

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH**Goods and Service Tax****O/o THE COMMISSIONER, COMMERCIAL TAX,****MOTI BUNGALOW,****MAHATMA GANDHI MARG, INDORE (M.P.) - 452007****e-mail : aar@mptax.mp.gov.in Phone : 0731- 2437315 fax. no. : 0731-2536229****PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING**
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017**Members Present**

1. Rajiv Agrawal
Additional Commissioner,
Office of the Commissioner,CGST and Central Excise, Indore
2. Manoj Kumar Choubey
Joint Commissioner,
Office of the joint Commissioner of Commercial Tax, Indore Division-1

GSTIN Number. If any/User-id	23AAACN7325A2Z2
Name and address of the applicant	M/s. NMDC Limited NMDC Limited , Majhgawan, Diamond Mining Project ,488001
Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	a) Classification of any goods or services or both; 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;
Present on behalf of applicant	Shree Ananthanarayanan S Counsel
Case Number	26/2018
Order dated	18/07/2019
Order Number	09/2019



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PROCEEDINGS

(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and MP Goods & Services Tax Act, 2017 (hereinafter also referred to as CGST Act and MPST Act respectively) by M/s. NMDC Limited (hereinafter referred to as the Applicant), registered under the Goods & Services Tax.
2. The provisions of the CGST Act and MPST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.
3. **BRIEF FACTS OF THE CASE:**

- 3.1 M/s. NMDC Limited (hereinafter referred to as 'the Applicant'), having their registered office at NMDC Limited, Majhgawan, Diamond Mining Project, 488001 and are registered with the GSTIN holding GSTIN 23AAACN7325A222.
- 3.2 The Applicant is engaged in mining and sale of "rough diamonds".
- 3.3 Thus the Applicant have approached the Authority for limited and specific ruling about clarification on classification of royalty payments to Government in respect of Mining lease under "Licensing services for Right to use minerals falling under the heading 9973" and 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.

4. **QUESTIONS RAISED BEFORE THE AUTHORITY:-**

The following questions have been posted before the Authority:-

- 4.1. 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"?
- 4.2. 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.

5. **RECORD OF PERSONAL HEARING:** Shree Ananthanarayanan S Counsel of the applicant for personal hearing and he reiterated the submissions already made in the application and attached submission. The Applicant argued the case as following-



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5.1 "Background of operations -

NMDC Limited is a state-controlled mineral producer of the Government of India. It is owned by the Government of India and is under administrative control of the Ministry of Steel.

5.2 It is India's largest iron ore producer and exporter producing about 30 million tons of iron ore from 3 fully mechanised mines in Chhattisgarh and Karnataka.

5.3 NMDC Ltd. also has Diamond Mining Project at Majhagawan, Panna (M.P) (hereinafter referred to as "NMDC" or "the Company" or "the Applicant") which is engaged in mining and sale of "rough diamonds" falling under Chapter Heading 7201 attracting GST Rate of 0.25%.

Operating Mines of NMDC includes the following –

- I) Bailadila Iron Ore Mine, Kirandul Complex, Distt. South Bastar, Dantewada (Chhattisgarh)
- II) Bailadila Iron Ore Mine, Bachel Complex, Distt. South Bastar, Dantewada (Chhattisgarh)
- III) Donimalai Iron Ore Mine, Donimalai, Distt. Bellary (Karnataka)
- IV) Diamond Mining Project, Majhgawan, Panna (Madhya Pradesh)

5.4 Payment of Royalty, DMF and NMET -

- I) The question raised above for which the Advance ruling is sought is in relation to Diamond Mining Project, Majhgawan, Panna of NMDC.
- II) Govt. of Madhya Pradesh has issued in principle approval to NMDC Ltd (Panna) for renewal of IBM No.270/17MPR26001 for period of 20 years w.e.f 15.07.2005 for an area of 280.08 acres (597.54 ha as per CEC).
- III) Pursuant to the agreement, NMDC Panna is required to pay royalty as per Mines and Minerals (Development & Regulation) Act, 1957.
- IV) As per Section 9 of the said Act, NMDC is required to pay royalty @ 15%. The Applicant seeks clarification as to 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.
- V) 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.



NO

- VI) Further, Section 9B and 9C of Mines and Minerals (Development & Regulation) Act, 1957 mandates that NMDC shall contribute 30% of royalty to District Mineral Foundation and 2% of Royalty to National Mineral Exploration Trust. In this regard, the Applicant seeks clarifications whether such statutory contributions made amounts to "Supply" and whether the same is liable for GST under reverse charge.

5.5 Admissibility of Application

As per Section 97(2) of CGST Act, advance ruling can be sought for following question under GST:

(a) classification of any goods or services or both;

Based on above, the Applicant requests to admit its application in respect of clarification sought on classification of service by way of royalty paid in respect of Mining Lease.

Further, as per Section 97(2) of CGST Act, 2017, advance ruling can be sought for following questions under GST:

(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

Based on the said Section, the Applicant wishes to seek clarification whether statutory contributions made to District Mineral Foundation (DMF) and National Mineral Exploration trust (NMET) as per MMDR Act, 1957 amounts to "Supply" and determination of liability to pay tax on such contributions made.

5.6 Classification of royalty paid in respect of mining lease under "Licensing services for the right to use minerals including its exploration and evaluation falling under the heading 9973

The Applicant prefers to present the application before this Authority on the following, among other, grounds, each of which is taken in the alternative and without prejudice to the others.

1. As stated above, Govt. of Madhya Pradesh has issued in principle approval to NMDC Ltd (Panna) for renewal of IBM No.270/17MPR26001 for period of 20 years w.e.f 15.07.2005 for an area of 280.08 acres (597.54 ha as per CEC).

2. Royalty is in the nature of periodical payments to be made by the lessee under his covenants in consideration of the various benefits granted by the lessor. Royalty is collected by the State Government from the business entities for right given to them to extract mineral and is payable based on quantum mineral removed or consumed.



3. The Applicant is of the view that payment of royalty is classifiable under heading:

Heading 9973 Leasing or rental services with or without operator

Sub-category 997337 Licensing services for the right to use minerals including its exploration and evaluation

Sub-category 997338 Licensing services for right to use other natural resources including telecommunication spectrum

The Applicant wishes to submit the following grounds for classification of royalty under SAC 997337.

4. Royalty is required to be paid as per Section 9(1) of Mines and Mineral (Development and Regulation) Act, 1957 (MMDR Act) which is read as under:

5. *"The holder of a mining lease granted shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, 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 after such commencement, at the rate for the time being specified in the Second Schedule in respect of that minerals"*

6. Further as per Section 9(2) of MMDR Act,

"The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any 1 [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".

7. The term 'Royalty' is not defined in MMDR Act. However, the meaning of the word royalty has been considered in some judicial decisions. Many of these judicial decisions have been summed up in the judgement delivered by the Supreme Court in the case of the India Cement Ltd., etc. v. State of Tamil Nadu, etc. (AIR 1990 SC 85). The case was primarily on the legality of the cess on royalty. However, the meaning and concept of royalty has also been discussed in the judgement in an incidental manner. Although royalty has not been explicitly defined, the Supreme Court held that **royalty is separate and distinct from land revenue and that it is not related to land as a unit. On the other hand, royalty is payable on a proportion of the minerals extracted and it has relationship to mining as also to the mineral won from the mine under a contract by which royalty is payable on the quantity of the mineral extracted.**



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8. Further, the Applicant tried to draw attention to the Sectoral FAQ's published by CBEC wherein it is categorically stated that Royalty payment is made towards **Licensing services for exploration of natural resources**. The extract of the same is produced as under:-

9. *"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"*

10. Therefore, the payment of royalty is for license given to extract minerals and the amount of royalty paid is based on quantum of mineral extracted.

11. Further, referring to the note on 'Mineral Royalties' published by Indian bureau of Mines concept of Royalty is explained as under:

"A lessee is a person who is granted mineral concessions. The lessee is required to pay a certain amount in respect of the mineral extracted in proportion to the quantity extracted. Such payment is called royalty. The royalties in respect of mining leases is specified in Section 9 of the MMDR Act, 1957. Royalty is a variable return and it varies with the quantity of minerals extracted or removed"

12. Also, it is important to draw reference to the definition of the term 'royalty' in various dictionaries, case law and other sources, which are as follows –

- • Strond's Judicial Dictionary (Vol. 4, P. 2414)

"In its secondary sense, the word 'royalties' signifies, in mining leases, that part of the reddendum which is variable, and depends upon the quantity of mineral gotten"

- • Bouvier's Law Dictionary

"Royalty, a payment reserved by the grantor of a patent, mining lease, etc., and payable proportionately to the use made of such right"

- • The New Oxford Illustrated Dictionary (Vol. 2, P.1478) (USU pl);



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"Royal Prerogative or privilege of licence to work minerals, etc"

- • An Introduction to Mineral Economics – by Dr. K.K. Chatterjee

"Royalty means dues payable to a land owner for mining rights"

13. Without prejudice to the above, the Applicant would like to draw reference to the meaning of the expression 'renting' in common parlance which indicates 'allowing', 'permitting or granting access', 'use', 'entry', 'occupation' 'use or any such facility' which infers the enjoyment of immovable property on 'as is' basis. The expression 'renting' cannot be extended to activities like 'exploration', 'extraction' etc. Therefore, mining land which is used for purpose of extraction of minerals and by which the immovable property cannot be used on "as is" basis, will not fall within the ambit of 'renting of immovable property'.

14. Upon harmonious reading from the above, what is intended to be transferred is the right and title to the interest over immovable property (i.e. mineral). Such an interest over immovable property cannot be equated with 'Renting of Immoveable Property'.

15. Further, the Applicant would like to quote Section 65(105)(zzzz) of Finance Act, 1994, which defines "Immovable Property" in relation of "Renting of Immovable Property"

16. As per the said Section, immovable property does not include "vacant land solely used for agriculture, farming, forestry, animal husbandry, mining purposes".

17. In a nutshell, it can be stated that royalty is a charge by the owner of a mineral in consideration of the exploitation of mineral resources by the lessee. In any case, it cannot be considered as payment made for renting of immovable property. The payment of royalty is a statutory levy as per MMDR act and the same is

as well categorically emphasized in the Mining lease agreement. Therefore it is against Licensing services by the Government for right to extract minerals.

18. Since the services are covered under the service code classification 997337, we now need to refer to the rate of GST on services as specified under Notification 11/2017 – Central Tax (Rate) dated June 28, 2017.

19. Notification 11/2017 dated June 20, 2017, notifies the rate, description of service and the Chapter, Section, Heading. Heading provided here is at 4 digit



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level. In terms of Explanation 4(2) of the said Notification, reference to "Chapter", "Section" "Heading", wherever they occur, unless the context otherwise require, shall mean respectively as "Chapter, "Section" and "Heading" in the annexed scheme of classification of services (Annexure). Therefore, any reference to classification to determine the rate of services should be read in conjunction with the Annexure.

20. Heading 9973 covers various types of leasing, rental, licensing services. The group under heading 99737 largely appears to cover right to use intangible property, Entry 997337, covers licensing services for the right to use minerals including its exploration and evaluation.

21. It is pertinent to note that for every entry for the Heading in Notification 11/2017, the last description of service in the heading states "Other than the above". This means any service at 6 digit level of the annexure not specified in the 4 digit level in Notification will fall in the residual clause of that particular heading.

22. The entries prescribing the rate of tax for the service code 9973 does not specifically cover the Licensing services for the right to use minerals including its exploration and evaluation and therefore it will be covered under the residuary entry "leasing or rental services, with or without the operator, other than (i), (ii), (iii), (iv) and (v) above", **with applicable tax rate as the same rate of tax as applicable on the supply of like goods involving transfer of title in goods.** Accordingly, in such cases, the relevant tax rate as applicable on the underlying natural resource would be applicable on the amount of royalty paid.

23. The Applicant wishes to quote the recent decision by Haryana Authority for Advance Ruling in the case of M/s. Poiner Partners, wherein it was held that Royalty paid towards mining rights of 'stone boulders' taxable at 5% under 'reverse charge'. The extract of the relevant para is stated below:

"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 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)."



Copy of the Advance Ruling is enclosed as **Annexure - 1**

24. Based on the above, the Applicant wishes to submit that the entries prescribing the rate of tax for the service code 9973 does not specifically cover the Licensing services for the right to use minerals including its exploration and evaluation and therefore it will be covered under the residuary entry "leasing or rental services, with or without the operator, other than (i), (ii), (iii), (iv) and (v) above", **with applicable tax rate as the same rate of tax as applicable on the supply of like goods involving transfer of title in goods.** Accordingly, in such cases, the relevant tax rate as applicable on the underlying natural resource would be applicable on the amount of royalty paid. Since, rough diamonds attracts 0.25% GST Rate, royalty paid for mining of rough diamonds will attract 0.25% GST Rate.

I II. Determination of liability to pay tax on contribution made to District Mineral Foundation (DMF) and National Mineral Exploration trust (NMET) as per MMDR Act, 1957

Contribution made to District Mineral Foundation (DMF)

25. District Mineral Foundation (DMF) is a trust set up as a non-profit body, in those districts where mining operations are carried out. The objective of the District Mineral Foundation is 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. It is funded through the contributions from miners.

26. The holder of a mining lease granted before 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 an amount of 30% of royalty.

27. It is submitted that as per Rule 3 of District Mineral Foundation Rules, 2016 in the state of Madhya Pradesh, District Mineral Foundation (DMF) is a foundation which shall be a Non Profit Making Trust. The objective of the foundation as per Rule 4 of the said rules is as under:

"The Trust shall prepare schemes and plans as per guidelines of the Pradhan Mantri Khanij Kshetra Kalyan Yojna (PMKKKY) and instructions issued by the State Government from time to time to ensure their implementation for the development of mining affected areas."

28. As per Notification 13/2017 Central tax (Rate), Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding the specified services are chargeable to tax under



reverse charge. Therefore, the Applicant wishes to seek clarification on liability to pay tax under reverse charge on such contribution made to the funds.

29. In this regard the Applicant would like to quote Section 7 of CGST Act, 2017. As per Section 7, 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"

30. Therefore, it is to be noted that liability to pay will result only if all the following conditions are satisfied:

- • There is a supply in terms of Section 7
- • The supply is in the course of or furtherance of business
- • The supply is not exempt under Section 7(2) or Section 11(1)

31. In order to determine whether tax is payable on payment to District Mineral Foundation following has to be tested:

- • Whether there is supply of goods or service by the trust to which such payment is made
- • If at all there is a supply, whether such supply is in the course of or furtherance of business of the trust?
- • Whether such supply is exempt under Section 7(2) or Section 11(1)

32. As stated above, the objective of DMF Trust is to mitigate adverse impact of mining, to work towards welfare and development of people inhabited near mining area and to ensure sustainable livelihood. In order to carry out the said objective, the contribution to such fund is made by Minors. It is pertinent to note that in lieu of such contribution made, there is no supply made by the trust to the Applicant (i.e., as a quid pro quo for the service is not received).

33. Further, as seen in Section 7, one also has to evaluate whether the supply is in the course of business. It is pertinent to note that the trust is a non-profit body organization and not involved in the course of any business, trade or commerce. Based on the above, there is no supply made in terms of Section 7 therefore liability to pay tax does not arise.



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34. Without prejudice to the above, the Applicant wishes to state that the liability to pay tax under reverse charge on the said payments will arise only if such trust/fund falls under the definition of Government or local authority.

35. As per Section 2(53) of CGST Act, 2017, government means "Central Government" and as per Section 2(53) of Madhya Pradesh GST Act, government means "State Government". Further, the said trust does not fall within the definition of local authority which is defined under Section 2(69) of the CGST Act, 2017:

"local authority" means—

- (a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution;*
- (b) a "Municipality" as defined in clause (e) of article 243P of the Constitution;*
- (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;*
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;*
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;*
- (f) a Development Board constituted under article 371 of the Constitution; or*
- (g) a Regional Council constituted under article 371A of the Constitution;*

36. It is submitted that, an autonomous trust set up for an independent purpose do not fall under the definition of Government or local authority. At the max such trust may fall under the definition of Governmental Authority which is defined in Explanation of Section 2(16) of IGST Act. The same is stated below for your reference.

the expression "governmental authority" means an authority or a board or any other body,—

- (i) set up by an Act of Parliament or a State Legislature; or*
- (ii) established by any Government,*

with ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.

37. Based on above, the Applicant wishes to submit that services provided by Governmental Authority is not covered under reverse charge and therefore the supplier is liable to charge GST and remit to the credit of Government.

38. It is to be noted that the trust established under Section 9B(1) of the MMDR Act does not fall under the definition of Government. The same is an independent non-profit body to carry out operations entrusted to it. Since the payment is not



made to government, there is no requirement of payment of GST under reverse charge in terms of Notification 13/2017 – Central Tax (Rate).

Contribution to National Mineral Exploration Trust

39. It is submitted that as per National Mineral Exploration Trust Rules, 2015 it is submitted that National Mineral Exploration trust (NMET) is a trust which was set up as a non-profit body for the purpose of detailed exploration of minerals that would facilitate high growth in the mining sector.

40. As per Section 9C(2) of MMDR Act, 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. The funds accumulated with the NMET will be utilised to step up the exploration activities.

41. The holder of a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, pay to the Trust, a sum equivalent to two per cent. of the royalty paid in terms of the Second Schedule.

42. As per Notification 13/2017 Central tax (Rate), Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding the specified services are chargeable to tax under reverse charge. Therefore, the Applicant wishes to seek clarification on liability to pay tax under reverse charge on such contribution made to the funds.

43. In this regard the Applicant would like to quote Section 7 of CGST Act, 2017. As per Section 7, 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"

44. Therefore, it is to be noted that liability to pay will result only if all the following conditions are satisfied:

- • There is a supply in terms of Section 7
- • The supply is in the course of or furtherance of business
- • The supply is not exempt under Section 7(2) or Section 11(1)

45. In order to determine whether tax is payable on payment made to NMET, following has to be tested:



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- • Whether there is supply of goods or service by the trust to which such payment is made
- • If at all there is a supply, whether such supply is in the course of or furtherance of business of the trust?
- • Whether such supply is exempt under Section 7(2) or Section 11(1)

46. The Applicant would like to state that there is no supply made by the trust to the Applicant in return of payment made to such trust (i.e., as a quid pro quo for the service received). As stated above, the objective of the trust is exploration of minerals that would facilitate high growth in the mining sector. There is no service/supply made to the payee. The payment made by the Applicant is purely in the nature of contribution and cannot be regarded as consideration.

47. Further, as seen in Section 7, one also has to evaluate whether the supplier is in the course of business. It is pertinent to note that the trust is a non-profit body organization and not involved in the course of any business, trade or commerce. Based on the above, there is no supply made in terms of Section 7 therefore liability to pay tax does not arise.

48. Without prejudice to the above, the Applicant wishes to state that the liability to pay tax under reverse charge on the said payments will arise only if such trust/fund falls under the definition of Government or local authority.

49. As per Section 2(53) of CGST Act, 2017, government means "Central Government" and as per Section 2(53) of Madhya Pradesh GST Act, government means "State Government". Further, the said trust does not fall within the definition of local authority which is defined under Section 2(69) of the CGST Act, 2017:

"local authority" means—

- (a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution;
- (b) a "Municipality" as defined in clause (e) of article 243P of the Constitution;
- (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- (f) a Development Board constituted under article 371 of the Constitution; or
- (g) a Regional Council constituted under article 371A of the Constitution;



50. Based on above, the Applicant wishes to submit that services provided by Governmental Authority is not covered under reverse charge and therefore the supplier is liable to charge GST and remit to the credit of Government.

51. It is to be noted that the trust established under Section 9C(1) of the MMDR Act does not fall under the definition of Government. The same is an independent non-profit body to carry out operations entrusted to it. Since the payment is not made to government, there is no requirement of payment of GST under reverse charge in terms of Notification 13/2017 – Central Tax (Rate).

Therefore, the contribution to DMF and NMET will not attract GST under reverse charge."

5.7 During discussion the applicant further argued that –

1. In addition to the submission given in our Application, the Applicant wishes to quote the recent decision by Haryana Authority for Advance Ruling in the case of M/s. Pioneer Partners, wherein it was held that Royalty paid towards mining rights of 'stone boulders' taxable at 5% under 'reverse charge'. The extract of the relevant para is stated below:

" 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 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). "

Based on the above, the Applicant wishes to submit that the entries prescribing the rate of tax for the service code 9973 does not specifically cover the Licensing services for the right to use minerals including its exploration and evaluation and therefore it will be covered under the residuary entry "leasing or rental services, with or without the operator, other than (i), (ii), (iii), (iv) and (v) above", **with applicable tax rate as the same rate of tax as applicable on the supply of like**



goods involving transfer of title in goods. Accordingly, in such cases, the relevant tax rate as applicable on the underlying natural resource would be applicable on the amount of royalty paid. Since, rough Diamond attracts 0.25% GST Rate, royalty paid for mining of rough Diamonds will attract 0.5% GST Rate.

Submission in relation to Contribution to District Mineral Fund and National Mineral Exploration Trust

2. The Applicant wishes to submit that Section 9B and 9C of Mines and Minerals (Development & Regulation) Act, 1957 mandates that NMDC shall contribute 30% of royalty to District Mineral Foundation and 2% of Royalty to National Mineral Exploration Trust.

No "Supply" in terms of Section 7

3. It is submitted that as per Rule 3 of District Mineral Foundation Rules, 2016 in the state of Madhya Pradesh, District Mineral Foundation (DMF) is a foundation which shall be a Non Profit Making Trust. The objective of the foundation is prescribed under Rule 4 as under:

"The Trust shall prepare schemes and plans as per guidelines of the Pradhan MantriKhanijKshetraKalyanYojna (PMKKKY) and instructions issued by the State Government from time to time to ensure their implementation for the development of mining affected areas."

4. As stated above, the objective of DMF Trust is to mitigate adverse impact of mining. In order to carry out the said objective, the contribution to such fund is made by Minors. It is pertinent to note that in lieu of such contribution made, there is no supply made by the trust to the Applicant (i.e., as a quid pro quo for the service is not received).

5. Also, as per National Mineral Exploration Trust Rules, 2015 it is submitted that National Mineral Exploration trust (NMET) is a trust which was set up as a



non-profit body for the purpose of detailed exploration of minerals that would facilitate high growth in the mining sector.

6. As per Section 9C(2) of MMDR Act, 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. The funds accumulated with the NMET will be utilised to step up the exploration activities.

7. The Applicant would like to state that in the said rules for DMF and NMET, the collections are defined as 'contribution' as against consideration. Also, in no manner such contribution made to DMF/NMET can be regarded as payment towards service by way of royalty or right to use minerals. Had such contribution been towards mining rights, the same would have been retained by State Government. The said sum is towards benefit of the interest and benefit of persons and areas affected by mining related operations, exploration activities and cannot be considered as consideration towards mining right.

8. In order to tax a particular transaction as "Supply" under Section 7 of CGST Act, there should be supply of goods or services agreed to be made for a consideration. In the instant case, supply of service is missing and therefore the main test of levy of tax under Section 7 is not satisfied.

No liability under Reverse charge

9. Without prejudice to the above, assuming but not admitting that there is a service provided by the trust in lieu of contribution made by the Applicant, the said service will not under notified services under Reverse charge.

10. As per Serial No. 5 of Notification 13/2017 – Central Tax (Rate), dated June 28, 2017, the recipient is liable to pay tax under reverse charge for following service:



Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, -

- (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.

11. It is to be noted that only services supplied by Central Government, State Government or local authority is liable to tax under reverse charge. The definition of the same are stated in Para 10 of the Application. As noted, an autonomous trust set up for an independent purpose do not fall under the definition of Government or local authority. At the max such trust may fall under the definition of Governmental Authority which is defined in Explanation of Section 2(16) of IGST Act. The same is stated below for your reference.

the expression "governmental authority" means an authority or a board or any other body,—

- (i) set up by an Act of Parliament or a State Legislature; or*
- (ii) established by any Government,*

with ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.

12. Based on above, the Applicant wishes to submit that services provided by Governmental Authority is not covered under reverse charge and therefore the supplier is liable to charge GST and remit to the credit of Government.

13. Since the DMF and NMET Trust falls under the definition of Governmental Authority and not under Government or Local Authority, the Applicant is not liable to pay tax under reverse charge on the contribution made to such funds. If at all



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such contribution is taxable, it is the supplier's responsibility to charge GST and remit the same to Government.

The Contribution made cannot be clubbed under the valuation of Royalty

14. Further, we would like to state that Section 15 of CGST Act, 2017 does not mention to include value paid to third party in the transaction value of supply. In this regard, we would like to quote clause (b) of Section 15;

"Value of supply shall include 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;"

15. In the instant case, the Government is not liable to incur the cost of development of people near mining area. The cost has to be borne by mining lease holder. There is no diversion of cost by supplier of royalty service to the recipient i.e. lessee. At the first place contribution to trusts is not for obtaining mining rights but is towards interest and benefit of affected people and for exploration activities. Therefore, the payment made to trust cannot be linked to mining rights and cannot be included in the valuation of royalty.

16. Further, it is submitted that even the Sectoral FAQs only talk about royalty paid under *"Licensing services for the right to use minerals including its exploration and evaluation"*. Contribution to DMF/NMET Trusts are not mentioned under such services in FAQ. Therefore, the same is not liable to GST under reverse charge.

17. We request your good office to consider our above submissions and pass such other orders and directions as may be deemed proper and necessary.



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6. **CONCERNED OFFICER'S VIEW POINT:** The Concerned Officer in his view submitted that the service by way of granting of license to extract minerals is classified under Tariff Heading 99733 and the additional contributions made to DMF and NMET are nothing but additions to the royalty and shall be treated under addition of value of original supply.

7. **DISCUSSIONS AND FINDINGS:**

The arguments and assertions made by the applicant along with supporting case law and the documents in support of such claims were studied and the following are noted:

Regarding the first question of the applicant as to the classification and taxability and the applicability of reverse charge on the mining lease provided by the Central Government to the applicant, the following points are worth noting:

- 7.1 It is clear that the supply made by the government, i.e. the right to mine the resources is taxable under Section 9 of the Act and is within the meaning of the term 'supply' as covered by Section 7. That, in order to classify as a supply, two important conditions are to be met. First, it should be in the course or furtherance of business. It must also be noted that as per Section 2(17), inter alia, any activity undertaken by the Central Government in which they are engaged as public authorities shall be deemed to be a business. Hence, the royalty received by the Government in lieu of the mining rights shall also be deemed to be for business purposes.
- 7.2 Furthermore, this is a service which is provided by the Central Government to the applicant being a business entity, and is therefore liable to be paid by the recipient under reverse charge, in terms of Sr. No. 5 of Notification No. 13/2017 – CT (Rate) dated 28.06.2017. Hence, the said service is taxable under reverse charge basis.
- 7.3 Regarding the additional issue raised by the applicant after the filing of the application, that the royalty is profit a prendre and hence not liable to tax under the GST Act cannot be accepted because the said lease is for mining of minerals and the main product of the mining is the mineral ore. The extraction of mineral ore being the main activity and product and the royalty is paid on the activity of extraction and usage of the mineral ore so extracted, this does not amount to an additional benefit out of the main transaction being something else and hence the royalty would not amount to profit a prendre. The judgments relied upon by the applicant have no application to the transactions of the applicant as the main activity is extraction of mineral ore for which royalty is paid.

- 7.4 Regarding classification of services, the following points are noted:

- a. The Annexure to the Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 which prescribed the Service Accounting Code for each type of



service gives the following services which are relevant to the transaction of the applicant. They are:

Heading 9973 Leasing or rental services with or without operator

Group 99731	Leasing or rental services concerning machinery and equipment with or without operator
Group 99732	Leasing or rental services concerning other goods
Group 99733	Leasing services for the right to use intellectual property and similar products

Since the service received by the applicant is not covered under Group 99731 or Group 99732 and hence it may get covered under Group 99733, i.e. leasing service for the right to use 'other similar products'.

7.5 Additionally, as per the guidelines on the Scheme of Classification issued by the Central Board of Indirect Taxes and Customs, the classification of this service is clarified under the above mentioned heading, i.e. 99733 only. In this respect, the relevant entry from the guidelines is reproduced below:

997337

Licensing services for right to use minerals including its exploration and evaluation
This service code includes licensing services for the right to use, mineral exploration and evaluation information, such as mineral exploration for petroleum, natural gas and non-petroleum deposits

From the above, it becomes clear that the services received by the applicant is of the above nature only, and it shall be classified under heading 997337.

7.6 Coming to the issue whether the license to extract mineral ore and also the right to use such minerals extracted is a leasing or rental service, it is clear that what is supplied by the Government is the service by way of license to extract and use mineral ores and that is not covered by any specific entries in the serial no. 17 of the Notification and hence falls under the residual entry.

7.7 Regarding the question who is liable to pay the above tax, Notification No. 13/2017 Central Tax (Rate) dated 28.06.2017 stipulates in Serial No.5, that the tax leviable under section 9 of the CGST Act shall be paid on reverse charge basis by the recipient of such services, and the entry reads as under:

Sl. No.	Category of Supply of Services	Supplier of Service	Recipient of Service



5	<p>Services supplied by the Central Government, State Government, Union Territory or Local Authority to a business entity, excluding—</p> <p>(1) Renting of immovable property, and</p> <p>(2) Services specified below-</p> <p>(i) Services by 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;</p> <p>(ii) Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) Transportation of goods or passengers</p>	<p>Central Government, State Government, Union Territory or local authority</p>	<p>Any business entity located in the taxable territory</p>
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7.8 Since the transaction is between the State Government and the applicant and the services are supplied by the state government to the applicant which is a business entity, and the transaction being a supply not covered under the exception, the applicant being the recipient of such service shall have to pay tax on the said supply under reverse charge mechanism as per Notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017.

Now, coming to the second issue of taxability of the contributions made to District Mineral Foundation (DMF) and the National Mineral Exploration Trust (NMDF), we note that:

7.9 The first question is whether such activity is liable to GST in the first place or not. In order for an activity to be charged to tax, it must fall within the meaning of 'supply' as defined by Section 7 of the CGST Act, 2017. That, the Section 7 makes it clear that any activity shall be called supply only if it fulfills two important conditions:

- A) It should be in the course of or furtherance of business
- B) It should be for a consideration

7.10 In the case of contributions made to the DMF and NMET, it is important to note that the applicant is a recipient of this service, and not the supplier. Since it is an inward supply for the applicant and not the outward supply, it becomes important to judge the taxability of the transaction from the point of view of the supplier, and not the recipient.



This stands true regardless of whether the given supply is subject to reverse charge mechanism. In other words, whether or not something is taxable must be examined from the point of view of the supplier, even if the tax liability thereon falls upon the recipient under Section 9 of the Act.

7.11 Thus, in the given context, it is important to question whether the transaction or activity carried out by the DMF or NMET falls in the purview of "supply" within the meaning of it as prescribed by Section 7 of the CGST Act and MP SGST Act, 2017. As mentioned earlier, any activity or transaction can be called a supply if it fulfils certain important conditions, i.e. it must be for a consideration and it must be in the course or furtherance of business.

7.12 Regarding the question of whether the activities carried out by the DMF or NMET are to be considered for the purposes of business, we refer to Section 2(17) of the CGST Act, which defines the term 'business' as follows:

(17) "Business" includes—

(a) Any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) Any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) Any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) Supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

(e) Provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

(f) Admission, for a consideration, of persons to any premises;

(g) Services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) Services provided by a race club by way of totalisator or a license to book maker in such club; and

(i) Any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

In view of above, the applicant's first contention that these are trusts set up by an Act and are working for non-profit purposes is not relevant. This is because the term 'business' includes any trade, commerce etc. 'whether or not it is for a pecuniary benefit' in terms of Section 2(17).

7.13 But before even judging whether activities undertaken by the DMF and NMET are for business purposes or not, we have to understand that the underlying service is not actually being provided by these trusts, but rather the payments made to these trusts is nothing but addition to royalty itself. That is to say, such payments are part of the original supply itself. The original supply, i.e. the mining rights given by the Central Government to the



applicant was for a consideration payable in the form of royalty. It can be seen that the payments made to the DMF and the NMET are also part of the same royalty, and consideration paid in respect of the same supply.

- 7.14 For this purpose, the definition of 'consideration' is important, and it is defined in the Act as follows:

"Consideration" in relation to the supply of goods or services or both includes—

(a) Any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

- 7.15 The first question is whether the payment made to the DMF and NMET are 'in respect of, in response to, or for the inducement of, the supply of service by way of granting leasing rights'? For this purpose, we may note the provisions of the MMDR Act, 1957 which provides for the payment of royalty as well as the contributions made to the DMF and the NMET. It is interesting to note that, as per Section 9 of the MMDR Act, the payment of royalty is 'in respect of' the minerals removed by the holder of the mining rights. The said Section 9 is reproduced here—

9. Royalties in respect of mining leases.—(1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, 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

It is worth noting that the payment of royalty is described as being 'in respect of' the mineral removed or consumed by the holder of the mining rights. Therefore, it is no doubt a consideration for the said mining rights.

- 7.16 Further, Section 9B and Section 9C of the MMDR Act, which talk about contributions made to the DMF and the NMET, state that such contributions are to be made by the holder of the mining rights 'in addition to the royalty'. Since the said Sections 9B and 9C use the word 'in addition to the royalty', these contributions are also in the nature of royalty and as such are to be treated just like they were royalty. Per this view, the amounts payable to DMF and NMET are nothing but payments of royalty, albeit by a different name.

- 7.17 This Authority is of the view that money payable to the DMF and the NMET may be treated as nothing but royalty itself, since these contributions are described as being 'in addition to' the payment of royalty, which itself is 'in respect of' the mining rights. As such, therefore, such amounts are paid in respect of mining rights and the said supply is already deemed to be taxable under reverse charge basis.



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7.18 Further support for this view comes from the intent behind the contributions to be made to these trusts. The intention behind setting up these trusts is to rehabilitate the affected areas and the affected people as a result of the mining operations being carried out. Had the government not started these trusts, the onus of rehabilitation would fall on the government itself, and as such would result in an additional cost directly related to royalty. By way of such contributions, the government has transferred such responsibility and cost thereof to the recipient, i.e. the applicant in this case. It should be seen that under regular valuation rules of GST, if any amount which the supplier is liable to pay has been incurred by the recipient, then such amount would also be added to the value of supply. While there is no legal liability on the government in this case, the intent behind such contribution is the same, i.e. to pass on the liability of the supplier to the recipient. In other words, if no such funds were set up, then the government might be forced to increase the royalty itself in order to meet the cost for rehabilitation. Therefore, the intent behind such contributions is clear, and therefore it is nothing but an addition to royalty.

8. RULING

8.1 In respect of the first question raised by the Applicant regarding the classification of service by way of granting of license to extract minerals, we rule that the said service shall be classified under Tariff Heading 99733.

8.2 In respect of the second question raised by the Applicant regarding the taxability or otherwise of the additional contributions made to DMF and NMET, we rule that the said contributions are nothing but additions to the royalty payable for the original supply itself, and is therefore liable to be added to the value of the original supply and treated accordingly for the purposes of GST.

8.3 This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act.

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RAJIV AGRAWAL
(MEMBER)

gt
MANOJ KUMAR CHOUBEY
(MEMBER)

Copy to:- No. 27/2018/AAR/K-28/22

INDORE dt. 18/07/2018 *सत्यप्रतिलिपि*

1. Applicant
2. The Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore
4. The Commissioner, CGST & Central Excise, Indore
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

Choubey

