BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax

D. No. 5-56, Block-B, R.K. Spring Valley Apartments, Eedupugallu, Vijayawada-521151

Present

1. Sri. D. Ramesh, Additional Commissioner of State Tax (Member)
2. Sri. A. Syam Sundar, Additional Commissioner of Central Tax (Member)

AAR No. 28 /AP/GST/2020 dated: 16.12.2020

1	Name and address of the applicant	M/s. Andru Sujatha, D.No.79-2-1, Tilak Road, Rajahmundry, East Godavari, Andhra Pradesh-533103.
2	GSTIN	37ATJPA8601M1ZI
3	Date of filing of Form GST ARA-01	16.03.2020
4	Hearing (Virtual)	22.10.2020
5	Represented by	Sri S. Thirumalai, Advocate
6	Jurisdictional Authority –State	Assistant Commissioner (State Tax) Aryapuram Circle, Kakinada Division.
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	b) applicability of a notification issued under the provisions of this Act; and e) determination of the liability to pay tax on any goods or services or both;

ORDER

(Under sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub- section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

Authority for Advance Ruling - GST * Andhra Pradesh *

1. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and SGST Act, 2017 are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the APGST Act.
2. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s. Andru Sujatha, Rajahmundry, East Godavari District, Andhra Pradesh (hereinafter referred to as applicant), registered under the AP Goods & Services Tax Act, 2017.

3. Brief Facts of the case:

1. Ms. Andru Sujatha (Andru), an individual proprietor and a mining lease holder was granted mining lease rights for "LATERITE" mineral by Government of Andhra Pradesh vide G.O. Ms. No. 63 dated 24.07.2013 over an extent of 10 hectares of land of Reserve Forest in East Godavari District.

2. On reclassification of Laterite from Major to Minor Mineral, the government has announced fixed Royalty (seigniorage fee) for Laterite vide G.O. M.S No. 105 dated 13.11.2015. The rate of Royalty is Rs. 75/- M.T for non -metal Grade and Rs. 150/- M.T for Metal Grade.
3. The Central Government as per section 9(c) of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR) read with National Mineral Exploration Trust Rules, 2015 ('NMETR') has notified the establishment of a trust as a non-profit body to be called the National Mineral Exploration Trust (NMET), for which the mining lease holder shall pay a sum equivalent to two percent of the royalty paid in terms of the second schedule in such manner as prescribed by the Central Government.

4. The Government of Andhra Pradesh (GoAP) has notified establishment of District Mineral Foundations (DMF), vide G.O M.S. No 36 dated 14.03.2016, which shall collect 30% of royalty in this case, 10% in some other cases and also voluntary contributions, to fund the activities specified in the said G.O and these are in the nature of social welfare activities. The payments towards DMF are paid to GoAP (Mining & Geology Department) through online payment on their website.

4. Questions raised before the authority:

Whether in the facts and circumstances the contributions to National Mineral Exploration Trust (NMET) and District Mineral Foundation (DMF) under the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR) read with National Mineral Exploration Trust Rules, 2015 ('NMETR') and Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015 ('MMCDMFR') would qualify as consideration towards supply of mining service by Andhra Pradesh Government and consequently included for purpose of value of supply chargeable to GST under the Reverse Charge Mechanism in the hands of the applicant service recipient?

On Verification of basic information of the applicant, it is observed that the applicant falls under State jurisdiction, i.e. Assistant Commissioner (ST), Aryapuram Circle, Kakinada Division. Accordingly, the application has been forwarded to the jurisdictional officer and a copy marked to the Central Tax authorities to offer their remarks as per the Sec. 98(1) of CGST /APGST Act 2017.

In response, remarks are received from the jurisdictional officers concerned stating that no proceedings are lying pending or passed relating to the applicant on the issue, for which the Advance Ruling sought by the applicant.

5. Applicant's Interpretation of Law and Facts:

- Contribution to National Mineral Exploration Trust (NMET) and District Mineral Foundation (DMF) is pursuant to the provision of Mines and Minerals (Development and Regulation) Act, 1957 (MMDR) read with National Mineral Exploration Trust

Rules, 2015 ('NMETR') and Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015 ('MMCDMFR') respectively for central Government and State Government.

Further in terms of Rule 6 of 'NMETR' and Rule 2 of 'MMCDMFR', mining company must deposit a sum or fund/ contribution to NMET and DMF respectively. Such contribution is additional sum to be deposited in NMET and DMF in addition to the royalty amount.

- The said contribution is not by way of royalty, and said fund is to be utilised for the objectives set under the MMRD Act read with NMETR and MMCDMFR rules framed under the said Act.
- It is clear from the G.Os issued in respect of DMF and MERIT that these are in connection with grant of mineral rights and the statement of objectives of the MERIT states that the trust fund shall be utilized towards study, identification, acquisition of technology and equipment and also development of mineral database for exploration, exploitation and use by mineral based industries. Further, the funds of DMF are meant for the welfare and benefit of persons and areas affected by mining related operations. Therefore the principal purpose in the case of MERIT seems to be public good.
- The contributions of the funds as prescribed by the Central Government are to be deposited at the rate of 2% of the royalty and 30% of the royalty in the case of NMET and DMF respectively.
- From the plain reading of the above provisions, we understand that under MMRD Act, it is statutory obligation on the mining company to contribute to the trust and fund as prescribed and such contribution are not in the form of any fee or charges collected by the Central /State Government. In other words there is no quid pro quo.

"As per Section 2(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."

- The definition of 'consideration' under section 2 (31) is in relation to supply of goods and services or both.
- The contributions made towards NMET and DMF are not in lieu of any supply of service by the Government. These payments are collected under the MMRD and it has to be paid by the mining lease holder mandatorily.
- It is a well settled position that Taxes, Cesses or Duties levied are not consideration for any particular service as such. Therefore, NMET and DMF are nothing but tax collected by the State Government in exercise of statutory powers under the MMRD and therefore not liable to GST.
- Notification No. 13/2017 dated 28th June 2017 as amended from time to time (to the extent relevant) requires any business entity located in the taxable territory to pay tax on reverse charge basis against the services supplied by the Central Government, State Government, Union territory or local authority.
- Since the said contribution to NMET and DMF are not consideration towards supply of any service by the Government, the same would not attract GST under reverse charge mechanism in the hands of the applicant service recipient. The fact that the yardstick for the measurement of the contribution to the NMET and DMF are based on a per ton basis or with reference to Royalty payment to be made separately to

the State Government (on which appropriate GST is being paid) will not take away the force of the submission because in law it is a well settled principle that the measure or yardstick for collection of tax will not determine the character or the nature of levy which in this case is a statutory collection by way of tax. (see: Union of India & Ors. Vs. Bombay Tyre international Ltd. & Ors., (1984) 1 SCC 467) Hence, It has long been recognized that the measure employed for assessing a tax must not be confused with the nature of the tax.

6. Virtual Hearing:

The proceedings of Hearing were conducted through video conference on 22nd October, 2020, for which the authorized representative, Sri S. Thirumalai, Advocate attended and made certain additional submissions which are as under:

1. Contribution to National Mineral Exploration Trust (NMET) forms part of the Consolidated Fund of India.

The collections on account of NMET are not proceeds from business since there is no supply by the Government and the amounts collected are not consideration against such supply. This is evident from the fact that the NMET funds are credited to the Consolidated Fund of India. The applicant relies on Page 4 & 5 of the Annual report 2017-18 published by Ministry of Mines, Government of India and is publicly available on www.nmet.gov.in which states as under:

The accounting procedure for utilization of NMET funds to be finalized during the current financial year. It is proposed that the States will collect the NMET contribution in their Public Account and transfer these funds to the Consolidated Fund of India (CFI).

Reliance was placed on the observations in paragraph 9 of Hingir Rampur Coal Co.'s case. AIR 1961 SC 459 to the following effect:

"Tax recovered by public authority invariably goes into the Consolidated Fund which ultimately is utilised for all public purposes, whereas, a cess levied by way of fee is not intended to be, and does not become, a part of the Consolidated Fund. It

is ear-marked and set apart for the purpose of service for which it is levied. There is, however, an element of compulsion in the imposition of both tax and fee. When the Legislature decides to render a specific service to any area or to any class of persons, it is not open to the said area or to the said class of persons to plead that they do not want the service and therefore they should be exempted from the payment of the cess. Though there is an element of quid pro quo between the tax-payer and the public authority there is no option to the tax-payer in the matter of receiving the service determined by public authority."

2. Contribution to District Mineral Foundation (DMF) is nothing but payment of tax and not a consideration towards supply

The applicant submits that contribution to the DMF is not consideration towards supply of services but a statutory levy of taxes. The applicant relies on the decision of the Supreme Court in **Federation of Indian Mineral ... vs. Union of India on 13th October, 2017 ((CIVIL) NO. 43 OF 2016)**

The Supreme Court in Federation of Indian Mineral was dealing with the question of date of operation of notification levying DMF contribution. Paras 27 to 33 of the said judgement deliberated extensively on the validity of the DMF contribution in the realms of taxation scheme. The three components of taxing statue viz. subject of the tax, person liable to pay the tax and the rate at which the tax is levied were applied in deciding the validity of the contribution towards DMF. The relevant paras of the judgement are as under:

*"**31**. We may also note a similar view expressed in Principles of Statutory Interpretation by Justice G.P. Singh that: There are three components of a taxing statute, viz. subject of the tax, person liable to pay the tax and the rate at which the tax is levied. If there be any real ambiguity in respect of any of these components which is not removable by reasonable construction, there would be no tax in law till the defect is removed by the legislature.*

***32**. In view of the decision of the Constitution Bench of this Court that the specification of the rate of tax (or any compulsory levy for that matter) is an*

essential component of the tax regime, it is difficult to agree with the learned Additional Solicitor General that specifying the 12th, 14th edition revised by Justice A.K. Patnaik, former Judge, Supreme Court of India, page 876 maximum amount of compensation to be paid to the DMF in terms of Section 9B of the MMDR Act, being an amount not exceeding one –third of the royalty, satisfies the requirements of law. What is required by the law is certainty and not vagueness not exceeding one-third could mean one-fourth or one-fifth or some other fraction it is this uncertainty that is objectionable.

***33**. Therefore, our answer to the second question is that the petitioners are not liable to make any contribution to the DMF from 12th January, 2015."*

As referred to in Para 33, since the DMF contribution failed the three tests applicable for levy of tax, Supreme Court struck down the levy of DMF contribution from retrospective date.

The applicant submits that decision of Supreme Court in Federation of Indian Mineral clearly points to the fact that DMF contribution is nothing but the tax payable to the Government.

3. Contribution to District Mineral Foundation (DMF) is paid to the non –profit trust (DMF Trust) established by the State Government and not to the State Government Without prejudice the submissions made under Para 2, even if it is assumed that DMF contribution is a consideration towards supply, the applicant submits that the DMF Trust and the State Government are two different persons. The payment of tax under Para 5 of Notification 13/2017 dated 28th June 2017 on RCM basis is not applicable to the DMF Trust. Hence, the applicant being recipient of service from DMF Trust is not liable to pay the GST on RCM basis. The levy if at all applicable is on forward charge and shall be liable to be paid by the supplier of service i.e. DMF Trust.

DMF Trust is not local authority within the scope of Section 2(69) of the GST Law which is reproduced hereunder:

"As per Section 2 (69) of the GST law "local authority" means--

(a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution;

(b) a "Municipatity" 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."

The definition of the term 'local authority' as defined in Section 2(69) is exhaustive and not inclusive.

Therefore, the local authority includes only those that have been listed in Section 2(69). Sub clause (a) to (g) except (c) refers to institutions constituted under specific Articles of the Constitution. However, DMF Trusts constituted under the Mines and Minerals (Development and Regulation) Act, 1957 with a specific purpose of interest and benefit of persons and areas affected by mining related operations is not covered under any of the Articles of Constitution as referred in Section 2(69) ibid.

In view of the above, the applicant submits that the levy of GST on DMF, even if applicable, is liable to be discharged by the supplier of service i.e. DMF trust and not the recipient of service i.e. the applicant.

4. Royalty is only a measure of NMET and DMF contributions and cannot be equated with NMET and DMF and that NMET and DMF are not in respect of single supply of service i.e. licensing that warrants clubbing of all amounts i.e. Royalty, NMET and DMF under Section 15 of the GST law for the purpose of valuation.

The applicant submits that Royalty has been in existence and payable since inception under an agreement between the mining department and the applicant, whereas NMET and DMF were introduced by way of separate legislations for specific purposes.

There is no correlation between the Royalty payments and the NMET and DMF except for measurement of NMET and DMF which is based on Royalty.

If the intention had been to collect additional amounts akin to Royalty, the Government would have either increased the Royalty rate or collected the same as surcharge linked to Royalty.

Merely because, the NMET and DMF payments were based on Royalty amounts, the same cannot be conjoined and termed as one to levy the GST.

Without prejudice to the submissions made in Para 1-3 supra, if it is assumed that NMET and DMF are supply of services, the same cannot be termed as single service and therefore clubbed to arrive at value under Section 15 of the GST Law.

5. Discussion and Findings:

We have examined the issues raised in the application. The taxability of the goods and services supplied or to be supplied, as governed under the provisions of respective GST Acts are examined.

The applicant seeks clarification on two issues

a) Whether the contribution to National Mineral Exploration Trust (NMET) and District Mineral Foundation (DMF) would qualify as consideration towards supply of mining service.

b) If so, whether it is consequently included for purpose of value of supply chargeable to GST under the Reverse Charge Mechanism in the hands of the applicant, i.e., service recipient.

The applicant has emphasized the following points at the time of hearing about the amount contributed to DMF and NMET.

1. Contribution to National Mineral Exploration Trust (NMET) forms part of the Consolidated Fund of India.

   The applicant contends that the NMET collections by the Mining Department are not proceeds from business since there is no supply by the Government, but revenues collected by the Government of India. Hence, the question of Levy of GST does not arise.

2. Contribution to District Mineral Foundation (DMF) is nothing but payment of tax and not a consideration towards supply

   The applicant submits that contribution to the DMF is not consideration towards supply of services but a statutory levy of taxes. The applicant relies on the decision of the Supreme Court in **Federation of Indian Mineral ... vs. Union of India on 13th October, 2017 ((CIVIL) NO. 43 OF 2016)**

   The applicant submits that decision of Supreme Court in Federation of Indian Mineral clearly points to the fact that DMF contribution is nothing but the tax payable to the Government.

3. Contribution to District Mineral Foundation (DMF) is paid to the non –profit trust (DMF Trust) established by the State Government and not to the State Government even if it is assumed that DMF contribution is a consideration towards supply, the applicant submits that the DMF Trust and the State Government are two different persons. The payment of tax under Para 5 of Notification 13/2017 dated 28th June 2017 on RCM basis is not applicable to the DMF Trust. Hence, the applicant being recipient of service from DMF Trust is not liable to pay the GST on RCM basis. The levy if at all applicable is on forward charge and shall be liable to be paid by the supplier of service i.e. DMF Trust.

   DMF Trust is not local authority within the scope of Section 2(69) of the GST Law

4. Royalty is only a measure of NMET and DMF contributions and cannot be equated with NMET and DMF and that NMET and DMF are not in respect of single supply of service i.e. licensing that warrants clubbing of all amounts i.e. Royalty, NMET and DMF under Section 15 of the GST law for the purpose of valuation.

The applicant submits that Royalty has been in existence and payable since inception under an agreement between the mining department and the applicant, whereas NMET and DMF were introduced by way of separate legislations for specific purposes.

There is no correlation between the Royalty payments and the NMET and DMF except for measurement of NMET and DMF which is based on Royalty.

If the intention had been to collect additional amounts akin to Royalty, the Government would have either increased the Royalty rate or collected the same as surcharge linked to Royalty.

Merely because, the NMET and DMF payments were based on Royalty amounts, the same cannot be conjoined and termed as one to levy the GST.

Without prejudice to the submissions made in Para 1-3 supra, if it is assumed that NMET and DMF are supply of services, the same cannot be termed as single service and therefore clubbed to arrive at value under Section 15 of the GST Law.

As per Sec. 9B of the Mines and Minerals (Development & Regulation) Act, 1957, DMF (District Mineral Foundation) is a trust which is formed by the state government to work for the benefit and interest of the persons and areas, affected by mining-related operations. Any person who is liable to pay royalty towards the exploration of minerals shall pay a certain percentage of the royalty amount towards DMF.

As per Sec. 9C of the Mines and Minerals (Development & Regulation) Act, 1957, NMET (National Mineral Exploration Trust) is a trust which is formed by the Central Government which will use the funds accrued to the trust for the purpose of regional and detailed exploration. Any person liable to pay royalty towards the exploration of minerals shall pay 2% of the royalty amount to NMET.

As per Sec. 7 of CGST Act, 2017, GST is applicable on any supply which is made for a consideration by a person in the course or furtherance of business. The activities

undertaken by the trust for the welfare of the affected families can be treated as vocation and thereby it satisfies the definition of the term business and the amount received by the trust can be called as consideration as the person who is receiving the supplies and the person who is paying the amount of consideration need not be same under GST. Hence, the activity undertaken by the trust satisfies the definition of supply.

Further, section 15(2) of CGST Act elaborates the components that can be considered under "value of supply"

2) The value of supply shall include---

(*a*) **any taxes, duties, cesses, fees and charges levied under any law** for the time being in force **other than this Act**, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

From the above it is clear that the charges levied under MMDR Act are meant to be the charges levied under any law other than the GST Act. Thus, the payments made to DMF and NMET are very well includible under the 'value of supply' in addition to the royalties paid and can be called a 'total consideration' received for granting mining and leasing rights.

Hence, the argument of the applicant that Royalty is only a measure of NMET and DMF contributions and cannot be equated with NMET and DMF and that NMET and DMF are not in respect of single supply of service i.e. licensing that warrants clubbing of all amounts i.e. Royalty, NMET and DMF under Section 15 of the GST law for the purpose of valuation does not hold good.

The service provided is only the license to extract mineral ore and also the right to use such minerals extracted is a single service where the consideration is payable under three heads and in case any one of the payments is not made, the service provider, that is the Government would not issue the permit to use the mineral ore so extracted. Hence it forms the value of the supply under Section 15 and the charges for DMF and NMET being compulsory payments, would only amount to application of the amounts paid and still would form the value of the taxable services.

It is also inferred that the service is a single service as discussed above, there are no separate service providers for royalty, DMF and NMET and in all cases the Government which has provided the license to mine mineral ore and permitted the use of such mineral ore mined would be the person who has provided the service.

As per Entry No. 5 of Notification No. 13/2017-Central Tax (rate), GST on services supplied by Central Government State Government or Local Authority, to a business entity needs to be paid by such business entity under RCM.

In view of the foregoing, we rule as follows

RULING

(Under Section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)

Question: Whether in the facts and circumstances the contributions to National Mineral Exploration Trust (NMET) and District Mineral Foundation (DMF) under the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR) read with National Mineral Exploration Trust Rules, 2015 ('NMETR') and Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015 ('MMCDMFR') would qualify as consideration towards supply of mining service by Andhra Pradesh Government and consequently included for purpose of value of supply chargeable to GST under the Reverse Charge Mechanism in the hands of the applicant service recipient.

Answer: The contributions to National Mineral Exploration Trust (NMET) and District Mineral Foundation (DMF) qualify as consideration towards supply of mining service by Andhra Pradesh Government and they being

includible under value of supply, are chargeable to GST under the Reverse Charge Mechanism in the hands of the applicant, i.e., service recipient.

Sd/- D. Ramesh
MEMBER

Sd/- A. Syam Sundar
MEMBER

//t.c.f.b.o//

Deputy Commissioner (ST)
DEPUTY COMMISSIONER (ST)
O/o. Chief Commissioner of State Tax,
Government of A.P., Vijayawada

TO

1. M/s Andru Sujatha D.No.79-2-1, Tilak Road, Rajahmundry, East Godavari, (A.P) **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, Aryapuram Circle, Kakinada Division.**(By Registered Post)**
2. The Superintendent, Central Tax, CGST Danavaipeta Range, Rajamahendravaram Division. **(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada, (A.P)
2. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035. A.P. **(By Registered Post)**

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.

Authority for Advance Ruling - GST * Andhra Pradesh *