

Goods and Services Tax

AAR-Rajasthan-Where applicant is providing support services to mine owner relating to mining of minerals, said services are classifiable under HSN 9986.

Facts

- 1.) The applicant (M/s KSC Buildcon Private Limited) have signed a contract agreement for development work of mines including the earthwork of drilling, excavation, removal, transportation of green marble/serpentine and dumping of waste material.
- 2.) The applicant also need to build the roads for the movement of vehicles and also responsible for safe maintenance of the haul roads and have to deploy necessary personnel from our own or through some external agency for the same.
- 3.) The applicant also purchase the land other than that in possession for further mining operations at our own expenses and also need to deploy necessary mining machinery viz IR, Poclain, JCB, Loader, Trucks along with operation & maintenance personnel and complete labour including skilled & unskilled manpower, Certified Mines Engineer, Site Accountant and if required, a qualified Cost & Works Accountant also.
- 4.) The consideration of the above said works is fixed at Rs. 400 per MT on a target based production basis which shall be subject to raising of undistributed bills on monthly basis and that shall be the full & final consideration including all the above said described words.
- 5.) There shall also be a penalty for short production. The above said consideration will be subject to TDS deduction u/s 194C of Income Tax Act, 1961.

Issue before the AAR

- 1.) Applicability of SAC and Classification of the said work contract in either of the two codes viz. SAC 9973 – Leasing or rental services concerning machinery & equipment with or without operator or SAC 9954 – Composite supply of Work contract services?
- 2.) What is the difference between operator and manpower as per GST Provisions?
- 3.) Whether the Special Purpose Vehicles in the above work order are classified as “Machinery”?

Discussion and Findings of the AAR

- 1.) The applicant has been tasked to extract 2 lakh MT of Serpentine/Green Marble (hereinafter 'the mineral) per year at M/s AMP's Dungarpur mining site located at Simalwara, Rajasthan.
- 2.) In the agreement, the applicant has also been asked to deploy some earthmoving vehicles and manpower at the mining site.
- 3.) The applicant has to produce at least 8000MT Serpentine/Green Marble per day, otherwise he shall be charged a penalty for non-achievement of target.
- 4.) The applicant will get consideration at the rate of Rs. 400 per ton of the mineral extract.

- 5.) We find that the applicant has not taken lease of the mining land, in fact, whatever material is extracted, be it mineral or overburden material, is owned by M/s AMP.
- 6.) It seems that M/s AMP has engaged applicant mainly to do mining work on his behalf and extract the minerals against which applicant will receive consideration.
- 7.) The applicant has to develop infrastructure viz. site office, workers stay facility etc. as per his convenience and as per his need, M/s AMP has nowhere in the agreement stated that he requires or mandates the applicant to construct such facilities on the mining site.
- 8.) We observe that, the applicant is providing a support to M/s AMP in extraction of mineral and therefore it is a kind of supplying support Service. Whereas the supply cannot be categorized as that of goods due to the fact that minerals and mining site both are under the ownership of M/s AMP throughout agreement and post-agreement too. The applicant is just facilitating/supporting M/s AMP in extraction of the mineral.
- 9.) We further find that it is mentioned in the agreement that the applicant is supplying manpower and some special purpose vehicles like earthmovers to facilitate extraction of mineral from the mining site Further, this extracted mineral is also dispatched to M/s AMP although the same has not been explicitly mentioned in the agreement.
- 10.) The supply of manpower and vehicles is for the own benefit of the applicant, these supplies are not made to M/s AMP but to himself. Therefore, both these supplies cannot be categorized as independent supplies made to M/s AMP, the applicant is receiving a single consideration of Rs. 400 per ton of the mineral and no separate consideration other than this is earmarked in the agreement which shows that the supply of vehicle and manpower is no way related to M/s AMP.
- 11.) The contention of the applicant that it is either a Leasing or rental service of machinery with or without operator or a Works Contract Service is not tenable on following grounds –
 - a) The final output or basis of consideration, is quantum of mineral extracted, whereas, supply of machinery is not done with M/s AMP but to he himself.
 - b) Works Contract Services (hereinafter WCS) as defined in .Section 2(119) of CGST Act, 2017 is “a contract for building, construction, fabrication, completion, erection, installation, fitting out,, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution, of such contract. Thus,the foremost. conditions of WCS are that it leads to creation of an immovable property and then transfer of the said property in goods, whereas in the instant case, no immovable property is created and question of transfer is does not; arises as ownership of the property and minerals is with M/s AMP.
- 12.) The work undertaken by the applicant is a 'Support Service to Mining is covered under HSN 998622 and attracts GST @ 18% (CGST 9% + SGST 9%) as provided under the Notification No. 11 /2017-Central Tax (Rate) dated 28.06.2017 (as amended).
- 13.) Question 2 & 3 are beyond the scope of mandate given to this authority as per Section 97(2) of CGST Act, 2017, therefore, no ruling is given.

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