

THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING
FOR GOODS AND SERVICES TAX

(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/DS-RM/14/2022-23

Date- 03.01.2023

BEFORE THE BENCH OF

(1) Dr. D.K. Srinivas, **MEMBER (Central Tax)**
(2) Shri Rajeev Kumar Mital, **MEMBER (State Tax)**

Name and Address of the Appellant:	M/s. Worley Services India Pvt. Ltd., New Energy House, Ramkrishna Mandir Road, J B Nagar Kondivita, Andheri East, Mumbai - 400059
GSTIN Number:	27AAKCS1815L1Z2
Clause(s) of Section 97, under which the question(s) raised:	(a) Classification of any goods or services or both;
Date of Personal Hearing:	10.11.2022
Present for the Appellant:	(i) Rohit Jain (ii) Jignesh Ghelani (iii) Darshan Madekar.
Details of appeal:	Appeal No. MAH/GST-AAAR-/06/2022-23 dated 27.05.2022 against Advance Ruling No. GST-ARA-27/2020-21/B-38 dated 31.03.2022.
Jurisdictional Officer:	Deputy/Assistant Commissioner, Division - V, Mumbai East, CGST & C.Ex. Commissionerate.

(Proceedings under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

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

2. The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “CGST Act” and “MGST Act”] by M/s. **Worley Services India Pvt. Ltd.**, New Energy House, Ramkrishna Mandir Road, J B Nagar Kondivita, Andheri East, Mumbai - 400059. (“hereinafter referred to as “Appellant”) against the Advance Ruling No GST-ARA-27/2020-21/B-38 dated 31.03.2022., pronounced by the Maharashtra Authority for Advance Ruling (hereinafter referred to as “MAAR”).

BRIEF FACTS OF THE CASE

3.1 The Appellant is a company registered under the Indian Companies Act, 1956. The Appellant is part of Worley Parsons Limited, which is a global engineering company providing project delivery and consulting services to the resources and energy sectors and other complex process industries.

3.2 The Appellant is *inter alia* engaged in the provision of project management consultancy (hereinafter referred as ‘PMC’) services. The Appellant is registered under the Maharashtra Goods and Service Tax Act, 2017 (‘MGST Act’) having registration number 27AAKCS1815L1Z2.

3.3 The Appellant is one of the world’s largest engineering, procurement and construction management (hereinafter referred as ‘EPCM’) service providers engaged in the oil and gas, chemicals, metals and minerals sector. The Appellant has a strength of more than 4,500 professionally qualified people in India, who are providing PMC services and EPCM services to local and international customers. The PMC services are provided to various natural oil and gas companies as well as oil and gas mining and exploration companies.

3.4 Vedanta Limited (hereinafter referred to as the ‘VL’) is a globally diversified natural resources company which is engaged in the business of exploration and mining of various natural resources.

3.5 VL has entered into separate agreements dated 29.05.2018 and 10.01.2019 with the Appellant in relation to the two projects for supply of PMC services. The PMC services are customized and tailor made to suit the requirements of VL and further require extensive technical and sound expertise. As per the agreements, the Appellant is required to continuously review, monitor, manage and control all aspects of the execution of the Projects on behalf of VL to complete it with quality, on time and within the approved cost.

The Appellant is appointed to manage the Projects right from details to designing to commissioning and close out of Projects with VL.

3.6 In relation to the aforesaid scope of work, the Appellant raises invoices on VL for the PMC services provided. Notification No. 19/2019 - Integrated Tax (Rate) dated September 30, 2019, and effective from October 01, 2019, has amended Notification No.08/2017 – Integrated Tax (hereinafter referred as the “Rate Notification”) to *inter alia* include the following entries:

Sl. No.	Heading	Description of Service	Rate (per cent)
21	Heading 9983 (Other professional, technical and business services)	(ia) Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both	12
24	Heading 9986 (Support services to agriculture, hunting, forestry, fishing, mining and utilities)	(ii) Support services to exploration, mining or drilling of petroleum crude or natural gas or both.	12

3.7 In view of the above, the Appellant approached the MAAR seeking advance ruling on the following questions:

- (i) Whether the services provided by the Appellant are classified under Sl No. 24(ii) of heading 9986 of the Rate Notification as ‘*Support services to exploration, mining or drilling of petroleum crude or natural gas or both*’ under SAC 998621 and attracts GST @ 12% in terms of Sl. No. 24(ii) of Rate Notification.
- (ii) Alternatively, whether the services provided by the Appellant are classified under Sl No. 21(ia) of heading 9983 of the Rate Notification as ‘*Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both*’ and attracts GST @ 12% in terms of Sl. No. 21(ia) of Rate Notification.
- (iii) Further, if the subject services are not classifiable under the aforesaid entry, what would be the appropriate classification for the same and at what rate GST would be imposable?

3.8 Thereafter, the MAAR passed the order No. GST-ARA-27/2020-21/B-38 dated 31.03.2022(‘Impugned Order’) and held that the services provided by the Appellant are

neither covered under Sl. No. 24(ii) nor under Sl. No. 21(ia) of Rate Notification on the following grounds:

- The service code 998621 includes services provided to the oil and gas mining sector by way of actual participation in the mining activity, and in the subject case, it is actually the EPC contractor who is giving support services to VL by being responsible for all the engineering, procurement, and construction activities to deliver the completed Projects. In view of this the impugned services are not covered under Sl. No. 24(ii) of the Rate Notification
- The Explanatory Notes to service code 998341 is restricted to geological and geophysical consulting services and the Notes to service code 998343 is restricted to mineral exploration and evaluation and the impugned services cannot be considered as being connected to either geological and geophysical consulting services or mineral exploration and evaluation services. In view of this the impugned services are not covered under Sl. No. 21(ia) of the Rate Notification
- The said professional, technical and business services supplied by the Appellant to VL are clearly covered under the residual entry No. 21(ii) of the Rate Notification, attracting tax at the rate of 18%

3.9 Aggrieved by the 'Impugned Order' passed by the MAAR, the Appellant has filed the present Appeal on the following grounds, which have been urged without prejudice to one other.

GROUNDS OF THE APPEAL

THE IMPUGNED ORDER GROSSLY FAILED TO UNDERSTAND THE TRUE COMMERCIAL NATURE OF SERVICES PROVIDED BY THE APPELLANT TO VL

4.1 At the outset the Appellant submits that it is a settled principle of law that while determining the taxability of a transaction, it is important to understand its true commercial nature. Therefore, it is prudent to understand the significance and relevance of these activities vis-à-vis the mining operations carried out by VL.

4.2 In the present case, VL is the operator of the concerned oil and gas block. In order to bolster their mining activity at the block, VL has developed new facilities under the RDG Development Project as well as under the All Development/Production - Debottlenecking Project. It has contracted with an EPC contractor for the purpose of development of



Raageshwari well pads, pipelines and OHL, new RDG gas processing terminal with associated infrastructure and utilities, and a new 132 KV grid line as well as executed contracts with the EPC Contractor inter alia covering Tight Oil - ABH and Tight Gas — Wells for execution of development wells and surface facilities. The said new installations would increase prospect of mining and the pursuant sale of gas, procured from the fields in the Projects.

4.3 VL was required to review, monitor and manage the activities of such EPC contractor for the development Project at RDG as well as the All Development/Production - Debottlenecking Project, however, it has outsourced the same to the Appellant vide separate agreements covering the scope of PMC services. As per the agreements, all such operational, consulting and management services, related to the Project development at RDG as well as the All Development/Production - Debottlenecking Project, are carried out by the Appellant.

4.4 The Appellant have submitted that the pertinent Projects are essentially for development/augmentation of existing oil and gas fields. Accordingly, the services provided by the Appellant are integrally connected with the mining operations, such that the wholistic objective of augmentation of oil and gas facilities are fulfilled as per the prescribed schedules.

4.5 On the basis of the above, the Appellant have argued that the MAAR has failed to understand the true commercial nature of services provided by the Appellant to VL and has merely passed the Impugned Order on frivolous grounds inasmuch as it has not analyzed the nature of activities carried out by the Appellant.

SUPPLY OF SERVICES BY THE APPELLANT SHOULD BE CLASSIFIED AS 'SUPPORT SERVICES TO EXPLORATION, MINING, OR DRILLING OF PETROLEUM CRUDE OR NATURAL GAS OR BOTH UNDER SI. NO. 24(ii) OF HEADING 9986 OF THE RATE NOTIFICATION UNDER SAC 998621

4.6 In order to provide the impugned services, the Appellant has the work force of professionally trained engineers who possess the qualification, technical expertise and skill sets required for executing the Projects and achieving the desired objective. Such services are in the nature of operational assistance in any manner to VL, and merits classification as 'support services to exploration, mining or drilling of petroleum crude or natural gas, or both under SI. No. 24(ii) of heading 9986 of the Rate Notification under SAC 998621'.

4.7 The Appellant have made reference to the Scheme of Classification of Services ('Scheme of Classification') which forms part of the Rate Notification. The relevant extract of Sl. No. 24(ii) as contained in the Rate Notification is as follows:

Sl. No.	Heading	Description of services	Rate
24	Heading 9986 (Support services to agriculture, hunting, forestry, fishing, mining and utilities)	(ii) Support services to exploration, mining or drilling of petroleum crude or natural gas or both.	12%

4.8 The heading 9986 of SAC relates to 'Support services to agriculture, hunting, forestry, fishing, mining and utilities.' In this regard, the relevant portion of the SAC as contained in the Scheme of Classification is as follows:

Annexure: Scheme of Classification of Services			
Sl. No.	Chapter, Section Heading, or Group	Service Code (Tariff)	Service Description
(1)	(2)	(3)	(4)
454	Heading 9986		Support services to agriculture, hunting, forestry, fishing, mining and utilities.
462	Group 99862		Support Services to Mining
463		998621	Support services to oil and natural gas extraction
		998622	Support services to other mining nowhere else classified

4.9 Term 'support service' has a wide meaning
 Heading 9986 of the SAC relates to support services and *inter alia* covers mining. The term 'support services' has not been defined under the CGST Act, 2017. The principle of *nomen juris* suggests that where definition of a term is not provided in a particular Act, the definition of the same can be borrowed from any other Act or statute. The said principle has been recognized and used by Courts in order to determine the true nature of the term or phrase, in **State of Madras v. Ganon Dunkerley & Co. (Madras) Ltd.**, AIR 1958 SC 650 and **Association of Leasing and Financial Service Companies v. Union of India ('UOI')**, 2010 (20) S.T.R. 417 (SC).

10 In this regard, the term '*support services*' had been defined under Section 65(49) under the erstwhile Finance Act, 1994 (inserted w.e.f. 1.6.2012), which is as follows:

'(49) 'support services' means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis;'

4.11 The Appellant have submitted that since they have been outsourced the activity of management of the entire Projects, the said activities carried out by the Appellant squarely falls within the ambit of support services.

4.12 Referring to the description of the Heading 9986, the Appellant have submitted that the said heading includes all kinds of support services which are co-related *inter alia* to the activity of mining or exploration. The said entry envisages a wide spectrum of activities covered within its ambit. This can be gathered from the amendment made vide Notification No. 19/2019-Integrated Tax (Rate) dated September 30, 2019, wherein 'support services of exploration, mining or drilling of petroleum crude or natural gas or both' was substituted to read as 'support services to exploration, mining or drilling of petroleum crude or natural gas or both.' In this regard, the aforesaid amendment had widened the scope of services, in as much as, such services would cover all ancillary or incidental activities to the main activity of mining or exploration of natural gases, and not only those support services which directly involves mining or exploration of gas.

4.13 While there is no specific definition of the term 'to' in the Rate Notification, however, it has been most acceptable position in law¹ that in absence of any specific legal definition, the term used in common trade parlance may be resorted to. The term 'to' is generally understood as below:

Dictionary	Meaning
Words & Phrases Legally defined, LexisNexis, Fourth Edition	I think we ought to construe the word 'to' as meaning 'towards'. That is the sense in which the word is always used in all instruments connected with or relating to marine assurance. It has that meaning in a bill of lading, and I don't know why we should adopt a different meaning in this policy of insurance'. - <i>College v Harty (1851) 6 Ech 205 at 210, per Pollock CB</i>

4.14 From the above, it can be seen that the term 'to' indicates contact or proximity to the subject or, more specifically, means 'towards'. Applying this to the present case, the Appellant submits that the 'support services to exploration, mining....' would essentially mean support services which are 'towards' or are most closely related to, or in close proximity with the activities of exploration and mining.

4.15 The PMC services provided by the Appellant are evidently related to the activity of mining and hence would find place under the said entry.

Ambit of the term 'mining'

4.16 As submitted above, it is evident that the services provided by the Appellant are in the nature of support services. In order to classify the said activity within the ambit of the heading 9986 of the SAC, it is imperative that such services are required to be provided *inter alia* in support to mining. It is pertinent to note that the term 'mining' has not been defined under the CGST Act and the Rate Notification. Hence, in order to understand the scope and ambit of the said term, the following definitions of mining/mining operations/mines have been extracted for ease of reference:

Source	Meaning
The Law Lexicon Dictionary, 3rd Edition	Mining: the process or business of making or working of mines; the process of extracting from the Earth the rough ore, would seem to be the first step in the process; milling or reducing, the second step, to writ, the further separation of the materials found together, the one from other, and extracting from the mass the particular natural product desired.
Mines and Minerals (Development and Regulation) Act, 1957	(d) 'mining operations' means any operations undertaken for the purpose of winning any mineral
The Oilfields (Development and Regulation) Act, 1948	(b) 'mines' means any excavation for the purpose of searching for or obtaining mineral oils and includes an oil well

4.17 On the basis of the definitions extracted above, the Appellant have submitted that mining is the process of extracting of minerals/petroleum/natural gas, as the case maybe. The said term also includes within its ambit, the ancillary and incidental activities such as extraction,

purification, development of existing mining facilities, all of which is in relation to the activity of mining of minerals/petroleum/natural gas from the Earth. Thus, it has been submitted that not only, the activity of extraction would qualify as mining, but also, it would include development of existing mining facilities, in order to bolster the quantum of mined goods or increase in sales or efficiency.

4.18 It is pertinent to note that the activity of mining pertaining to extraction of oil and gas is carried out by VL in relation to Project 1 and Project 2 as outlined below:

Project 1

On a plain perusal of the agreement in relation to Project 1, it is clear that VL is the operator of the block, and it mines and processes gas from inter alia Raageshwari gas fields. In order to increase the gas sales in the concerned terminal, VL has proposed to develop new gas facilities by way of augmenting and increasing the present production capacity by constructing new well pads and improve pipelines. The development Project also includes upgrading the present gas facility and improving the capacity at RGT.

Project 2

On a plain perusal of the agreement in relation to Project 2, it is clear that surface facilities infrastructure in existing Aishwariya field shall be utilized and augmentation shall be done based on adequacy studies. The Project inter alia entails augmentation of existing intra-field gas pipeline network, increasing liquid gas handling capacity.

4.19 It is submitted by the Appellant that the activity of mining includes not only the activity of extraction, but also development of existing mining facilities. Accordingly, it is submitted that the activities carried out by VL under both the Projects come within the ambit of the term 'mining' in light of the definitions extracted above.

4.20 In light of above, the support services provided by the Appellant are integrally connected to the activity of mining and therefore, the supply of services provided by the Appellant is squarely covered within the ambit of Sl. No. 24(ii) of heading 9986 of the Rate Notification under SAC 998621. As a result, it is submitted that the said services would attract GST @ 12% in light of Sl. No. 24 (ii) of the Rate Notification as 'support services to exploration, mining or drilling of petroleum crude or natural gas or both'.

Circular clarifies scope of support services

4.21 The Appellant have relied upon the Circular No. 114/33/2019-GST dated October 11, 2019 ('Circular') wherein clarification on the scope of support services to exploration, mining or

drilling of petroleum crude or natural gas or both have been provided. The said Circular makes reference to the Explanatory Notes to the Scheme of Classification of Services which inter alia explanations with respect to service codes 998621 and 998622 (Support services to other mining n.e.c).

4.22 The relevant extract of SAC 998621 as provided in the Explanatory Notes to the scheme of classification of services is being reproduced hereinunder:

'998621 Support services to oil and gas extraction'

This service code includes derrick erection, repair and dismantling services; well casing, cementing, pumping, plugging and abandoning of wells; test drilling and exploration services in connection with petroleum and gas extraction; specialized fire extinguishing services; operation of oil or gas extraction unit on a fee or contract basis

.....'

4.23 Relying upon the aforementioned extract, the Appellant have submitted that the concerned Explanatory Note for 998621 uses the phrase 'includes', which has a very wide connotation, thereby giving the Chapter Heading an extensive scope. The said phrase used in the Explanatory Note clearly shows that the Chapter Heading is to be construed in the exhaustive sense and not *per se* in a restrictive sense. Reference in this regard has been made to following decisions:

- (a) **Tetragon Chemie Private Limited and Ors Vs CCE and Ors [2001 (138) ELT 0414 Tri-LB];**
- (b) **StoveKraft Pvt. Ltd. Vs State of Karnataka [2006(2) TMI 603];**
- (c) **Bharat Coop. Bank (Mumbai) Ltd Vs Coop Bank Employees Union [2007(4) SCC 685]**

4.24 In view of the inclusive nature of the phrase 'includes' used in the Explanatory Note to 998621 as well as in light of the judicial precedents, the services provided by the Appellant to VL will be classified under 'support services to exploration, mining or drilling of petroleum crude or natural gas, or both' under Sl. No. 24(ii) of heading 9986 of the Rate Notification under SAC 998621.

ALTERNATIVELY, THE SUPPLY OF SERVICES BY THE APPELLANT SHOULD BE CLASSIFIED AS 'OTHER PROFESSIONAL, TECHNICAL AND BUSINESS SERVICES RELATING TO EXPLORATION, MINING OR DRILLING OF PETROLEUM CRUDE OR NATURAL GAS OR BOTH' UNDER HEADING 9983 OF SI. NO. 21(ia) OF THE RATE NOTIFICATION

5.1 Without prejudice to the aforesaid submissions, in the event the supply of services by the Appellant do not merit classification under Heading 9986 of the SAC, the said services would merit classification as 'Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both' under SI. No. 21(ia) of heading 9983 of the Rate Notification. SI. No. 21 of Rate Notification provides the rate of tax leviable on the services meriting classification under the Heading 9983 of the SAC. The relevant portion of the said entry is reproduced hereinbelow:

Sl. No.	Heading	Description of services	Rate
(1)	(2)	(3)	(4)
21	Heading 9983 (Other professional, technical and business services)	(ia) Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both	12

The relevant portion of Heading 9983 of SAC as prescribed under the Scheme of Classification is as follows:

Annexure: Scheme of Classification of Services			
Sl No.	Chapter, Section Heading, or Group	Service Code (Tariff)	Service Description
(1)	(2)	(3)	(4)
296	Heading 9983		Other professional, technical and business services

5.2 Relying upon the aforesaid entries, they have submitted that on a bare reading of the aforesaid heading and corresponding service description, it is seen that the said entry is broad in its entirety, as it includes business services. They relied upon the definition of the term 'business' provided under Section 2(17) of the CGST Act, the relevant portion relied upon by the Appellant is being reproduced hereinbelow :

'(17) 'business' includes—

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit:

5.3 It has been further submitted that the aforesaid definition of 'business' is an inclusive definition; that it is settled law that the term 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute. The said word is succeeded by the phrase '*any trade, commerce, manufacture, profession,whether or not it is for a pecuniary benefit*'. The definition of the word 'business' under the CGST Act makes it amply evident that it covers within its ambit, a wide range of activities. The said definition would also include operational, consulting and management services.

5.4 Entry (ia) of Sl. No. 21 of Rate Notification was inserted vide Notification No. 19/2019 with effect from October 1, 2019. The aforesaid entry was introduced by the Government in order to classify particular services such as management and consultancy services relating *inter alia* mining, and which do not merit classification as support services to mining under Heading 9986 of the SAC.

5.5 The Appellant have further emphasized that Entry (ia) of Sl. No. 21 of Rate Notification uses the phrase '*relating to*', which signify that any professional, technical and/or business services provided relating to mining, would merit classification under the said entry. The phrase '*relating to*' or '*in relation to*' is a very broad expression and has a wide ambit. The Hon'ble Supreme Court in *Doypack Systems (P) Ltd Vs. UOI, [1988 (36) E.L.T. 201 (SC)]*, has held that the term '*in relation to*' is a very broad expression, which pre-supposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context. The term '*relating to*' has been held to be equivalent to or synonymous with '*concerning with*' and '*pertaining to*'. Therefore, it is submitted that entry (ia) of Sl. No. 21 includes a broad range of services which pertain or concern with the activity of mining.

5.6 It is further submitted that PMC services provided by the Appellant in relation to the Projects are not in the nature of generic management services which can be provided by any service provider, as the said services are customized and tailor made to suit the requirements of the customers and further require extensive technical and sound expertise in the field of oil and gas, built over many years. Hence, in the present case, is submitted that the supply of services by the Appellant to VL in relation to the mining activities under the Projects, which

are technical in nature, merits classification under heading 9983 of the SAC. Accordingly, by virtue of Sl. No. 21(ia) of the Rate Notification, it is submitted that the said activity gets squarely covered within the broad ambit of 'Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both' and consequently attracts GST @12%.

RESPONDENT'S/DEPARTMENT'S SUBMISSIONS

6 The Jurisdictional Officer vide their letter dated 23.06.2022 have made the following submissions:

- (i) The service code 998621 "includes services provided to the oil and gas mining sector by way of actual participation in the mining activity, and in the subject case, it appears that it is actually the EPC contractor who is giving support services to VL by being responsible for all the engineering, procurement and construction activities to deliver the completed projects.
- (ii) The impugned activity is not covered under Heading 998621 and therefore the first question raised by the applicant will have to be answered in the negative.
- (iii) From reading of the circular and the relevant explanatory notes to service codes 998341 and 998343 of the scheme of classification of services, it is clear that the impugned services are not covered by the said explanatory notes since the notes to service code 998341 is restricted to Geological and geophysical consulting services and the notes to service code 998343 is restricted to mineral exploration and evaluation and the impugned services cannot be considered as being connected to either geological and geophysical consulting services or mineral exploration and evaluation of services. Thus, it is observed that the impugned services are not covered under Sr. No. 21(ia) also of notification 11/2017-CTR dated 28.06.2017 as amended by notification No. 20/2019 CTR dated 30.09.2019(SAC 9983).
- (iv) Even though the subject services consist of professional, technical and business services, the same are not covered under Sr.No. 21(ia)(SAC 9983) and Sr.No. 24(SAC 986) of Notification 11/2017-CT® dated 28.06.2017 as amended. Therefore, the said professional , technical and business services supplied by the Appellant to VL are clearly covered under the residual Entry No. 21(ii) of Notification 11/2017-CT(R) dated 28.06.2017 as amended, attracting tax rate of 18%.

PERSONAL HEARING DT. 10.11.2022

7. The personal hearing in the matter was conducted on 10.11.2022, which was attended by Shri Rohit Jain, Shri. Jignesh Ghelani, and Shri Darshan Madekar on behalf of the Appellant, wherein they reiterated their earlier submissions made while filing the Appeal under consideration.

DISCUSSIONS AND FINDINGS

8. We have gone through the Appeal memorandum encapsulating facts of the case and the grounds of appeal. We have also gone through the impugned MAAR Order bearing No. GST-ARA-27/2020-21/B-38 dated 31.03.2022 ('hereinafter referred to as the "**Impugned Order**") wherein it has been held that the services provided by the Appellant are neither covered under Sl. No. 24(ii) nor under Sl. No. 21(ia) of the Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 as amended (hereinafter referred to as the "**Rate Notification**"), on the following grounds:

- (i) The service code 998621 includes services provided to the oil and gas mining sector by way of actual participation in the mining activity, and in the subject case, it is actually the EPC contractor who is giving support services to VL by being responsible for all the engineering, procurement, and construction activities to deliver the completed Projects, and therefore, the impugned services are not covered under Sl. No. 24(ii) of the Rate Notification;
- (ii) The Explanatory Notes to service code 998341 is restricted to geological and geophysical consulting services and the Notes to service code 998343 is restricted to mineral exploration and evaluation and the impugned services cannot be considered as being connected to either geological and geophysical consulting services or mineral exploration and evaluation services, and therefore, the impugned services are not covered under Sl. No. 21(ia) of the Rate Notification;
- (iii) Further, the said professional, technical and business services supplied by the Appellant to VL are clearly covered under the residual entry No. 21(ii) of the Rate Notification, attracting tax at the rate of 18%.

9. On perusal of the above records and the impugned order passed by the MAAR, the moot issues before us are as under:

- (a) Whether the impugned PMC (Project Management Consultancy) services provided by the Appellant can be construed as "support services to exploration, mining or drilling of petroleum crude or natural gas or both" as enumerated under the entry at Sl. No. 24(ii) of the Rate Notification attracting GST at the rate of 12%;

(b) If answer to the above question is in negative, whether the impugned services provided by the Appellant can be construed as “Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both” under the entry at Sl. No. 21(ia) of the Rate Notification attracting GST at the rate of 12%;

(c) If the answer to the above question is also negative, then what will be the classification of the impugned services, and what will be the rate of tax thereon?

10. Now, we proceed to examine the first moot issue as to whether the impugned PMC (Project Management Consultancy) services provided by the Appellant can be construed as “support services to exploration, mining or drilling of petroleum crude or natural gas or both” as enumerated under the entry at Sl. No. 24(ii) of the Rate Notification attracting GST at the rate of 12%. In this regard, the Appellant have relied upon the definition of “support services” as provided under section 65(49) of the erstwhile Finance Act, 1994 as the support services have not been defined under the CGST Act, 2017. Section 65(49) of the erstwhile Finance Act, 1994 reads as under:

'(49) 'support services' means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis;'

11. Relying upon the aforesaid definition of support services, the Appellant have contended that since they are carrying out the functions pertaining to the management and supervision of the Project which should otherwise have been carried out by the Appellant’s client, Vedanta Limited (hereinafter referred to as “VL”), but the same have been outsourced to them in terms of the agreement entered between them, therefore, they are providing support services to their client. They further argued that since the impugned services provided by them are pertaining to the projects which would support in increasing the mining activities of their client, therefore, their services would aptly be construed as support services to exploration, mining or drilling of petroleum crude or natural gas or both” as enumerated under the entry at Sl. No. 24(ii) of the Rate Notification. They have also stressed upon the amendment carried out in the Notification No. 8/2017-I.T. dated 28.06.2017 vide Notification No. 19/2019 –I.T. dated 30.09.2019 wherein ‘support services ‘of’ exploration, mining or

drilling of petroleum crude or natural gas or both' was substituted to read as 'support services 'to' exploration, mining or drilling of petroleum crude or natural gas or both.' In this regard, the Appellant have contended that the aforesaid amendment had widened the scope of services, in as much as, such services would cover all ancillary or incidental activities to the main activity of mining or exploration of petroleum crude and natural gases, and not only those support services which directly involves mining or exploration of gas. They have also referred to the various dictionary meanings of the word 'to' for deriving the interpretation of the clause "support services to exploration, mining or drilling of petroleum crude or natural gas or both", and eventually derived the meaning of word "to" used in the aforesaid clause to be construed as "towards" or "concerned". Based on this, they have contended that since their management activities related to the projects are ultimately directed towards the mining of petroleum crude or natural gas or both, their services would be construed as support services to exploration, mining or drilling of petroleum crude or natural gas or both", falling under entry at Sl. No. 24(ii) of the Rate Notification. They have also made reference to the Circular No. 114/33/2019-GST dated October 11, 2019 ('Circular') wherein clarification on the scope of "support services to exploration, mining or drilling of petroleum crude or natural gas or both" has been provided. The said Circular has made reference to the Explanatory Notes to the Scheme of Classification of Services which inter alia includes the explanation of the SAC 998621, which has been extracted as under:

'998621 Support services to oil and gas extraction'

This service code includes derrick erection, repair and dismantling services; well casing, cementing, pumping, plugging and abandoning of wells; test drilling and exploration services in connection with petroleum and gas extraction; specialized fire extinguishing services; operation of oil or gas extraction unit on a fee or contract basis

.....

12. Based on the aforementioned provision of the Circular, the Appellant have argued that the concerned Explanatory Note for 998621 uses the phrase 'includes', which has got a very wide connotation, thereby giving the Chapter Heading an extensive scope, which would squarely cover their activities related to the management of projects, under the above service code, i.e., 998621. In order to strengthen their contention, they have relied upon various court rulings wherein the scope and interpretation of the word "include" has been derived by

the court in the extensive sense and not in restrictive sense, and thereby, assigning a very connotation to the word “include”.

We have carefully considered the above contentions put forth by the Appellant. In this regard, first we would like to examine the relevant entry, i.e., entry at Sl. No. 24(ii) of the Rate Notification, which is being reproduced herein under:

Sl. No.	Heading	Description of Service	Rate (per cent)
24	Heading 9986 (Support services to agriculture, hunting, forestry, fishing, mining and utilities)	(ii) Support services to exploration, mining or drilling of petroleum crude or natural gas or both.	12

13. On perusal of the aforesaid entry, it is seen that the aforesaid entry *inter alia* contains the phrase “support services”. In this regard, we are inclined to agree with the interpretation drawn by the Appellant wherein they have relied upon the definition of the support services as provided under the Finance Act, 1994 as the same has not been defined under the CGST Act, 2017, and thereby, the Appellant’s activities related to the project management, which were otherwise the responsibilities and functions of the Appellant’s client, VL, can be construed as support services attributing to the reason that the impugned activities of management and supervision of the projects have been outsourced by VL to the Appellant as per the agreement entered between them.
14. Further, the aforesaid entry under Sl. No. 24(ii) of the Rate Notification *inter alia* contains the term “mining”, which is relevant in the context of the present case. Since the meaning of the term “mining” has not been provided under the CGST Act, 2017, we would resort to the dictionary meaning of the said term, which is being reproduced hereinunder:

As per Cambridge Dictionary:

the industry or activity of removing substances such as coal or metal from the ground by digging:

15. Thus, on perusal of the aforesaid meaning of the term “mining”, it is observed that, in common parlance, mining is construed as digging up of earth for extracting something valuable. It is further observed from the aforesaid notification entry under Sl. No. 24(ii)

that the phrase support services and the phrase mining of petroleum crude or natural gas or both have been connected with the word “to”, which has been interpreted and elaborated by the Appellant under their submissions made hereinabove. In this regard, the Appellant have interpreted that the meaning of the term “to” should be construed as “**towards**” or “**concerned**”. Here also, we tend to agree with the interpretation and meaning drawn in respect of the word “to” on the basis of the dictionary meaning of the said word. Now, after having drawn the interpretation and meaning of the aforesaid words and phrases, we proceed to interpret the scope of the pertinent entry, i.e., entry under Sl. No. 24(ii) of the Rate Notification. On bare perusal of the said entry and on application of the fundamental principle of literal rule of interpretation, it is observed that the said entry covers only such activities or services which are used directly in the mining operations as understood by the aforesaid dictionary meaning of the term “mining” which essentially entails the excavation of the land or sea to extract the valuable substances therefrom. In this regard, we would also like to refer to the explanatory note to the scheme of classification of services which inter alia indicates the scope and coverage of the pertinent entry by illustrating certain activities which are to be included under the specific Chapter Heading, group or service code. In the context of the case, the relevant service code under the Chapter Heading 9986, having description as “**Support services to agriculture, hunting, forestry, fishing, mining and utilities**”, is 998621 which bears the description “**Support services to oil and gas extraction**”, under which the Appellant intends to classify their services. The relevant extracts of the said explanatory note is being reproduced hereinunder:

‘998621 Support services to oil and gas extraction

This service code includes derrick erection, repair and dismantling services; well casing, cementing, pumping, plugging and abandoning of wells; test drilling and exploration services in connection with petroleum and gas extraction; specialized fire extinguishing services; operation of oil or gas extraction unit on a fee or contract basis

.....

16. On perusal of the above provisions made in the said explanatory note to the scheme of classification of services, it is adequately evident that the activities, which merit classification under SAC 998621, are in the nature of physical performance or activities which are being directly used in the mining and extraction operations whereas the services

provided by the Appellant are not so as the said services are in the nature of review, monitoring, management and supervision of the project works which are done towards realization of mining activities. Hence, we agree with the MAAR observation wherein it has been held that it is the services provided by the EPC company who are undertaking the actual infrastructural work for increasing the production capacity of their client, VL, would be classified under the entry at Sl. No. 24(ii) of the Rate Notification, and not the Project Management Consultancy services provided by the Appellant which are not directly concerned with the mining operation.

17. Further, the use of the word “include” in the pertinent explanatory note to SAC 998621 does not suggest in any manner that the activities which are not similar in the nature and import to the ones enumerated in the said explanatory note will be covered under the scope of the subject SAC. Since, the Appellant’s activities are not in the similar nature to those of activities enumerated under the subject explanatory note, hence there is no question of inclusion of the impugned services under the SAC 998621. Thus, the Appellant’s contention made in this regard is erroneous, and hence, not tenable.
18. As regards the Appellant’s contention with respect to the amendment in the Notification No. 8/2017-I.T. (Rate) carried out by the Notification No. 19/2019 dated 30.09.2019 wherein against entry at Sl. No. 24, in item (ii), ‘support services ‘of’ exploration, mining or drilling of petroleum crude or natural gas or both’ was substituted to read as ‘support services ‘to’ exploration, mining or drilling of petroleum crude or natural gas or both’, thereby, widening the scope of the pertinent entry to such an extent that the said entry would aptly include the impugned services, it is opined that the said substitution appears to be more in the grammatical nature rather than the intention of widening the scope of the pertinent entry as the preposition “to” substituted in place of the preposition “of” removes the ambiguities, if any, and add more relevance and meaning to the clause of the pertinent entry. Thus, the Appellant’s contention put forth in this regard is fictitious, and hence, not tenable.
19. The Appellant have further contended that in the event services by the Appellant do not merit classification under Heading 9986 of the SAC, the said services would merit classification as ‘Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both’ under Sl. No. 21(ia) of heading 9983 of the Rate Notification. It is submitted by the Appellant that Entry (ia) of Sl No. 21 of Rate Notification uses the phrase ‘other professional, technical and business services’, which has a broad connotation to inter alia include PMC services rendered by professionals of their

company. They further contended that since the term 'mining' is wide enough to include within its ambit, ancillary and incidental activities such as extraction, purification, development of existing mining facilities, all of which is in relation to the activity of mining of minerals/petroleum/natural gas from the Earth. Accordingly, the term 'mining' would also include development of existing oil and gas facilities to strengthen the mining activities carried out at the block. In this regard, it is submitted that PMC services supplied by the Appellant are incidental to the activity of mining and would accordingly fall under heading 9983 of the Rate Notification under 'other professional, technical and business services relating to exploration'.

20. The Appellant further relied upon the Circular 114/33/2019-GST dated October 11, 2019 ('Circular') wherein it has been stated that most of the activities associated with exploration, mining or drilling of petroleum crude or natural gas fall under heading 9986 of the SAC. Further, it has been clarified that certain services such as technical and consulting services in relation to exploration, would merit classification under the Heading 9983 of the SAC. The relevant extract of the Circular is reproduced hereinbelow:

'2. The matter has been examined. Most of the activities associated with exploration, mining or drilling of petroleum crude or natural gas fall under heading 9986. A few services particularly technical and consulting services relating to exploration also fall under heading 9983. Therefore, following entry has been inserted under heading 9983 with effect from 1st October 2019 vide Notification No. 20/2019- Central Tax (Rate) dated 30.09.2019;

'(ia) Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both'.

21. The Appellant have further contended that the said Circular has not provided an exhaustive list of services which would merit qualification under Sl. No. 21(ia) of Rate Notification and submitted that certain technical and consulting services which are not specifically covered under the Heading 9986, would get covered under the Heading 9983 of the Services Accounting Code. In this regard, they have further contended that Entry (ia) to Sl. No. 21 of the Rate Notification is very wide and that the Circular cannot per se restrict the scope of the Rate Notification to cover only few services, and hence the impugned services provided by them would aptly be covered under entry at Sl. No. 21(ia) of the Rate Notification. Further, they have also relied upon the definition of the business as provided under section 2(17) of

the CGST Act, 2017 to contend that their services are in the nature of business services being provided to augment the business of their Client, and hence merit classification under the pertinent entry at Sl. No. 21(ia) of the Rate Notification.

22. In this regard, we agree with the Appellant's contention in as much as the impugned services provided by them through their professionals are in the nature of professional and technical services as the said impugned services provided by them in deed require technically qualified and trained professionals and staffs. However, the impugned services provided by them are not related to *exploration, mining or drilling of petroleum crude or natural gas or both*'. This observation is also supported by the explanatory note to SAC 998341 which is being reproduced hereinunder:

99834 Scientific and other technical services

998341 Geological and geophysical consulting services

This service code includes provision of advice, guidance and operational assistance concerning the location of mineral deposits, oil and gas fields and groundwater by studying the properties of the earth and rock formations and structures; provision of advice with regard to exploration and development of mineral, oil and natural gas properties, including pre-feasibility and feasibility studies; project evaluation Page 62 of 130 services; evaluation of geological, geophysical and geochemical anomalies; surface geological mapping or surveying; providing information on subsurface earth formations by different methods such as seismographic, gravimetric, magnetometric methods & other subsurface surveying methods

This service code does not include - test drilling and boring work, cf. 995432

998343 Mineral exploration and evaluation

This service code includes mineral exploration and evaluation information, obtained on own account basis.

23. On perusal of the above, it is evident that services covered under the SAC 998341 are essentially related to the survey and exploration of the mineral deposits and the study of their properties, which is certainly not the case with the impugned services which are in the nature of project management and supervision, and hence the contention put forth by the Appellant are devoid of any merit and cannot be accepted. It is also pertinent to mention that the CBIC Circular No. 114/33/2019-GST dated October 11, 2019 clearly specified that the

scope of the entry at Sr. No. 21 (ia) under heading 9983 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 inserted with effect from 1st October 2019 vide Notification No. 20/2019- CT(R) dated 30.09.2019 shall be governed by the explanatory notes to service codes 998341 and 998343 of the Scheme of Classification of Services. Thus, it is concluded that as per the explanatory note, the impugned services do not merit classification under SAC 998341.

24. Now we proceed to classify the impugned services under the proper service head and determine the rate of tax thereon. In this regard, we have observed hereinabove that the impugned services provided by the Appellant through their professionals are in the nature of professional and technical services as the said impugned services provided by them in deed require technically qualified and trained professionals and staffs. Thus, we conclude that the impugned services provided by the Appellant will merit classification under SAC 998349 bearing description "Other technical and scientific services nowhere else classified, and accordingly merit entry at item (ii) of Sl. No. 21 of the Rate Notification bearing the description Other professional, technical and business services other than (i) and (ia) above and serial number 38 below, attracting GST at the rate of 18% (CGST @9%+SGST @9%).

In view of the above discussions and findings, we pass the following order:

ORDER

25. We, hereby, uphold the MAAR Order No. GST-ARA-27/2020-21/B-38 dated 31.03.2022('Impugned Order') wherein it has been held that the services provided by the Appellant are neither covered under Sl. No. 24(ii) nor under Sl. No. 21(ia) of the Rate Notification. As regards the classification of the impugned services, it is held that the impugned services of project management consultancy services provided by the Appellant would merit classification under the SAC 998349 bearing description "Other technical and scientific services nowhere else classified, attracting GST at the rate of 18% (CGST @9%+SGST @9%).


(RAJEEV KUMAR MITAL)
MEMBER




3/1/2022
(Dr. D.K. SRINIVAS)
MEMBER

CERTIFIED TRUE COPY

Copy to the:

1. Appellant;
2. AAR, Maharashtra
3. Chief Commissioner, CGST and Central Excise, Mumbai Zone.
4. Commissioner of State Tax, Maharashtra.
5. Commissioner, CGST& C.Ex, Mumbai East
5. Assistant Commissioner, CGST &C.Ex, Division-V, Mumbai East
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