



सत्यमेव जयते

**RAJASTHAN AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX**

**KAR BHAWAN, AMBEDKAR CIRCLE, NEAR
RAJASTHAN HIGH COURT
JAIPUR - 302005 (RAJASTHAN)**



ADVANCE RULING NO. RAJ/AAR/2018-19/39



J.P.Meena Additional Commissioner	:	Member (Central Tax)
Hemant Jain Joint Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s Wolkem Industries Limited, E-101, Mewar Industrial Area, Madri, Udaipur, Rajasthan 313001
GSTIN of the applicant	:	08AAACW5635N1ZU
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; e. determination of the liability to pay tax on any goods or services or both;
Date of Personal Hearing	:	01.03.2019 and 14.03.2019
Present for the applicant	:	Mr. Pankaj Ghiya and Ms Priyamvada Joshi (Authorised Representative)
Date of Ruling	:	25.03.2019

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

The issue raised by M/s Wolkem Industries Limited, E-101, Mewar Industrial Area, Madri, Udaipur, Rajasthan 313001, (hereinafter the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2)(a) and (e), given as under :

- a. classification of goods and/or services or both;
- e. determination of the liability to pay tax on any goods or services or both.

Further, the applicant being a registered person (GSTIN is 08AAACW5635N1ZU), as per the declaration given by him in Form ARA-01) the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. Based on the above observations, the applicant is admitted to pronounce advance ruling.



1. SUBMISSION AND INTERPRETATION OF THE APPLICANT:

- a. The applicant is a Limited company registered under the Companies Act having their office at E 101, Mewar Industrial Area, Madri, Udaipur, Rajasthan, 313001. The Applicant is also registered under the provisions of Central Goods & Services Tax Act, 2018 read with the provisions of the Rajasthan Goods & services tax Act, 2017 having GSTIN 08AAACW5635N1ZU.
- b. That the Applicant is engaged in the business of mining of Wollastonite, Calcite, Feldspar and Quartz at Sirohi in the State of Rajasthan. The said products are classifiable under Tariff Chapter 25 and are taxable at the rate of 5% under GST. That the applicant has been granted a mining lease for extracting Wollastonite, Calcite, Feldspar and Quartz at village Khertala, Pindwara Tehsil, District Sirohi, Rajasthan by the state Government on various terms and conditions as per the Lease Deed. The terms and conditions of the said Lease Deed are to be referred from the lease deed and are not reproduced here for sake of brevity.
- c. That the Applicant is required to pay Dead rent / Royalty / Surface rent as per the rate notified by the State Government from time to time. That in light of the above, the applicant wishes to get better understand regarding taxability as to the nature of services being provided by the State

Government of Rajasthan to it along with the rate of tax and who would be liable to discharge GST on the same and at what rate as the mines are of Wollastonite, Calcite, Feldspar and Quartz which are itself taxable at the rate of 5% under GST.

- d. That the applicant has been granted a mining lease for extracting Wollastonite, Calcite, Feldspar and Quartz at village Khertala, Pindwara, Tehsil, District Sirohi, Rajasthan by the state Government on various terms and conditions as per the Lease Deed.
- e. That the Applicant is required to pay Dead rent / Royalty / Surface rent as per the rate notified by the State Government from time to time. That in light of the above, the applicant wishes to get better understand regarding taxability as to the nature of services being provided by the State Government of Rajasthan to it along with the rate of tax and who would be liable to discharge GST on the same and at what rate as the mines are of Wollastonite, Calcite, Feldspar and Quartz which are itself taxable at the rate of 5% under GST.
- f. The applicant's interpretation of law and/or facts, (i.e. applicant's view point and submissions on issues on which the advance ruling is sought).
- I. That the applicant is engaged in the business of mining of Wollastonite, Calcite, Feldspar and Quartz at Sirohi in the State of Rajasthan. The said products are classifiable under Tariff Chapter 25 and are taxable at the rate of 5% under GST. That the Applicant has been granted a mining lease for extracting Wollastonite, Calcite, Feldspar and Quartz at village Khertala, Pindwara Tehsil, District Sirohi, Rajasthan by the state Government on various terms and conditions as per the Lease Deed.
- II. That Section 9 being the charging Section under the CGST Act, 2017 states as under: 9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.
- III. By way of this Section, every transaction which qualifies as a Supply except Supply of alcoholic liquor for human consumption shall be taxable



and the taxable person would be liable to pay GST. The said transaction falls under the definition of Supply and is therefore taxable under the provisions of GST. The same has also been confirmed by the Ministry in their GST Flyer pertaining to FAWs on Government Services, wherein it was asked Whether an amount in the form of royalty or any other form paid/payable to the Government for assigning the rights to use of natural resources is taxable?

IV. It was explained that 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.

V. The question pertaining to whether reverse charge mechanism is applicable on it or not, the Ministry answered by clarifying that on royalty GST will apply under reverse charge mechanism. Further, such payment of GST under reverse charge mechanism would be eligible as ITC in the hands of the recipient of supply for payment of GST.

VI. Notification No. 11/2017-CT (Rate) dated 28.06.2017 as amended vide Notification No. 01/2018-Central Tax (Rate) has been issued in exercise of the power conferred under Section 9(1) of the CGST Act, 2017 stated above which notifies the Central tax on intra-state supply of service description along with Tariff Heading in accordance with the scheme of classification is specified which are subject to specific conditions.

VII. That Annexure appended to the said Notification specifies that at Serial No. 257 the group 99733 includes sub-heading 997337 which is for: "Licensing services for the right to use minerals including its exploration and evaluation".

VIII. As per our understanding 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 as per terms of the lease.



IX. That in the given transaction the lease deed has been executed for leasing of mines, Hence, it is stated that the classification of services is in accordance with Notification No. 11/2017-CT (rate) dated 28.06.2017 and the said transaction is covered under Serial no. 17 of the said Notification. The said entry is reproduced for your kind perusal:

S.No.	Heading	Description	Rate of Tax	Remarks
17.	Heading 9973 (Leasing or rental services, with or without operator)	(i) Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of goods other than Information Technology software.	6	-
		(ii) Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of Information Technology software. [Please refer to Explanation No. (v)]	9	-
		(iii) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.	Same rate of central tax as on supply of like goods involving transfer of title in goods	-
		(iv) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof.	Same rate of central tax as on supply of like goods involving transfer of title in goods	
		(v) Leasing of aircrafts by an operator for operating scheduled air transport service or scheduled air cargo service by way of transaction covered by clause (f) paragraph 5 of Schedule II of the Central Goods and Services Tax Act, 2017. Explanation.— (a) "operator" means a person, organisation or enterprise engaged in or offering to engage in aircraft	2.5	Provided that credit of input tax charged on goods used in supplying the service has not been taken [Please



		<p>operations;</p> <p>(b) "scheduled air transport service" means an air transport service undertaken between the same two or more places operated according to a published time table or with flights so regular or frequent that they constitute a recognisable systematic series, each flight being open to use by members of the public;</p> <p>(c) "scheduled air cargo service" means air transportation of cargo or mail on a scheduled basis according to a published time table or with flights so regular or frequent that they constitute a recognisably systematic series, not open to use by passengers.</p>		refer to Explanation no. (iv)]
		(vi) Leasing of motor vehicles purchased and leased prior to 1 st July 2017;	65 per cent of the rate of central tax as applicable on supply of like goods involving transfer of title in goods. Note : Nothing Contained in this entry shall apply on or after 1 st July, 2020.	
		(vii) Time charter of vessels for transport of goods.	2.5	Provided that credit of input tax charged on goods (other than on ships, vessels including bulk carriers and tankers) has not been taken [Please refer to Explanation No.(iv)].
		(viii) Leasing or rental services, with	Same rate	

		or without operator, other than (i), (ii), (iii), (iv), (v), (vi) and (vii) above.	of central tax as Applicable on supply of like goods involving transfer of title in goods	
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X. That on bare perusal of classification of services it is clear that the services of right to use natural resources classify under heading 9973 and since description of service under Serial no. (i) to (v) does not cover such services of right to use minerals therefore it would fall under the residual entry at serial no. 17(vi). Being so, the rate of tax applicable on such services shall be the same rate of tax as applicable on supply of like goods involving transfer of title in goods.

XI. Therefore, it is our humble submission that the service charge by way of annual dead rent or royalty paid for services of granting of right to use minerals would attract GST rate as applicable on the Supply of minerals which are being extracted through such mining. The minerals being extracted from the mines in the present case are classifiable under Chapter 25 in heading numbers 2506, 2529 and 2530 which are all taxable at the rate of 5%. The Entries are reproduced hereunder for your kind perusal:

S.No	HSN	Description
114.	2506	Quartz (other than natural sands); quartzite whether or not roughly trimmed or merely cut by sawing or otherwise
136.	2529	Feldspar; leucite nepheline and nepheline syenite; fluorspar.
137.	2530	Mineral substances not elsewhere specified or included.

Therefore it is our humble submission that the rate of GST applicable on the Service provided by the State Government of Rajasthan to the Applicant is taxable at the same rate at which the supply of like goods involving transfer of such goods is taxed. Thus, according to us as we are extracting Quartz, Feldspar, etc. which are taxable at the rate of 5% the tax as Services provided by the State Government of Rajasthan for Royalty / Dead Rent would also be liable to tax under GST at the rate of 5%.

XII. CONCLUSION

Therefore, it is our humble submission that the Dead rent payable to the Government by the Applicant is the consideration against the transfer of right to use minerals including its exploration and evaluation as per the lease granted by the Government of Rajasthan to the Applicant. The

service of right to use minerals including its exploration and evaluation as per Sr. No. 257 of the annexure appended to Notification No. 11/2017-Central tax (rate) dated 28.06.2017 is included in heading 99733 under Chapter 9973.

The Rate of tax applicable on such services provided by the State to the Applicant for which Royalty is being paid would be the same rate of tax as applicable on the supply of like goods involving transfer of title in goods as specified in Notification No. 11/2017-CT (Rate) dated 28.06.2017. The rate of tax applicable on the goods in the present case is 5% as explained above and hence, the rate of GST on such services would also be 5% i.e. 2.5% under CGST and 2.5% under SGST.



2. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT

- a. What is the classification of service provided in accordance with Notification No. 11/2017-CT (Rate) dated 28.06.2017 read with annexure attached to it, by the State of Rajasthan to M/s Wolkem Industries Limited for which royalty is being paid?
- b. Whether 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?
- c. What is the rate of GST on given services provided by the State of Rajasthan to M/s Wolkem Industries Limited for which royalty is being paid?

3. PERSONAL HEARING

In the matter personal hearing was granted to the applicant on 01.03.2019 at Room no. 2.29 NCRB, Statue Circle, Jaipur. Mr. Pankaj Ghiya (Authorised Representative) of applicant appeared for PH. During the PH, he reiterated the submissions made in the application. He further requested for a second personal hearing as they want to study more facts. Accordingly, a second personal hearing was granted to the applicant on 14.03.2019. Ms Priyamvada Joshi, authorized

representative appeared on behalf of the applicant and reiterated submission already made. She requested that the case may be decided at the earliest.

4. COMMENTS OF THE JURISDICTIONAL OFFICER


The jurisdiction officer (Assistant Commissioner, CGST Division-B, 142-B, Sector-11, Hiran Magri, Udaipur 313002) has submitted his comments vide letter dated 12.02.2019 which can be summarized as, the activity undertaken by the applicant is covered under Serial Number 258 of chapter head 997338 i.e. "Licensing services for right to use other natural resources including telecommunication spectrum" which is broadly covered in 9973 i.e. licensing or rental services with or without operator. As per the Notification No.11/2017 dated 28-06-2017 further amended vide Notification No. 27/2018 dated 31/12/2018 the applicable GST rate on the activity undertaken by the applicant is 18% (SGST 9% + CGST 9%).



5. FINDINGS, ANALYSIS & CONCLUSION:

- a. We observe that, the applicant entered in to a lease transfer agreement dated 19.03.1976 for obtaining mining lease and engaged in the business of mining of Wollastonite, Calcite, Feldspar and Quartz. The said minerals (goods) are classifiable under tariff heading 2506, 2529 and 2530 and are leviable to GST on their supply at the rate of 5%.
- b. 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.

- c. The mining lease is governed by the Rajasthan Minor Minerals Concession Rules, 2017(RMMCR). As per provisions of RMMCR, 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 a supply of service (*Licensing services for the right to use minerals including its exploration and evaluation*) wherein the government of Rajasthan 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.
- d. 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:



Sl. No.	Chapter ,Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
		(viii) Leasing or rental services, with or without operator, other than (i), (ii), (iii), (iv), (v), (vi), (vii) and (viia) above	9	—


As the service undertaken by the applicant falls at item (viii) of serial no. 17 of notification no. 11/2017 (as amended from time to time) which attracts 18% GST (9% CGST+ 9% SGST).

- e. Further, we observe that, the applicant is receiving leasing / licensing services from the government of Rajasthan 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.


6. In view of the foregoing, we rule as follows:-

RULING

- A. 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) 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.
- B. The activity undertaken by the applicant attracts 18% GST (9% CGST+ 9% SGST).


J.P. MEENA 25/3/19
Member
(Central Tax)




HEMANT JAIN 25/3/19
Member
(State Tax)

SPEED POST

M/s Wolkem Industries Limited,
E-101, Mewar Industrial Area,
Madri, Udaipur, Rajasthan 313001

o/c
(CGST)/(SGST)

F.No. AAR/Wolkem/2018-19/112-115

Dated: 26.03.2019

Copy to:-

1. Commissioner, SGST & Commercial Taxes, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
2. Commissioner, CGST and Central Excise Udaipur Commissionerate, 142-B, Sector-11, Hiran Magri, Udaipur 313002.
3. Deputy/Assistant Commissioner, CGST Division-B, 142-B, Sector-11, Hiran Magri, Udaipur 313002.


Superintendent