M/s Wolkem Industries Limited, E-101, Mewar Industrial Area, Madri, Udaipur, Rajasthan 313001 (GSTIN 08AAACW5635N1ZU)

Authority for Advance Ruling — Rajasthan

Advance Ruling No. RAJ/AAR/2018-19/39, dated 25.03.2019 (F.No. AAR/… Dated **25.03.2019**

Q Questions Before the Authority

- What is the classification of the service provided, in accordance with Notification No. 11/2017-CT (Rate) dated 28.06.2017 read with its annexure, by the State of Rajasthan to M/s Wolkem Industries Limited for which royalty is being paid?
- Whether the said service can be classified under 9973, specifically under 997337 as licensing services for the right to use minerals including its exploration and evaluation, or as any other service?
- What is the rate of GST on the services provided by the State of Rajasthan to M/s Wolkem Industries Limited for which royalty is being paid?

F Facts

The applicant mines Wollastonite, Calcite, Feldspar and Quartz at Khertala, Pindwara Tehsil, Sirohi, under a mining lease granted by the Rajasthan Government. It pays dead rent or royalty to the State as the lease requires. The applicant argued that this payment is consideration for a right to use minerals, which should be taxed at the 5% rate applicable to the minerals themselves. The question was whether the service is licensing under heading 9973 and at what rate it is taxed.

H Ruling

Classification of royalty / dead rent service (Q1 and Q2)	**Heading 9973, serial 257, sub-heading 997337 of Notification 11/2017-CT (Rate): licensing services for the right to use minerals including exploration and evaluation**	Reverse charge applies under Notification 13/2017-CT (Rate) dated 28.06.2017, as amended, so the applicant as recipient pays the tax.
Rate of GST on the service (Q3)	**18% (9% CGST + 9% SGST)**	The authority read the service as falling under item (viii) of serial 17 at 9% CGST. The applicant's proposed 5% rate was not accepted.

The authority held that the activity is classifiable under Heading 9973 as licensing services for the right to use minerals under serial 257, sub-heading 997337, of Notification 11/2017-CT (Rate). It held that the applicant is liable to pay tax under reverse charge under Notification 13/2017-CT (Rate). It held that the activity attracts GST at 18% (9% CGST and 9% SGST), rejecting the applicant's 5% argument.

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

R Reasoning

The authority held that payment of dead rent or royalty under the Rajasthan Minor Minerals Concession Rules, 2017 is a supply of service by the State as licensor to the applicant as licensee. It placed that service under serial 257 of the annexure to Notification 11/2017-CT (Rate), within heading 9973. It then held that the service falls within item (viii) of serial 17, the residual leasing or rental entry, at 9% CGST. Because the State is the supplier, it found reverse charge applicable under Notification 13/2017-CT (Rate). The applicant's argument that the service takes the goods rate of 5% was rejected. The order relies on Section 9(1) of the CGST Act as the charging provision, as quoted by the applicant.

P Provisions Relied On

- Section 97(2)(a) and (e) of the CGST/SGST Act, 2017 (admissibility of the question)
- Section 9(1) of the CGST Act, 2017 (charge of central tax)
- Notification No. 11/2017-CT (Rate) dated 28.06.2017, serial 17 (heading 9973, items (i) to (viii)) and serial 257 (sub-heading…
- Notification No. 13/2017-CT (Rate) dated 28.06.2017, as amended (reverse charge)
- Rajasthan Minor Minerals Concession Rules, 2017 (RMMCR)
- Notification No. 01/2018-CT (Rate), as cited in the applicant's submission
- Notification No. 27/2018, as cited in the jurisdictional officer's comments

! For the Practitioner

Mining lessees in Rajasthan who pay dead rent or royalty to the State can use this ruling to find that the payment is a reverse-charge licensing service under 997337 taxed at 18%, not at the 5% rate of the mineral. It settles classification and the rate for the applicant. It does not bind other taxpayers or other States, and it does not address valuation of the payment. The jurisdictional officer cited a different sub-heading (997338, serial 258) and a different rate amendment, which the order does not discuss in detail.

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 -> raj.39.2018-19_wolkem_inds_ltd.pdf

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