KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD,
GANDHINAGAR, BANGALORE – 560009

(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018)

BEFORE THE BENCH OF

SHRI. D.P.NAGENDRA KUMAR, MEMBER

SHRI. M.S.SRIKAR, MEMBER

ORDER NO.KAR/AAAR-03/2020-21 **DATE: 21.09.2020**

Sl. No	Name and address of the appellant	M/s NMDC Ltd, Admin Building, Donimalai Township, Donimalai, Sandur, Ballari District 583118
1	GSTIN or User ID	29AAACN7325A1ZR
2	Advance Ruling Order against which appeal is filed	KAR/ROM01/2020 Dated: 23rd March 2020
3	Date of filing appeal	22-06-2020
4	Represented by	Mr Anantnarayan S & Mr K Sivaranjan, Authorised representatives
5	Jurisdictional Authority- Centre	The Commissioner of Central Tax, Belagavi Commissionerate.
6	Jurisdictional Authority- State	LGSTO 500, Hospete
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Challan CPIN No 20062900104581 dated 15-06-2020 for Rs 20,000/-

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, Act 2017 are in *parimateria*and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

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2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by M/s NMDC Ltd, Admin Building, Donimalai Township, Donimalai, Sandur, Ballari District 583118(herein after referred to as Appellant) against the ROM order No. KAR/ROM01/2020 dated: 23rd March 2020.

Brief Facts of the case:

3. The Appellant, a State-controlled mineral producer of Government of India. It is owned by the Government of India and is under the administrative control of the Ministry of Steel. It has operations in Karnataka, Chhattisgarh and Madhya Pradesh. It operates Donimalai Iron Ore Mine in Donimalai in Ballari District and also operates a pellet plant adjacent to Donimali Iron Ore Mine in Karnataka. Government of Karnataka has issued in principle approval to NMDC Ltd (Donimalai) for renewal of ML No. 2396 for a period of 20 years w.e.f. 04.11.2008. The Appellant is required to pay royalty at 15% as per Section 9B of the Mines and Minerals (Development & Regulation) Act, 1957. Royalty is collected by the State Government from the business entities for right given to them to extract mineral and is payable based on quantum mineral removed or consumed. Further, Section 9B and 9C of the Mines and Minerals (Development & Regulation) Act, 1957 mandates that the Appellant shall contribute 30% of royalty to District Mineral Foundation and 2% of royalty to National Mineral Exploration Trust.

4. In this regard, the Appellant approached the Authority for Advance Ruling (AAR) seeking a ruling on the following questions:

(i) *Whether the royalty paid in respect of Mining Lease can be classified as "Licensing services for Right to use minerals including its exploration and evaluation falling under the heading 9973 attracting GST at the same rate of tax as applicable on supply of like goods involving transfer of title in goods?*

(ii) *Whether statutory contributions made to District Mineral Foundation (DMF) and National Mineral Exploration Trust (NMET) as per MMDR Act, 1957 amounts to "Supply" and whether the same is liable for GST under reverse charge.*

5. The AAR vide its order KAR ADRG No 69/2019 dated 21st Sept 2019 gave the following ruling:

i. *The royalty paid in respect of Mining Lease is a part of the consideration payable for the Licensing services for right to use minerals including exploration and evaluation falling under the Head 9973 which is taxable at the rate applicable on*

supply of like goods involving transfer of title in goods upto 31.12.2018 and taxable at 9% CGST and 9% SGST from 01.01.2019 onwards under the residual entries of Serial No.17 of the Notification No.11/2017- Central Tax dated 28.06.2017.

ii. *The statutory contribution made to District Mineral Foundation (DMF) and National Mineral Exploration Trust (NMET) as per MMDR Act, 1957 are also part of the consideration payable for the Licensing services for right to use minerals including exploration and evaluation.*

iii. *The supply is of Licensing services for right to use minerals including exploration and evaluation and the value of such supply of services includes royalty, DMF and NMET contributions.*

iv. *Since the supply of services by the Government to a business entity located in the taxable territory, are covered under Serial No.5 of Notification No.13/2017- Central Tax dated 28.06.2017, the liability to pay tax is on the recipient of such services on reverse charge mechanism as the Licensing services for right to use minerals including exploration and evaluation are provided by the State Government to a business entity, i.e., the applicant.*

6. The Appellant filed an application dated 23-01-2020 for rectification of mistake (ROM) in the Advance Ruling order dated 21-09-2019 in terms of Section 102 of the CGST Act, 2017. In the ROM application, the Appellant stated that the Advance Ruling Authority had not ruled as to whether or not the contributions towards DMF and NMET amount to supply in terms of Section 7 of the CGST Act and that the Authority had erred in considering the said payments as single payment whereas they are two different transactions.

7. The Authority examined the ROM application and concluded that the Authority had considered all the submissions and that there is no error / apparent mistake on the face of the record and hence the ROM application was rejected in terms of Section 98(2) of the CGST Act vide order No KAR ROM 01/2020 dated 23-03-2020.

8. Aggrieved by the rejection of the ROM application, the appellant has filed this appeal on the following grounds.

8.1. Payment of royalty is not a supply under GST and is not liable to GST. They submitted that royalty is in the nature of periodical payments to be made by the lessee (Appellant) in consideration of the various benefits granted by the lessor (Govt); that royalty is required to be paid at a certain percentage of average sale price on ad valorem basis; that royalty is collected by the State Govt from the business entities for right given to them to extract mineral and is payable based on quantum of mineral removed or consumed; that royalty is " profit a pendre". i.e share of profit received from land which is not taxable under

GST; that sharing of profit will not be a supply from one person to another. They drew analogy from the Apex Court decision in the case of Titaghur Paper Mills Company vs State of Orissa &ors which was followed by the AP High Court in the case of Andhra Pradesh Paper Mills and in the case of ITC Bhadrachalam Paper Boards Division wherein it was held that such profit is in the nature of "profit a pendre" and cannot be viewed as 'sale' and is not subject to VAT. Accordingly, royalty paid by them is not a supply as it is a statutory obligation and not a service rendered by the Central or State Govt.

8.2. Without prejudice to the above, they submitted that royalty paid in respect of mining lease will be classifiable under SAC 997337 and will continue to be taxed at 5% even after the amendment to Notf No 11/2017 CT (R) vide Notf No 27/2018 CT (R) dt 31-12-2018. They submitted that Heading 9973 covers various types of leasing, rental, licencing services. However, the group under heading 9973 in the rate Notf largely covers right to use intangible property. They submitted that the entries prescribing the rate of tax for the service code 9973 does not specifically cover the Licencing services for the right to use minerals including its exploration and evaluation and therefore it will be covered under entry '(viia) leasing or renting of goods' with applicable tax rate as the same rate as applicable on the supply of like goods involving transfer of title in goods. Accordingly, the rate as applicable on the underlying natural resources would still be applicable on the amount of royalty paid and not the residual entry as held by the lower Authority.

8.3. They submitted that contributions made to DMF and NMET are without any quid pro quo and hence no taxable supply is involved; that DMF and NMET are not for profit trusts; that the levy of GST is attracted only when there is an activity undertaken at the behest of the service recipient and the same is in response to /for consideration; that in their case, there is no activity undertaken by DMF Trust and NMET at the behest of the Appellant for a consideration; that the Appellant is mandated under law to contribute to the trusts set up and the payment made is in the nature of contribution and not consideration. Even assuming that GST is payable for any service received by the Appellant, the same is payable by the Trusts and not the Appellant under reverse charge mechanism.

8.4. They submitted that DMF and NMET Trusts work to mitigate adverse impact of mining and carry out the welfare and development of people inhabited near mining areas; that in order to carry out the said objective, miners like the Appellant contribute to these Trusts; that there is no supply made by the Trusts to the Appellant in return for this contribution.

Further they submitted that even if it is assumed to be a supply by DMF and NMET, the Appellant will be liable to pay the tax under reverse charge only when the supply is made by the Central Govt, State Govt, Union Territory or local authority to a business entity. In this case, the Trusts established under the Mines and Mineral (Development & Regulation) Act does not fall under the definition of Government and hence the contributions made to DMF and NMET cannot attract GST under reverse charge. In view of the above submissions, the Appellant prayed that the advance ruling be set aside.

PERSONAL HEARING

9. The appellant was called for a virtual hearing on 9th Sept 2020 but they sought an adjournment. Accordingly, the Appellants were called for another virtual hearing on 21st September 2020.

9.1. The hearing on 21stSeptember 2020 was conducted on the Webex platform following the guidelines issued by the CBIC vide Instruction F.No 390/Misc/3/2019-JC dated 21st August 2020. The Appellant was represented by their authorised representatives Mr Anantnarayan S &Mr K Sivaranjan, Chartered Accountants who gave a brief about the facts of the case and reiterated the submissions made in the grounds of appeal. They also filed detailed written submission at the time of the personal hearing. They submitted that payment of royalty is not a supply under GST and is not liable to tax; that grant of mining lease and its execution by the Govt is a statutory act and not a supply of service. The payment of royalty by a lessee is also a statutory obligation and is to be paid in proportion to the mineral excavated for sale, use or consumption. Therefore, the transaction cannot be regarded as supply.

9.2. They further submitted that, even if royalty is taxable, it will be covered under service code 997337 and will continue to be taxed at 5% GST even after 01-01-2019 and not at 18% as held by the lower Authority. Heading 9973 in the rate Notf 11/2017 CT dt 28.06.2017 largely appears to cover right to use tangible property; the entries prescribing the rate of tax for the service code 9973 does not specifically cover the licensing services for the right to use minerals and therefore, it will be covered under entry "(viia) leasing or renting of goods" with applicable tax rate as the same rate of tax as applicable on the supply of like goods involving

transfer of title in goods. Accordingly, the relevant tax rate as applicable on the underlying natural resource would still be applicable.

9.3. They also submitted that contributions made to DMF and NMET do not qualify as "supply". There is no activity undertaken by the DMF Trust and NMET at the behest of the appellant for a consideration. The Appellant is mandated under law to contribute to the trusts set up in law. The payment made by the Appellant is purely in the nature of contribution and cannot be regarded as a consideration. Even assuming that GST is payable on the contributions made to DMF and NMET, the same cannot be held liable to reverse charge at the hands of the appellant but has to be a forward charge payable by the Trusts.

9.4. The authorised representatives pleaded that the order of the lower Authority may be set aside in view of the above submissions.

9.5. On a specific query by the Members regarding the admissibility of the instant appeal which is based on an order passed by the lower Authority in terms of Section 98(2) of the CGST Act and not under Section 98(4) of the said Act, the authorised representatives submitted that subsequent to the issue of the advance ruling, they had applied for a rectification of mistake in as much as some issues were not addressed by the lower Authority. However, the lower Authority rejected the ROM application and hence the same is merged with the original advance ruling and an appeal has been filed against the merged order. They further submitted that the ROM application has been filed within the stipulated time and only after the ROM application was decided they have filed this appeal. They requested that he matter be heard on merits by taking into consideration the original advance ruling as well as the ROM order.

DISCUSSIONS AND FINDINGS

10. We have gone through the records of the case and considered the submissions made by the Appellant in their grounds of appeal as well as the detailed submissions made at the time of personal hearing.

11. We first address the issue of admissibility of this appeal under Section 100 of the CGST Act. In terms of the said Section an appeal to the Appellate Authority for Advance Ruling may be made by either the applicant, the concerned officer or the jurisdictional

officer who is aggrieved by the advance ruling pronounced under Section 98(4) of the said Act. The said Section 98(4) relates to the advance ruling pronounced by the Authority on the questions specified in the application.

12. As per Section 95(a) of the CGST Act, "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or questions specified in sub-section (2) of section 97 or sub-section (1) of section 100,in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. The procedure for obtaining an advance ruling is outlined in Section 98 of the said Act which is reproduced below for reference:

> ***98. Procedure on receipt of application.***— *(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records:*
>
> *Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.*
>
> *(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:*
>
> *Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:*
>
> *Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:*
>
> *Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.*

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the concerned officer.

(4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorised representative as well as to the concerned officer or his authorised representative, pronounce its advance ruling on the question specified in the application.

(5) Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

(6) The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.

(7) A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jũrisdictional officer after such pronouncement.

13. An advance ruling pronounced by the Authority under Section 98(4) may be appealed against to the Appellate Authority within a period of 30 days from the date on which the ruling sought to be appealed against is communicated to the aggrieved person. However, the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days. In terms of Section 101, the Appellate Authority may pass such order as it thinks fit, confirming or modifying the ruling appealed against. Further, Section 102 of the CGST Act, provides for rectification of advance ruling whereby the Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought

to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order.

14. Now let us set out the facts in this case leading to the instant appeal before us. The Appellant filed an application for advance ruling on 27-08-2028 before the Authority in terms of Section 97 of the CGST Act seeking a ruling on the questions relating to payment of tax on the royalty paid in respect of the mining lease and the contributions made to DMF and NMET. The said application was admitted by the Authority and examined and a ruling was pronounced on the above questions on 21st Sept 2019 vide order No KAR ADRG 69/2019. On 23-01-2020, the Appellant made an application to the Authority for rectification of mistake (ROM) in the advance ruling dated 21-09-2019. The ROM application was filed in terms of Section 102 of the CGST Act stating that the Authority had not given a ruling on whether the contributions made to DMF and NMET amounts to a supply in terms of Section 7 of the CGST Act and also that the Authority had erred in considering the payments as a single payment whereas they are two different transactions. This ROM application was rejected by the Authority vide order dated 23-03-2020, in terms of Section 98(2) of the said Act in as much as the Authority had considered all the submissions and pronounced a ruling on all questions of the applicant and there was no error/mistake which was apparent on record. It is against this rejection of ROM vide order dated 23-03-2020 that this appeal has been filed before us.

15. A reading of the above provisions of law makes it clear that an appeal can be filed before the Appellate Authority only against an advance ruling pronounced in terms of Section 98(4). In this case, the ruling pronounced in terms of Section 98(4) is the advance ruling order No KAR ADRG 69/2019 dated 21-09-2019. An appeal is maintainable only against the said order dated 21-09-2019 within the statutory period of 30 days from the date of communication of the said order. However, no appeal has been filed before us against the advance ruling dated 21-09-2019. The Appellant contends that the order rejecting the ROM application merges with the original order and hence the appeal filed against the ROM rejection order dated 23-03-2020 is to be considered as an appeal against the original order dated 21-09-2020. This argument is not legally tenable.

16. The question whether there is any merger in a case where the authority has passed an original order and subsequently reconsidered the matter and passed another order, has been dealt extensively by the Hon'ble High Court of Karnataka in the case of Kothari Industrial

Corporation vs Agricultural Income Tax Officer. The relevant para of the High Court order is reproduced below:

> *"11. The next question is where the authority who passed the order, has occasion to reconsider the matter and passed a subsequent order, whether there is any merger, and if so to what extent. There are two circumstances where an authority has occasion to reconsider his own order : (a) by way of review; and (b) by way of rectification. Normally, review is contemplated where new and important matter or evidence comes to light or where there is a mistake or error apparent on the face of the record. Rectification is resorted to, to correct clerical or arithmetical errors. When the authority grants an application for review of an order, the order in regard to which review is granted stands vacated or set aside and the order subsequently passed on review (either modifying, reversing or confirming the earlier order) will supersede the original order. In such a case, there is no question of merger, as the second order supersedes the first order and only the second order remains in existence. On the other hand, when an application for rectification is allowed, the original order is 'rectified' or corrected. The 'Rectification' presupposes the continuance of the original order with the change incorporated. Rectification is the process by which an order which contains an error is set right. If the entire order is to be replaced by a new order by the same authority, such an order is not an 'order of rectification', but an 'order on review'. When rectification is directed, there is no merger, as there is no order into which the original order can merge. When an order of rectification is made, the effect is that the original order has to be read subject to the corrections/modifications made by the rectification order. The correction is incorporated in the original order, as for example, where merely a figure is altered or typographical correction is made. However, having regard to the nature of original order and rectification order, if the correction cannot be incorporated in the original order, the rectification becomes an addendum to the original order, both being read together...."*

17. From the above, it is clear that even in cases where a rectification of mistake application is admitted and a mistake apparent on record is corrected, the original order is not set aside. The original order remains on record and only the mistakes are corrected therein. The principle of doctrine of merger will not apply in such cases. Any appeal can be made only against the original order which will be read together with the correction made in the rectification order. In this case, the rectification application was not admitted as there was no error apparent on record and hence, the original order stands without any changes. The ROM rejection order does not merge with the original advance ruling order. The original advance ruling stands without any corrections. The appeal should have been filed by the Appellant against the advance ruling order dated 21-09-2019 within the period of 30 days from the date of communication of the said order.

18. We also observe that in the instant appeal, the Appellant is aggrieved by the entire ruling pronounced by the lower Authority. All issues which were part of the original application for advance ruling are being contested in appeal before us. Assuming for the sake of argument that we consider this appeal as an appeal against the advance ruling dated 21-09-2019, even then we observe that the statutory time limit for filing an appeal against the advance ruling order has long expired. This Appellate Authority being a creature of the statue is empowered to condone a delay of only a period of 30 days after the expiry of the initial time period for filing appeal. We are not empowered to condone any delay beyond what the statute permits us.

19. In view of the aforesaid, we hold that the appeal filed against the ROM order KAR ROM 01/2020 dated 23-03-2020 is not maintainable in as much as the impugned order is not an appealable order under Section 100 of the CGST Act, 2017. We also hold that the ROM rejection order dated 23-03-2020 does not merge with the original advance ruling dated 21-09-2019. Since the appeal is not maintainable, the question of addressing the issues raised in appeal does not arise.

20. In view of the above discussion, we pass the following order

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ORDER

We dismiss the appeal filed by M/s NMDC Ltd, Admin Building, Donimalai Township, Donimalai, Sandur, Ballari District 583118 on the ground that it is not maintainable.

(D.P.NAGENDRAKUMAR)
Member
Karnataka Appellate Authority
for Advance Ruling

Member
Appellate Authority for Advance Ruling

(M.S. SRIKAR)
Member
Karnataka Appellate Authority
for Advance Ruling

Member
Appellate Authority for Advance Ruling

To,

The Appellant

Copy to

1. The Member (Central), Advance Ruling Authority, Karnataka.
2. The Member (State), Advance Ruling Authority, Karnataka
3. The Commissioner of Central Tax, Belagavi Commissionerate
4. The Assistant Commissioner, LGSTO-500, Hospete
5. Office folder

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