

पत्रिका - 8040/22/01/19

BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULINGS FOR
THE STATE OF UTTARAKHAND GOODS & SERVICE TAX, E-BLOCK,
NEHRU COLONY, DEHRADUN-248001

PRESENT:

Shri S.H Hasan (CGST Member)

Smt.Sowjanya (SGST Member)

The 21st day of January, 2019

Appeal No. GSTARA02/04//25-10 -2018

1.	Name and Address of Appellant	M/S Purewal Stone Crusher, Ramnagar.
2.	Appeal No/Date	GSTARA02/04//25-10 -2018
3.	Order No.	02/18-19/21.01.2019
4.	Jurisdictional Officer	Range-03 CGST Ramnagar Div/State Sector-DC Ramnagar.
5.	Date of Personal hearing	28-11-2018
6.	Party Represented by	Shri Ashwarya Sharma, Advocate.
7.	Date of Reg.of Appeal	25-10 -2018

ORDER

(Proceedings under Section 101 of the Central Goods and Service Tax Act, 2017 and Uttarakhand Goods and Service Tax Act, 2017)

The present appeal has been filed under Section 100 of the Central Goods and Service Tax Act and Uttarakhand Goods and Service Tax Act, 2017 (hereinafter referred to as "the CGST Act and UKGST Act") by M/s Purewal Stone Crusher, Ramnagar, Nainital, Uttarakhand (hereinafter referred to as the "Applicant") against the Advance Ruling Order No.08/2018-19 dated 05.10.2018 by the Authority for Advance Ruling, Uttarakhand in an application made by them.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the UKGST 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 provisions under the UKGST Act.

Brief Facts of the Case

The facts, in brief are –

- I. M/s Purewal Stone Crusher, Ramnagar (hereinafter referred as 'PSC') are registered in Uttarakhand with GSTIN No. 05AAPFP3357G1Z2.
- II. EGL made an application under Section 97 (1) of the CGST Act 2017 (hereinafter referred to as 'the act') on 15.06.2018, seeking an Advance Ruling on the following issues –
 - (i) Nature of Road Usage Charges and Government Fee paid by the applicant in respect of following services-

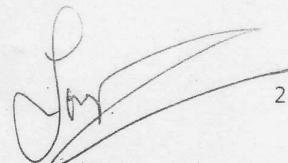
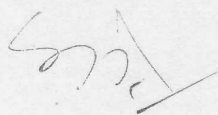
Head	Description of activity	Nature	Govt. Body
Road Usage Charge	Abhivahan Shulk	Road usage charges paid to Govt.	Tarai Paschim, Van Prabhad, Ramnagar
	Road Usage Charges		
Govt. Fee	Fee for ambient air monitoring	Pollution control expenses	U.P.E.P.C. Board
	Khanij Sampada Shulk	Mining charges	Dist. Geology Mining Deptt.
	Motor Vehicle Tax	Amt. Paid to state transport authority	ARTO, Kashipore State Transport Deptt.

- (ii) Road usage charges and govt. Fees paid by the applicant to multiple govt. Deptts. [tabled in sl. (i) above] falls within the category of exempted govt. Services as mentioned under sl. Nos. 4,5,6,9,23 & 47 of the exemption notification and accordingly no GST is required to be paid on such charges under sl. No. 5 of the RCM notification.
- (iii) GST applicability on penalty paid by the applicant on unaccounted stock of river bed material (RBM) on the orders of the District Magistrate to the govt. Deptt., under sl. No. 5 of the RCM notification.
- (iv) Vehicles (pokland, JCB, Dumper 7 Tipper) purchased and used by the applicant in its day to day business activities for movement of goods from one place to another would fall within the definition of motor vehicle under the provisions of GST law.
- (v) Availability of input credit of GST paid by the applicant at the time of purchase or repairs including spare parts w.r.t. above vehicles.

III. The Authority on Advance Ruling, after examining the issue, gave the following ruling –

- (a) “Abhivahan Shulk” is different from toll tax and is covered under service code 9997 and is to be treated as ‘other services’ and is liable to a GST @18% (9% each of CGST and SGST) to be paid on reverse charge.
- (b) The fee collected by UPEPPCB is exempted in terms of sl. No. 4 of the notf. No. 12/2017 –CT(R) dated 28.06.2017.
- (c) Khanij Sampada Shulk is a supply of service and hence is liable to a GST @18% (9% each of CGST and SGST) to be paid on reverse charge.
- (d) The service of registration provided by the state is exempted and hence no GST is payable on such charges.
- (e) Penalty imposed by the authority is liable for GST @18% (9% each of CGST and SGST) to be paid on reverse charge.
- (f) Input credit is allowed on purchase of Pokland, JCB, Dumper and Tipper.

IV. Being aggrieved with the said ruling, M/s Purewal Stone Crusher, have filed the present appeal for setting aside the Ruling passed by the AAR to the extent of declaring the following-



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- (A) Penalty paid on stock of RBM on the orders of DM is outside the scope of supply or in the alternative it is an exempt service under GST and hence not taxable under RCM;
- (B) Abhivahan Shulk paid to TPVP is exempt service under GST and hence not taxable under RCM; and
- (C) Khanij Sampada Shulk paid to District Geology & Mining Department, Directorate of Industries, Govt. of Uttarakhand is exempt service under GST and hence not taxable under RCM.

Personal Hearing

An opportunity for personal hearing was granted to the appellant on 28.11.2018 which was attended by Shri Ashwarya Sharma, Advocate, on behalf of M/s Purewal Stone Crusher, Ramnagar, Nainital. During the course of the personal hearing Shri Ashwarya Sharma reiterated the points covered in the grounds of appeal dated 24.10.2018. He further explained that no GST is payable on the penalty paid by him on the unaccounted River Bed Material as imposed by the District Magistrate. The same is not covered as supply in Section 7(1)(d) of the GST Act. He also cited various CBEC circulars of the service tax era as well as GST provisions to buttress the point that the fines and penalties don't constitute supply of services. Even if held as supply, it is exempted under GST.

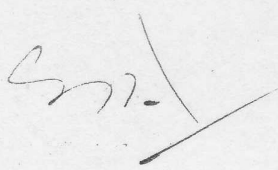
Regarding Abhivahan Shulk, he stated that any amount paid as consideration less than Rs. 5,000/- is not charged to GST under Sl.No. 9 of Notification No. 12/2017.

As regards the Khanij Sampada Shulk, the same is in the nature of a tax and not a fee for service provided, there being no quid pro quo. Hence, no GST is applicable.

In light of the afore-said submissions he requested a Ruling in favour of the appellant.

Discussion and Findings

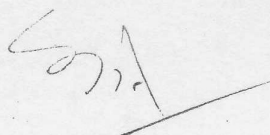
We have gone into the ruling of the AAR, the appeal memorandum and the submissions made at the time of personal hearing. The appeal against the ruling of AAR is limited to the extent enumerated above under (A) to (C), and we take up each of the three issues individually.



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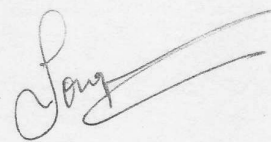
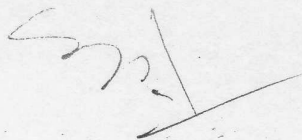
A. Penalty paid on stock of RBM on the orders of DM is outside the scope of supply or in the alternative it is an exempt service under GST and hence not taxable under RCM – The details, as are evident from Annexure-I of the Appeal Memorandum, are that a search was conducted at the place of business of the appellant by the local revenue department in co-ordination with the officials of the Mining Department and the Sub-Divisional Magistrate, Ramnagar, on the orders of the District Magistrate (DM) of Nainital on 13.03.2018 which resulted in detection of unaccounted stock of River Bed Material (RBM) at the place of business of the appellant. Thereafter, the DM levied a 'penalty' (as claimed by PSC) of Rs.19858100/- on the said unaccounted stock in terms of powers exercised under the Mines and Minerals (Development and Regulation) Act 1957, the Uttarakhand Secondary Minerals Rules 2001 read with Minerals Policy 2015. The appellant claims that since he has deposited the said 'penalty' amount with the District Geology. & Mining Department, the unaccounted stock becomes legal and the same can be supplied on payment of GST. He further states that since no GST was paid on purchase of such stock as the same was unaccounted, so the advance ruling was sought for clearing this ambiguity. The appellants have tried to make out a case that penalty imposed by the DM cannot be defined as 'service' in absence of quid pro quo and hence such penalty cannot be leviable to GST. They have cited numerous decisions of various higher judicial forum in support of their contention that penalty imposed by government agency cannot be considered as 'service' as defined in the GST act and rules.

At the very outset, we agree with the contention of the appellant that penalty cannot be considered as a consideration for any service since such an amount is paid for contravention of certain provisions of law made for general public. The penalty imposing/collecting agency is not expected to or is providing any service to the particular person who is paying the penalty. Penalties are inbuilt in provisions of law to ensure its strict compliance and it acts as a deterrent for violators. No quid pro quo, which is an essential ingredient for 'service' as held by a catena of decisions of the Apex Court and also lower judicial forum, is present when a person pays penalty to a government or semi government agency. The penalty is imposed by such an agency in the course of imparting its sovereign responsibilities and it is not done for any commercial consideration or for furtherance of business. Penalty is different from 'fees' collected by such agencies in as much as the agency is supposed to render certain specific service to a specific class of person in lieu of the fees.



We do not agree with the findings and rulings of the AAR regarding penalty being a service under "agreeing to the obligation to refrain from an act, or to tolerate an act or situation, or to do an act" category (TSH 9997- other services.). A plain reading of the description of the service shows that the first requirement is that there must be an 'agreement'. This service is applicable where there is a contract between two persons for completing a service and in case of failing to complete such service; the service provider is bound by the said contract to pay fine/penalty or demurrage charges. Such a contract specifically provides for the eventuality of delay/failure etc. which is to result in a liability to pay fine/penalty or demurrage charges, and that is why the GST Act has also provided for this eventuality by specifically deeming the act of agreeing to tolerate an act or situation as a supply of service in terms of para 5(e) of Schedule II to the GST Act. In such a situation, these amounts become a part of the overall taxable consideration agreed under the contract for that particular service. Hence, in such cases, the fine/penalty or demurrage becomes a part of the assessable value and is therefore taxable under GST. However, in case of penalties paid in terms of provisions of law of the land for contravention of certain legal provisions of that particular law, there is no contract or agreement between persons for violation of any law or rendering of any type of service otherwise and there is no quid pro quo. It is basically a punishment for violation of law and the monetary element of the penal provision is introduced into it to dissuade and to act as a deterrent and not for any commercial consideration or for furtherance of business. The penalty so collected, is used by the agency for the good of the general people. Hence, in such cases, the penalty does not satisfy the definition of 'consideration' as contained in GST Act and is therefore not liable to be taxed.

Now, coming to the present context, the exact nature of the amount, claimed by the appellant as 'penalty' has to be understood before the above inference is applied. We have gone through the notice of the District Magistrate dated 31.03.2018, issued to the appellant, through which Rs.19858100/- was demanded on the unaccounted stock of 25530 cu. Mtrs. of RBM. The notice categorically states that this amount consists of **royalty @ of Rs.770/- per cu.mt.** totalling to Rs.19658100/- (Rupees One crore ninety six lakhs fifty eight thousands and one hundred only) and a penalty of Rs.200000/- (Rupees two lakhs only). Thus, it appears that the appellants have tried to mis-lead the AAR, because the actual penalty is only Rs.200000/- (Rupees two lakhs only) and it is clearly and categorically mentioned in the demand notice of the DM.

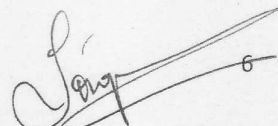
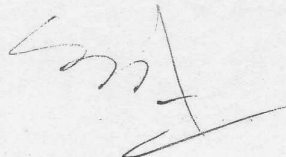


Section 2(31) of the CGST Act 2017 defines 'consideration' as—
(31) "*consideration*" in relation to the supply of goods or services or both includes—

(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:

Thus the amount of Rs. 19658100/- was paid by the appellant to the District Geology & Mining Department, Directorate of Industries, Govt. of Uttarakhand, **and not to the District Magistrate (as claimed in the Appeal Memorandum)**. Further, this amount was demanded as royalty on 25530 cu. Mtrs. of RBM of unaccounted stock on which royalty due to the State had been evaded by the appellant. The wordings of the demand notice of the DM were clear and unambiguous and there remains not even an iota of doubt about the nature of Rs. 19658100/- being royalty. Value of taxable service, as elaborated in Section 15 of the CGST Act 2017 clearly states inter alia that it must include "*any taxes, duties, cesses, fees and charges levied under any law for the time being in force...*". In the present case, the said royalty is charged and collected by the Government of Uttarakhand in terms of powers exercised under the Mines and Minerals (Development and Regulation) Act 1957, the Uttarakhand Secondary Minerals Rules 2001 read with Minerals Policy 2015 and is therefore a 'consideration' as defined in GST Act, since in lieu of that the District Geology & Mining Department had given him the right to remove and transport RBM and also has ensured the continued availability of the said RBM to the appellant and is therefore undoubtedly subject to levy of GST at the appropriate applicable rates. In fact, the appellants appear to have been paying or at least seem to be aware of, such GST on their legally procured and accounted stock of RBM, as is obvious from para 9 of Annexure-I of the appeal memorandum, wherein they have claimed that since no GST was paid on the purchase of unaccounted stock, so the advance ruling was sought. Therefore, we hold that the payment of Rs. 19658100/- was made by the appellants as royalty which is covered by Heading No. 9973 at entry serial no. 17 of Notification no. 11/2017-CT(R) dated 28.06.2017 and the GST is applicable at the rate prescribed therein.

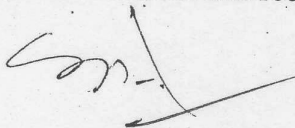


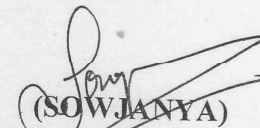
B. Taxability of Abhivahan Shulk and Khanij Sampada Shulk -

We find that the AAR has given a well reasoned ruling. Abhivahan Shulk is paid to TVPV only by the license holders and in lieu of this fee, the govt. agency is ensuring the right of passage as well as continued maintenance of supplies. Similarly, **Khanij Sampada Shulk** is paid only by the lease holders who have been given the right to extract, transport and sell RBM by the District Geology & Mining Department who are providing service to the lease holder through allowing right of mining and passage and ensuring supply and ensuring the fulfilment of all other conditions of the lease agreement. Both these fees are collected from a particular class of people i.e. holders of licence/lease allotted by the respective govt. agencies, who are providing the said services only to those particular group of people and not to the general populace. Thus quid pro quo between the person paying the fee and the collecting agency is very much present and both the cases qualify as 'services' and both the fees are 'consideration' in terms of GST Act definition. Accordingly both the fees are to be included in the taxable value, as defined in Section 15 of the GST Act 2017, of the service and are taxable to GST at appropriate rates as held by the AAR.

Ruling

In view of the foregoing discussions and findings, the Ruling No. 08/2018-19 dated 05.10.2018 of Uttarakhand Authority on Advance Ruling is partially modified only to the extent that out of Rs.19858100/- deposited by the appellant against demand notice of the District Magistrate, GST is to be paid by the appellant on Rs. 19658100/- (Rupees One crore ninety six lakhs fifty eight thousands and one hundred only) at the appropriate rate applicable for entry serial 17(vi) of Notification no. 12/2017-CT(R) dated 28.06.2017 on Reverse Charge Mechanism. No GST is payable on the balance Rs.200000/- (Rupees two lakhs only) since the same is a penalty. The assessing officer is to ensure assessment and recovery of GST in consonance with this ruling.


(S.H. HASAN)
CGST MEMBER


(SOWJANYA)
SGST MEMBER

I am directed to transmit herewith a certified copy of the order passed by the Appellate Authority for Advance Ruling for the State of Uttarakhand, Goods & Service Tax under Section 101 of the CGST/SGST Act 2017.

Manchale
11/01/19
Registrar रजिस्ट्रार
AAAR Uttarakhand अग्रिम विनिर्णय
अपीलीय प्राधिकारी
रजिस्ट्रार
उत्तराखण्ड अग्रिम विनिर्णय
अपीलीय प्राधिकारी

Copy To:-

1. The Chief Commissioner, CGST, Meerut Zone, Meerut.
2. The Commissioner, CGST, Commissionerate Dehradun.
3. The Commissioner, SGST, Uttarakhand.
4. Members of Advance Ruling Authority.
5. Concerned Officer, State Tax, Dehradun.
6. Jurisdictional Officers, Dehradun.
7. Appellant M/S Purewal Stone-Crusher, Ramnagar
8. Guard File

