

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/68/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/07)
Date: 17.09.2020

Name and address of the applicant	:	M/s Rachna infrastructure Pvt. Ltd. B-405, Angel Complex, Nr. Oasis Hotel, Nr. Income Tax Railway Crossing, Navrangpura, Ahmedabad, Gujarat 380009.
GSTIN/ User Id of the applicant	:	24AABCR9791F1Z4
Date of application	:	06.03.2020
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	a) Classification of goods and/or services or both. b) Applicability of a notification issued under the provisions of Act e) Determination of the liability to pay tax on any goods or services or both:
Date of Personal Hearing	:	17.08.2020 (Through video conference)
Present for the applicant	:	Shri Ativ Patel

M/s Rachna Infrastructure Pvt. Ltd. B-405, Angel Complex, Nr. Oasis Hotel, Nr. Income Tax Railway Crossing, Navrangpura, Ahmedabad, Gujarat 380009 having a GSTIN : 24AABCR9791F1Z4, is a company registered under the provisions of Central Goods and Service Tax Act, 2017 filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and Section 97 of the GGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the SGST Act.

2. M/s. Rachna infrastructure Pvt. Ltd. is mainly engaged in business of constructing state and national highways, city roads and bridges. In addition to the main business, the applicant is also engaged in business of mining of Black trap in the State of Gujarat. Mineral called “BLACK TRAP” is generally used for concrete aggregates and for road metalling. The said product viz. BLACKTRAP classifiable under Heading 2517 and are leviable to GST on their supply at the rate of 5%.

3. The Applicant has been granted a mining lease for extracting Mineral called “BLACKTRAP” at village : Borvai, Taluka : Dhansura, Distt: Sabarkantha, State: Gujarat by the State Govt. on various terms and conditions as per the Grant Order and Lease deed. The applicant not only sells the Black Trap which is been excavated from the mine in the market, but it also uses the Black Trap aggregate

material for its own use since the applicant main business is constructing state and national highways, city roads and bridges. On every tonne of Black Trap dispatched by the applicant, the applicant has to pay royalty to the State Govt of Gujarat for the right to use minerals including its exploration and evaluation.

4. The applicant has been granted a mining lease for a period of 20 years from 13th August 2013; that under part-V of the executed lease deed- To pay dead Rent or Royalty whichever is greater wherein it has been agreed that :-

Rate and mode of payment dead rent:

1. The lessee/ lessees shall not be liable to pay in respect of any yearly period both the dead rent reserved by Clause 2 of this part and also the sum of the royalties reserved by Clause-3 of this part, but shall pay only whichever of the said sum is greater.
2. Subject to the provision of clause I of this part, as from the day of during the subsistence of this lease the lessees shall pay to the Govt. Annual dead rent at the rate mentioned in second schedule of the said rules per mineral.

Rate and mode of Payment of royalty

3. Subject to the provisions of clause I of this part, the lessee/ lessees shall during the subsistence of this lease, pay to the Government at such times and in such manner as the Government may prescribe royalty in respect of any minor minerals removed by him/them from the leased area at the rates for the time being in force under Schedule I to the Gujarat Minor Minerals Concession Rules, 2008.
4. The applicant submitted that under part-VI of the executed lease deed it has been agreed that :

As per Clause 1

1. The rent and royalties mentioned in Part V of this Schedule shall be paid free from any deductions to the Government at District/ Sub-Treasury at Dhansura, Himmatnagar and in such manner as the Competent Authority may prescribe & E-payment.
5. The applicant submitted that in compliance to the said lease agreement they have paid annual dead rent or royalty as the case may be; that Gujarat Govt. has transferred its right to use Black Trap Minerals for commercial purpose for a period of 20 years against the payment of royalty or dead rent as the case may be by executing Lease deed with the applicant. Further, the applicant is liable to pay royalty in respect of mining lease for the right to use minerals including its exploration and evaluation. Royalty is in the nature of periodical payments to be made by the applicant (Lessee) under his covenants in consideration of the various benefits granted by the State govt (lessor). Royalty is collected by the State Govt. from the applicant for right given to them to extract mineral and is payable based on quantum of mineral removed/consumed.

6. The Applicant seeks Advance Ruling on the following questions :

What shall be the classification of service provided by the State of Gujarat to the applicant in accordance with Notification No. 11/2017-CT (Rate) dated 28.06.2017 read with further amendments made to it.

- (i) Whether said service can be classified under Tariff Heading 9973 as item No. (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. Or item No. (viia) Leasing or renting of goods as any other service under the said chapter?
- (ii) What shall be the rate of GST on given services provided by State of Gujarat to applicant for which royalty is being paid?

Grounds for application/interpretation of law :

7. The applicant submitted that he is of the view that service provided by the State govt. by transferring its right to use minerals including its exploration and evaluation against consideration received in form of Royalty or dead rent as the case may be is covered under chapter 9973 of service code either in

- Item No. (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 in which rate of GST applicable as same rate of central tax as on supply of like goods involving transfer of title in goods. Since Blacktrap attract 5% GST Rate, royalty paid for mining of Black Trap will attract 5% GST Rate OR
- Item No. (viia)- Leasing or renting of goods in which rate of GST applicable as Same rate of Central tax as on supply of like goods involving transfer of title in goods. Since, Blacktrap attracts 5% GST Rate, royalty paid for mining of Black Trap will attract GST Rate.

8. The applicant submitted the additional reply vide letter dated 16.08.2020 wherein they stated that the Gujarat Govt. Has granted a mining lease for Mineral called “ Black Trap” at Vill : Borvai, Taluka ; Dhansura, Dist. Sabarkantha, State Gujarat. They sold “black Trap” which excavated/ extracted from lease into the market after charging GST @ 5% on Taxable Sales Value from their customer.

9. The applicant submitted that Gujarat Govt. Has transferred its right to use Black Trap Minerals for commercial purpose along with title of “Black Trap” Minerals. It means that they have not only right to use Black Trap mineral but also they sell it to the market as if they are owner of Black Trap.

10. The applicant further submitted that as per Sr. No. 17 of Notification No. 11/2017- CT (Rate) dated 28.06.2017 as amended, “leasing or rental service”, Point (iv) deals with transfer of right in goods without the transfer of title and point No. (iii) deals with Transfer of right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other

valuable consideration; that point No. (iv) talks about without transfer of title, in their case the govt. has transferred title in goods along with transfer of right to use goods. Therefore, it is not applicable. On the basis of point No. (iii) above and if they go word by word it interprets as under :

- Transfer of the right to use any goods : In their case it is transfer of the right to Use Black Trap
- For any purpose : In their case it is for commercial/ business purpose.
- (whether or not for a specified period) : In their case it is for specified period i.e. 20 years.
- For cash, deferred payment or other : In their case it is payment of Valuable consideration Royalty.

Based on above they submit that service provided by the State government falls under point No. (iii) as explained above.

11. They also submitted that as per Notification No. 11/2017-CT (Rate) dated 28.06.2017 as amended, service provided by the State govt. may be fall under point No. (viiia) Leasing or renting of goods. Because in general manner it consider as the State govt. has ultimately lease goods to them for specified period and against which they require to pay royalty or dead rent as the case may be to the state govt.

12. The applicant submitted that after consideration the Notification No. 11/2017-CT (Rate) dated 28.06.2017 as amended that if any service not falling under point No.(i) to (viiia) then only it comes under point No. (viii) as residual service; that in their case as explained above and earlier explanations, the service provided by the state govt. falls either under point No. (iii) or (viiia) clearly. It does not fall under point No. (viii) as residual service.

Personal Hearing

13. Personal hearing in the matter was held on 17.082020. The authorised representative was appeared on behalf of the applicant and re-iterated the submission made in the Application.

Findings and Discussion

14. We have considered the submissions made by the Applicant in their application for advance ruling. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law. At the outset, we would like to state that the provisions of both the CGST Act and the GGST 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 SGST Act.

15. The applicant is engaged in the business of mining activity on a plot of land leased from the government of Gujarat and exploring, drilling, processing etc., of products derived from such mines and stone quarry lands. The applicant is quarrying "BLACK TRAP". BLACKTRAP material attracts GST at 5% under Heading 2517 in Schedule-I.

16. The Applicant has entered into Quarrying lease/license agreement for "BLACKTRAP" material with the Government of Gujarat on various terms and conditions. As per the terms and condition of the lease applicant is required to pay Annual Deed Rent or royalty as the case may be for the lease. Further, the applicant is liable to pay royalty in respect of mining lease for the right to use minerals including its exploration and evaluation. Royalty is in the nature of periodical payments to be made by the applicant (Lessee) under his covenants in consideration of the various benefits granted by the State govt (lessor). Royalty is collected by the State Govt. from the applicant for right given to them to extract mineral and is payable based on quantum of mineral removed/consumed

17. The applicant has obtained Government land on lease for quarrying BLACK TRAP Material and in turn applicant is required to pay Annual Rent deed or Royalty as the case may be to the Government of Gujarat. The leasing of the Government land to the applicant is considered as supply of service, as per sub-section (1) of Section 7 of the CGST Act, 2017, which is narrated as under:

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, licence, 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; and
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration.

(1A) where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

Further, the activities mentioned in the Entry No. 2 of the Schedule II relate to the activities to be treated as supply of goods or supply of services with regard to the Land and Building, which are given as under:

- (a) Any lease, tenancy, easement, license to occupy land is supply of service

Therefore, from the above, leasing of the Government land to the applicant to carry out the activity of the quarrying, is a supply of service to the applicant.

18. Regarding the classification of service received by the applicant Annexure to the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 have been

referred. The Annexure attached to the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 has defined the Service Accounting Code for each type of services, details of the following services, which are relevant to the transaction of the applicant is as under:

Heading 9973 Leasing or rental services with or without operator

Group 99731	Leasing or rental services concerning machinery and equipment with or without operator
Group 99732	Leasing or rental services concerning other goods
Group 99733	Licensing services for the right to use intellectual property and similar products

The service received by the applicant is not covered under Group 99731 or Group 99732. We, therefore, look at the services covered under Group 99733 or else by any other group.

The Group 99733 consists of the following Headings

Service Code (Tariff)	Service Description
997331	Licensing services for the right to use computer software and databases
997332	Licensing services for the right to broadcast and show original films, sound recordings, radio and television programme and the like
997333	Licensing services for the right to reproduce original art works
997334	Licensing services for the right to reprint and copy manuscripts, books, journals and periodicals
997335	Licensing services for the right to use research and development products
997336	Licensing services for the right to use trademarks and franchises
997337	Licensing services for the right to use minerals including its exploration and evaluation
997338	Licensing services for right to use other natural resources including telecommunication spectrum
997339	Licensing services for the right to use other intellectual property products and other resources nowhere else classified

From the above, it is seen that the nature of service received by the application is covered under the Service Accounting Code 9973 37 - Licensing services for the right to use minerals including its exploration and evaluation. The Government has been providing the service of licensing services for the right to use minerals after its exploration and evaluation to the applicant and applicant has to pay a consideration in the form of rent/ royalty to the Government for the same.

19. The Sectoral FAQ published by the C.B.E. & C. (<https://cbic-gst.gov.in/sectoral-faq.html>) in reply of Q. No. 30 of "Government Services" it is categorically state that royalty payment made towards Licensing services for exploration of natural resources is treated as supply of services. The extract of the same is as under:

“The Government provides license to various companies including Public Sector Undertakings for exploration of natural resources like oil, hydrocarbons, iron ore, manganese, etc. For having assigned the rights to use the natural resources, the licensee companies are required to pay consideration in the form of annual license fee, lease charges, royalty, etc. to the Government. The activity of assignment of rights to use natural resources is treated as supply of services and the licensee is required to pay tax on the amount of consideration paid in the form of royalty or any other form under reverse charge mechanism.”

20. Therefore, payment of rent/royalty is for license given to extract minerals and the amount of rent/royalty paid is based on the quantum of mineral extracted. Hence it is covered under Service Accounting Code 997337 - Licensing services for the right to use minerals including its exploration and evaluation, as it is a license to extract mineral ore and also the right to use such minerals extracted.

21. The applicability of GST rate for the aforementioned service is based on the classification of service. In the present case, the mining rights so granted are covered under the sub-heading 9973 37 that specifies - ‘Licensing services for the right to use minerals including its exploration and evaluation’

22. Regarding the rate of tax applicable on the above supply Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 is referred and found that the entries related to SAC 9973 are as under :

Sl. No.	Chapter Section or Heading	Description of Service	Rate (per cent)	Conditions
17	Heading 9973 (Leasing or rental services, with or without operator)	(i)		
		(ii)		
		(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)		
		(v)		
		(vi) Leasing or rental services, with or without operator, other than (i), (ii), (iii), (iv) and (v) above.	Same rate of central tax as applicable on supply of like goods involving transfer of title in goods	-
35	Heading 9997	Other services (washing, cleaning and dyeing services; beauty and physical well-being services; and other miscellaneous services including services nowhere else classified).	9	-

Since the services covered under the license to extract mineral and also the right to use such minerals extracted is not covered under any of the sub-entries (i) to (v) of Serial No. 17 as such these entries cover the services other than leasing of mine i.e. entry (i) & (ii) cover the service of “Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of goods other than Information Technology software” and “in respect of Information Technology software”, entry (iii) cover the Service of “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”, entry (iv) cover the service “Any transfer of right in goods or of undivided share in goods without the transfer of title thereof” and entry(v) cover the service “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 Act, 2017”, the service received by the applicant is not at all leasing of goods but rather “Licensing services for the right to use minerals including its exploration and evaluation accordingly, it needs to be seen whether the same is covered under Entry No. (vi) of Serial No. 17 attracting the tax rate which is same as that applicable on the supply of like goods involving transfer of title in goods or under the Serial No. 35 which is related to the other miscellaneous services including services nowhere else classified.

22.1 Serial No. 17 of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 was amended by Notification No. 31/2017-Central Tax (Rate), dated 13-10-2017 and entry no. (vi) was inserted, then after the amendment the entries look as under :

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
17	Heading 9973 (Leasing or rental services, with or without operator)	(i)		
		(ii)		
		(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)		
		(v)		
		(vi) Leasing of motor vehicles purchased or leased prior to 1st 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 1st July, 2020.	-
		(vii) Leasing or rental services, with or without operator, other than (i), (ii), (iii), (iv), (v) and (vi) above.	Same rate of central tax as applicable on supply of like goods involving	-

			transfer of title in goods	
35	Heading 9997	Other services (washing, cleaning and dyeing services; beauty and physical well-being services; and other miscellaneous services including services nowhere else classified).	9	-

22.2 Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017, Serial No. 17 was further amended by Notification No. 1/2018-Central Tax (Rate), dated 25-1-2018 and entry No. (vii) was inserted, then after the amendment the entries look as under :

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
17	Heading 9973 (Leasing or rental services, with or without operator)	(i)		
		(ii)		
		(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)		
		(v)		
		(vi) Leasing of motor vehicles purchased or leased prior to 1st 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 1st 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 or without operator, other than (i), (ii), (iii), (iv), (v), (vi) and (vii) above.	Same rate of central tax as applicable on supply of like goods involving transfer of title in goods	-
35	Heading 9997	Other services (washing, cleaning and dyeing services; beauty and physical well-being services; and other miscellaneous services including services nowhere else classified).	9	-

22.3 The Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017, Serial No. 17 was again amended by Notification No. 27/2018-Central Tax (Rate), dated 31-12-2018 and entry No. (viiia) was inserted, then after the amendment the entries look as under :

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
17	Heading 9973 (Leasing or rental services, with or without operator)	(i)		
		(ii)		
		(iii) Transfer of the right to use any goods for any purpose (whether or	Same rate of central tax as on supply of	-

		not for a specified period) for cash, deferred payment or other valuable consideration.	like goods involving transfer of title in goods	
		(iv)		
		(v)		
		(vi) Leasing of motor vehicles purchased or leased prior to 1st 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 1st 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))
		(viiia) Leasing or renting of goods	Same rate of central tax as applicable on supply of like goods involving transfer of title in goods	-
		(viii) Leasing or rental services, with or without operator, other than (i), (ii), (iii), (iv), (v), (vi), (vii) and (viiia) above.	9	-
35	Heading 9997	Other services (washing, cleaning and dyeing services; beauty and physical well-being services; and other miscellaneous services including services nowhere else classified).	9	-

22.4 Coming to the issue whether the license to extract mineral and also the right to use such minerals extracted is a leasing or rental service, it is clear that what is supplied by the Government is the lease of the right to extract and use mineral and that is not covered by any specific entries in the Serial No. 17 of the Notification and hence falls under the residual entry. We find that the applicant in its application has submitted that their service may cover either in Sl. No. (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”- in which rate of GST applicable as Same rate of Central as on supply of like goods involving transfer of title in goods OR Sl. No. (viiia) “Leasing or renting of goods”- in which rate of GST applicable as Same rate of central tax as on supply of like goods involving transfer of title in goods. Since, the service received by the applicant is not at all leasing of goods but rather “Licensing services for the right to use minerals including its exploration and evaluation”, the transaction is appropriately covered under the residual entry of Sl. No. ‘17’ of the aforesaid notification and not under Sl. No. (iii) or Sl. No. (viiia) as claimed by the applicant. The aforesaid description of service received by the applicant has subsequently been classified against item no. ‘vii’ [From 13-10-2017 to 24-1-2018] and item no. ‘viii’ from 25-1-2018 onwards. We also find that the GST rate so prescribed at Sl. No. 17(vi) or at clause (vii) or (viii) after amendment is not implementable due to the absence of any underlying goods.

22.5 On examining the Notification No. 27/2018-Central Tax (Rate), dated 31-

12-2018 which has been issued on the recommendations of the GST Council to further amend the Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017, we find that the same has been issued consequent upon decisions of the 31st GST Council meeting held on 22-12-2018. In this connection, for proper understanding of the issue, we have gone through the Agenda for 31st GST Council Meeting. Proposals recommended by Fitment Committee and Minutes of the Meeting of the Council available in GST Council website. Sl. No.'18' of Annexure-II of Agenda Item 6, which is relevant to the issue, is reproduced below:

Sl. No.	Proposal	Comments																
18.	To clarify the GST rate applicable on right to	Recommendation : - It is proposed that to bring clarity, the residuary rate entry for Heading 9973 in notification No. 11/2017-C.T. (R), dated 28-6-2017 may be split in two parts as follows.																
	use Intellectual Property and similar products other than IPR	<table border="1"> <thead> <tr> <th colspan="2">Existing</th> <th colspan="2">Proposed</th> </tr> <tr> <th>Description of Services</th> <th>Rate (%)</th> <th>Description of Services</th> <th>Rate (%)</th> </tr> </thead> <tbody> <tr> <td colspan="4">Sl. 17 Heading 9973 (Leasing or rental servies with or without operator)</td> </tr> <tr> <td>(viii) Leasing or rental services, with or without operator other than (i), (ii), (iii), (iv), (v), (vi) and (vii) above.</td> <td>Same rate of Central Tax as on supply of like goods involving transfer of title in goods.</td> <td>(viia) Leasing or renting of goods. (viii) Leasing or rental services, with or without operator other than (i), (ii), (iii), (iv), (v), (vi), (vii) and (viia) above.</td> <td>Same rate of Central Tax as on supply of like goods involving transfer of title in goods. 18</td> </tr> </tbody> </table> <p>Discussion : 1. Heading 9973 of scheme of classification of services under GST includes "Group 99733 : the licensing services for the right to use intellectual property and similar products". However, the rate notification No. 11/2017-C.T. (R), dated 28-6-2017, prescribes rate only for transfer or permitting the use or enjoyment of Intellectual Property Rights (IPR). No rate has been prescribed for transfer of intellectual property and similar products other than IPR. IPR, as held in several decisions of the Tribunal and the Courts, refers to rights in intellectual property protected by the relevant IPR law in force. Intellectual property not protected by IPR law in force cannot be termed as IPR.</p> <p>2. The residuary entry for the Heading 9973, i.e. entry Sl. No. 17(viii) prescribes GST rate as "same rate of Central Tax as on supply of like goods involving transfer of title in goods". However, the intellectual property does not have underlying goods and thus the prescribed rate does not apply to transfer of intellectual property and similar products other than IPR.</p>	Existing		Proposed		Description of Services	Rate (%)	Description of Services	Rate (%)	Sl. 17 Heading 9973 (Leasing or rental servies with or without operator)				(viii) Leasing or rental services, with or without operator other than (i), (ii), (iii), (iv), (v), (vi) and (vii) above.	Same rate of Central Tax as on supply of like goods involving transfer of title in goods.	(viia) Leasing or renting of goods. (viii) Leasing or rental services, with or without operator other than (i), (ii), (iii), (iv), (v), (vi), (vii) and (viia) above.	Same rate of Central Tax as on supply of like goods involving transfer of title in goods. 18
Existing		Proposed																
Description of Services	Rate (%)	Description of Services	Rate (%)															
Sl. 17 Heading 9973 (Leasing or rental servies with or without operator)																		
(viii) Leasing or rental services, with or without operator other than (i), (ii), (iii), (iv), (v), (vi) and (vii) above.	Same rate of Central Tax as on supply of like goods involving transfer of title in goods.	(viia) Leasing or renting of goods. (viii) Leasing or rental services, with or without operator other than (i), (ii), (iii), (iv), (v), (vi), (vii) and (viia) above.	Same rate of Central Tax as on supply of like goods involving transfer of title in goods. 18															

22.6 On thoroughly examining the recommendation of the 31st GST Council it is observed that amendment of Entry Sl. No. 17(viii) was approved merely to clarify the GST rate applicable to the right to use Intellectual Property and similar products other than IPR which are covered under Group 99733. The impugned service received by the applicant is appropriately covered under description 'Licensing services for the right to use minerals including its exploration and evaluation' which is classifiable under SAC 9973 37 under Group 99733. From perusal of Point No. 1 of the Discussion, it is very much clear that the impugned Service is not classifiable under entry No. (iii) and (iv) of the Notification No.

11/2017-Central Tax (Rate). Perusal of Point No. 2 of the Discussion makes it clear that the rate under pre-revised Entry No. (viii) does not apply to “Licensing services for the right to use intellectual property and similar products other than IPR”. Since the impugned Service is also the “Licensing services for the right to use intellectual property and similar products other than IPR”, the rate under pre-revised Entry No. (viii) is not applicable on it. Since the rate under newly created entry No. (viia) is same as that of pre-revised entry No. (viii), the impugned Service would not attract this rate and so would also not merit classification under the entry No. (viia). It is crystal clear that neither entry No. (iii) nor (iv) nor (viia) would cover the impugned Service. Point No. 2 ibid clearly mentions that for this Service (Licensing services for the right to use intellectual property and similar products other than IPR), the GST Council has carved out a new entry No. (viii) with the Service description “Leasing or rental services, with or without operator, other than (i), (ii), (iii), (iv), (v), (vi), (vii) and (viia) above” with rate of tax as 18%.

23. The rate of GST applicable on lease of goods may have been prescribed as the rate of GST applicable to supply of like goods involving transfer of title over the goods but the rate of GST prescribed for lease of goods can't be made applicable for leasing of mining area conferring the right to extract and appropriate the minerals. The lease by Government not being a lease of any goods, the conditional rate of tax applicable to sale of like goods cannot be imported for prescribing the rate of GST applicable to leasing of mining area. Therefore, in view of the above discussion of GST Council it is clear that amendments have been carried out vide the aforesaid notification No. 27/2018-CT (Rate) Dated 31.12.2018 to clarify the legislative intent as well as to resolve the unintended interpretations. It is well settled that the legislative intent cannot be defeated by adopting interpretations which is clearly against such interpretations.

24. We rely on the decision of the Hon'ble Supreme Court of India in the case of W.P.I.L. Ltd. v. Commissioner of Central Excise, Meerut, U.P. [2005 (181) E.L.T. 359 (S.C.)] which is also applicable to the present case, wherein a '3' Judges Bench of the Hon'ble Supreme Court while interpreting applicability of exemption notifications have observed in Paras 15 and 16 as follows :

“15. The Learned Counsel for the appellant is also right in relying upon a decision of this Court in Collector of Central Excise, Shillong v. Wood Craft Products Ltd. [(1995) 3 SCC 454]. In that case, this Court held that a clarificatory notification would take effect retrospectively. Such a notification merely clarified the position and makes explicit what was implicit. Clarificatory notifications have been issued to end the dispute between the parties.

16. In view of the consistent policy of the Government of exempting parts of power driven pumps utilized by the factory within the factory premises, it could not be said that while issuing Notification No. 46/94 of March 1, 1994, the exemption in respect of said item which was operative was either withdrawn or revoked. The action was taken only with a view to rescinding several notifications and

by issuing a composite notification. The policy remained as it was and in view of demand being made by the Department, a representation was made by the industries and on being satisfied, the Central Government issued a clarificatory Notification No. 95/94 on April 25, 1994. It was not a new notification granting exemption for the first time in respect of parts of power driven pumps to be used in the factory for manufacture of pumps but clarified the position and made the position explicit which was implicit.

25. The ratio of the aforesaid decision of the Hon'ble Supreme Court of India is squarely applicable to the instant case in as much as the amendment of the Notification No. 11/2017-(Rate)- Central Tax dated 28.06.2017 vide Notification No. 27/2018 (Rate)- Central Tax dated 31.12.2018 is of clarificatory notification and therefore impugned service 'Licensing services for the right to use minerals including its exploration and evaluation' which is classifiable under SAC 9973 37 will be covered under residual entry No. (viii) of the Notification No. 11/2017-(Rate) Central Tax dated 28.06.2017 as amended vide Notification No. 27/2018-CT (Rate) dated 31.12.2018. Since the insertion of entry (viiia) and (viii) vide said amendment Notification was being nature of clarification of the GST rate in respect of "right to use Intellectual Property and similar products other than IPR", the applicability of said residual entry (viii) would be from the date of Not. No. 11/2017-(Rate) Central Tax dated 28.06.2017 as the same view is held by Hon'ble Supreme Court of India. Accordingly, impugned service 'Licensing services for the right to use minerals including its exploration and evaluation' which is classifiable under SAC 9973 37 will be covered under residual entry No. (viii) of the Notification No. 11/2017-(Rate) Central Tax dated 28.06.2017 and would attract GST rate 18% {9% CGST+9% SGST } from the period of July, 2017 onwards.

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

RULING

- (i) What shall be the classification of service provided by the State of Gujarat to applicant in accordance with Notification No. 11/2017-CT (Rate) dated 28.06.2017 read with further amendments made to it?

Ans. 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-C.T. (Rate), dated 28-6-2017.

- (ii) Whether said service can be classified under Tariff Heading 9973 as item No. (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. Or item No. (viiia) Leasing or renting of goods as any other service under the said chapter?

Ans. Licensing services for the right to use minerals including its exploration and evaluation' which is classifiable under SAC 9973 37 will be covered under residual entry No. (viii) of the Notification No. 11/2017-(Rate) Central Tax dated 28.06.2017 as discussed above.

(iii) What is rate of GST on given services provided by State of Gujarat to M/s. Rachna infrastructure Pvt. Ltd for which Royalty is being paid?

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

(SANJAY SAXENA)

MEMBER

(MOHIT AGRAWAL)

MEMBER

Place: Ahmedabad

Date: 17.09.2020.