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GST

SECTORAL SERIES

Mining



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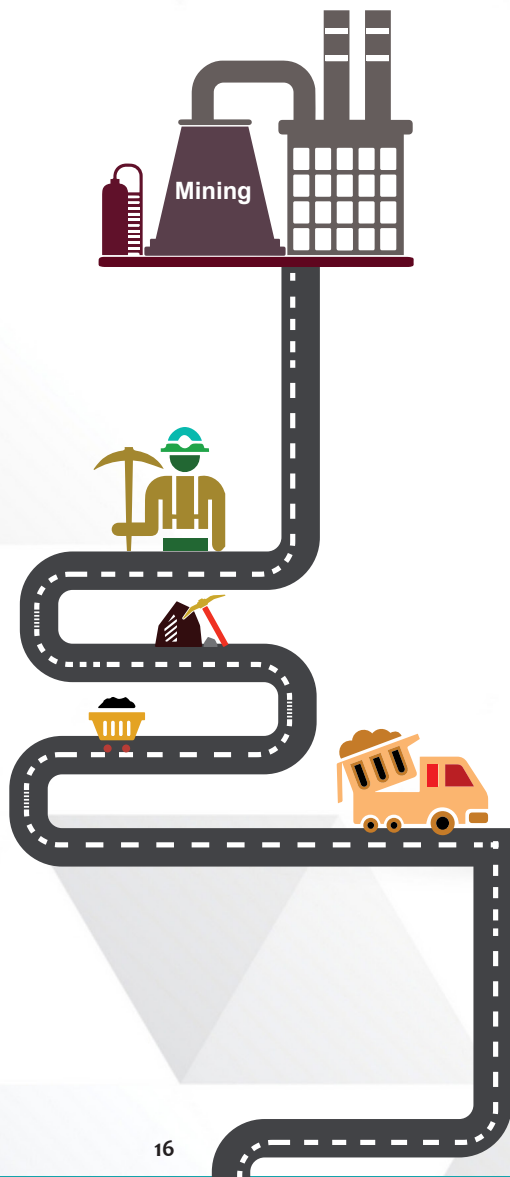


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FAQ: Mining

Question 1: Can small mining leaseholders with a turnover less than Rs.75 lacs operate under composition scheme?

Answer: As per Sec. 10(1) of the CGST Act, 2017, a registered person whose aggregate turnover in the preceding FY did not exceed Rs.75 lakhs, would be eligible for paying GST under the composition scheme.

Question 2: What is the GST rate for minerals and ores in Composition Scheme?

Answer: In a case where the process amounts to manufacture, the rate of tax will be 1% (CGST) and 1% (SGST/UTGST). In any other case, the rate will be ½% (CGST) and ½% (SGST/UTGST).

Question 3: Will they have to deposit GST under SGST/CGST heads separately?

Answer: Yes. GST has to be paid separately under CGST and SGST/UTGST by generating a single challan through the common portal under a single return.

Question 4: Can a small Mine Lease holder undertake inter-State supply if it avails composition scheme?

Answer: No. If a supplier chooses to avail of composition scheme, he shall not undertake inter-State supply.

Question 5: What is the IGST rate for minerals and ores in case of inter – State supply?

Answer: At present, the IGST rate is the sum of CGST and SGST/ UTGST rate. These rates have been notified and are available in public domain.

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Question 6: Can the buyer get input credit on the supply of minerals from a mine owner in composition scheme?

Answer: No, the buyer cannot avail of the credit of tax paid by the supplier who is under the composition scheme as the person paying tax under composition scheme cannot issue a tax invoice and collect taxes on his supplies.

Question 7: Will the recipient have to pay tax under reverse charge?

Answer: GST on reverse charge mechanism is payable under section 9(4) of the CGST Act, 2017 only in case of purchases from unregistered suppliers. As the mine owner who is paying tax under composition scheme is registered, the recipients need not pay GST on reverse charge mechanism.

Question 8: What is the threshold limit and conditions when a small mine owner/lease holder under Composition Scheme has to migrate into full GST System?

Answer: As per section 10(3) of the CGST Act, 2017, the option availed of by the small mine owner/lease holder shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds Rs. 75 lakhs. For details regarding other conditions, section 10 of the CGST Act, 2017 and the rules framed there under may be referred to.

Question 9: Is the Return filing and compliance simpler under composition scheme?

Answer: Yes, Return filing and compliance is simpler under the composition scheme. The registered person has to file only one return on a quarterly basis in Form GSTR-4.

Question 49: Will ITC be available on steel, timber and sometimes cement which are used in the underground mines to provide a protective device for security purpose?

Answer: Credit will not be available if these goods are supplied for construction of an immovable property. But if these are temporarily placed for protective purposes, credit will be available.

Question 50: As per Section 54 (3), it is clear that no refund of ITC will be available for export in the cases where product is subject to export duty. Iron Ore export is subjected to export duty. In the earlier regime, the exporters were allowed to take refund of service tax paid on exports. Will not our exports become uncompetitive as no refund of ITC will be available?

Answer: The refund of ITC credit is not admissible in view of the second proviso to section 54(3) of the CGST Act, 2017.

Note: Reference to CGST Act, 2017 includes reference to SGST Act, 2017 and UTGST Act, 2017 also.

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Question 45. In case of coal, the applicable Compensation Cess is a Fixed Amount of Rs.400/- per MT. Under above situation, how such apportionment is possible since in case of FSA Sale, supply of different grade of coal as per availability of stock against single bulk receipt of “Advance” is to be adjusted?

Answer: If tax rate is not determinable, the tax rate may be determined and paid on the amount of advance at 18%.

Question 46. Whether Railway siding in mining industry exclusively utilized for effecting dispatch of taxable goods (i.e. directly used in the course or furtherance of business) will be treated as Plant and Machinery and ITC under GST will be allowed or treated as civil structure and ITC will be denied?

Answer: ITC will not be available as railway siding is not plant and machinery as defined in section 17 of the CGST Act, 2017.

Question 47. According to HSN Code 2516 calcareous building stone comes under 5% tax rate, but simultaneously under HSN Code 6802 it comes under 28% tax rate. Clarity on the same may be provided by the Government

Answer: Chapter 68 covers value added articles of sandstone etc. which are further worked other than by way of roughly trimmed or merely cut into blocks or slabs.

Question 48. Whether supply of HSD free of cost for mining operation would attract GST and whether the input tax credit would be available for GST so charged by the Service provider?

Answer: HSD is outside GST and therefore, input tax credit would not be admissible.

Question 10: Will the basic exemption limit from GST be applicable to the tiny & micro segment in mining?

Answer: Yes, the basic exemption limit of Rs. 20 lakhs (Rs.10 lakhs in the case of special category States) is applicable to the tiny and micro segment even in mining. However, a person engaged in making taxable supply and having aggregate annual turnover (more than Rs.20 lakhs in any State other than the special category States) would be liable to obtain registration under GST. The return has to be filed on monthly basis by regular taxable persons and on quarterly basis by the taxable persons registered under the composition scheme. .

Question 11: What is aggregate turnover?

Answer: As per section 2(6) of the CGST Act, 2017, “aggregate turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes Central tax, State tax, Union territory tax, integrated tax and compensation cess.

Question 12: Will the buyer of goods from unregistered person pay reverse tax?

Answer: A registered person receiving taxable goods or services from a supplier who is not registered, would be liable to pay GST under reverse charge mechanism. However, in terms of notification no. 8/2017-Central Tax (rate) dated 28th June, 2017, aggregate value of supplies of goods and/or service received by a registered person from any or all the suppliers, who is or are not registered, upto five thousand rupees in a day is exempt from tax under reverse charge mechanism. This exemption will not apply if the value exceeds Rs.5000/-.

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Question 13: Can a buyer of goods and services pay the value of services / goods to the supplier and deposit the GST component of the invoice in the supplier's account so that when the buyer claims input credit, he may get the same cross entry tallied from the supplier's account?

Answer: No. This option is not available under GST Law.

Question 14: In case there are disputes regarding quality, weight, etc. between the buyer and the supplier and the goods are returned fully or partially, as found unfit for use, can the excess paid tax component be adjusted from future tax liability?

Answer: In such cases, the supplier may issue a credit note to the recipient in accordance with the provisions of section 34(1) of the CGST Act, 2017.

Question 15: Whether deduction of Liquidity Damage (LD)/Penalty deduction from contractor's bills and charging Penalty for non-lifting of coal till targeted minimum level to Annual Contractual Quantity (ACQ) will attract GST?

Answer: Yes, it is a service being "tolerating an act" as per Schedule II of the CGST Act, 2017 thus GST shall apply.

Question 16: Will GST be payable at the time of raising an invoice for supply of goods from a mining lease holder or it will be applicable on the amount of advance received by the mining company for booking the order?

Answer: No. As per the provisions of section 12(2) of the CGST Act, 2017 the time of supply of goods shall be the date of issue of invoice or the date of receipt of payment, whichever is earlier. Accordingly, GST would be payable on advance payment received prior to issuance of the invoice.

Question 40. Education Cess and S&H Education Cess carried forward in ER-1 – whether eligible for ITC under the CGST Act, 2017?

Answer: No. Credit of Education Cess and SH Education Cess cannot be carried forward.

Question 41. What will happen to the balance available in the current account (PLA) under Central excise, deposited in cash in advance by any assessee?

Answer: Balance in PLA will not be under transition to GST since that has not been appropriated to the Government account which will be determined post completion of the pending assessment. The same can be claimed as refund under the Central Excise Law.

Question 42. Whether credit of Green Cess (Clean Energy Cess) paid on coal and available at the time of transition be eligible for being carried over?

Answer: No. Credit of Clean Energy Cess cannot be carried forward on transition.

Question 43. Whether stock held by mining companies on which Clean Energy Cess has been paid be chargeable to compensation cess in GST regime?

Answer: Yes. Compensation cess will be charged on supply of such stock.

Question 44. Can supplies of coal under a particular order or under FSA (Fuel Supply Agreement) be eligible under the definition of 'continuous supply of goods'?

Answer: Such supplies are in the nature of continuous supply as the invoices are raised periodically. The individual dispatches may be covered under delivery challans and invoice may be issued for the supplies made during a period as per the contract.

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Question 38. Whether an Input Service Distributer (ISD) will be eligible to distribute the ITC in respect of services received during April 17 to June 17 even if the invoices are raised and submitted by contractors after appointed date i.e. in July 17.

Answer: In terms of section 140(7) of the CGST Act, 2017 the ISD will be able to distribute the available credit even if the invoices are received after the appointed day.

Question 39. In Table 5(b) of GST-TRAN-1, the details of Form C, F and H/I are to be given for the period April 15 to June 17 (i.e. for 27 months) which would be a voluminous task. Reasons of furnishing the details for last 27 months may please be clarified?

Answer: In cases where sales were covered by Forms C, F, H and I, the input tax credit has remained in the account of the taxpayer because the taxpayer has availed of the benefit of concessional rate/nil rate of tax on the sale/stock transfer under CST Act. The benefit of concessional rate/nil rate is available conditional upon production of the statutory forms. Therefore, allowing migration of the credit that has accrued on account of sale/stock transfer having been made on concessional rate/nil rate should be given only on production of the statutory forms. Even otherwise, the taxpayer would have claimed refund of this ITC and such refund would have been given only on production of the statutory forms. It has been presumed that forms for periods before April '15 would have either been presented or the State would have recovered the additional tax payable on account of non-production of statutory forms. Production of these forms is a statutory liability and the taxpayers have already availed the benefit.

Question 17: Will the supplier have to issue “receipt voucher” against each advance received?

Answer: Yes, as per section 31(3)(d) of the CGST Act, 2017 the supplier has to issue a “receipt voucher” for every advance received.

Question 18: How do I show the advance received in GSTR 1?

Answer: Where against an advance the invoice is issued in the same tax period, the advance need not be shown separately in Form GSTR-1 but the specified details of invoice itself can be directly uploaded on the system. Details of all advances against which the invoices have not been issued till the end of the tax period shall have to be reported on a consolidated basis in Table 11 of Form GSTR-1. As and when the invoices against these advances are issued, they have to be declared in Form GSTR-1 and the adjustment of the tax paid on advances against the tax payable on the invoices uploaded in Form GSTR-1 shall have to be done in Table 11 of Form GSTR-1.

Question 19: In case no supplies are made against an advance, will the dealer have to issue a “refund voucher” only for the advance or for advance including GST?

Answer: Refund voucher has to be made for the full value of advance, including the amount of GST.

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Question 20: It will be difficult to link between “Advance Receipt Voucher” and invoices in case of sales billing on Cash Sale (Rail/Road)/e-Auction etc., especially in case of Rail Cash sale, where purchasers deposit money in advance to the tune of many crores for which lifting of coal has to be made from various loading point and time. In such situation how will the billing person at one point realize how much “balance advance” is available for adjustment while raising invoice at his end at a specific point of time?

Answer: Under GST gross amount of advance is to be reported and tax has to be paid. Advance can be adjusted in totality. While raising the invoice subsequent to receipt of advance, the tax payable will get reduced by the amount of tax paid on the advance and balance amount of advance may be adjusted against future supplies.

Question 21: Will GST charged on purchase of all earth moving machinery including JCB, tippers, dumpers by a mining company be allowed as input credit?

Answer: The provision of Sec. 17(5) (a) of the CGST Act, 2017 restricts credit on motor vehicle for specified purposes listed therein. Further, in terms of the provision of Section 2(76) of the CGST Act, 2017 the expression ‘motor vehicle’ shall have the same meaning as assigned to it in Clause (28) of Section 2 of the Motor Vehicle Act, 1988, which does not include the mining equipment, viz., tippers, dumpers. Thus, as per present provisions, the GST charged on purchase of earth moving machinery including tippers, dumpers used for transportation of goods by a mining company will be allowed as input credit.

Question 35. How can we take support during filing of returns, as huge mines are located throughout the districts in the country, especially in rural and backward areas, and the problem will be aggravated as the huge number of mines are operating without any IT infrastructure?

Answer: Returns may be filed from the central office of the Company which are usually located in areas with infrastructure required for filing such returns.

Question 36. Whether GST TDS will be applicable on Works Contract Jobs (to be renamed as Supply of Services) in case of PSUs, since such GST TDS U/s 51 (1) of CGST Act. 2017 is applicable on: a) Dept. or establishment of the Central Govt. or State Govt.; or b) Local authority; or c) Govt. agencies; or d) Such persons or category of persons as may be notified by the Govt. on the recommendations of the Council.

Answer: TDS, under section 51 (1) of the CGST Act, 2017 will apply to supplies made to such agencies as may be mandated by the Government for TDS. As of now, this section has not been notified and therefore TDS is not applicable on any supplies. .

Question 37. What is the requirement for E-way bill for companies operating in the sector?

Answer: As per rule 138 of the CGST Rules, 2017, till such time as final rules are issued, the Government may, by notification, specify the documents that the person in-charge of a conveyance shall carry while the goods are in movement or in transit storage. As and when the new e-way bill rules are notified, the person transporting the goods shall carry the said e-way bill generated from the common portal along with the invoice (challan in the case of movement other than by way of supply).

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Question 32. Will the mining companies be eligible to take ITC for construction of townships, hospitals and schools?

Answer: No. Mining companies will not be eligible for ITC on such activities even if used in course or furtherance of business. In this connection, the provisions contained in section 17(5) (c) of the CGST Act, 2017 refer.

Question 33. Are minerals sent for export in processed or raw form fully exempted from payment of GST or IGST?

Answer: In terms of the provision of Section 16(1) of the IGST Act, 2017 export of goods is considered as zero rated supply. Further, in terms of the provision of Section 16(3) of the IGST Act, 2017 a registered person may export goods (i) without payment of IGST against bond/letter of undertaking and claim refund of unutilised ITC, or (ii) on payment of IGST, utilising eligible ITC and claim refund of such IGST.

Question 34. What is the procedure for return of goods under GST?

Answer: In terms of Section 34(1) of the CGST Act, 2017 in case of return of goods on which GST was paid at the time of supply, the supplier of such goods may issue a credit note for the full value, including the amount of GST in favour of the recipient, and will be entitled to reduce his output tax liability subject to the condition that the recipient of such supply has not availed credit of such GST and if availed, has reversed his ITC on the same.

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Question 22: Whether GST is payable on royalty (to be paid to Government) for Mining Lease granted by State Govt.

Answer: Yes, on royalty GST will apply under reverse charge mechanism. Further, such payment of GST under reverse charge mechanism would be eligible as ITC in the hands of the recipient of supply for payment of GST.

Question 23: Is ITC available on hiring of immovable properties (land, office, warehouse, processing unit, stock yards) for facilitation of mining operations?

Answer: Yes. GST paid on hiring of land, office, warehouse, processing unit, stock yards when these are used in the course or furtherance of business, would be allowed as ITC.

Question 24: What is the time limit for availing input credit under GST?

Answer: As per provisions of Section 16(4) of the CGST Act, 2017 the ITC is not available after the due date of furnishing the return for the month of September of the next year or furnishing of the annual return, whichever is earlier.

Question 25. Would the net outstanding amount of unutilised input credit be refunded by the Government?

Answer: In terms of the provision of Section 54(3) of the CGST Act, 2017 subject to conditions, refund of unutilized input tax credit would be available in respect of zero rated supply or where ITC has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supply. However, such refund of ITC would not be available if export duty is payable on the goods so exported out of India.

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Question 26. Will GST charged by tax consultants, advocates, Chartered Accountants, environmental consultants, canteen service providers and other service providers to mining companies be allowed as input credit?

Answer: ITC on any input service/ inputs used in the course or furtherance of business would be available subject to restrictions and other conditions as per the provisions of Chapter-V of the CGST Act, 2017. However, tax paid in respect of canteen service providers shall not be available as credit.

Question 27. Whether free issue of coal to employees paid in course of employment and on the basis of wage agreement with value below Rs.50, 000/- per employee will attract GST?

Answer: Gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both (as per Schedule 1 of the CGST Act, 2017). Free issue of coal based on the wage agreement is not a gift. Therefore, free issue of coal in this case will attract GST.

Question 28. Can GST charged as per transport bill on movement of mineral from mine to the buyer be allowed as ITC to the buyer irrespective of the ownership of the transporting vehicle?

Answer: In case of an FOR contract for supply of mineral from the mine to the buyer, it is a composite supply where the consideration will be inclusive of the transportation cost. Therefore, GST on forward charge will be payable by the supplier of the mineral and credit will be available to the buyer if otherwise available. The supplier of the mineral will also pay tax on reverse charge basis on the freight charged by the GTA and the credit of the same will be available to the supplier of the mineral.

In case of an ex-works contract of supply, where the GTA service has been booked by the supplier at the instance of the buyer and the service is billed by the GTA to the buyer

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and the minerals are billed by the supplier of the mineral to the buyer, then GTA on reverse charge shall be paid by the buyer who shall be entitled to take credit of the same. The tax on the mineral will be paid on forward charge by the supplier of the mineral and credit will be available to the buyer if otherwise available.

Question 29. Will the situation as mentioned above be different if the value of mineral is less than the cost of freight in long distance consignments?

Answer: In the aforesaid example relating to FOR contract, the supply under the contract shall be classified as 'composite supply' where there is a principal supply and other supplies are naturally bundled and supplied in conjunction with each other in the ordinary course of business. The GST rate of principal supply shall be applicable in this case i.e. GST rate as applicable to the mineral.

Question 30. Exploration companies undertake exploration activities for preparing mining blocks for auction in different States in the country. They use rigs for exploration. CENVAT credit was available on rig operations under the existing law. Will the company be eligible to take ITC under GST?

Answer: Rigs, capitalized in the books of accounts as capital goods are used in the course or furtherance of business. Hence, it will be eligible as capital goods and ITC will be available under GST.

Question 31. Will ITC be available for holding Environmental Clearance (EC) and Forestry Clearance (FC) meetings and for obtaining 'consent to operate' the Mines?

Answer: Yes, ITC on expenses incurred in the course or furtherance of business shall be available.

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