M/s Kayden Infra Engineering Private Limited, Village Ramalwas, Charkhi Dadri, Bhiwani, Haryana-127021

Authority for Advance Ruling — Haryana

ADVANCE RULING NO.HAR/HAAR/R/2018-19/36 dated 08.01.2019 (In Ap… Dated **08.01.2019**

Q Questions Before the Authority

- Since the applicant is the person responsible to pay GST on the mineral mining rights in lieu of which royalty is being paid, at what GST rate should it discharge its GST liability: 5% (rate applicable on extracted raw material) or 18% (residual category)?
- In case the applicable GST rate is 5%, whether the applicant could adjust its future GST liability out of excess GST paid on such mineral mining rights at the rate of 18% in the past?

F Facts

The applicant is a private limited company registered under the Haryana and Central GST Acts, engaged in mining stone and associated minor minerals in Haryana. It was awarded a mining contract by the Haryana State Government for a mine at Ramalwas, Tehsil Dadri, Bhiwani. It must pay the State the higher of royalty (calculated on quantity extracted) or dead rent (a fixed area-based rent) on a monthly basis, and it sought to know the GST rate on the mining rights for which that royalty is paid.

H Ruling

Rate of GST on mineral mining rights (royalty or dead rent) paid to the State Government	****5% GST** (2.5% Central Tax + 2.5% State Tax)**	The services fall under Sr. No. 257 of the annexure to notification 11/2017-CT (Rate) (group 99733, heading 9973) and, as they are not within entries 17(i) to (vii), under the residual entry 17(viii). The rate follows that of like goods under tariff heading 2516. GST is payable on reverse charge by the applicant as recipient, under entry 5 of notification 13/2017-CT (Rate).
Whether the applicant can adjust future GST liability against excess 18% GST paid in the past	**Rejected. No ruling given.**	The authority held that this question is not covered by any provision of section 97(2) of the CGST/HGST Act and is outside its scope.

The authority ruled that the services for the right to use minerals fall under Sr. No. 17(viii) of notification 11/2017-CT (Rate) and attract the same rate as supply of like goods involving transfer of title, namely **5% GST (2.5% Central Tax + 2.5% State Tax)** , since the goods are classifiable under tariff heading 2516. The second question, on adjusting excess 18% GST already paid, was rejected as not covered by section 97(2) and was not answered on merits.

R Reasoning

The authority read section 9(1) of the CGST and HGST Acts as the charging provision and applied the definition of services in section 2(102). It held that licensing services for the right to use minerals, including exploration and evaluation, fall under Sr. No. 257 of the annexure to notification 11/2017-CT (Rate), which places them in group 99733 under heading 9973. Because the description at entries 17(i) to (vii) does not cover such services, they fall under the residual entry 17(viii), which takes the rate applicable to like goods involving transfer of title. Since the mineral is classifiable under heading 2516, the 5% rate applies. The authority also relied on entry 5 of notification 13/2017-CT (Rate) to place the liability on the applicant under reverse charge. The officer's comments had also cited section 9(3), and the authority's reasoning followed the earlier Pioneer Partners ruling of 29.06.2018.

P Provisions Relied On

- Section 9(1) of the CGST Act, 2017 and the corresponding HGST Act provision (charging section)
- Section 2(102) of the CGST Act, 2017 (definition of services)
- Section 97(2)(b) and 97(2)(e) of the CGST/HGST Act, 2017 (scope of questions)
- Section 98(4) of the CGST/HGST Act, 2017 (order)
- Section 103 of the CGST/HGST Act, 2017 (binding effect)
- Section 9(3) of the CGST/HGST Act, 2017 (cited in the officer's comments)
- Notification 11/2017-CT (Rate) dated 28.06.2017, Sr. No. 257 of the annexure and entry 17(viii)
- Notification 01/2017-CT (Rate) dated 28.06.2017, entry 124 of Schedule I (and corresponding HGST notification)
- Notification 13/2017-CT (Rate) dated 28.06.2017, entry 5 (reverse charge)

! For the Practitioner

This ruling is useful for mining lessees in Haryana who pay royalty or dead rent to the State and need to know the GST rate and who bears the tax. It settles that the rate is 5% and that the lessee pays under reverse charge, following the same treatment as the Pioneer Partners ruling. It does not decide whether excess tax paid at 18% can be adjusted or refunded, because that question was rejected as outside section 97(2). The ruling binds only the applicant and the department under section 103.

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 -> har_aar_36_2018-19_08.01.2019_kiepl.pdf

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