



**AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax**

D. No. 5-56, Block-B, R.K. Spring Valley Apartments,
Edupugallu, Vijayawada-521151

Present:

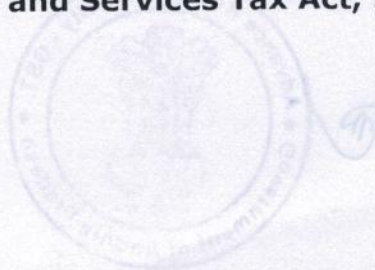
Sri.D. Ramesh, Additional Commissioner...Member (State Tax)
Sri.S.Narasimha Reddy, Additional Commissioner ...Member (Central tax)

AAR No. 29/AP/GST/2019 dated:16.07.2019

1	Name and address of the applicant	M/s. PKR Projects and Engineers, 19-56, NRP Road, Yeleswaram, East Godavari, Andhra Pradesh-533429.
2	GSTIN	37AEFPP4224G1ZK
3	Date of filing of Form GST ARA-01	29-3-2019
4	Date of Personal Hearing	16-04-2019
5	Represented by	KVJLN Sastry, Advocate
6	Jurisdictional Authority - State	The Assistant Commissioner of State Tax, Peddapuram Circle, Kakinada Division.
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	a) classification of goods and /or services or both b) applicability of a notification issued under the provisions of the act; e) <i>determination of the liability to pay tax on any goods or services or both.</i>

ORDER

**(Under sub-section (4) of section 98 of Central Goods and Service
Tax Act, 2017 and under sub- section (4) of Section 98 of Andhra
Pradesh Goods and Services Tax Act, 2017)**



1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to as CGST Act and APGST Act respectively) by M/s PKR Projects and Engineers, (hereinafter referred to as applicant), registered under the Goods & Services Tax.
2. The provisions of the CGST Act and APGST 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 APGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or AP GST Act would be mentioned as being under the GST Act.

3. Brief Facts of the case:

- 3.1 M/s. PKR projects and Engineers (herein after referred to as Applicant), situated at 19-56. NRPM Road, Yelleswaram, E.G. District, Andhra Pradesh -533429 is a registered firm with GSTIN 37AEFPP4224G1ZK. Applicant is in the business of mining/ quarrying of broken or crushed stone which is commonly used for concrete aggregates, for road metalling or for railways falling under HSN 2517.
- 3.2 The applicant submits that they were granted road metal quarry of Sy.No.53 Chinashankarlapudi Village, Pratipadu Manda!, E.G. District, for extraction of road metal by the Deputy Director of Mines and Geology, Kakinada through their letter dt.10.04.2018 which is valid up to dt.15.04.2021.24.08.2022, 17.06.2022and 09.03.2021. Applicant further submits that the Broken or crushed stone falls under HSN code 2517 which is liable to be taxed@ 2.5% under CGST and 2.5% under APSGST aggregating to a total of 5%. The applicant extracts broken stone in large size and get it crushed into different sizes of aggregate of 10mm and 20mm or any other size as per the requirement and the orders procured. The applicant submits that the department of Geology every year will issue a notice to pay advance dead rent of Rs.47,500/- per Hects besides Rs. 100/- towards land assessment and cess on LA Rs. 50/- and Rs.950/ towards income tax. Applicant enclosed one of the letters issued by Deputy Director for perusal.



3.3 The applicant has to pay advance royalty/seigniorage along with income tax to the mines department. The above royalty will be paid on estimated quantity extraction of big metal. The royalty is Rs.75/- per QM and have to pay 30% of Rs.75/- towards DMF and 2% of Rs.75/-towards merit fund and 2% of Rs.75/ - towards TCS to the mines department.

3.4.Then after extracting the broken stone it will be shifted to crusher basing on the permit issued by the mines department to the applicant crusher to convert the large broken stone into aggregates of different sizes as per the use and the aggregates will be supplied to various parties. The supplies are accompanied by the permit issued by mines department and GSTIN invoice. The applicant has to discharge his liability under GST law on the amounts paid to the mines department towards dead rent, royalty, etc., under RCM as per Section 9(3) of CGST Act and APSGST act.

3.5 The applicant filed ARA-01 by paying the prescribed amount of fee and approached this authority for Advance Ruling. On Verification of basic information of the applicant, it is observed that the applicant falls under State jurisdiction, i.e, The Assistant Commissioner (State Tax), Peddapuram Circle, Kakinada Division. Accordingly, the application has been forwarded to the State jurisdictional officer, with a copy marked to the Central Tax authorities to offer their remarks as per the Section 98(1) of CGST /APGST Act 2017. In response the jurisdictional officer concerned stated that there are no pending proceedings relating to the applicant and no proceedings were passed on the issue, for which the advance ruling is sought by the applicant. Based on the above observation the application is admitted to pronounce Advance Ruling as it falls under the ambit of the Section 97(2)(a), (b) and (e), given as under :

- a. *classification of goods and/or services or both:*
- b. *applicability of a notification issued under the provisions of the act;*
- e. *determination of the liability to pay tax on any goods or services or both.*

4. Questions Raised Before the Authority:

1. The applicant sought to know whether such a royalty paid/dead rent on account of mining rights was liable to tax in the hands of applicant under the reverse charge mechanism or not.
2. If so, what is the rate of GST- payable on the royalty/ dead rent.



5. Applicant's Interpretation of Law and Facts:

The applicant opines that he has to discharge his liability under GST law on the amounts paid to the mines department towards dead rent, royalty, etc., under RCM as per Section 9(3) of CGST Act and APSGST act. The applicant interprets his stance as per the following legal provisions.

The term "services" has been defined under Section 2(102).

" services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged".

That in exercise of power conferred under Section 9(1) of the CGST Act, 2017, notification number 11/2017-CT (Rate) dated 28.06.2017 has been issued which notifies the central tax, on intra-state supplies of service description along with Tariff Heading in accordance with the scheme of classification subject to specific conditions.

That along with the notification number 11/2017-CT(Rate)dated 28.06.2017, an annexure has also been appended with it which at Serial No.257 specify that the Group 99733 includes sub heading 997337 which is for:-

"Licensing services for the right to use minerals including its exploration and evaluation"

According to section 9 of Mines and minerals (Development and Regulation) Act, 1957 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 after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.

(2) The holder of a mining lease granted on or after the commencement of this Act shall 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 at the rate for the time being specified in the Second Schedule in respect of that mineral.

Applicant claims that in order to enjoy or right to use the mineral i.e., broken stone in their case royalty has to be paid to the government.



According to the applicant the Royalty-or the Dead rent paid by the applicant to the Government is nothing, but an amount paid for getting right to use the minerals granted to it for a specified period. That in given transaction, the quarry from which broken stone extracted is granted by department of mines and geology. Hence, it has been argued that, the classification of services in accordance with Notification No 11/2017-CT (Rate) 28.06.2017, according to applicant is covered at Sr.No.17 of the notification.

The applicant further claims that the perusal of classification of services shows that services of right to use natural resources classify under tariff 9973 since the description of service serial No.17 (i) to (v) does not cover such a services of right to use minerals.

Therefore, it would fall under residuary entry No.17 for which the rate of tax applicable on such services, as provided therein, shall be the same rate of tax as applicable or supply of like goods involving transfer of title in goods.

That on the basis of the above, it is evident that the charges paid to the government by way of annual dead rent or royalty paid for services of granting right to use mineral would attract GST rate as applicable on supply of such goods which is being extracted through such mining.

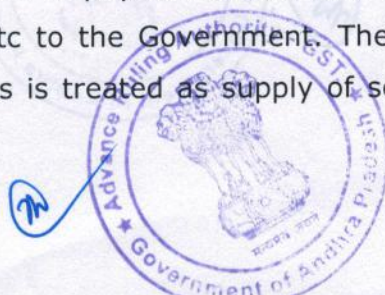
That the goods which are extracted from the mine are classifiable under the Tariff Heading 2517 and, leviable to GST@5%both CGST and APSGST combined.

5. Record of Personal Hearing:

During Personal Hearing on 16-04-2019, the authorised representative KVJLN Sastry, Advocate appeared and reiterated the submissions that had already been made.

6. Discussion and Findings:

- 6.1** We observe that, Applicant is in the business of mining/ quarrying of broken or crushed stone which is commonly used for concrete aggregates, for road metalling or for railways falling under HSN 2517.
- 6.2** 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.

6.3 The mining lease is governed by the AP Minor Minerals Concession Rules, 2017 (APMMCR). As per provisions of APMMCR, the applicant is required to pay dead rent or royalty (whichever is higher but not both). This activity of payment of dead rent or royalty is on supply of service (Licensing services for the right to use minerals including its exploration and evaluation) wherein the government of Andhra Pradesh is supplier and the applicant is recipient. The said service is classifiable under "Licensing services for the right to use minerals including its exploration and evaluation" at Serial No. 257, Heading 9973, Group 99733, sub heading 997337 of annexure "Scheme of classification of Services to Notification No. 11/2017-CT (Rate) dated 28.06.2017.

6.4. The relevant portion of the serial no. 17 for item (viii) of Notification No. 11/2017-CT (Rate), dated 28.06.2017(as amended from time to time) is reproduced as below:

SI.NO	Chapter, section or Heading	Description of service	Rate (Per Cent.)	Condition
	2	3	4	5
		(Viii) Leasing or rental services, with or without operator, other than (i),(ii),(iii),(iv),(v), (vii) and (viiia) above	9	

Thus the service undertaken by the applicant falls at item (viii) of serial no. 17 of notification no.11/2017 dt:28-06-2017, further amended vide Notification No. 27/2018-Central Tax (Rate) dt:31-12-2018 and attracts 18% GST (9% CGST+ 9% SGST) w.e.f. 01.01.2019.



6.5 Further, we observe that, the applicant is receiving leasing / licensing services from the government of Andhra Pradesh. Hence, provisions of reverse charge mechanism are applicable under the Notification No.13/2017-CT (Rate), dated 28.06.2017 (as amended from time to time) of the CGST Act, 2017.

RULING

(Under section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)

The activity undertaken by the applicant is classifiable under Heading 9973 (Leasing or rental services. with or without operator), as mentioned in the annexure at Serial No. 257(licensing services for the right to use minerals including its exploration and evaluation) and sub heading 997337 of notification number 11/2017-CT (Rate) dated 28.06.2017. The applicant is liable to discharge tax liability under reverse charge mechanism vide Notification no.13/2017-CT (Rate), dated 28.06.2017 (as amended from time to time) of the CGST Act, 2017.

The activity undertaken by the applicant falls at item (viii) of serial no. 17 of notification no.11/2017, which was further amended vide Notification No. 27/2018-Central Tax (Rate) dt:31-12-2018 and attracts 18% GST (9% CGST+ 9% SGST) w.e.f. 01.01.2019.

Sd/-D.Ramesh
Member (State Tax)

Sd/- S.Narasimha Reddy
Member (Central tax).

//t.c.f.b.o//


Assistant Commissioner (ST)
Joint Commissioner (State Tax)
w/o. Chief Commissioner of State Tax,
Andhra Pradesh, Vijayawada.

To

1. M/s PKR Projects and Engineers, 19-56, NRP Road, Yeleswaram, East Godavari, Andhra Pradesh-533429. **(By Registered Post).**



Copy to

2. The Assistant Commissioner of State Tax, Peddapuram Circle, Kakinada Division. **(By Registered Post)**
3. The Superintendent, Central Tax, Tuni Range, Kakinada CGST Division. **(By Registered Post)**

Copy Submitted to

4. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Government of A.P., Eedupugallu, Vijayawada
5. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035.

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act 2017, with in a period of 30 days from the date of service of this order.



Assistant Commissioner (ST)
 Commissioner (State Tax)
 Chief Commissioner of State Tax
 Andhra Pradesh, Vijayawada

