M/s. NMDC Limited

Authority for Advance Ruling — Madhya Pradesh

Order No. 09/2019 dated 18.07.2019 (Case No. 26/2018), Authority for Ad… Dated **18.07.2019**

Q Questions Before the Authority

- Whether royalty paid in respect of a mining lease can be classified under 'Licensing services for the right to use minerals including its exploration and evaluation' under heading 9973, attracting GST at the same rate of tax as applicable on supply of like goods involving transfer of title in goods.
- Determination of the liability to pay tax on contributions made to the District Mineral Foundation (DMF) and the National Mineral Exploration Trust (NMET) under the MMDR Act, 1957, including whether such contributions amount to 'supply' and whether they attract GST under reverse charge.

F Facts

NMDC Limited operates a diamond mining project at Majhgawan, Panna, Madhya Pradesh, under a mining lease for which the State Government has given in-principle approval for renewal. Under Sections 9, 9B and 9C of the MMDR Act, 1957, the applicant pays royalty at 15% and, in addition, contributes 30% of royalty to the DMF and 2% of royalty to the NMET. The applicant sought a ruling on the GST classification of the royalty and on whether the statutory contributions are a taxable supply attracting reverse charge.

H Ruling

Classification of royalty paid under a mining lease (licence to extract minerals)	**Classified under Tariff Heading 99733**	The ruling does not state a rate. It does not accept the applicant's argument that the rate of the underlying mineral (0.25% for rough diamonds) should apply.
Taxability of contributions to the District Mineral Foundation (DMF) and National Mineral Exploration Trust (NMET)	**Contributions are additions to royalty payable for the original supply and are liable to be added to its value**	The Authority treated the contributions as part of the consideration for the original supply. It did not expressly decide the reverse-charge question in the ruling itself, and the reasoning rests on the Section 9 MMDR Act reading.

The Authority ruled that the service of granting a licence to extract minerals is to be classified under Tariff Heading 99733. It held that the DMF and NMET contributions are nothing but additions to the royalty payable for the original supply, and are therefore liable to be added to the value of that supply and treated accordingly for GST. The ruling does not state a GST rate for the royalty.

R Reasoning

The Authority held that the grant of mining rights is a supply under Section 7 CGST Act, made in the course or furtherance of business under Section 2(17), since the royalty is received by the Government for that supply. It classified the licence service under heading 99733 after noting that the Annexure to Notification 11/2017 CT(Rate) and the CBIC scheme of classification place licences to use minerals (entry 997337) within that group.

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

On the contributions, it reasoned that Sections 9B and 9C MMDR Act describe them as payable 'in addition to the royalty', so they share the character of royalty. It further held that the Government's cost of rehabilitation is shifted to the lessee through these contributions, so they form part of the consideration for the same supply and are not separate supplies by the trusts. The applicant's authorities, including the Haryana AAR decision in Poineer Partners and the 'profit a prendre' argument, were not accepted.

P Provisions Relied On

- Section 7, CGST Act, 2017 (definition of supply)
- Section 2(17), CGST Act, 2017 (definition of business)
- Section 9, CGST Act, 2017 (levy and reverse charge), as cited in the discussion
- Section 97(2), CGST Act, 2017 (scope of advance ruling)
- Sections 103(2) and 104(1), CGST Act, 2017 (binding effect and voidance of ruling)
- Section 9, Mines and Minerals (Development and Regulation) Act, 1957 (royalty)
- Sections 9B and 9C, Mines and Minerals (Development and Regulation) Act, 1957 (DMF and NMET contributions)
- Notification No. 11/2017 CT(Rate) dated 28.06.2017 (Annexure, heading 9973, group 99733)
- Notification No. 13/2017 CT(Rate), Serial No. 5 (reverse charge on services supplied by Government)
- CBIC Scheme of Classification guidelines (entry 997337)
- Rules 3 and 4, Madhya Pradesh District Mineral Foundation Rules, 2016, as cited by the applicant

! For the Practitioner

A practitioner dealing with mining leases in Madhya Pradesh can cite this ruling for the position that royalty is classified under heading 99733 and that DMF and NMET contributions are treated as part of the value of the royalty supply. The ruling does not settle the GST rate applicable to the royalty, and it does not clearly decide the reverse-charge mechanism for the contributions as a separate question. Because the ruling is state-level and rests on the Authority's own reading of Section 9B and 9C, its persuasive weight outside Madhya Pradesh is limited. The full order should be read before relying on it for rate or reverse-charge positions.

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 -> mp_aar_09_2019_18.07.19_nmdcl.pdf

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