THE MADHYA PRADESH APPELLATE AUTHORITY FOR ADVANCE RULING
OFFICE OF THE COMMISSIONER, COMMERCIAL TAX, MOTI BUNGLOW, MAHATMA GANDHI MARG, INDORE (M.P.) - 452007

BEFORE THE BENCH OF

(1) Shri V.K. SAXENA, MEMBER
(2) Shri RAGHWENDRA KUMAR SINGH, MEMBER

ORDER NO. MP/AAAR/01/2020 DATE....27.08.2020

Name and address of the appellant	M/s. NMDC Limited NMDC Limited, Majhgawan , Diamond Mining Project , Panna (MP) Pin 488001
GSTIN or User ID	23AAACN7325A2Z2
Order of AAR under Appeal before AAAR	09/2019 dated 18.07.2019

PROCEEDINGS

(Under section 101 of the Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MPGST Act are mirror image of each other except for certain specific provisions. Therefore, unless a specific mention is made to such dissimilar provisions, a reference to the CGST Act would mean a reference to the similar provisions under the MPGST Act and vice-versa. At places we may refer it as GST Act.
The present appeal has been filed under section 100 of the Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017 [hereinafter also referred to as "the CGST Act and MPGST Act"] by M/s. NMDC Limited (hereinafter also referred to as the "appellant") against the order of Authority for Advance Ruling No. 09/2019 dated 18.07.2019

BRIEF FACTS OF THE CASE

1. NMDC limited is a state-controlled mineral producer of the Government of India. It is owned by the Government of India and is under administrative control of the Ministry of Steel.

2. It is iron ore producer and exporter producing about 30 million tons of iron ore from 3 fully mechanised mines in Chhattisgarh and Karnataka.

3 NMDC Ltd. also has Diamond Mining Project at Majhgawan, Panna (M.P.) (hereinafter referred to as "NMDC" or "the company" or "the Appellant") which is engaged in mining and sale of "rough diamonds" falling under chapter heading 7102 attracting GST rate of 0.25% .

Operating mines of NMDC includes the following--

Bailadila Iron Ore Mine, Kirandul Complex, Disst. South Bastar, Dantweada (Chhattisgarh)

Bailadila Iron Ore Mine, Bacheli Complex Distt. South Bastar, Dantewada (Chhattisgarh)
Donimalai Iron Ore Mine, Donimalai, Distt. Bellary (Karnataka)
Diamond Mining Project, Majhgawan, Panna (Madhya Pradesh)

QUESTIONS RAISED BEFORE AUTHORITY FOR ADVANCE RULING (AAR)

Questions as were raised before AAR are as under: -

1. 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 heading 9973 attracting GST at the same rate of tax as applicable on supply of like goods involving transfer of title in goods"?
2. Determination of the liability to pay tax on contributions made to District Mineral foundation (DMF) and National mineral Exploration trust (NMET) as per MMDR Act, 1957.

RULLING PRONOUNCED BY AUTHORITY FOR ADVANCE RULING (AAR)

1. In respect of the first question raised by the Applicant regarding the classification of service by way of granting of license to extract minerals, we rule that the said service shall be classified under Tariff Heading 99733.
2. In respect of the second question raised by the Applicant regarding the taxability or otherwise of the additional contributions made to DMF and NMET, we rule that the said contributions are nothing but additions to the royalty payable for the original supply itself, and is therefore liable to be added to the value of the original supply and treated accordingly for the purposes of GST.

QUESTIONS RAISED BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)

The following question has been posed before the Appellate Authority with reference to the activity undertaken by the Appellant: -
Appellant's liability to pay tax on contributions made to District Mineral Foundation (DMF) and National Mineral Exploration Trust (NMET) as per Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act, 1957) ?

GROUNDS OF APPEAL

The Appellant has given grounds of appeal in pdf format which are as under: -

GROUNDS OF APPEAL

The Appellant prefers the present appeal before this Hon'ble Authority on the following grounds, amongst others, each of which is taken in the alternative and without prejudice to each other:

Contributions made to District Mineral Foundation (DMF) and National Mineral Exploration trust (NMET) are not for any taxable supply and hence, no GST should be on applicable on the contributions made by the Appellant

12. Under the GST law, all 'supplies' of goods and services should attract GST (unless specifically exempted). Section 9 of the Central Goods and Services Tax Act, 2017 (CGST Act) is the charging Section which provides that there shall be a levy of a tax called the central goods and services tax on all intra-state supplies of goods or services or both on the value determined under section 15 of the CGST Act, 2017 at such rates not exceeding twenty percent as may be notified by the Government. As is clear from the aforesaid Section, the key pre-condition for the levy of GST is presence of a "supply".

13. Section 7 of the CGST Act, 2017 defines the term "supply" and the relevant portion of the same is reproduced hereunder as follows:-

> *"7. (1) For the purposes of this Act, the expression "supply" includes-*
>
> *(a) all forms of* ***supply of goods or services or both*** *such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*
> *(b) import of services for a consideration whether or not in the course or furtherance of business;*
> *(c) the activities specified in Schedule I, made or agreed to made without a consideration; and*
> *(d) the activities to be treated as supply of goods or supply of services as referred to Schedule II.*
>
> ..... "

14. Section 7 of the CGST Act, 2017 defines the term "supply" to include all forms of supply of goods or services or both. Also, it expressly seeks to include all activities treated as supply of goods or supply of services as referred to Schedule II of the CGST Act, 2017. In this regard, Clause 5 of Schedule II provides for the list of activities that shall be treated as supply of services. *Inter alia*, Clause 5(e) provides that agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to an act shall be

treated as a supply of services. The relevant portion of the Schedule II is extracted hereunder for your ready reference:-

"

SCHEDULE II
(Section 7)

5. Supply of services

The following shall be treated as supply of services, namely:-
(a).....
.....

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and....."

15. Further, although there is no comprehensive definition of the term "service" (as it existed under the erstwhile service tax regime), the term "service" is defined as follows under section 2(102) of the CGST Act, 2017:-

> *"services means anything other than goods, money and securities but includes activities relating to the use of money or 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."*

16. A plain reading of the aforesaid provisions indicate that for a transaction to qualify as a 'supply of service', it is necessary there is an underlying 'activity' performed by one person for another for consideration.

17. In order to qualify as a 'supply of service' for a consideration there has to be a service provider and a service recipient who have agreed to perform/ receive specified services. The contract/agreement should involve contractual reciprocity.

18. For an activity to qualify as a 'service', the same has to be performed at the behest of the service recipient. An act done without corresponding desire or without reciprocate contractual obligation of the service recipient cannot be considered as an activity for a consideration.

19. Further, under the GST law, for a supply be taxable, the same has to be for a 'consideration. Section 2(31) of the CGST Act, 2017 defines the term 'consideration' as follows:

> *"(31) "consideration" in relation to the supply of goods or services or both includes––*
> *(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall*

not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government: Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply"

20. From the definition of the term 'consideration', it is apparent that consideration can be monetary or non-monetary and that same should be 'in respect of', 'in response to', 'or for the inducement of the supply' of goods or services or both, meaning thereby that it should be identified with a supply of service and have nexus with the said supply of service.

21. Basis the above, it is understandable the levy of GST is attracted only when there is i) an activity undertaken at the behest of the service recipient and ii) the same is in response to/ for consideration (as contemplated under section 2(31) of the CGST Act, 2017). In the Appellant's case, there is no activity undertaken by the DMF Trusts and NMET at the behest of the Appellant for a consideration. The Appellant is mandated under law to contribute to the trusts set up and law and there is no voluntary contribution made by the Appellant in return for an activity. In fact, there is no agreement entered into for a specific service by the Appellant and the trusts in question for a pre-defined consideration.

22. In any event, since the trusts in question do not qualify as 'government' or 'local authority', there can no obligation on the Appellant to discharge GST under the reverse charge mechanism. Payment of GST, if any, shall be the liability of the trusts in question.

23. In short, it is submitted that there can no levy of GST on the contributions made by the Appellant:

- There is no activity/supply of service undertaken by the Trusts in question (DMF Trusts and NMET Trusts) for the Appellant;
- Further, even assuming that there is an activity undertaken by the Trusts, the same cannot be said to be in the course of furtherance of any business.
- Even assuming that the Trusts undertake a supply of service to the Appellant, the same cannot be subject to be GST since the same is not for a consideration;
- Alternatively, since the trusts in question qualify neither as 'government' nor as 'local authority', there can no liability on the Appellant to pay tax under the reverse charge.

<u>There is no activity/supply of service undertaken by the Trusts in question for the Appellant</u>

24. The holder of a mining lease shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried an amount of 30% of royalty. Also, a certain portion of the royalty (at 2% is payable to NMET) by a mining lease holder.

25. District Mineral Foundation (DMF) is a trust set up as a non-profit bod in districts where mining operations are carried out. The objective of a DMF is to work for the interest and benefit of persons, and areas affected by mining related operations in such manner as may be prescribed by the State Government. It is funded through the contributions from miners like the Appellant.

26. As per Rule 3 of District Mineral Foundation Rules, 2016 ("DMF Rules") in the state of Madhya Pradesh, District Mineral Foundation (DMF) is set up in the form of trust. The objective of the foundation as per Rule 4 of the said rules is as under:

> *"The Trust shall prepare schemes and plans as per guidelines of the Pradhan Mantri Khanij Kshetra Kalyan Yojna (PMKKKY) and instructions issued by the State Government from time to time to ensure their implementation for the development of mining affected areas."*

27. The terms "affected people" and "affected areas" are also defined under the DMF Rules under rule 12. Under rule 12, the term 'affected area' shall include:

(1) Affected Areas:

(i) villages and Gram Panchayats within which the mines are situated and are operational. Such mining areas may extend to neighboring village, block or district of state.

(ii) An area within such radius from a mine or cluster of mines as may be specified by the State Government, irrespective of whether this falls within the district concerned or adjacent district.

(iii) villages in which families displaced by mines have been re settled/rehabilitated by the project authorities.

(iv) Villages that significantly depend on the mining areas for meeting their economic needs and have usufruct and traditional rights over the project areas, for instance, for grazing, collection of minor forest produce etc.

(2) Indirectly affected areas- Those areas which are not directly affected but where local population is adversely affected on account of economic, social and environmental consequences due to mining related operations, even though the major negative impacts of mining could be by way of deterioration of water, soil and air quality, reduction in stream

flows sand depletion of ground water, congestion and pollution due to mining operations, transportation of minerals, increased burden on existing infrastructure and resources.

(3) The Foundation shall prepare and maintain an updated list of such directly and indirectly affected areas.

28. Further, under rule 12(4) of the DMF Rules, the term "affected people" is defined to include the following:-

"Affected People" shall include:-

(a) Affected family as defined under clause (c) of Section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Settlement Act, 2013 (30 of 2013);

(b) 'Displaced Family' as defined under clause (k) of Section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (No. 30 of 2013);

(c) Any other person or family appropriately identified by the concerned Gram Sabha;

(d) people who have legal and occupational rights over the land being mined, and also those with usufruct and traditional rights;

(e) the Foundation shall prepare and maintain an updated list of such affected persons/local communities.

29. In particular, rule 13 deals with expenditure from the Trust fund and according to the said rule, the funds available with the Trust shall be used for:-

- High priority areas - At least 60% of the funds shall be utilized under following heads:-
    - Drinking water supply
    - Environment preservation and pollution control measures:
    - Health care
    - Education
    - Welfare of Women and Children
    - Welfare of aged and disabled people
    - Skill Development
    - Sanitation
- Other priority areas – Up to 40% funds shall be utilised under the following heads:-
    (a) Physical infrastructure
    (b) Irrigation
    (c) Energy and Watershed Development
    (d) Any other measures for enhancing environmental quality in mining district

30. Likewise, contributions to NMET are not for carrying out any activity for the Appellant. Instead, according to National Mineral Exploration Trust Rules, 2015 contributions made to NMET are meant (amongst others) for carrying regional and detailed exploration for minerals 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 conccealed mineral deposits;
(b) Undertake 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 strategic and critical minerals;
(d) Consulting Central Geological Programing Board to decide the priorities for exploration of the Trust;
(e) facilitating exploration activities in such a manner that areas explored can be taken up for the grant of mineral concessions in accordance with the provisions of the Act and the Rules made thereunder; etc.

31. Basis the above, it is clear that the DMF Trusts work to mitigate adverse impact of mining, to work towards welfare and development of people inhabited near mining area and to ensure sustainable livelihood for the affected people. In order to carry out the said objective, minors like the Appellants contribute to DMF Trusts. In lieu of such contributions made, there is no supply made by the trust to the Appellant (i.e., as a quid pro quo for the service is not received). When there is no identifiable activity carried out by the Trusts in question at the behest of the Appellant, the Trusts in question cannot be said to have undertaken an activity for the Appellant.

32. Likewise, contributions to NMET Trust are not for carrying out any activity for the Appellant. Instead, contributions made to NMET are meant for achieving the objects mentioned in the NMET Rules.

33. The DMF and NMET Trusts in question are mandated by law to works towards the objectives stated under the rules. There is nothing identifiable undertaken by these Trusts at the behest of the Appellant. Therefore, the element of *quid pro quo* is missing.

34. In such circumstances, where the element of *quid pro quo* is absent/ no identifiable activity undertaken by the Trusts for the Appellant, it cannot be said that the DMF/NMET Trusts undertake an activity for the Appellant.

Even assuming that there is an activity undertaken by the Trusts, the same cannot be said to be in the course of furtherance of any business

35. It is to be further noted that liability to pay will result only if all the following conditions are satisfied:

- There is a supply in terms of Section 7 of the CGST Act, 2017;
- The supply is in the course of or furtherance of business; and
- The supply is not exempt under Section 7(2) or Section 11(1)

36. Therefore, one also has to evaluate whether the supply is in the course of business. It is pertinent to note that the trust is a non-profit body organization and not involved in the course of any business, trade or commerce. Based on the above, there is no supply made in terms of Section 7 therefore liability to pay tax does not arise.

There is no flow of consideration between the Appellant and the Trusts in the sense contemplated under section 2(31) of the CGST Act, 2017

37. An important requirement for there to be levy of tax is the presence of element of 'consideration'. If there is no flow for consideration for an activity, there cannot be levy of tax. Section 2(31) of the CGST Act, 2017 requires that consideration should be in response to/in respect of any supply. Mandatory contributions made by the Appellant to DMT and NMET Trusts cannot be treated as consideration paid for an activity by the Appellant. Mere flow of money between the Appellant and the Trusts cannot be subject to the levy of GST.

38. Under the service tax law, which had identical requirements, it was settled law that mere flow of money cannot be subject matter of service tax and consideration/money should have 'nexus' with an identified supply of service. Reliance is this regard is placed by the Appellant on the following cases:-

- In the case of ***Cricket Club of India* v. Commissioner of Service Tax [(2015) (40) STR 973]**, the Hon'ble CESTAT (Mumbai Bench), observed as under:-

> *"11.....Consideration is, undoubtedly, an essential ingredient of all economic transactions and it is certainly consideration that forms the basis for computation of service tax. However, existence of consideration cannot be presumed in every money flow. The factual matrix of the existence of a monetary flow combined with convergence of two entities for such flow cannot be moulded by tax authorities into a taxable event without identifying the specific activity that links the provider to the recipient.*
>
> *12. Unless the existence of provision of a service can be established, the question of taxing an attendant monetary transaction will not arise. Contributions for the discharge of liabilities or for meeting common expenses of a group of persons aggregating for identified common objectivities will not meet the criteria of taxation under Finance Act, 1994 in the absence of identifiable service that benefits an identified individual or individuals who make the contribution in return for the benefit so derived.*
>
> *13..... Neither can monetary contribution of the individuals that is not attributable to an identifiable activity be deemed to be a consideration that is liable to be taxed merely because 'club" or association is the recipient of that contribution."*
>
> *(Emphasis supplied)*

- **Mormugao Port Trust v. Commissioner of Customs, Central Excise and Service Tax, Goa; 2016 TIOL 2843 CESTAT Mum,** highlighting the importance of nexus of a service with the

element of consideration to render a transaction liable for service tax, the Hon'ble Jurisdictional CESTAT (Mumbai) observed as follows:-

> *"18. In our view, in order to render a transaction liable for service tax, the nexus between the consideration agreed and the service activity to be undertaken should be direct and clear. Unless, it can be established that a specific amount has been agreed upon as a quid pro quo for undertaking any particular activity by a partner, it cannot be assumed that there was a consideration agreed upon for any specific activity so as to constitute a service."*

39. In the current case, there is no identifiable service provided to the Appellant for any consideration. Therefore, the money flow in the form of contributions cannot be called 'consideration' for any service by the Trusts in question.

Alternatively, since the Trusts in question qualify neither as 'government' nor as 'local authority', there can be no liability on the Appellant to pay GST under the reverse charge

40. As per Notification 13/2017 Central tax (Rate), services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding the specified services are chargeable to tax under reverse charge.

41. 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.

42. As per Section 2(53) of CGST Act, 2017, government means "Central Government" and as per Section 2(53) of Madhya Pradesh GST Act, government means "State Government". Further, the said trust does not fall within the definition of local authority which is defined under Section 2(69) of the CGST Act, 2017:

> *"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;*
> *(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) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;*
> *(e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;*
> *(f) a Development Board constituted under article 371 of the Constitution; or*
> *(g) a Regional Council constituted under article 371A of the Constitution;*

43. It is submitted that, an autonomous trust set up for an independent purpose do not fall under the definition of Government or local authority. At the max such trust may fall under the definition of Governmental Authority which is defined in Explanation of Section 2(16) of IGST Act. The same is stated below for your reference:

the expression "governmental authority" means an authority or a board or any other body,––
(i) set up by an Act of Parliament or a State Legislature; or
(ii) established by any Government,
with ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.

44. Based on above, the Appellant wishes to submit that services provided by Governmental Authority is not covered under reverse charge and therefore the supplier is liable to charge GST and remit to the credit of Government.

45. It is to be noted that the trust established under Section 9B(1) of the MMDR Act does not fall under the definition of Government. The same is an independent non-profit body to carry out operations entrusted to it. Since the payment is not made to government, there is no requirement of payment of GST under reverse charge in terms of Notification 13/2017 – Central Tax (Rate).

46. The Hon'ble Authority erred in holding that the Trusts in question qualify as a 'local authority' in para 6.7 of the impugned order as i) "any other authority legally entitled to, or entrusted by the Central Government or any other State Government with the control or management of a municipal or local fund" will be a 'local authority' and ii) Trusts in question undertake activities enumerated in 11th Schedule (Article 243G) and 12th Schedule (Article 243W) of the Indian Constitution.

47. The Appellant submits that the Trusts in question cannot qualify as a government/local authority for the reasons explained hereinabove. Therefore, the contributions made to DMF Trusts and NMET will not attract GST under reverse charge.

PERSONAL HEARING

The appellant was called for personal hearing on 22.07.2020 and 25.08.2020. He sought adjournment for both the dates. He did not avail of the opportunity of hearing though internet. Considering the time constrains the case is being decided as per written submissions on merit.

DISCUSSION AND FINDINGS

The arguments and assertions made by the appellant along with supporting case law and the documents in support of such claims were studied and our observations are as under:

1. Appellant had put forth two questions before AAR. First was regarding royalty paid in respect of Mining Lease, wherein he wanted to know the classification and rate of tax on "Licensing services for the right to use minerals including its exploration and evaluation. AAR has ruled it to the satisfaction of Appellant.
2. The second question was about liability to pay tax on contributions made to District Mineral foundation (DMF) and National mineral Exploration trust (NMET) as per MMDR Act, 1957. This has been ruled by AAR that said contributions are nothing but additions to the royalty payable for the original supply itself and is therefore liable to be added to the value of the original supply and treated accordingly for the purpose of GST.
3. Appellant has come before us against the ruling of AAR for question number 2.
4. Appellant has taken several grounds without prejudice to each other. Their first ground is that contributions made by them to DMF and NMET are not against any taxable supply made by these bodies, hence, no GST should be applicable to these contributions. Appellant has argued by quoting definition of supply and citing paragraph 5 (e) of schedule II which defines "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" as services that there must be a service provider and a service recipient.
5. These arguments can be stated in short as

    a. There is no activity/supply of services undertaken by DMF and NMET for the Appellant at his behest; that he has not asked for any supply from DMF and NMET. There is no quid pro quo.
    b. Further even assuming that the activity undertaken by the Trusts is supply to appellant, the same is not business. The establishment, source of income and objects of trusts i.e. to mitigate the adverse impact of mining and to work towards welfare, development and sustainable livelihood of affected people goes to say that is not an activity where Trusts receive consideration for their supply of services.
    c. Even assuming that the Trusts undertake a supply of service to the Appellant, the same cannot be subject to be GST since the same is not for a consideration.
    d. Alternatively, since the trusts in question qualify neither as 'government' nor as local authority, there can no liability on the Appellant to pay tax under the reverse charge.

6. AAR in its order in para 7.16 has held as " Further, section 9B and section 9C of the MMDR Act, which talk about contributions made to the DMF and NMET, state that such contributions are to be made by the holder of the mining rights "in addition to the royalty", these contributions are also in the nature of royalty and as such are to be treated just like they were royalty. Per this view,

the amounts payable to the DMF and NMET are nothing but payments of royalty, albeit by different name."

7. In para 7.17 AAR has held " This authority is of the view that money payable to the DMF and NMET may be treated as nothing but royalty itself, since these contributions are described as being "in addition to" the payment of royalty, which itself is "in respect of" the mining rights. As such, therefore, such amounts are paid in respect of mining rights and the said supply is already deemed to be taxable under reverse charge basis."
8. Appellant is required to explain and contest the finding of AAR but we find no such contest in the write up. He could have further argued in this regard but did not avail of the benefit of personal hearing or hearing through virtual hearing.
9. Further for the sake of understanding we note "charging sections of MMDR Act as under: -

9. 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 1[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 1[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.

(2A) The holder of a mining lease - - - .

(3)The Central Government - - - .

1 [9 A. Dead rent to be paid by the lessee.—

(1) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, shall notwithstanding anything contained in the instrument of lease or in any other law for the lime being in force, pay to the State Government, every year, dead rent at such rate, as may be specified, for the time being, in the Third Schedule, for all the areas included in the instrument of lease:

Provided that where the holder of such mining lease becomes liable, under section 9, to pay royalty for any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area, he shall be liable to pay either such royalty, or the dead rent in respect of that area, whichever is greater.

(2) The Central Government - - -.

3[9 B. District Mineral Foundation.—

(1) In any district affected by mining related operations, the State Government shall, by notification, establish a trust, as a non-profit body, to be called the District Mineral Foundation.

(2) The object of the District Mineral Foundation shall be to work for the interest and benefit of persons, and areas affected by mining related operations in such manner as may be prescribed by the State Government.

(3) The - - - .

(4) The State Government - - - .

(5) The holder of a mining lease or a prospecting licence-cum-mining lease granted on or after the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount which is equivalent to such percentage of the royalty paid in terms of the Second Schedule, not exceeding one-third of such royalty, as may be prescribed by the Central Government.

(6) The holder of a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount not exceeding the royalty paid in terms of the Second Schedule in such manner and subject to the categorization of the mining leases and the amounts payable by the various categories of lease holders, as may be prescribed by the Central Government.

9C. National Mineral Exploration Trust. —

(1) The Central Government shall, by notification, establish a Trust, as a non-profit body, to be called the National Mineral Exploration Trust.

(2) The object 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.

(3) The composition - - - .

(4) The holder of a mining lease or a prospecting licence-cum-mining lease shall pay to the Trust, a sum equivalent to two per cent. of the royalty paid in terms of the Second Schedule, in such manner as may be prescribed by the Central Government.]

10. Thus, it is noted that a mining lease holder or prospecting license cum mining lease is required to pay royalty, dead rent (when it is more than royalty), money to DMF and NMET under the MMDR Act. These leases are granted to the person under the Act and he has to make payment of all the requisite amounts. He has no choice to make payment of one or more but has to pay all the dues as per Act. The Act has bifurcated the heads for its own convenience, but the person is discharge all the liabilities.
11. AAR in its order has already held that as per sub-clause (i) of clause (17) of section 2 of CGST Act the activity is supply and as per paragraph 5 (e) of schedule II it is a supply of services. Appellant has not contested it.
12. These all payments are made in order to secure a mining or prospecting licence cum mining lease under the Act which are charged by Government.
13. AAR has in its order also held that being a business entity the appellant is liable to pay tax on this supply of services under reverse charge mechanism as per notification 13/2017 central tax (rate) dated 28.06.2017. Hence, the order of AAR is confirmed in absolute terms.

ORDER

The Appellant is liable to pay GST under reverse charge on the contributions made to District Mineral Foundation (DMF) and National Mineral Exploration Trust (NMET) as per Mines and Minerals (Development and Regulation) Act, 1957.

V.K. Saxena
(Member)
Madhya Pradesh Appellate Authority

Raghwendra Kumar Singh
(Member)
Madhya Pradesh Appellate Authority

No.01/2020/A.A.A.R./33 Indore, dated - 27.08.2020

Copy to:-

1. The Appellant
2. The AAR, Madhya pradesh
3. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
4. The Commissioner of State Tax, Madhya Pradesh
5. The Commissioner, CGST and Central excise, Indore
6. The Jurisdictional officer State/ Central
7. The web Manager, www.gstcounsil.gov.in
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