

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH
4, Vibhuti Khand, Gomti Nagar, Lucknow

ADVANCE RULING NO. UP ADRG-08/2022 **DATED 28/07/2022**

PRESENT:

- 1. Shri Rajendra Kumar**
Additional Commissioner, Central Goods and Service Tax
.....Member (Central Tax)
- 2. Shri Vivek Arya**
Joint Commissioner, State Goods and Service TaxMember (State Tax)

1.	Name of the Applicant	M/s Concrete Udyog Limited Plot No 4,5,6 And 7, INDUSTRIAL AREA, BIJOLI, JHANSI, Jhansi, Uttar Pradesh, 284001
2.	GSTIN or User ID	09AACCC3505D1Z6
3.	Date of filing of Form GST ARA-01	02-05-2022
4.	Represented by	Shri Kunal Agarwal, Advocate
5.	Jurisdictional Authority-Centre	Range-Jhansi-I, Division- Jhansi
6.	Jurisdictional Authority-State	Sector- Corporate Circle, Jhansi, Range-Jhansi
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes, PUNB22040900431022

ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 & UNDER SECTION 98
(4) OF THE UPGST ACT, 2017

1. M/s Concrete Udyog Limited, Plot No 4,5,6 And 7, INDUSTRIAL AREA, BIJOLI, JHANSI, Jhansi, Uttar Pradesh, 284001 (here in after referred to as the applicant) is a registered assessee under GST having GSTN: 09AACCC3505D1Z6.

2. The Applicant has submitted application for Advance Ruling dated 02-05-2022 enclosing duly filled Form ARA-01 (the application form for Advance Ruling) along with certain annexure.

3. The Applicant in his application sought Advance Ruling as follows:–

Whether composite works contract services supplied to Uttar Pradesh Jal Nigam involving construction & design of prestressed concrete cylinder pipelines (PCCP) and pumping plant for the purpose of supplying water to the Khurja Sewerage Treatment Plant Project from the Mundakhera Reservoir to the pond of Khurja STPP along with all ancillary works such as development of roads/paths, drain septic Tanks, sewer line, water supply system, external electrification, service connection to building, etc would be covered under Entry 3(iii) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017.

4. As per the declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending in any proceedings nor decided in any proceedings in the applicant's case under any of the provisions of the CGST Act, 2017/UPGST Act, 2017.

5. The applicant has submitted that-

(1) The Applicant is engaged in execution of projects involving laying of cement concrete pipes.

(2) The Applicant has been sanctioned a tender by Uttar Pradesh Jal Nigam (for short 'UPJN') vide letter dated 7.10.2021 for execution of works involving construction & design of pumping plant containing prestressed concrete cylinder pipelines (PCCP).

(3) The work to be undertaken by the Applicant is intended to supply water to the Khurja Sewerage Treatment Plant Project from the Mundakhera Reservoir.

(4) The Applicant would also undertake all ancillary works such as development of roads/paths, drain septic Tanks, sewer line, water supply system, external electrification, service connection to building, etc.

(5) The infrastructure would ultimately pass on from UPJN to Tehri Hydro Development Corporation Limited ('THDC'), an undertaking owned by the National Thermal Power Corporation Limited, Ministry of Power, Government of India.

(6) in terms of the Agreement, the responsibility of the Applicant is to supply and laying down of concrete pipes; construction of the pumping plant involving the construction of pumping house, boundary wall, deep tube well etc, along with all external activities such as development of roads/paths, drain septic Tanks, sewer line, water supply system, external electrification, service connection to buildings, etc.

(7) the Applicant was responsible for providing the necessary goods, which are, pipes; valves; pumps; tube wells, septic tanks, sewer lines, and providing the necessary labour to undertake the commissioning of the pumping plant.

(8) In terms of Section 2(119) of the CGST Act, the Applicant has been treating its supplies as works contract services.

(9) an activity will qualify as a works contract if it satisfies the following conditions:

i. There should be a contract involving an activity such as building, construction, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning.

ii. The contract should be in respect of an immovable property; and iii. The execution of such contract should involve transfer of property in goods (whether as goods or in some other form).

(10) the contract of the applicant with UPJN involves erection and commissioning of the pumping plant involving PCCP pipes for supplying water to the Khurja STPP from the Mundakhera Reservoir. Alongwith, the Applicant would also undertake appurtenant works such as development of road/ paths, drain septic tanks, sewer lines, external electrification, etc. The said infrastructure required to be constructed, supplied, erected and commissioned by the Applicant would be permanently embedded into the earth as a part of one single network for water supply from the reservoir to the specified pond of Khurja STPP. This infrastructure would, therefore, attain the nature of an immovable property.

(11) In this regard, reference is made to the decisions of the Hon'ble Supreme Court in the cases of Municipal Corporation of Greater Bombay & Ors. Vs. Indian Oil Corporation Ltd AIR 1991 SC 686b and Triveni Engineering & Industries Limited vs CCE, 2000 (120) E.L.T. 273 (S.C.), which hold that any infrastructure which is permanently attached to the earth, and which cannot be removed without disrupting or causing damage to the system would be treated as an immovable property. A similar finding has been given by the CESTAT, Mumbai in the case of Alfa Laval (India) Ltd. Vs. CCE, Pune, 1998 (99) E.L.T. 649 (Tribunal) wherein it was held that a contract for supply, installation and



commissioning of Neutralisation-Washing-cum-Degumming Equipment for Vanaspati Plant would result in existence of an immovable property as it would be permanently attached to earth and the activity did not bring into existence any marketable, movable or excisable goods. On the basis of these judgments and the clarification issued by the CBIC in Circular No. F. No. 154/26/99-CX.4 dated 15.1.20021, the Applicant has been treating the contract for erection and commissioning of pipelines to be in relation to immovable property.

- (12) Further, as mentioned above, the contract involves supply of both, goods (concrete pipes; valves; tanks, goods for electrification, etc) and services (labour and manpower), wherein the property in goods, which is the water supply infrastructure, would ultimately pass to UPJN. Hence, in terms of Section 2(119) of the CGST Act, the Applicant has been classifying its supply as works contract services and would continue to supply these services in the coming years.

6. The applicant has submitted their interpretation of law as under-

- (1) the Applicant satisfies all the criteria for filing the application for advance ruling, particularly under sub-clause (b) of Section 97(2) of the CGST Act.
- (2) e, the Applicant is engaged in composite supply of the works contract service to C&DS,UPJN, who is the recipient of supplies, which qualifies as a 'local authority', and therefore, supplies by the Applicant would be covered under Entry 3(iii) of Notification No. 11/2017- C.T. (Rate). These supplies would thereby attract GST @ 12% (CGST 6% and SGST 6%).
- (3) the Applicant is making composite supplies to C&DS,UPJN in the nature of works contract service involving supply and laying down of concrete pipes; construction of the pumping plant involving the construction of pumping house, boundary wall, deep tube well etc, along with all external activities such as development of roads/paths, drain septic Tanks, sewer line, water supply system, external electrification, service connection to buildings, etc. In terms of Section 7(1A) of the CGST Act read with Clause 6(a) of Schedule II of the CGST Act, such composite supplies qualify as a supply of service.
- (4) the Applicant is making composite supplies to C&DS,UPJN in the nature of works contract service involving supply and laying down of concrete pipes; construction of the pumping plant involving the construction of pumping house, boundary wall, deep tube well etc, along with all external activities such as development of roads/paths, drain septic Tanks, sewer line, water supply system, external electrification, service connection to buildings, etc. In terms of Section 7(1A) of the CGST Act read with Clause 6(a) of Schedule II of the CGST Act, such composite supplies qualify as a supply of service.
- (5) Notification No. 11/2017-CT (Rate) provides for the applicable rate of CGST that shall be levied on intra-State supply of services, the description of which is specified in the corresponding entry in column (3) of the Table under the Notification, falling under the Chapter, Section or Heading of the scheme of classification of services as specified in the corresponding entry in column (2) of the said Table.
- (6) The relevant entry under the Notification No. 11/2017-CT (Rate) reads as under:

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (%)
3	Heading 9954	Composite supply of works contract as	6

	(Construction services)	defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the Central Government, State Government, Union territory or a local authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, - - a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958); - canal, dam or other irrigation works; - pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.	
--	-------------------------	---	--

- (7) As such, the total rate of GST on intra-State supply of the above-referred services would be 12%.
- (8) In the present case, the Applicant is supplying works contract services in relation to supply and laying down of concrete pipes; construction of the pumping plant involving the construction of pumping house, boundary wall, deep tube well etc, along with all external activities such as development of roads/paths, drain septic Tanks, sewer line, water supply system, external electrification, service connection to buildings, etc.
- (9) These services, by virtue of Section 7(1A) of the CGST Act read with Clause 6(a) of Schedule II of the CGST Act qualify as composite supplies. However, in order for the supplies to fall under Entry No. 3(iii) to Notification No. 11/2017-CT (Rate), it is imperative that the supplies be made either to (i) the Central Government; (ii) State Government; (iii) Union territory; or (iv) a local authority.
- (10) Therefore, the question for determination is whether C&DS,UPJN, the recipient of such composite supplies, qualifies as a (i) the Central Government; (ii) State Government; (iii) Union territory; or (iv) a local authority.
- (11) The Applicant, in the present case, submits that C&DS,UPJN qualifies as a local authority, and therefore, the supplies made by it would be covered under Entry No. 3(iii) of Notification No. 11/2017-CT (Rate).
- (12) In this regard, it is submitted that Section 2 (69) of the CGST Act defines the term 'local authority' as under:
(69) "local authority" means—
(a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution;



(b) a "Municipality" 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 (41 of 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 and article 371J of the Constitution; or

(g) a Regional Council constituted under article 371A of the Constitution;

(13) From the above, there is no dispute that UPJN would not be covered under Sl. No. (a); (b); (d); (e); (f) and (g). However, it is submitted that UPJN qualifies as a local authority as it is an 'authority which is legally entitled to the control or management of a local fund', thereby falling under Sl. No. (c) mentioned above.

(14) It is submitted that on 18.6.1975, Uttar Pradesh State legislature passed the UP-Water Supply and Sewerage Act, 1975 (for short 'UPWS Act') for the establishment of a corporation, authorities and organisations for the development and regulation of water supply and sewerage services and for matters connected therewith.

(15) The term 'Nigam' has been defined under Section 2 (15) of the UPWS Act as the 'Uttar Pradesh Jal Nigam' (UPJN) which has been established under Section 3 of the UPWS Act. Further, Section 3 categorically states that the Nigam would be a local authority for all purposes. Relevant provisions of the UPWS Act are reproduced hereunder:

2. Definitions.- In this Act, unless the context otherwise requires-

(15) "Nigam" means the Uttar Pradesh Jal Nigam established under Section 3

3. Establishment of the Nigam.-

(1) **The State Government shall, by notification in the Gazette and with effect from a date to be specified therein, constitute a corporation by the name of the Uttar Pradesh Jal Nigam.**

(2) **The Uttar Pradesh Jal Nigam shall be a body corporate by the said name, having perpetual succession and a common seal, and shall sue and be sued by the said name and have the power to acquire, hold or dispose of property.**

(3) **The Nigam shall for all purposes be deemed to be a local authority.**

(4) **The Nigam shall have its head office at Lucknow and may have offices at such other places as it may consider necessary.**

(16) Further, by virtue of Section 40 of the UPWS Act, the UP State Government has sanctioned a local fund to the UPJN. Section 40 of the UPWS Act reads as under:

40. Nigam's funds.- (1) The Nigam shall have its own fund to be called the Nigam Fund, which shall be deemed to be a local fund and to which shall be credited all moneys received otherwise than by way of loans by or on behalf of the Nigam.

(2) The Nigam shall also have another fund to be called the Local Fund, which shall also be deemed to be a local fund and to which shall be credited all moneys received by or on behalf of the Nigam by way of loans.

(3) Without prejudice to the provisions of sub-sections (1) and (2). the Nigam

may, with the previous approval of the State Government, constitute such other funds as may be necessary for the efficient performance of its functions under this Act.

- (17) Furthermore, Section 15 (2) (ix) of the UPWS Act provides UPJN with the power to manage the Nigam's fund. Section 15 (2) (ix) of the UPWS Act is reproduced hereunder:

15. Powers of the Jal Nigam

(2) Without prejudice to the generality of the foregoing provision, such power shall include the power-

(ix) to borrow money, issue debentures to obtain subventions and grants and manage its own funds

- (18) Thus, from combined reading of Section 2(15); Section 3(3); Section 40 and Section 15 (2) (ix) of the UPWS Act, it can be concluded that UPJN is a local authority which has been entrusted by the UP State Government with a local fund and control of the said funds is also with UPJN.
- (19) Hence, it is submitted that UPJN would qualify as a local authority in terms of Section 2(69) (c) of the CGST Act.
- (20) Reliance in this regard is placed on the decision ***IN RE: GDCL-EMIT JV 2021 (2) TMI 1249- Authority for Advance Ruling, Uttarakhand***, wherein UPJN was held to be a local Authority.
- (21) Reliance is also placed on the decision in the case of ***UP. Jal Nigam Vs. CIT 2011 (1) TMI 1038- Allahabad High Court***. In the said case, Section 3(31) of the General Clauses Act, which defines 'local authority', was discussed. It may be noted that Section 3(31) of the General Clauses Act carries an identical definition of a local authority as given under Section 2(69) of the CGST Act. While interpreting the definition and applying the decision in the case of ***Union of India Vs. R. C. Jain 1981 (2) TMI 200- SC***, the Hon'ble High Court held that UPJN was a 'local authority'.
- (22) Reliance is also placed on the decision in the case of ***Newton Kolkata Development Authority 2019 (3) TMI 1740- Authority for Advance Ruling, West Bengal***, wherein New Town Kolkata Development Authority was held to be a local authority in terms of Section 2 (69) (c) of the CGST Act, being an authority other than a Municipal Committee, a Zilla Parishad or a District Board that is legally entitled to and entrusted by the State Government with the control and management of a local fund.
- (23) Similar reasoning was given ***IN RE: Ahmedabad Municipal Transport Service, 2021 (4) TMI 563-Authority for Advance Ruling, Gujarat*** and it was held that Ahmedabad Municipal Transport Service is a local authority in terms of Section 2 (69) (c) of the CGST Act, being an authority other than a Municipal Committee, a Zilla Parishad or a District Board that is legally entitled to and entrusted by the State Government with the control and management of a local fund.
- (24) In light of the above discussion, it can be concluded that C&DS, UPJN qualifies as a local authority.
- (25) At the cost of repetition, the Applicant submits that all the conditions of Entry No. 3(iii) to Notification No. 11/2017-CT(Rate) are satisfied, as tabulated below:



Sl. No.	Condition	Whether satisfied
1.	Composite supply of works contract service rendered in relation construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.	Yes, composite supply of works contract service to UPJN involving supply and laying down of concrete pipes; construction of the pumping plant involving the construction of pumping house, boundary wall, deep tube well etc, along with all external activities such as development of roads/paths, drain septic Tanks, sewer line, water supply system, external electrification, service connection to buildings, etc
2.	Supply has been made to a Central Government, State Government, Union territory or a local authority	Yes, UPJN qualifies as a local authority.

In the view of the above, it is submitted that the composite supply of works contract services to UPJN would be covered under Entry 3(iii) of Notification No. 11/2017-CT (Rate) and would suffer GST @ 12% (CGST 6% and SGST 6%).

7. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer his comments/views/verification report on the matter. The Joint Commissioner, CGST & Central Excise Division Jhansi vide his letter C.No. V930)41-Tech/Misc/JHS/18/pt II/670 dated 10.06.2022 submitted his report as under-

- (1) the services provided by the applicant are covered in Sl. No. 3(3) of the Notification No. 11/2017-CT(Rate) dated 28.06.2017 and attract tax rate of 12% (6% CGST & 6% SGST).
- (2) as per Section 3 of the UP Water Supply and Sewerage Act, 1975, UPJN deemed to be a local authority.
- (iii) no proceedings on the question raised in application is pending or decided under any provisions of the Act.

8. The opportunity of personal hearing was granted on 27.07.2022 which was attended by Shri Kunal Aggarwal,. During personal hearing, the applicant reiterated the submissions made in the application of advance ruling.

DISCUSSION AND FINDING

9. At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST 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 provision under the UPGST Act. Further for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act'.



10. We have gone through the submissions made by the applicant and have examined the explanation submitted by them. The applicant has ticked following issues in column no. 13 of Form GST ARA-01-

(1) Applicability of a notification issued under the provisions of this Act.

We find that the issue raised in the application is squarely covered under Section 97(2) of the CGST Act 2017. We therefore, admit the application for consideration on merits.

11. We observe that the question sought by the applicant is as under-
Whether composite works contract services supplied to Uttar Pradesh Jal Nigam involving construction & design of prestressed concrete cylinder pipelines (PCCP) and pumping plant for the purpose of supplying water to the Khurja Sewerage Treatment Plant Project from the Mundakhera Reservoir to the pond of Khurja STPP along with all ancillary works such as development of roads/paths, drain septic Tanks, sewer line, water supply system, external electrification, service connection to building, etc would be covered under Entry 3(iii) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017.

12. The Uttar Pradesh Jal Nigam (hereinafter referred to as the UPJN) was created by the Government of Uttar Pradesh by enacting the U.P. Water Supply and Sewerage Act, 1975 (hereinafter referred to as the UPWSS Act). It is a body corporate having perpetual succession and a common seal and capable of suing and being sued in its name. It has power to acquire, hold and dispose of the property. The relevant provisions of the UPWSS Act is as under-

(i) The preamble of the UPWSS Act indicates that U.P. Jal Nigam was brought into existence to provide for the establishment of a corporation, authorities and organization for the development and regulation of water supply and sewerage services and for matters connected therewith.

(ii) The Section 3(3) of the UPWSS Act provides that the assessee corporation shall for all purposes be deemed to be a local authority and Section 4 of the UPWSS Act relates to its constitution, according to which it shall consist of a Chairman, to be appointed by the State Government. It also provides that the Members other than the Chairman shall be a Managing Director, a Finance Director, both to be appointed by the Government, and the Secretary to the State Government in the Finance Department (Ex-officio), Secretary to the State Government in the Local Self Government Department (Ex-officio), the Director of Local Bodies, Uttar Pradesh (Ex-officio), the Director of Medical and Health Services U.P. (Ex-officio) and three elected Heads of Local Bodies in the State, to be nominated by the State Government.

(iii) Section 40(1) of the UPWSS Act provides that the corporation shall have its own fund to be called the Nigam Fund which shall be deemed to be a local fund and to which shall be credited all moneys received otherwise than by way of loans by or on behalf of the corporation.

13. The applicant has submitted that the UPJN is covered in the definition of 'Local Authority'. We find that for answering the question raised by the applicant, it is necessary to examine as to whether Construction & Design Services Division of the Uttar Pradesh Jal Nigam is 'local authority' or 'governmental authority'.

14. The term local authority is defined in S. 2(69) of the CGST Act as follows:

(69) "local authority" means-

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

(b) a "Municipality" 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 (41 of 2006);

(e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;

(f) a Development Board constituted under article 371⁸ [and article 371J] of the Constitution; or

(g) a Regional Council constituted under article 371A of the Constitution;

15. The definition of "local authority" in the CGST Act includes within its ambit "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". Thus, for the purpose of the GST Laws, any authority legally entitled to or entrusted by the Government with the control or management of a municipal or local fund qualifies as a "local authority".

16. The definition of the 'local authority' is contained in Section 3(31) of the General Clauses Act, 1897 which is as under-

"local authority" shall mean a municipal committee, district board, body of port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;

17. Thus, it is seen that the term 'local authority' has been similarly worded in CGST Act, 2017 as well as General Clauses Act, 1897. The Apex Court in the landmark decision of Union of India Vs. R.C. Jain (1981)2SCC308 while deciding whether the Delhi Development Authority is a 'local authority' or not, explained the scope of the term local authority under the General Clauses Act as follows-

Let us, therefore, concentrate and confine our attention and enquiry to the definition of 'Local Authority' in Sec.3(3) of the General Clauses Act. A proper and careful scrutiny of the language of Sec.3(31) suggests that an authority in order to be a local Authority, must be of like nature and character as a Municipal Committee, District Board or Body of Port Commissioners, possessing, therefore, many, if not all, of the distinctive attributes and characteristics of a Municipal Committee, District Board, or Body of Port Commissioners, but, possessing one essential feature, namely, that it is legally entitled to or entrusted by the Government with, the control and management of a municipal or local fund. What then are the distinctive attributes and characteristics, all or many of which a Municipal Committee, District Board or Body of Port Commissioners shares with any other local authority? First, the authorities must have separate legal existence as Corporate bodies. They must not be mere Governmental agencies but must be legally independent entities. Next, they must function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the area. Next, they must enjoy a certain degree of autonomy, with freedom to decide for themselves questions of policy affecting the area administered by them. The autonomy may not be complete and the degree of the dependence may vary considerably but, an appreciable measure of autonomy there must be. Next, they must be entrusted by Statute with such Governmental functions and duties as are usually entrusted to municipal bodies, such as those connected with providing amenities to the inhabitants of the locality, like health and education services, water and sewerage, town planning and development, roads, markets, transportation, social welfare services etc. etc. Broadly we may say that they may be entrusted

with the performance of civic duties and functions which would otherwise be Governmental duties and functions. Finally, they must have the power to raise funds for the furtherance of their activities and the fulfillment of their projects by levying taxes, rates, charges, or fees. This may be in addition to moneys provided by Government or obtained by borrowing or otherwise. What is essential is that control or management of the fund must vest in the authority.

18. The Apex Court in the case of Union of India and others v. R.C. Jain and others (supra) has laid down the following ingredients, which are required to be fulfilled cumulatively before an authority can be said to be a 'local authority', in the light of the definition of 'local authority' as given under Section 3(31) of the General Clauses Act.

- (1) The authorities must have separate legal existence as corporate bodies. It must be legally independent entities.
- (2) The authority must function in a defined area and ordinarily, wholly or partly, directly or indirectly be elected by the inhabitants of the area.
- (3) The authority must enjoy a certain degree of autonomy, with freedom to decide for themselves questions of policy affecting the area administered by them.
- (4) The authority must be entrusted by Statute with such Governmental functions and duties as are usually entrusted to municipal bodies.
- (5) The authority must have the power to raise funds for the furtherance of their activities and the fulfillment of their projects by levying taxes, rates, charges, or fees.
- (6) Essentially, control or management of the funds must vest in such authority.

19. The UPJN is not satisfying some of the above conditions for qualifying as 'local authority' as discussed below-

19.1 The Apex court in the RC Jain case (supra) has held that that the authority should be elected by the inhabitants of the area. As per Section 4 of the UPWSS Act, the UPJN shall consist of Chairman and members appointed by the state government. As such, the UPJN is not elected by the inhabitants of the area but the same is established by the state. Therefore, the said is not satisfied in the case of UPJN.

19.2 The Apex court in the RC Jain case (supra) has held that that the authority must enjoy a certain degree of autonomy, with freedom to decide for themselves questions of policy affecting the area administered by them. The autonomy may not be complete and the degree of the dependence may vary considerably but, an appreciable measure of autonomy there must be. Perusal of the UPWSS Act reveals that the UPJN is not enjoying appreciable nature of autonomy as discussed below-

- (1) As per Section 4(1) of the UPWSS Act, the Chairman shall be appointed by the State Government.
- (2) As per Section 6(3) of the UPWSS Act, the Managing Director and finance director shall hold office on such terms and conditions as the State Government may, by order, specify.
- (3) As per Section 14 of the UPWSS Act, the UPJN is entrusted
 - (i) to prepare State plans for water supply, sewerage and drainage on the directions of the state government.
 - (ii) to operate, run and maintain any waterworks and sewerage system, if and when directed by the State Government, on such terms and conditions and for such periods as may be specified by the State Government;
 - (iii) such other functions as may be entrusted to the Nigam by the State Government by notification in the Gazette.

(4) As per section 46(2) of the UPWSS Act, the UPJN may, from time to time, with the previous sanction of the State Government and subject to the provisions of this Act and to such conditions as the State Government may, by general or special order determine, borrow any sum required for the purposes of this Act, whether by the issues of bonds or stock or otherwise or making arrangements with bankers or other bodies or institutions approved by the State Government for this purpose.

(5) As per section 46(3) of the UPWSS Act, stock issued by the Nigam under the section shall be issued, transferred, dealt with and redeemed in such manner as the State Government may, general or special order, direct.

(6) As per Section 50 of the UPWSS Act, the UPJN is obliged to submit a statement of programme of its activities to the State Govt. before the commencement of financial year and may at any time during financial year. Further, the accounts of UPJN shall be audited by such auditor as the State Govt. may direct. Moreover, the accounts of the Nigam and a Jal Sansthan, as certified by the Auditor together with the audit report thereon shall be forwarded annually to the State Government and the Nigam respectively, who may issue such directions to the Nigam or the Jal Sansthan, as the case may be, as it may deem fit, and the Nigam or the Jal Sansthan shall comply with such directions. The State Government shall-

a) cause the accounts of the Nigam together with the audit report thereon, received by it under section 50(4) to be laid annually before each House of the State Legislature, and

b) cause the accounts of the Nigam to be published in such manner as it thinks fit.

(7) As per Section 89 of the UPWSS Act, the UPJN shall be guided by such directions on questions of policy as may be given to it by the State Govt.

(8) As per Section 90 of the UPWSS Act, the UPJN shall submit to the State Govt. an annual report giving an account of its activities during the previous financial year and the State Govt. shall cause every such report to be laid before the State Legislature.

Above provisions are clear indicators to the fact that UPJN does not enjoy autonomy of work and has little freedom to decide for themselves questions of policy affecting the area administered by them.

19.3 The Apex court in the RC Jain case (supra) has held that the main requirement to qualify as a local authority is that the authority must be legally entitled to or entrusted by the Government with, the control and management of a Municipal or local fund. In case of UPJN, there is no local fund entrusted by the Government with UPJN. A perusal of the UPWSS Act would reveal that no municipal or local fund has been entrusted by the Government. The fund of UPJN is its own fund and cannot be equated with a fund entrusted by the Government. So far as local fund is concerned as it is not a sound rule of interpretation to seek the meaning of words used in an Act, in the definition clause of other statutes. The definition of an expression in one Act must not be imported into another. Thus, the important requirement in order to qualify as a local authority, viz. control and management of a municipal/local fund is absent in the present case.

The applicant has referred to Hon'ble Supreme Court decision in the case of Union of India Vs R.C. Jain 1981 (2) TMI 200-SC, and argued that Hon'ble High Court on the basis of definition given in the judgement has decided that M/s UPJN is a local authority, but this argument is a quite contrary to what the Hon'ble judges have observed.

20. Further, the Hon'ble High Court, Allahabad (Lucknow Bench) in the Income Tax Appeal No. 128/2008 has held that UP Jal Nigam is not a 'local authority. While passing the

order, the Hon'ble High Court has discussed various case laws including RC Jain case (supra). The relevant portion of the order is reproduced below-

Order dated 22.09.2011 delivered by Hon'ble Justice Devi Prasad Singh

43. Thus, to hold statutory body as an "authority", it shall be necessary that the authority must have 'local fund' which shall be spent for providing civic amenities and also shall have right to generate fund by imposing taxes within the statutory jurisdiction, managed by elected body. Merely because a corporation has local fund, does not mean that it shall be the "local authority" as contemplated under Section 3 (31) of the General Clauses Act.

.....
75. The 1975 Act, does empower the State Government or the Jal Nigam to claim exemption from taxes only because the word, 'local authority' has been used in sub-section (3) of Section 3 of the 1975 Act. Virtually this broader principle has been upheld by the Hon'ble Supreme Court in the case of CIT Vs. U.P. Forest Corporation, 230 ITR 945 (supra) while declining to treat it 'local authority' under the Act. The provisions contained in the Section 10 (20) of the Income Tax Act, shall prevail over and above the U.P. Water Supply and Sewerage Act, 1975.

76. After a close scrutiny of 1975 Act, the law settled by Hon'ble Supreme Court in the cases of Valjibhai Muljibhai Soneji (supra), R.C. Jain (supra), Commissioner of Income Tax. Vs. U.P. Forest Corporation (supra), Agricultural Produce Market Committee, Narela, Delhi (supra), read with Part IX and LXA of the Constitution and Section 3 (31) of General Clauses Act, the U.P. Jal Nigam does not seem to be the 'local authority' under Section 10 (20) of the Income Tax Act, 1961 even prior to Finance Act, 2002. The word, "local authority" has been defined in the Section 3 (31) of the General Clauses Act, 1897, an old Central Act, which has been interpreted by the Hon'ble Supreme court by catena of judgments (supra).

Order dated 22.09.2011 delivered by Hon'ble Justice Satish Chandra

Further, Hon'ble Apex Court held that the U.P. Forest Corporation is not an authority, though, under section 3(3) of the U.P. Forest Corporation Act, 1974 it is provided that for all purposes, it shall be the 'local authority'. Hence, on the similar analogy, provisions of Section 3 (3) of U.P. Act no. 1975 is of no use to the assessee. Thus, to hold statutory body as an "authority", it shall be necessary that the authority must have 'local fund' which shall be spent for providing civic amenities and also shall have right to generate fund by imposing taxes within the statutory jurisdiction, managed by elected body. Merely because a corporation has local fund, does not mean that it shall be the "local authority" as contemplated under Section 3 (31) of the General Clauses Act.

At the cost of repetition, it may be mentioned that in the instant case, the assessee has three wings namely; (i) Jal Nigam Wing; (ii) Nalkoop Wing; and (iii) Construction & Design Wing. In the case of R. C. Jain; AIR 1981 (SC) 951, it was observed that the "local authority" must be entrusted by statute with such governmental functions and duties as are usually entrusted to municipal bodies, such as those connected with providing amenities to the inhabitants of the locality, like health and education services, water and sewerage, town planning and development, roads, markets, transportation, social welfare services etc. Broadly, it may say that they may be entrusted with the performance of civic duties and functions which would otherwise be governmental duties and function. Finally, they must have the power to raise funds for the furtherance

of their activities and the fulfillment of their projects by levying taxes, rates, charges, or fees. This may be in addition to money provided by Government or obtained by borrowing or otherwise. What is essential is that control or management of the fund must vest in the authority.

Order dated 12.01.2012 of Hon'ble Justice Devi Prasad Singh and Hon'ble Justice Satish Chandra

In pursuance to the reference made by this Bench, Hon'ble the Chief Justice has referred the case to a Third Judge Hon'ble R.K.Agrawal, J. Opinion expressed is as follows:-

"In my considered opinion as both the Brother Judges have come to the same conclusion that Jal Nigam is not a local authority, the question formulated for opinion as to whether U.P. Jal Nigam is Local Authority or not does not arise. Let the papers be placed before Hon'ble Division Bench for passing appropriate order."

In view of the opinion expressed by Hon'ble Third Judge, no further order is required. The appeal decided accordingly.

21. Although, the aforesaid order in Income Tax Appeal No. 128/2008 denying UP Jal Nigam the status of local authority is in respect of dispute of Income Tax, the same is applicable to instant case as the order of the Hon'ble High Court has been passed after analyzing the definition of 'local authority' contained in General Clauses Act. It has already been discussed that the term 'local authority' has been similarly worded in CGST Act, 2017 as well as General Clauses Act, 1897.

22. Further, the relevant clarification contained in Service Tax Educational Guide published in erstwhile tax regime is reproduced below-

"2.4.9 Are all local bodies constituted by a State or Central Law local authorities?

No. The definition of 'local authority' is very specific as explained in point no 2.4.8 above and only those bodies which fall in the definition comprise 'local authorities'. It would not include other bodies which are merely described as a local body by virtue of a local law.

23. Thus, we are of the view that the UPJN is not a 'local authority'.

24. Now we proceed to examine as to whether the UPJN is 'Governmental Authority'. It is relevant to note that the term "Governmental Authority" is not defined in the CGST Act. However, Notification No. 31/2017-Central Tax (Rate) dated October 13, 2017, which amended the Notification No 11/2017 - Central Tax (Rate) dated June 28, 2017, defined Governmental Authority as follows:

"ix. Governmental Authority" means an authority or a board or any other body, -

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government, with 90 per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution."

25. Thus, in order to qualify as a governmental authority, such authority must be set up by an act of Parliament/State Legislature, should have 90% or more stake of government, and should carry out any function entrusted to a Municipality under article 243 W of the Constitution of India.



26. As already discussed, the UPJN is a body corporate formed by the State legislature under UPWSS Act enacted by the UP State Legislature. As such, the first requirement of a governmental authority stands fulfilled in the present case. Further, as per Section 3 of the UPWSS Act, UPJN is a body corporate established by the Government of U.P., as such, the second requirement of governmental authority has also been fulfilled in the present case. Moreover, the UPJN is constituted for the development and regulation of water supply and sewerage services in the State of U.P. Under the Section 14 of UPWSS Act, UPJN is *inter alia* entrusted with the function to operate, run, and maintain any waterworks and sewerage system. As per Article 243W read with Twelfth Schedule of the Constitution of India, water supply for domestic, industrial and commercial purposes and public health, sanitation conservancy and solid waste management is a function of municipality. In view of the above, the requirement that the authority must be established to carry out any function entrusted to a Municipality under article 243 W of the Constitution has also been fulfilled in the present case. Thus, the UPJN is a governmental authority in our view.

27. The Notification No.11/2017- Central Tax (Rate) dated June 28, 2017 was amended vide Notification No. 15/2021-Central Tax (Rate) dated November 18, 2021, wherein, in Entry 3(iii), the words “Union territory, a local authority, a Governmental Authority or a Government Entity” were substituted with “Union territory or a local authority”. Thus, as on date, the amended Entry 3(iii) of the Notification No.11/2017 reads as follows:

Description of Service	Rate (percent)
“(iii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the Central Government, State Government, Union territory or a local authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, - (a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958); (b) canal, dam or other irrigation works; (c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.	6

28. As such, by way of Notification No. 15/2021-Central Tax (Rate) dated November 18, 2021, the lower rate of tax of 12% provided by Entry 3(iii) of Notification No.11/2017- Central Tax (Rate) dated June 28, 2017, was restricted to works contract supplied to Central Government, State Government, Union territory and a local authority only. As the UPJN does not qualify as a ‘local authority’ and it qualifies as a governmental authority, tax rate of 18% is applicable on the works contract services provided to UPJN by way of Entry 3(xii) of Notification No. 11/2017- Central Tax (Rate) dated June 28, 2017. The said Entry 3(xii) of the Notification No.11/2017 reads as follows:

Description of Service	Rate (percent)
“(xii) Construction services other than (i), (ia), (ib), (ic), (id), (ie),	9



(if), (iii), (iv), (v), (va), (vi), (vii), (viii), (ix), (x) and (xi) above.”

29. Accordingly, we pass the following ruling.

RULING

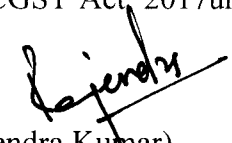
Question - Whether composite works contract services supplied to Uttar Pradesh Jal Nigam involving construction & design of prestressed concrete cylinder pipelines (PCCP) and pumping plant for the purpose of supplying water to the Khurja Sewerage Treatment Plant Project from the Mundakhera Reservoir to the pond of Khurja STPP along with all ancillary works such as development of roads/paths, drain septic Tanks, sewer line, water supply system, external electrification, service connection to building, etc would be covered under Entry 3(iii) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017.

Answer - Replied in negative.

30. This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.


(Vivek Arya)

Member of Authority for Advance
Ruling


(Rajendra Kumar)

Member of Authority for Advance
Ruling

To,

M/s Concrete Udyog Limited,
Plot No 4,5,6 And 7, INDUSTRIAL AREA,
BIJOLI, JHANSI,
Uttar Pradesh, 284001

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & C. Ex, CGO, 117/7, Sarvodaya Nagar, Kanpur -208005
4. The Assistant Commissioner, CGST & C. Ex. , Division-Jhansi, 1984/1, Civil Lines, Jhansi-284001
5. Through the Additional Commissioner, Gr-I, Commercial Tax, *Jhansi Zone, Jhansi*, Uttar Pradesh to jurisdictional tax assessing officers.

Note: An Appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Service Tax, 4, VibhutiKhand, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.