



HARYANA AUTHORITY FOR ADVANCE RULING,  
GOODS AND SERVICES TAX,  
HARYANA VANIJYA BHAWAN, PLOT NO 1-3, SECTOR 5,  
PANCHKULA-134151 (HARYANA)



ADVANCE RULING NO.HAR/HAAR/R/2018-19/42  
(In Application No.: 42/2018-19, dated 11.12.2018)

Name & Address of the Applicant	:	M/s Sainik Mining and Allied Services Ltd., Village Pichopa Kalan, Pichopa Kalan, Bhiwani.
GSTIN of the Applicant	:	06AAACS2791P1ZV
Date of Application	:	11.12.2018
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	:	Clause(a)- classification of any goods or services or both
Date of Personal Hearing	:	25.02.2019
Present for the Applicant	:	Sh. Yash Dhadha (C.A)

Memo No- 809  
Dated - 09/11/19

### 1. Factual Background:

- 1.1 As per submission of facts, M/s Sainik Mining And Allied Services Ltd, is a private limited company registered under the provisions of the Central Goods and Services Tax Act 2017 read with the provisions of the Haryana State Goods and Services Tax Act 2017 (hereinafter known as the "Assessee/Applicant").
- 1.2 That applicant is engaged in business of mining of Boulder in the State of Haryana. The product is classifiable under Tariff Heading **2517** and are leviable to GST on their supply at the rate of 5%.
- 1.3 That the applicant has been granted a mining lease for extracting "Stone along with associated minor minerals" at village "Pichopa Kalan ", Distt. Bhiwani, Haryana by the State Government on various terms and conditions as per the LOI and Lease deed (Annexure-3 & 4).
- 1.4 That further in accordance with the **part-III ("Covenants of the Lessee") in para 3(a) of the Lease deed** it has been agreed that the bid amount of Rs. 26 crore shall become "annual dead rent" as amount agreed to be paid by lessee and the rate of same shall increase depending upon the terms of auction. Further, **3rd proviso to para 3(a) of part-III of the executed lease deed provide:-**

"Provided further that lessee/lessees shall be liable to pay the dead rent or royalty in respect of each mineral, whichever is higher but not both."



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- 1.5 That under para 5 to part-III of the executed lease deed the "Mode of payment of dead rent/royalty and surface rent" has been decided wherein it has been agreed that
- a. The applicant shall deposit one advance installment of dead rent before commencement of mining operations.
  - b. Royalty on the mineral excavated and dispatched at the rate specified in the first schedule or dead rent, whichever is more and not both on monthly basis.
- 1.6 That in compliance to the said lease agreement the applicant has paid annual dead rent or royalty as the case maybe.
- 1.7 That in accordance to the said lease deed the applicant is required to deposit a monthly and an annual return in specified format i.e. MMP1 and MMP2 respectively wherein it has been asked to submit information about quality of minerals raised and dispatched from leased mines along with other information.
- 1.8 That in terms of the executed lease agreement the applicant is required to pay in addition to the annual dead rent, amount to the extent of 10% as rural development fund (for rehabilitation of environment).
- 1.9 That in light of above, the applicant wants to understand what is the nature of service which has been provided by The State Government of Haryana to it along with the rate of GST on it. Accordingly, the applicant has framed the following questions:
- a. What is the classification of service provided in accordance with Notification No. 11/2017-CT (Rate) dated 28.06.2017 read with annexure attached to it, by the State of Haryana to M/s Sainik Mining And Allied Services Ltd., for which royalty is being paid? Whether said service can be classified under 9973 specifically under 997337 as Licensing services for the right to use minerals including its exploration and evaluation or as any other service?
  - b. What is the rate of GST on given services provided by State of Haryana to M/s Sainik Mining and Allied Services Ltd. for which royalty is being paid?



**2. Record of Personal Hearing:**

2.1 Personal hearing in the case was conducted on 20.06.2018 which was attended by Sh. Yash Dhadda, C.A, (POA). The applicant had reiterated the submissions made in their application.

- a. In continuation to the submissions made earlier they further submitted that the Entry at Sr. No. 17 in Notification No. 11/2017-CT (Rate) has been amended vide Notification No. 27/2018-CT (Rate) dated 31.12.2018 and made effective from 01.01.2019.
- b. That now Sr. No.17 (vii) has been added and accordingly the Sr. No. 17(viii) has been amended. The revised Sr. No 17 of the said notification is now read as under:

Sr. No.	Chapter, Section or Heading	Description of Service	Rate (percent)	Condition
(1)	(2)	(3)	(4)	(5)
17	Heading 9973 (leasing or rental services with or without operator)	(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)]
		(vii) 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	9	-



		operator, other than (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) above		

- c. That the royalty which is being paid by the applicant to the state government is in respect of the minerals extracted or consumption or for onward supply. Thus it is specifically linked with the right to use of goods being provided to the applicant by the state government.
- d. That royalty is being paid to the government on the basis of a specific return named MMP1. That in the given MMP1, the quantity of mineral extracted and removed is being mentioned and royalty is being paid on said basis only. Thus, is evident from the said definition and procedure also that royalty is being charged by the state government for transfer of right to use minerals.
- e. That now with the amendment in entry for the HSN 9973 the clause (viii) has been added and clause (vii) has been amended as the service is not in relation to the renting of property, but since it still belongs to HSN 9973 and the exact classification of service is 997337, thus it shall classify as either transfer of right to use goods or leasing or hiring of goods i.e. minerals extracted in this case. The rate of GST in such case shall remain as applicable on supply of minerals which is 5%.
- f. That it is stressed that given service can fall under category of Sr. No. 17 (iii), (iv) or (viii) because these services are in relation to goods. The minerals in question are also goods and since these rights have been given in respects of given minerals only, hence for the purpose of GST rate, the given service can fall under Entry No. 17 (iii), (iv) or (viii) but not (vii).
- g. That in light of aforesaid facts and precedents it is contended that royalty or dead rent being paid by the applicant against mining lease



is a service classifiable under HSN 997337 and rate of GST shall be same as applicable on supply of like goods i.e. at 5% (for boulders).

**3. Discussion and finding of the authority:**

For the purpose of understanding the questions involved, the following relevant provisions of the law is being discussed below:

**3.1 Section 9** of the CGST Act 2017 which is charging section of Goods & Services Tax states:-

9(1) Subject to provisions of sub-section (2), there shall be levied a tax called the Central Goods and Services Tax on all Intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under Section 15 and at such rates, not exceeding 20%, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

**3.2** The term “**services**” has been defined under section 2(102). “**Services**” means anything other than goods, money and securities but includes activities relating to the use of money or its 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.

**3.3** That in exercise of power conferred under Section 9(1) of the CGST Act 2017, Notification No. 11/2017-CT (Rate) dated 28.06.2017 has been issued which notifies the Central Tax, on Intra-State supplies of service description along with Tariff Heading in accordance with the scheme of classification is specified which are subject to specific conditions.

**3.4** That along with the Notification No. 11/2017-CT (Rate) dated 28.06.2017, an annexure has also been appended with it which at Serial No.257 specify that the Group 99733 includes Sub-Heading 997337 which is for:-

*“Licensing services for the right to use minerals including its exploration and evaluation”.*

According to the applicant, the Royalty or the Dead Rent paid by the applicant to the Government is nothing but an amount paid for getting



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right to use the minerals granted to it for a specified period as per terms of the lease.

3.5 That in given transaction, the LOI and lease deed has been executed for leasing of mines. Hence, it has been argued that, the classification of services in accordance with Notification No.11/2017-CT (Rate) 28.06.2017, according to applicant is covered at Sr. No. 17 of the notification.

3.6 A perusal of classification of services shows that services of right to use natural resources classify under tariff 9973 and description of services under serial no. 17 (i) to (vii) does not cover such services of right to use minerals. Further, the Sr. No. 17(viia) as introduced vide notification No.27/2018 CT(Rate) dt. 31.12.2018 is reproduced below for better understanding:

Sr.No.	Chapter, Section or Heading	Description of Service	Rate (percent)	Condition
(1)	(2)	(3)	(4)	(5)
17	Heading 9973 (leasing or rental services with or without operator)	(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)]
		(viia) leasing or renting of goods	Same rate of central tax as applicable on supply of like goods involving transfer of title in goods	-



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	(viii) leasing or rental services with or without operator, other than (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) above	9	-

h. As is evident from above, that the service in question is ***“licensing services for right to use minerals”*** and not ***“leasing or renting of goods”*** and thus is not covered under Sr. No.17 (viii). Therefore, it would fall under the residual entry at Sr. No. 17 (viii). Being so, the rate of tax applicable on such services, as provided therein, shall be 9% CGST and 9% SGST

**4. Advance ruling under section 98 of the CGST/HGST Act 2017:**

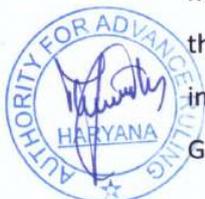
In the backdrop of above discussions and findings the advance ruling on the questions is pronounced as under: -

4.1 What is the classification of service provided in accordance with Notification No. 11/2017-CT (Rate) dated 28.06.2017 read with annexure attached to it, by the State of Haryana to M/s Sainik Mining And Allied Services Ltd., for which royalty is being paid? Whether said service can be classified under 9973 specifically under 997337 as Licensing services for the right to use minerals including its exploration and evaluation or as any other service?

**5. Ruling:**

5.1 The Licensing services for the right to use minerals including its exploration and evaluation, as per Sr. No. 257 of the annexure appended to notification no. 11/2017-CT (Rate), dated 28.06.2017 is included in group 99733 under heading 9973. The royalty/dead rent paid/payable to the Government by the applicant is consideration against the transfer of right to use minerals including its exploration and evaluation as per the lease granted by the Government to the applicant.

5.2 What is the rate of GST on given services provided by State of Haryana to M/s Sainik Mining and Allied Services Ltd., for which royalty is being paid?



S. Anand

6. **Ruling:**

6.1 The services for the right to use minerals including its exploration and evaluation, as per Sr. No. 257 of the annexure appended to Notification No. 11/2017-CT (Rate), dated 28.06.2017 is included in group 99733 under heading 9973 and is covered under Sr. No. 17(viii). Accordingly, as per Notification No. 11/2017-CT (Rate) as amended vide notification No. 27/2018-CT (Rate) dated 31.12.2018 and made effective from 01.01.2019, rate of GST on given services provided by State of Haryana to M/s Sainik Mining and Allied Services Ltd., for which royalty is being paid is 18% (9% CGST + 9% SGST).

Ordered accordingly.  
To be communicated.

01.03.2019  
Panchkula.

  
(Sangeeta Karmakar)  
Member CGST

  
(Madhubala)  
Member SGST

**Regd. AD/Speed Post**

M/s Sainik Mining and Allied Services Ltd.,  
Village Pichopa Kalan, Pichopa Kalan, Bhiwani.

Copy to:

1. The Commissioner, Central Goods & Service Tax, Panchkula Commissionerate, SCO 407-408, Sector-8, Panchkula (Haryana).
2. The Deputy Excise and Taxation Commissioner (ST), Bhiwani.
3. The Commissioner of Central Goods & Service Tax, 2<sup>nd</sup> floor, Pacific City Centre, Opposite Shangila Hotel, Near Jat Bhawan, Delhi Bypass, Rohtak, Haryana-124001.
4. GST Division Bhiwani, SCO-1, City Center HUDA, Near Basiya Bhawan, Bhiwani, Haryana-127021.