THE AUTHORITY ON ADVANCE RULINGS IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009
Advance Ruling No. KAR ADRG 66/2019
Dated: 21st September, 2019

Present:

1. Sri. Harish Dharnia,
   Additional Commissioner of Central Tax .... Member (Central Tax)

2. Dr. Ravi Prasad M.P.
   Joint Commissioner of Commercial Taxes .... Member (State Tax)

1.	Name and address of the applicant	M/s. JSW Steel Ltd., 1st Floor, HR Building, PO Vidyanagar Toranagallu, Ballari District, Karnataka, 583275
2.	GSTIN or User ID	*29AAACJ4323N1ZC*
3.	Date of filing of Form GST ARA-01	01/10/2018
4.	Represented by	Sri. Harish Bindumadhavan, Advocate and Authorised Signatory
5.	Jurisdictional Authority – Centre	Commissioner of Central Tax, Belagavi
6.	Jurisdictional Authority – State	LGSTO- 500 Hospete
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000-00 under CGST Act and Rs 5,000-00 under SGST Act vide CIN No. ICICI8092900009348 dated: 03.09.2018

ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE KARNATAKA GOODS AND SERVICES TAX ACT, 2017

1. M/s. JSW Steel Ltd., (hereinafter referred to as "Applicant"), bearing GSTIN number 29AAACJ4323N1ZC filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 and Section 97 of the KGST Act, 2017, in FORM GST ARA-01 by discharging the fee of Rs.5,000/- each under the CGST Act, 2017 and the KGST Act, 2017.

2. The applicant is a Public Ltd Company, registered under the Companies Act 1956. The Applicant is registered with GST authorities vide GSTIN 29AAACJ4323N1ZC and has been regularly paying GST liabilities and filing GST returns.

Authority For Advance Ruling ★ Karnataka, Bengaluru ★

3. The applicant is manufacturer of Iron & Steel Products viz., HRPO/HRSPO coils, CRFH/CRCA coils, CRCA sheets, HR plates and sheets, MS slabs, Cobbles, Galvanized Corrugated sheets, Pig Iron, Iron scrap, Steel scrap ends etc., falling under Chapter 72; Iron ore pellets, Pig iron etc., falling under Chapter 26. The Applicant has set up a large production facility for manufacture of Iron and steel products in the region of Toranagallu, Sandur taluk, Bellary Dist.

4. The applicant states that with the intent to fulfill the requirement of Iron ore for manufacture of Steel and Iron they had participated in auction for seven mines and based on the bidding, M/s JSW Steel Limited was given the lease area to the extent of 33.21 hectares for a period of 50 years for carrying out mining activities.

5. With regard to the levies made for the purpose of mining for extraction of the iron ore, the applicant pays Royalty to the government. The royalty amount, in light of Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957, is equivalent to fifteen percent of average selling price of iron ore.

6. Further, the applicant states that, in addition to the royalty, he is paying an amount equivalent to ten percentage of the royalty to the District Mineral Foundation of the district in which the mining operations are carried out. This amount is paid in terms of Section 9B (5) of the Mines and Minerals (Development and Regulation) Act, 1957.

7. Apart from the above levies as per the provisions of Section 9C of the Mines and Minerals (Development and Regulation) Act, 1957, Central Government has established a National Mineral Exploration Trust, with an object to use the funds accrued to the Trust for the purposes of regional and detailed exploration in such manner as may be prescribed by the Central Government. The holder of a mining lease shall pay to National Mining Exploration Trust, a sum equivalent to two percent of the royalty paid in terms of the Second Schedule.

Accordingly, the applicant states that he has made statutory contributions into the above funds vide the following demand drafts, copy of the deposits are enclosed as under.

Demand draft details		Amount (in Rs.)
Deputy Director, Department of Mines & Geology	No. 398308 dated 05.05.2018	3,31,47,000

Deputy Director, towards District Mineral Fund	No. 398309 dated 05.05.2018	33,14,700
National Mineral Exploration Trust	No. 398310 dated 05.05.2018	6,62,940

8. In light of the aforesaid facts, the applicant seeks to obtain a ruling with regard:

> "Whether the Applicant is liable to discharge GST under reverse charge, for the contribution made towards NMET and DMF, in light of Sl. No. 5 of the Notification No. 13/2017- Central Tax (Rate) dated 28.06.2017."

Grounds for Application / Interpretation of law

9. As per Section 9 of the KGST and CGST Act (both together, hereinafter referred commonly as 'GST Act'), KGST and CGST respectively is leviable on supply of goods or services at the rates notified by the Government. On perusal of Section 9 it can be understood that GST shall be leviable on "supply" of "goods or services". Firstly it is pertinent to explicate the said terms of goods/services/supply as envisaged under the provision of the GST Act.

i. 'Goods' have been defined under section 2(52) the GST Act as:

> *"(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply."*

ii. 'Services' are defined under Section 2(102) as:

> *(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.*

iii. Scope of supply is defined under Section 7 of the said GST Act to *inter alia* include:

- all forms of supply of goods or services such as sale, transfer, etc. for a consideration made in the course or furtherance of business
- import of services for a consideration whether or not in the course or furtherance of business

- the activities specified in Schedule I, made or agreed to be made without a consideration; and
- the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

iv. And the following shall neither be treated as a supply of goods nor supply of services
- activities or transactions specified in Schedule III; or
- such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council.

10. As discussed above, the applicant states that he has made statutory contributions to two funds established, under the Mines and Minerals (Development and Regulation) Act, 1957 read with District Mineral Foundation Rules, 2016 and National Mineral Exploration Trust Rules, 2015, called the District Mineral Foundation Fund and National Mineral Exploration Trust Fund respectively.

11. The object of the District Mineral Foundation is primordially to work for the interest and benefit of the persons and areas affected by mining related operations in the districts. In respect of the National Mineral Exploration Trust, the object is primarily to use the funds accrued to the Trust for the purposes of regional and detailed exploration.

12. In this regard, the applicant has submitted that the above payments are made as a percentage of the royalty paid to the Government's exchequer. Herein it is pertinent to quote Section 9 of the MMDR Act,1957 wherein it has been stated that:

> *"the holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral."*

13. Further the applicant states that, it must be noted that the successful bidder of the mining lease shall also make monthly payments towards iron ore, on the basis of average sale price determined by the

India Bureau of Minerals (IBM). The monthly payment shall be computed on the basis of the value of mineral dispatched.

14. From the foregoing, the applicant states that, it can be observed that the royalty is being paid an amount equivalent to fifteen percentage of average sale price of iron ore. Subsequently the contribution towards DMF and NMET is also being paid on an amount equivalent to ten and two percentage of such royalty paid respectively.

15. From the aforesaid paragraphs applicant states that it can been inferred that the above payments towards NMET and DMF are essentially made as a percentage of average sales price of iron ore i.e. goods as defined under para 9.

16. In light of the preceding paragraphs, that applicant states that it is pertinent to examine whether such fund paid is towards service provided to applicant for permission to excavate iron ore from mines. Further whether such service is liable for payment of GST under reverse charge.

17. The GST Act defines "reverse charge" under Section 2(98), as to mean, *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 of the Central Goods and Services Tax Act or under sub-section (3) or subsection (4) of section 5 of the Integrated Goods and Services Tax Act.*

18. As per Section 9(3), *the Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.*

19. In the present case, the payments made in form of contributions to NMET and DMF, and for cases wherein tax is payable under reverse charge, attention is drawn to Notification No. 13/2017- Central Tax (Rate) dated 28.06.2017. Relevant Sl. No. 5 is extracted below for ease of reference:

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 agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.

20. The aforesaid principle of payment of tax under reverse charge has been adopted under the GST regime in line with the erstwhile service tax regime, wherein vide F. No. 334/8/2016-TRU inter-alia in Sl.No.5 (extracted below), the government has clarified that the consideration paid for provision of service by Government or a local authority is subject to Service Tax.

Sl.No.	***Issue***	***Clarification***
5.	*Services provided in lieu of fee charged by Government or a local authority.*	*It is clarified that any activity undertaken by Government or a local authority against a consideration constitutes a service and the amount charged for performing such activities is liable to Service Tax. It is immaterial whether such activities are undertaken as a statutory or mandatory requirement under the law and irrespective of whether the amount charged for such service is laid down in a statute or not. As long as the payment is made (or fee charged) for getting a service in return (i.e., as a quid pro quo for the service received), it has to be regarded as a consideration for that service and taxable irrespective of by what name such payment is called. It is also clarified that Service Tax is leviable on any payment, in lieu of any permission or license granted by the Government or a local authority.* *2. However, services provided by the Government or a local authority by way of: (i) registration required under the law; (ii) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under the law, have been exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 58*

		refers]. *3. Further, services provided by Government or a local authority where the gross amount charged for such service does not exceed Rs 5000/- have been exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 56 refers]. However, the said exemption does not cover services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994. Further, in case of continuous service, the exemption shall be applicable where the gross amount charged for such service does not exceed Rs. 5000/- in a financial year.* *4. It is also clarified that Circular No. 89/7/2006-Service Tax dated 18-12-2006 & and Reference Code 999.01/23.8.07 in Circular No. 96/7/2007-ST dated 23.8.2007 issued in the pre-negative list regime are no longer applicable*

21. From the aforesaid table, the applicant states that, it can be inferred that the government has extended similar clauses of taxing as well providing exemption under service tax to the GST regime. It is submitted that as there is a payment to NMET and DMF as a percentage of the mineral/iron ore excavated and dispatched, the Applicant contends that the same is towards supply of goods. The reverse charge provisions for services envisaged under Section 9(3) read with Notification No.13/2017- Central Tax (Rate) shall not be applicable in the instant case since there is no specific service being provided by NMET and DMF to the business entity i.e the Applicant, in return for the payments made.

22. The applicant states that it is herein pertinent to quote the FAQ Governmental Services issued by the CBIC wherein under Question No.30, explanation has been given to the applicability of GST under RCM for Royalty charges:

> *Question 30: Whether an amount in the form of royalty or any other form paid/payable to the Government for assigning the rights to use of natural resources is taxable?*
>
> *Answer: 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.*

23. From the aforesaid, the applicant states that it can be understood that GST is applicable under reverse charge for the purpose of Royalty as there is a service of assignment of rights to use natural resources. However with reference to the objectives laid out by the MMDR Act, 1957 and stated under Annexure-I to the advance ruling, there is no service received for the payments made towards DMF and NMET as they are contributions made towards development and welfare projects in mining affected areas and research funding respectively.

24. Hence the applicant submits that the contribution made towards NMET and DMF, shall not be towards services, but towards goods and shall avail exemption from GST payment under reverse charge per Sl.No.6 of the Notification 12- Central Tax (Rate).

PERSONAL HEARING: / PROCEEDINGS HELD ON 28.11.2018

25. Sri. Harish Bindumadhavan, Advocate and authorised representative of M/s JSW Steel Ltd., appeared for personal hearing proceedings before this authority and made the submissions as mentioned above. Further he requested the authority to grant time for additional submission. Accordingly he made additional submissions and appeared again on 28.02.2019.

26. Accordingly, the applicant has submitted the following additional arguments.

i. As per Section 7 of the CGST Act 2017 it is clear that each supply must have a consideration and the in present case, there is no consideration, even if it assumed that there is a supply. In this regard, the Applicant contends that the definition of 'consideration' is adopted from the Indian Contract Act, 1872 as provided under Section 2(d), as:

> *"When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence or promise is called consideration for the promise"*

ii. In light of the above provision, the Applicant submits that the payments like Royalty, NMET and DMF are statutory payment

towards holding a mining license. Such payments are made to specific funds of the Government, by virtue of holding a mining license by the Applicant and the Government does not provide anything in return to the Applicant.

iii. As per Section 15 of the GST Act, value of supply shall include any taxes, duties, cesses, fees and charges levied under any statute, other than GST. This suggests that the payment made by the Applicant can be 'consideration' and included in the value of supply. However, as submitted in the previous paras, payments made by the Applicant do not qualify as 'consideration' and there is no 'supply' provided to the Applicant by the Government. These payments are made by the mining license holders. Therefore, such payments made by the Applicant to the said funds, cannot be included in the value of supply.

iv. The Applicant submits that even though, the payments made by it are mandated by the statute, such payments are made only by mining license holder to the Government, for specific purpose for the benefit of the persons and areas affected by mining related operations in the districts and for regional and detailed exploration. Therefore, it has no nexus with the permission to mine as provided by the Government to the Applicant. The payments are for different purposes.

v. The Applicant places reliance on the case of **Bhayana Builders (P) Ltd. v. CST, Delhi 2013 (32) STR 49 (Tri.-LB)** wherein the relevant provision read as follows:

".....referred to the concept of "consideration" expounded in Goods and Service Tax Rulings 2001/6, in the context of Australian GST Legislation, as providing generic guidance for identifying consideration which is liable to be taxed. This GSTR also explains the concept, of when non-monetary consideration would be taxable for levy of tax. In the area of non-monetary consideration, GSTR emphasises that the definition of a taxable supply requires, among other things that a supply is made for consideration. Thus, there must be a supply; a payment; and the necessary nexus between the supply and the payment. Thus, where one party makes monetary payment to another, something of economic value is provided to the other. Para 90 GSTR sets out illustrations, of circumstances where the recipient of a supply may provide or make a thing available to the supplier for use

in making the supply and states that the thing (made available for use) does not necessarily forms the consideration."

vi. The above Larger Bench decision was recently upheld by the Hon'ble Supreme Court in the above case of **Bhayana Builders**, which was reported in **2018-TIOL-66-SC-CT** which interprets Section 67 of the Finance Act and lays downs a very important test i.e. 'nexus test'. Relevant paragraph is extracted below:

"...For valuation of taxable service, provision is made in Section 67 of the Act which enumerates that it would be 'the gross amount charged by the service provider for such service provided or to be provided by him'. Whether the value of materials/goods supplied free of cost by the service recipient to the service provider/assessee is to be included to arrive at the 'gross amount', or not is the poser. On this aspect, there is no difference in amended Section 67 from unamended Section 67 of the Act and the parties were at ad idem to this extent.

On a reading of the above definition, it is clear that both prior and after amendment, the value on which service tax is payable has to satisfy the following ingredients:

a. Service tax is payable on the gross amount charged:- the words "gross amount" only refers to the entire contract value between the service provider and the service recipient. The word "gross" is only meant to indicate that it is the total amount charged without deduction of any expenses. Merely by use of the word "gross" the Department does not get any jurisdiction to go beyond the contract value to arrive at the value of taxable services. Further, by the use of the word "charged", it is clear that the same refers to the amount billed by the service provider to the service receiver. Therefore, in terms of Section 67, unless an amount is charged by the service provider to the service recipient, it does not enter into the equation for determining the value on which service tax is payable.

b. The amount charged should be for "for such service provided": Section 67 clearly indicates that the gross amount charged by the service provider has to be for the service provided. Therefore, it is not any amount charged which can become the basis of value on which service tax becomes payable but the amount charged has to be necessarily a consideration for the service provided which is taxable under the Act. By using the words "for such service provided" the Act has provided for a nexus between the amount

charged and the service provided. Therefore, any amount charged which has no nexus with the taxable service and is not a consideration for the service provided does not become part of the value which is taxable under Section 67. The cost of free supply goods provided by the service recipient to the service provider is neither an amount "charged" by the service provider nor can it be regarded as a consideration for the service provided by the service provider. In fact, it has no nexus whatsoever with the taxable services for which value is sought to be determined"

Key takeaway from the above case: There ought to be a direct nexus between the amounts charged for service provided. Therefore, merely because there is the use of the word 'gross', that does not indicate that the entire contract value is the consideration for the service provided.

vii. In this regard, the applicant submits that in the present case there is no direct connection between the statutory payments made by the Applicant and a supply made by the Government. In this regard, the Appellant submits that due to absence of specific judicial precedents in India, it must be noted that the definition of supply under the Australian GST Act reads similar to the definition of service under the Finance Act, 1994. Section 9-10 of the Australian GST Act provides for the 'Meaning of supply' as below:

"(1) A supply is any form of supply whatsoever.
(2) Without limiting subsection (1), supply includes any of these:
(a) a supply of goods;
(b) a supply of services;
(c) a provision of advice or information;
(d) a grant, assignment or surrender of real property;
(e) a creation, grant, transfer, assignment or surrender of any right;
(f) a financial supply;
(g) an entry into, or release from, an obligation:
(i) to do anything; or
(j) to refrain from an act; or
(k) to tolerate an act or situation;
(l) any combination of any 2 or more of the matters referred to in paragraphs (a) to (g).
(3) It does not matter whether it is lawful to do, to refrain from doing or to tolerate the act or situation constituting the supply."

viii. In this context, the applicant places reliance on the **Goods & Service Tax Ruling numbered as GSTR 2001/4 of the Australian Taxation Office** which deals with the test of nexus in detail, and relevant paragraphs are reproduced below:

"81. It will not be sufficient for there to be a supply and a payment. GST is not payable on supplies unless they are made for consideration, and the other tests in section 9-5 are satisfied.[F43] There must be a sufficient nexus between the supply and the payment. In C of IR v. New Zealand Refining Co. Ltd(1997) 18 NZTC 13187, at 13193 Blanchard J commented:

'It can be seen that ... a linkage between supply and consideration is requisite to the imposition of the tax ... There is a practical necessity for a sufficient connection between the payment and the supply. The mechanics of the legislation will otherwise make it impossible to collect the GST.'...

92. In a similar fashion to the GST legislation in New Zealand[F56], the nature of the nexus required between supply and consideration is specified in the definition of consideration. A payment will be consideration for a supply if the payment is 'in connection with', 'in response to' or 'for the inducement' of a supply.[F57]

93. In determining whether a payment satisfies the requirements of subsection 9-15(1), the test is whether there is a sufficient nexus between the supply and the payment made.

94. This test may establish a nexus between consideration and supply in a broader range of cases than the 'direct link' test which applies in the European Community and in Canada. While caution needs to be exercised in applying decisions on connective terms in other contexts, the term 'in connection with' has been held to be broader in scope than 'for'.

95. The meaning given to the term 'in connection with' in Berry's Case[F58] is similar to that which was described by the Court of Appeal in New Zealand Refining[F59], but needs to be applied with regard to the structure of the definition of supply in the GST Act. In Berry's Case, Kitto J held that 'in connection with' was a

broader test than 'for'. At page 659 he commented that consideration will be in connection with property where:
'the receipt of the payment has a substantial relation, in a practical business sense, to that property'

96. In determining whether a sufficient nexus exists between supply and consideration, regard needs to be had to the true character of the transaction. An arrangement between parties will be characterised not merely by the description which parties give to the arrangement, but by looking at all of the transactions entered into and the circumstances in which the transactions are made.[F60]"

ix. In light of the above ruling, the Applicant submits it is clear that there must be a direct nexus between supply and payment and from the above discussions, it is amply clear that no supply has been made by the Government, and the Applicant, as a mine license holder is obligated to make statutory payments to Government controlled funds.

FINDINGS AND DISCUSSION

27. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by Sri. Harish Bindumadhavan, authorised Signatory of M/s JSW Steel Ltd., during the personal hearing proceedings before this authority and we have also considered the additional submissions made. We have also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts and the applicant's interpretation of law.

28. The applicant is a manufacturer of Iron & Steel Products and to fulfill the requirement of Iron ore M/s JSW Steel Limited was given an area to the extent of 33.21 hectares by the Government on lease basis for a period of 50 years to carrying out activities of mining. On extraction of the iron ore from lease area, the applicant has to discharge Royalty to the Government exchequer, equivalent to fifteen percentage of average selling price of iron ore, ten percentage of the royalty to the District Mineral Foundation of the district in which the mining operations are carried on and two percent of the royalty to the National Mineral Exploration Trust, in light of Section 9, 9B (5) and 9C respectively of the Mines and Minerals (Development and Regulation) Act, 1957.

29. Presently the applicant is discharging GST on the royalty amount paid to the Government. Apart from the royalty amount, the Applicant also pays to the District Mineral Foundation of the district and National Mineral Exploration Trust amounts as specified by the Government. In this regard applicant seek Advance Ruling on

> *"Whether the Applicant is liable to discharge GST under reverse charge, for the contribution made towards NMET and DMF, in light of Sl. No. 5 of the Notification No. 13/2017- Central Tax (Rate) dated 28.06.2017."*

30. Before going to the detailed discussion of the case in hand we examine the applicability of legal provisions of the GST Act to the activities carried out by the applicant. The applicant has obtained Government land on lease for extraction of mineral ore, which is used as an input for the manufacture of iron and steel products. The applicant has received land from Government on lease and in turn the applicant pays Royalty along with payments to District Mineral Foundation of the district and National Mineral Exploration Trust as specified by the Government. The leasing of the Government land to the applicant is considered as supply of service as per sub section (1) of section 7 of the CGST/ KGST Act 2017 which is narrated as under.

> 7. (1) For the purposes of this Act, the expression "supply" includes:
>
> a. all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
> b. import of services for a consideration whether or not in the course or furtherance of business; and
> c. the activities specified in Schedule I, made or agreed to be made without a consideration.
>
> (1A) where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

31. Scheduled II to the CGST/KGST Act, 2017 lists activities to be treated as supply of goods or supply of services. Entry No. 2 of the

schedule is with regard to the Land and Building and the entry is narrated as under:

> ***a.*** *any lease, tenancy, easement, licence to occupy land is supply of service*

This provision implies that leasing of Government land to the applicant to carry out the activity of the mining is a supply of service to the applicant.

32. From the above provisions it is observed that Government has provided the land on lease to the applicant to carry out the mining activity and in turn the applicant pays royalty along with the amounts paid to the District Mineral Foundation of the district and to the National Mineral Exploration Trust as specified by the Government. Applicant made these payments under the statutory requirements of the Mines and Minerals (Development and Regulation) Act, 1957. Here whether amount paid to the District Mineral Foundation of the district and to the National Mineral Exploration are to be included in the value of the service provided is discussed as follows.

33. Regarding the issue of DMF and NMET Contribution, the following are observed:

33.1. Section 9B of the Mines and Minerals (Development and Regulation) Act, 1957 as amended from time to time reads as under:

> *"**9B. District Mineral Foundation** – (1) In any district affected by mining related operations, the State Government shall, by notification, establish a trust, as a non-profit body, to be called the District Mineral Foundation.*
> *(2) The object of the District Mineral Foundation shall be to work for the interest and benefit of persons, and areas affected by mining related operations in such manner as may be prescribed by the State Government.*
> *(3) The composition and functions of the District Mineral Foundation shall be such as may be prescribed by the State Government.*
> *(4) . . . . .*
> *(5) The holder of a mining lease or a prospecting licence cum mining lease granted on or after the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried*

on, an amount which is equivalent to such percentage of the royalty paid in terms of the Second Schedule, not exceeding one-third of such royalty, as may be prescribed by the Central Government.
(6) The holder of a mining lease granted before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount not exceeding the royalty paid in terms of the Second Schedule in such manner and subject to the categorization of the mining leases and the amounts payable by the various categories of lease holders, as may be prescribed by the Central Government."

33.2. Section 9C of the Mines and Minerals (Development and Regulation) Act, 1957 as amended from time to time reads as under:

*"**9C. National Mineral Exploration Trust.** – (1) The Central Government shall, by notification, establish a Trust, as a non-profit body, to be called the National Mineral Exploration Trust.*
(2) The object of the Trust shall be to use the funds accrued to the Trust for the purposes of regional and detailed exploration in such manner as may be prescribed by the Central Government.
(3) The composition and functions of the Trust shall be such as may be prescribed by the Central Government.
(4) The holder of a mining lease or a prospecting licence-cum-mining lease shall pay to the Trust, a sum equivalent to two percent of the royalty paid in terms of the Second Schedule, in such manner as may be prescribed by the Central Government.

33.3. On perusal of the above sections related to DMF and NMET, it is seen that both these payments are payable by a lessee in addition to the royalty and both the calculations are made on the basis of royalty.

34. In this context we see clause (a) of subsection (2) of the section 15 of the CGST/ KGST Act, 2017 which is narrated as under.

15(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 Central Goods and Services Tax 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;

Therefore from the above provision it is clear that, the value of the taxable supply of service not only includes the amount of royalty paid to the Government but it also includes the amount paid to the District Mineral Foundation of the district and to the National Mineral Exploration Trust as these payments are made under the statutory requirements of the Mines and Minerals (Development and Regulation) Act, 1957 which is taxable under GST.

35. Further, the question relates to paying taxes on the payment of royalty, payment made to District Mineral Foundation of the district and to the National Mineral Exploration Trust under "reverse charge" as per the provisions of section 9(3) of the GST Act 2017. The provisions are narrated as under:

'Reverse charge' is defined under Section 2(98), as to mean, *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 of the Central Goods and Services Tax Act or under sub-section (3) or subsection (4) of section 5 of the Integrated Goods and Services Tax Act.*

Section 9(3) of the GST Act,2017 says, *the Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.*

Pursuant to the above provision Government notified the categories of supply of services under the Notification No. 13/2017- Central Tax (Rate) dated 28.06.2017. Relevant portion of the said notification at Sl. No. 5 is extracted below:

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	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable

	by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.		territory.

In view of the above provision in the instant case it is clear that since the Government (Central/state) has provided the land to the applicant on lease to carry out the mining activity, the Government(Central/state) becomes the supplier of the service and the applicant (business entity) is the recipient of the service. Therefore, as per the Notification No. 13/2017- Central Tax (Rate) dated 28.06.2017 applicant is liable pay GST on the payment made to the District Mineral Foundation of the district and payment made to the National Mineral Exploration Trust on reverse charge basis.

36. In view of the above we rule as follows.

RULING

The Applicant is liable to pay GST under reverse charge, for the payment made towards NMET and DMF, in light of Sl. No. 5 of the Notification No. 13/2017- Central Tax (Rate) dated 28.06.2017.

Authority For Advance Ruling * Karnataka, Bengaluru *

21.09.2019

(Harish Dharnia)
Member

(Dr.Ravi Prasad.M.P.)
Member

Place: Bengaluru,
Date: 21.09.2019
To

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, HOSPET-C RANGE.
4. The Asst. Commissioner, LGSTO-500, Hospet
5. Office Folder.