e. MMP1 and MMP2 respectively wherein it has been asked to submit information about quality of minerals raised and dispatched from leased mines along with other information.
8. That in terms of the executed lease agreement the applicant is required to pay in addition to the annual dead rent , amount to the extent of 10% as rural development fund (for rehabilitation of environment) and 1% as Tax collected at Source in accordance with provisions of The Income Tax Act 1961.
9. That in light of above, the applicant wants to understand what is the nature of service which has been provided by The State Government of Haryana to it along with the rate of GST on it and who is the person liable to discharge GST on the same. Accordingly, the applicant has framed the following questions:-
1. What is the classification of service provided in accordance with Notification No. 11/2017-CT (Rate) dated 28.06.2017 read with annexure attached to it, by the State of Haryana to M/s Pioneer Partners for which royalty is being paid? Whether said service can be classified under 9973 specifically under 997337 as Licensing services for the right to use minerals including its exploration and evaluation or as any other service?
 2. What is the rate of GST on given services provided by State of Haryana to M/s Poiner Partners for which royalty is being paid?
 3. Whether services provided by State Government of Haryana is governed by applicability of Notification No 13/2017-CT (Rate) dated 28.06.2017 under entry number 5 and whether M/s Poiner Partners is taxable person in this case to discharge GST under reverse charge mechanism or whether given service is covered by exclusion clause number (1) of entry no 5 and State Government of Haryana is liable to discharge GST on same?

Comment of the Officer under section 98 (1) of the CGST, HGST Act 2017

The DETC (ST), Bhiwani has submitted his comments on 18.06.2018 on the questions raised by the applicant. It has been stated that the applicant is against is the business of mining of boulders and extraction minor minerals in village Pichopa Kalan, District Bhiwani and is supplying the same under Tariff Heading 2516 attracting 5% GST (2.5% CGST + 2.5% HGST). As per section 9 (3) of the HGST Act, 2017 GST is payable on the royalty amount under RCM by the recipient of such services. The royalty/lease deed comes under the category of supply of services and general rate of tax @18% is applicable.

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Record of Personal Hearing

Personal hearing in the case was conducted on 20.06.2018 which was attended by Sh. Yash Dhadda, CA, (POA). Sh. Jagjit Singh, DETC (ST), Bhiwani was also heard. The applicant had reiterated the submissions made in their application. After detailed discussions the application was admitted being covered by clause (a) & (b) of section 97 (2) of the CGST/HGST Act 2017. As regard merits, the decision was reserved which is being released today.

Discussion and finding of the authority

For the purpose of understanding the questions involve, the applicant has highlighted the following relevant provisions of the law.

1. **Section 9** of the CGST Act 2017 which is charging section of Goods & Services Tax states:


9(1) Subject to provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

2. The term “**services**” has been defined under section 2(102) “services” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.
3. That in exercise of power conferred under Section 9(1) of the CGST Act 2017, notification number 11/2017-CT (Rate) dated 28.06.2017 has been issued which notifies the central tax, on intra-state supplies of service description along with Tariff Heading in accordance with the scheme of classification is specified which are subject to specific conditions.
4. That along with the notification number 11/2017-CT (Rate) dated 28.06.2017, an annexure has also been appended with it which at Serial No.257 specify that the Group 99733 includes sub heading 997337 which is for:-

“Licensing services for the right to use minerals including its exploration and evaluation”.

According to the applicant the Royalty or the Dead Rent paid by the applicant to the Government is nothing but an amount paid for getting right to use the minerals granted to it for a specified period as per terms of the lease.

5. That in given transaction, the LOI and lease deed has been executed for leasing of mines. Hence, it has been argued that, the classification of services in accordance

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- with Notification No.11/2017-CT (Rate) 28.06.2017, according to applicant is covered at Sr. No. 17 of the notification.
6. Since, a perusal of classification of services shows that services of right to use natural resources classify under tariff 9973 and since description of services under serial no. 17 (i) to (v) does not cover such services of right to use minerals therefore, it would fall under the residual entry at serial no. 17(viii). Being so, the rate of tax applicable on such services, as provided therein, shall be the same rate of tax as applicable on supply of like goods involving transfer of title in goods.
 7. That on the basis of above, it is evident that service charge by way of annual dead rent or royalty paid for services of granting right to use mineral would attract GST rate as applicable on supply of mineral which is being extracted through such mining.
 8. That the minerals which are extracted from the mine are classifiable under Tariff Heading 2516 and leviable to GST @ 5%.
 9. The applicant has also argued that in view of Sr. No.5 of notification no. 13/2017-CT (Rate) dated 28.06.2017, the recipient of service is not liable to discharge any GST. In our considered view, the applicant has misconstrued the entry which in fact casts a liability of tax to be discharged by the recipient on reverse charge basis.

Advance ruling under section 98 of the CGST/HGST Act 2017

In the backdrop of above discussions and findings the advance ruling on the questions is pronounced as under: -


1. *What is the classification of service provided in accordance with Notification No. 11/2017-CT (Rate) dated 28.06.2017 read with annexure attached to it, by the State of Haryana to M/s Pioneer Partners for which royalty is being paid? Whether said service can be classified under 9973 specifically under 997337 as Licensing services for the right to use minerals including its exploration and evaluation or as any other service?*

Ruling

The services for the right to use minerals including its exploration and evaluation, as per Sr. No. 257 of the annexure appended to notification no. 11/2017-CT (Rate), dated 28.06.2017 is included in group 99733 under heading 9973. The royalty/dead rent paid/payable to the Government by the applicant is consideration against the transfer of right to use minerals including its exploration and evaluation as per the lease granted by the Government to the applicant.

2. *What is the rate of GST on given services provided by State of Haryana to M/s Pioneer Partners for which royalty is being paid?*

Ruling


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The services for the right to use minerals including its exploration and evaluation, as per Sr. No. 257 of the annexure appended to notification no. 11/2017-CT (Rate), dated 28.06.2017 is included in 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. 1/2017-CT (Rate), dated 28.06.2017 under the CGST Act, 2017 and the corresponding State Tax notification under HGST Act, 2017, Schedule –I the stone boulders extracted by the applicant attract 5% GST (2.5 % CGST+ 2.5% HGST) as covered under HSN 2516 (At Sr. No. 124 of the notification).

3. *Whether services provided by State Government of Haryana is governed by applicability of Notification No 13/2017-CT (Rate), dated 28.06.2017 under entry number 5 and whether M/s Poiner Partners is taxable person in this case to discharge GST under reverse charge mechanism or whether given service is covered by exclusion clause number (1) of entry no 5 and State Government of Haryana is liable to discharge GST on same?*

Ruling

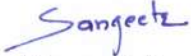
As per entry no. 5 of the Notification No 13/2017-CT (Rate), dated 28.06.2017 under the CGST Act, 2017 and the corresponding Notification No. 48/ST-2 Dt. 30.06.2017 under the HGST Act, 2017, the recipient of such services, i.e., the applicant is liable to discharge the tax liability on such services provided to it by the Government on reverse charge basis.


Ordered accordingly.

To be communicated.

29.06.2018

Panchkula.


(Sangeeta Karmakar)
Member CGST


(Vijay Kumar Singh)
Member SGST

Regd. AD/Speed Post

M/s Poiner Partners,
Mining Plot No.2,
Pichopa Kalan, Bhiwani.

Copy to

1. Deputy Excise & Taxation Commissioner (ST), Bhiwani
2. The Assistant Commissioner, Central Tax Division, Bhiwani.