

GOA AUTHORITY FOR ADVANCE RULING.

(Constituted under section 96 of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017) read with Rule 103 of the Goa Goods and Services Tax Rules, 2017)

BEFORE THE BENCH OF

- (1) Shri. J. K. Meena, Addl. Commissioner of Central Tax
(2) Smt. Sarita S. Gadgil, Addl. Commissioner of State Tax

Advance Ruling No. GOA/GAAR/4 of 2019-20/ 3118

Name of the Applicant	M/s Cosme Costa & Sons
Address	E-8-56, Cosme Costa House, Ground Floor, Altinho, Mapusa – Goa.
GSTIN	30AABFC0743K1ZZ
Date of Application	02/12/2019
Under Section 97(2) of the CGST/GGST Act, 2017 under which question raised	1. Classification of Royalty Payment and the rate of GST applicable on extraction of iron. 2. Taxability and Classification for payment made towards National Mineral Exploration Trust (NMET) Fund, District Mineral Foundation (DMF) Fund, Goa Mineral Ore Permanent Fund Trust (GMOPFT) and if held in affirmative, rate at which GST is payable in relation to extraction of iron.
Date of Hearing	24/01/2020
Persons Present for Hearing	Shri Abhinav Srivastava, Partner, BDO India LLP



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PROCEEDING

(Under Section 98 of the Goa Goods and Services Tax, Act 2017)

The present application has been filed under section 97 of the Goa Goods and Services Tax Act, 2017 and the Central Goods and Services Tax, Act 2017 by **M/s Cosme Costa & Sons, Mapusa, Goa** seeking an Advance Ruling in respect of the following question:

- i. Classification of "Leasing service" against payment of Royalty and the rate of GST applicable on royalty for extraction of iron;
- ii. Whether the payment made to National Mineral Exploration Trust (NMET) Fund, District Mineral Foundation (DMF) Fund and Goa Mineral Ore Permanent Fund Trust (GMOPFT) is subject to levy of GST and if held in affirmative, rate at which GST is payable in relation to extraction of iron.

BRIEF FACTS OF THE CASE:

2. At the outset, we would like to make it clear that the provisions of both the CGST Act and the Goa GST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the Goa GST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act/GGST Act would be mentioned as being under the "GST Act".

3. M/s Cosme Costa and Sons, a partnership firm having their registered office at Altinho - Mapusa, Faira Alita, Bardez, Goa -403507 (hereinafter referred to as 'the applicant') are registered under the provisions of the GST Act and hold GSTIN No. 30AABFC0743K1ZZ. The applicant are engaged in the business of extraction and sale of iron ore from GAVAL SONSHI MINE located at Pissurlem Village in North Goa, Sattari Taluka spread over to an extent of 61.7430 hectares of land bearing Sy. No: 41



covered under the Mining Lease TC No. 110/1953. The operations conducted in relation to the extraction include the activity of raising, excavating, stacking of iron ore and delivering the extracted crude iron ore at Pit head. The following statutory payments are required to be made by the applicant in order to extraction and sale of iron ore:-

- a) The applicant has to pay royalty as a statutory payment to the State Government of Goa at the rate of 15% of the average sale price of iron ore, as a consideration for right to extract iron ore, in accordance with the provisions of the Mines and Minerals (Development and Regulation) Act, 1957.
- b) The applicant has to make a contribution to the National Mineral Exploration Trust (NMET) as a statutory payment in accordance with the provisions of the Mines and Minerals (Development and Regulation Act) at the rate of 2% of the royalty paid.
- c) The applicant has to make a contribution to the District Mineral Foundation (DMF) as a statutory payment in accordance with the provisions of the Mines and Minerals (Development and Regulation Act) as a statutory payment at the rate of 30% of the royalty paid.
- d) The applicant has to make a statutory payment of the Goa Mineral Ore Permanent Fund Trust (GMOPFT) at the rate of 10% of sale proceeds of the iron ore.

4. The applicant's submission on Royalty and payments to be made to aforesaid trusts are as below:

SUBMISSIONS ON CLASSIFICATION OF ROYALTY -

4.1 The applicant submitted that services provided by the State Government by way licensing services for extraction of iron ore is a 'Supply' for which royalty payable is a consideration and the GST payable on the same is to be discharged by the applicant under Reverse Charge Mechanism in accordance with the provisions of Section 9(3) of the CGST Act, 2017 read with entry no: 5 of Notification No:13/2017 - Central Tax (Rate) dated 28th

June, 2017 and similar notification issued by the State Government. The applicant is of the view that the most appropriate classification would be under Heading: 9973 – (Leasing or rental services with or without operator) with the sub-category 997337 – (Licensing services for the right to use minerals including its exploration and evaluation). Royalty is in the nature of periodical payments to be made by the lessee under his covenants in consideration of the various benefits granted by the lessor. Royalty is collected by the State Government from the business entities for right given to them to extract mineral and is collected based on quantum of mineral removed or consumed. The applicant is also of the view that the Royalty on extraction of iron ore is subject to GST @ 5% (2.5% CGST and 2.5% SGST) till 30.12.2018 and thereafter @ 18% (9% CGST and 9% SGST)

SUBMISSION ON CONTRIBUTION TO NMET FUND:

4.2 The applicant submitted that the activities carried out by NMET is not a 'supply' in relation to the operation of the applicant and that activities of the trust are totally independent and has neither any relation with the business of the applicant nor provide any value-addition or even a basic reciprocity to the activities of the applicant at all. The contribution made to the fund is not a consideration to 'supply' but only a statutory payment mandated by the law, failing which the applicant wouldn't be allowed to carry out mining and extraction activities. The applicant submitted that as per Section 7 of the GST Act of 2017, "supply" includes -

(a) All forms of supply of goods or services or both such as sale, transfer, barter, exchange, licensee, rental, lease or disposal made for a consideration by a person in the course or furtherance of business."

It is to be noted that liability to pay GST will arise only if all the following conditions are satisfied:

- i. There must a supply in terms of Section 7 of the GST Act of 2017;
- ii. The supply must be in the course of or furtherance of business; and
- iii. The supply is not exempted under Section 7(2) or Section 11(1) of the GST Act 2017;



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4.3 The applicant submitted that there is no supply made by the trust to the applicant in return for the payment made to such trust (i.e. as a quid pro quo for the service received). As stated above, the objective of the trust is to work for the purposes such as taking up exploration of areas for regional and detailed exploration, giving priority particularly to strategic and critical minerals, etc. There is neither 'supply' nor rendition of 'service' to the applicant. The payment made by the applicant is purely in the nature of contribution and cannot be regarded as consideration.

4.4 Further, the applicant contested that it also requires to be evaluated whether the supply is in the course of business in terms of Section 7 of the GST Act of 2017 or otherwise. The Trust is a non-profit organisation and not involved in the course of any business, trade or commerce. Hence, there is no supply made in terms of section 7 of the GST Act of 2017 and therefore, the liability to pay tax does not arise.

4.5 The applicant argued that contribution to NMET is not a part of the consideration paid to the Govt. of Goa for licensing services against the right to use minerals including its exploration and evaluation and hence, should not be clubbed along with royalty in the value of supply of licensing services. The applicant submitted that in no way such contribution made to NMET can be regarded as payment towards service by way of royalty or right to use minerals. Had such contribution been towards mining rights, the same would be paid to the State Government. The said sum is used towards purposes such as taking-up exploration of areas for regional and detailed exploration, giving priority particularly to strategic and critical minerals, etc. by NMET independently and cannot be considered as consideration towards mining right.

4.6 The applicant further submitted that the Bombay High Court in the case of Bai Mumbai Trust v. Suchitra Wd/o Sadhu Koraga Shetty – Suit (L) No.236 of 2017 dated September 13, 2019, while holding that a supply must

involve reciprocal obligations, observed that there should be enforceable reciprocal obligations for supply and unilateral acts, or any resulting payment of damages cannot be encompassed into supply. The applicant further argued that in a recent CBIC circular, where the issue of levy of GST on the service of display of name in the premises of charitable organisation receiving donations was clarified, the Board has clarified that where the recipient is under no obligation (quid pro quo) to do anything in return of donation or gift, there is no GST liability on such receipt. Evidently, it can be inferred that where there is merely some payment and no reciprocal activity/service/goods is supplied, the payment wouldn't be considered to be made against a 'supply' and no GST would be leviable on such payments. Artificially, interpreting such activities as 'supply', merely because there is a consideration, being a unilateral act, would tantamount to superfluous interpretation of the law. A prerequisite is that the supply and the payment of consideration thereof must have reciprocity with each other. Consideration could be monetary or a non-monetary consideration.

In respect of contribution to DMF Fund and GMOPFT fund, the applicant has made submission similar as that of contribution to NMET Fund.

PERSONAL HEARING:

5. Personal Hearing in the matter was fixed and conducted on 24.01.2020 and Shri Abhinav Srivastava, duly authorised by the applicant appeared for hearing. Shri Abhinav Srivastava reiterated the arguments and contentions made in the application and as produced above.

DISCUSSION AND FINDINGS:

6. The applicant, M/s Cosme Costa & Sons is a registered partnership firm engaged in the business of extraction and sale of iron ore. In order to conduct the activity of extraction of iron ore, applicant was mandated to obtain following licenses:

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- Lease deed for TC 110/1953 which was valid till 2027, (which now stands cancelled)
- Permissions from State Pollution Control Board
- Environmental Clearance accorded by Ministry of Environment & Forests
- Mining Plan by Indian Bureau of Mines (IBM) & Directorate General of Mines Safety (DGMS)

Further, Section 9 of the Mines and Minerals (Development & Regulation) Act, 1957 mandate the applicant to pay royalty to the state Government of Goa at the rate of 15% of the average sale price of iron ore. In addition, the applicant is also required to make a payment to National Mineral Exploration Trust (NMET) @ 2% of the royalty paid to the Government of Goa. They were also required to pay statutory contribution to District Mineral Foundation (DMF) @ 30% of the royalty. The applicant is also mandated to pay 10% of the sale proceeds to the Goa Mineral Ore Permanent Fund Trust (GMOPFT).

6.1 The applicant seeks Advance Ruling as to whether royalty paid in respect of Mining Lease can be classified under “*Licensing services for the right to use minerals including its exploration and evaluation*” falling under the SAC 9973 and what is the rate of GST on the said supply. Further, Section 9B and 9C of the ‘Mines and Minerals (Development & Regulation) Act, 1957 mandates that the miners shall contribute 30% of the royalty amount paid to the Government, to the District Mineral Foundation and 2% of the royalty amount to the ‘National Mineral Exploration Trust’. In this context the applicant seeks Advance Ruling as to whether the contribution/payment made to the funds can be treated as consideration against supply and whether the same is subject to levy of GST under Reverse Charge.

7. Royalty is required to be paid as per Section 9(1) of the Mines and Mineral (Development and Regulation) Act, 1957, which reads as under:

“The holder of a mining lease granted 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 minerals”.

7.1 The Central Board of Indirect Taxes and Customs (CBIC) in Sectoral FAQ's has clarified that the royalty payment is made towards Licensing services for exploration of natural resources. The extract of the same is reproduced as under:

“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”.

7.2 The note on 'Mineral Royalties' published by the Indian Bureau of Mines is reproduced as under:

“A lessee is a person who is granted mineral concessions. The lessee is required to pay a certain amount in respect of the mineral extracted in proportion to the quantity extracted. Such payment is called royalty. The royalties in respect of mining leases is specified in Section 9 of the Mines and Mineral (Development and Regulation) Act, 1957. Royalty is a variable return and it varies with the quantity of minerals extracted or removed”.

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7.3 As regards classification and SAC of activity related to royalty, the same have been laid down in the Notification No. 11/2017-Central Tax [Rate], dated 28.06.2017. The relevant entry is as under:

Heading 9973	Leasing or rental services with or without operator
Group 99733	Licensing services for the right to use intellectual property and similar products.
SAC 997337	Licensing services for the right to use minerals including its exploration and evaluation.

From the above it may be seen that the services received by the applicant are duly classifiable under SAC Code 997337.

From the holistic reading of the aforesaid clarification and notes it is quite clear that royalty is a charge by the State Government in lieu of consideration of the exploitation and extraction of the mineral resources by the lessee. The payment of royalty is a statutory levy in accordance with the provisions of Mines and Mineral (Development and Regulation) Act, 1957 against licensing services by the Government for right to extract minerals and the same is subject to levy of GST under Reverse Charge Mechanism.

Now, we proceed to discuss the issue of taxability, classification and tax rate on contribution to the District Mineral Foundation (DMF), National Mineral Exploration Trust (NMET) and Goa Mineral Ore Permanent Fund Trust (GMOPFT) .

8.1 Section 9B and 9C of 'Mines and Minerals (Development & Regulation) Act, 1957 mandates that the miner shall contribute 30% of royalty to DMF, 10% of sale proceeds to Goa Mineral Ore Permanent Fund Trust (GMOPFT) (Constituted on state level) and 2% of royalty to the NMET. In this regard the applicant has argued that the amount paid to the said Funds cannot be treated as consideration in course or furtherance of business. The applicant also contests that DMF, GMOPFT and NMET are trusts which shall be a non-profit body and as per Section 9C(2) of the MMDR Act, the objective of

the trust shall be to use the funds accrued to the Trust for the purposes of regional and detailed exploration in such manner as may be prescribed by the Central Government. Further, Rule 9(1) of the National Mineral Exploration stipulates that:

“The Trust shall carry out regional and detailed exploration for mineral and it shall undertake such activities as may be deemed necessary by the Governing Body to achieve its objects including:

- (a) funding special studies and projects designed to identify, explore, extract, beneficiate and refine deep-seated or concealed mineral deposits;*
- (b) undertaking studies for mineral development, sustainable mining, adoption of advanced scientific and technological practices and mineral extraction metallurgy;*
- (c) taking up exploration of areas for regional and detailed exploration, giving priority particularly to strategic and critical minerals;*
- (d)*
- (e)*

From the above it may be seen that the activities/functions entrusted to the Trust are related to **Exploration and Evaluation of Minerals** which is duly covered under SAC code No. 997337 which classifies “**Licensing services for the right to use minerals including its exploration and evaluation**”.

8.2 As per Section 9B of the MMDR Act, DMF (District Mineral Foundation) is a trust which is formed by the State Government with an objective to work for the benefits and interest of the persons and areas affected by mining-related operations. Any person who is liable to pay royalty towards the exploration of minerals shall pay a certain percentage of the royalty amount towards DMF. The applicant contended that the activities performed by the DMF, NMET and GMOPFT Funds are not in the course of business. The term “business” has been defined under Section 2(17) of the GST Act, 2017 as under:



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“Business” includes-

- a) *any trade, commerce, profession, vocation, adventure, wager or any other similar activity, whether or not it is for pecuniary benefit;*
- b) *any activity or transaction in connection with or incidental or ancillary to sub-clause (a);*
- c) *an activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;*
- d) *supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;*
- e) *provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;*
- f) *admission, for a consideration, of persons to any premises,*
- g) *services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;*
- h) *services provided by a race club by way of totalisator or a license to book maker in such club; and*
- i) *any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;*



As already discussed M/s Cosme Costa are engaged in mining and extraction of iron ore in Goa. Thus the activities of M/s Cosme Costa, squarely fall under the definition of business as stipulated above. For this mining activity, they are also duty bound under Section 9B and 9C of the Mines and Minerals (Development & Regulation) Act, 1957 for contribution of 30% of royalty to District Mineral Foundation, DMF (Constituted on State level), 10% of sale proceeds to Goa Mineral Ore Permanent Fund Trust (GMOPFT) and 2% of Royalty to National Mineral Exploration Trust (NMET).

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These contributions to the said trusts are on account of their mining operations being carried out. This mining gets covered under “any other similar activity, whether or not it is for a pecuniary benefit” as specified under (a) above as also under the activity for furtherance of their trade specified under (g) above. There is no ambiguity that M/s Cosmc Costa pays royalty for its business of iron ore extraction and also pays to the said trusts i.e. DMF, GMOPFT and NMET in the course of furtherance of their business only. By no stretch of imagination, the contributions paid the said trusts can be treated as donation. In case of failure to contribute to the above trusts, the business/ rights of iron ore extraction would legally get hampered and terminated. Whereas, donations are always of voluntary nature here in the instant case there is a compulsion to make payment to the said trusts in proportion to the amount of royalty and sale proceeds. Thus there hardly remains any doubt that the contributions paid by M/s Cosme Costa to the said trusts are amounts being paid in the course of furtherance of their business activities only.

8.4 Further, the activities carried out by DMF, NMET and GMOPFT are squarely covered under the clause (i) of the Section 2(17) of the GST Act, 2017 which enumerate “*any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities*” in the definition of the “*business*”.

8.5 The applicant in their contention has argued that the DMF, NMET and GMOPFT, all the three Trusts have been constituted under the provisions of Mines and Minerals (Development and Regulation) Act, 2017 and both the trusts could not be treated as State Government or Central Government authority. In this regard, Section 2(69) of the GST Act, which defines “Local Authority”, is to be examined. As per the said provision “Local Authority” means:

(a) a “Panchayat” as defined in clause (d) of Article 243 of the Constitution;

(b) a “Municipality” as defined in clause (e) of Article 243P of the Constitution;




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(c) a Municipal Committee, a Zilla Parishad, a District Board and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;

(d)

(e)

The NMET has been constituted by the Central Government and the DMF and GMOPFT have been constituted by the Goa Government under the provisions of 'Mines and Minerals (Development and Regulation) Act, 1957 with the objective of management of "Local Fund". Therefore, these are covered under the definition of the "Local Authority". It has already been held that the activities carried out by the said trusts are in relation to the 'business' and the same are classifiable under **SAC Code No. 997337** which covers "**Licensing services for the right to use minerals including its exploration and evaluation**". There is no ambiguity that Royalty and contribution to funds are made for applicant's mining business. By no stretch of imagination, it can be treated as donation. These contributions are statutorily mandatory and not voluntary. Applicant will not get legal rights to extraction which is the reciprocal for these contributions which in case of failure to contribute gets hampered.

**9.** As regards liability to pay GST on royalty paid to the Goa Government and amount paid to the Funds, Section 2(98) of the GST Act, 2017 stipulates that "reverse charge" means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or sub-section (4) of Section 5 of the Integrated Goods and Services Tax Act;

Further, Reverse Charge Mechanism is applicable for certain notified services as mentioned in the Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017. As per Sr. No. 5 of the said Notification, services supplied

by the Central Government, State Government, Union Territory or Local Authority to a business entity attracts GST under reverse charge basis.

9.1 As regards the rate of GST on the said supply (Royalty and amount paid to the Funds) the services of “*Licensing services for the right to use minerals including its exploration and evaluation*” are covered under entry No. 17 of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. On careful perusal of the notification it may be seen that the said services are specifically not mentioned in any of descriptions of entry No. 17 and thereby it qualifies to be categorized in the residual clauses/serial of entry No. 17, wherein it has been specified that the rate applicable for such service should be the same rate as applicable for the supply of like goods involving transfer of title in goods. The relevant entry of Notification No. 17 *ibid* is reproduced as under:

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
17	Heading 9973 (Leasing or rental services with or without operator)	(i)		
			
		(vi) Leasing or rental services with or without operator, other than (i),(ii),(iii),(iv) and (v) above	Same rate of Central Tax as on supply of like goods involving transfer of title in goods	



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The said notification has passed through several amendments and the GST rate against relevant entry of Sl. No. 17 was amended vide Notification No. 27/2018 (w.e.f. 01.01.2019). The amended texts of the notification are as under:

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
17	Heading 9973 (Leasing or rental services with or without operator)	(i)		
			
		(viii) Leasing or rental services with or without operator, other than (i),(ii),(iii),(iv),(v),(vi),(vii) and (viia) above	9	-“

From the above, it may be concluded that till 31.12.2018 the rate of GST on the impugned services was applicable at the rate of tax as applicable to like goods involving transfer of title of goods i.e. 5% in the case of iron ore, the goods supplied by the applicant, and the rate of GST stands increased to 18% (CGST 9% + SGST 9%) from 01.01.2019 onwards.

10. In view of the above facts and discussions we pass the following order:-



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ORDER

ADVANCE RULING UNDER SECTION 98 OF THE CGST/GGST ACT,
2017.

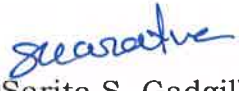
The ruling so sought by the Applicant is accordingly answered as under:-

1. The royalty paid by M/s Cosme Costa & Sons in respect of mining lease is classifiable under sub heading 997337- "*Licensing services for the right to use minerals including its exploration and evaluation*" and is subject to levy of GST @ 5% till 31.12.2018 and thereafter @ 18% under reverse charge basis;
2. The contributions made to the District Mineral Foundation (DMF), the National Mineral Exploration Trust (NMET) and the Goa Mineral Ore Permanent Fund Trust (GMOPFT) are classifiable under sub heading 997337- "*Licensing services for the right to use minerals including its exploration and evaluation*" and is subject to levy of GST @ 5% till 31.12.2018 and thereafter @ 18% under reverse charge basis.


(J. K. Meena)

Member




(Sarita S. Gadgil)

Member

Dated: -27/02/2020

Place: - Panaji - Goa

To,

M/s Cosme Costa & Sons
E-8-56, Cosme Costa House, Ground Floor,
Altinho, Mapusa - Goa.

Copy to

1. The State Tax Officer, Mapusa Ward, Mapusa – Goa;
2. The Dy. Commissioner of State Tax, Mapusa Ward, Mapusa
3. The Commissioner of State GST, Panaji – Goa;
4. The Commissioner of Central GST, Panaji – Goa; ✓
5. The Deputy Commissioner of Central GST, Division-I, Goa ✓
Commissionerate;
6. The Superintendent of Central GST, R-III (Mapusa), Division-I, Goa ✓
Commissionerate;
7. Office file;
8. Guard file.



