M/s Aravali Polyart (P) Ltd., A-251, B-1, Mewar Industrial Area, Road No.-1, Madri, Udaipur-313001 (Rajasthan) (appellant before the Appellate Authority, GSTIN 08AAECA7970L2Z5)

Appellate Authority for Advance Ruling — Rajasthan

ORDER NO. RAJ/AAAR/03/2019-20 Dated **30.05.2019**

Q Questions Before the Authority

- What is the classification of the service provided by the State of Rajasthan to the appellant for which royalty is paid under Notification No. 11/2017-Central Tax (Rate) read with its Annexure? Can it be classified under SAC 997337 (licensing services for the right to use minerals including its exploration and evaluation) or under some other service, and is tax payable by the recipient under reverse charge owing to Notification No. 13/2017-Central Tax (Rate)?
- What is the GST rate applicable on the said services provided by the State of Rajasthan to the appellant for which royalty is paid?

F Facts

The appellant is a private limited company mining soapstone and dolomite on land it holds on lease from a private lessor in Rajasthan, and it classifies these products under heading 2518 and pays GST at 5% on supplies of them. Under the Rajasthan Minor Mineral Concession Rules, 2017 it must pay royalty or dead rent for the lease, and the State has appointed an Excess Royalty Collection Contractor to collect that royalty. The question concerns the GST treatment of the royalty payment itself, which the appellant argued should attract the 5% rate applicable to the minerals it sells.

H Ruling

Q1: Classification of the royalty-linked service (SAC) and reverse charge liability	**SAC 997337 (licensing services for the right to use minerals including exploration and evaluation), as ruled by the AAR and not disputed by the appellant**	The order does not separately discuss the reverse charge point. It upholds the AAR ruling, which placed liability under reverse charge per Entry No. 5 of Notification No. 13/2017-Central Tax (Rate).
Q2: GST rate on the royalty-linked service	**18%, under entry 17(viii) of Notification No. 11/2017-Central Tax (Rate), with the corresponding SGST notification**	Rejects the appellant's contention for 5% under entry 17(iii), (iv) or (viia). The rate is the residuary rate for leasing or rental services under heading 9973.

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

The Appellate Authority upheld the Advance Ruling of the Rajasthan AAR, which classified the service under SAC 997337 and held it taxable at 18% under entry 17(viii) of Notification No. 11/2017-Central Tax (Rate), with tax payable under reverse charge. The appellant's claim for 5% under entry 17(iii), (iv) or (viia) was rejected. The appeal was dismissed.

R Reasoning

The Authority accepted the SAC 997337 classification from the Scheme of Classification and then examined the rate entries in entry 17 of Notification 11/2017-CT(R). Relying on the GST Council's 31st meeting proposal, which led to Notification 27/2018-CT(R) dated 31.12.2018, it held that entries 17(iii) and (iv) do not cover licensing of intellectual property and similar products other than IPR, and that the new entry 17(viia), covering leasing or renting of goods, cannot stretch to cover a mineral-use licence. The rulings of the Haryana and Chhattisgarh authorities cited by the appellant were not followed because they predated the amendment or did not consider it, and because under section 103 an advance ruling binds only the applicant who sought it. The appellant's own shifting position across the three forums was also noted against it.

P Provisions Relied On

- Section 97(2) of the CGST Act, 2017 (scope of advance ruling questions)
- Section 100 of the CGST Act, 2017 and Section 100 of the RGST Act, 2017 (appeal)
- Section 101 of the CGST Act, 2017 and RGST Act, 2017 (appellate authority)
- Section 103 of the CGST Act, 2017 (binding effect of advance ruling)
- Section 2(52) of the CGST Act, 2017 (definition of goods), cited by the appellant
- Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, entry 17(iii), (iv), (viia) and (viii), and the Scheme of Classificati…
- Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018 (insertion of entry 17(viia) and substitution of entry 17(viii))
- Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017, Entry No. 5 (reverse charge), as applied by the AAR
- Rule 28 of the Rajasthan Minor Mineral Concession Rules, 2017 (royalty or dead rent)

! For the Practitioner

This order is useful for any mining lessee in Rajasthan who pays royalty collected through a state contractor and wants to argue for the 5% mineral rate. It shows that the appellate authority will treat the royalty as a licence to use minerals and tax it at 18% under the residuary entry 17(viii), with reverse charge. It does not decide how royalty should be treated in other states, nor does it resolve the reverse charge analysis in any depth, since that point was simply carried through from the AAR ruling. Practitioners should also note that the order relies on the post-December 2018 amendment, so it is of limited use for earlier periods.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> aaar-raj-3-2019-20_aravali_polyart_pl.pdf

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