

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

ADVANCE RULING NO. UP ADRG- 12/2022

DATED 23/09/2022

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 Indian Hume Pipe Company Ltd., Gwalior Road, Karari, Jhansi, Uttar Pradesh, 284003
2.	GSTIN or User ID	09AAACT4063D1ZK
3.	Date of filing of Form GST ARA-01	28-06-2022
4.	Represented by	Shri MANISH R GOEL, C.A.
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, IP0905220010024

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

1. M/s Indian Hume Pipe Company Ltd., Gwalior Road, Karari, Jhansi, Uttar Pradesh, 284003 (here in after referred to as the applicant) is a registered assessee under GST having GSTIN: 09AAACT4063D1ZK.
2. The Applicant has submitted application for Advance Ruling dated 28-06-2022 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:-
 - a. Whether the supply of Services by the Applicant to M/s. **UTTARPRADESH JAL NIGAM** is covered by Notification No. 15/2021 Central Tax (Rate), dated 18th November, 2021 r/w. Notification No.22/2021- Central Tax (Rate), dated 31st December, 2021.
 - b. If the supplies as per Question a are covered by Notification No.15/2021- Central Tax (Rate), dated 18th November, 2021, r/w. Notification No. 22/2021- Central Tax (Rate), dated 31st December,2021, then what is the applicable rate of Tax under the Goods and Services Tax Act, 2017 on such Supplies made w.e.f. 01-01-2022; and

c. In case if the supplies as per Question a are not covered by the Notification supra then what is the applicable rate of tax on such supplies under the Goods and Services Tax Act, made w.e.f. 01-01-2022.

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 a Company registered under the Indian Companies Act.

(2) It undertakes Contracts for Construction of Head works, Sumps, Pump Rooms, laying, jointing of pipe line and commissioning and maintenance of the entire work for Water Supply Projects / Sewerage Projects/ Facilities.

(3) Its major customers include Government Bodies/ Entities/Authorities/Local Bodies/Municipalities.

(4) The applicant has been awarded a contract by M/s. UTTAR PRADESH JAL NIGAM vide Department Letter No. 130/Vividh-13/11 dated 25-02-2021.

(5) M/s UTTAR PRADESH JAL NIGAM holds PAN AAALU0256C under Income Tax Act, 1961 and GSTIN 09AAALU0256C320 under the Goods & Services Tax Act, 2017.

(6) Public Health Engineering Department was created in 1927 to provide drinking water supply and sewerage facilities in Uttar Pradesh. In year 1946, it was rechristened as Local Self Government Engineering Department (LSGED). In 1975, it was converted to Uttar Pradesh Jal Nigam through Uttar Pradesh Water Supply and Sewerage Act, 1975 (ACT no-43, 1975). As per this Act, Jal Nigam has jurisdiction over whole Uttar Pradesh (except Cantonment Area). The basic objective of creating this Corporation is development and regulation of water supply & sewerage services and for matters connected therewith.

(7) The Notification No. 15/2021-Central Tax (Rate) dated 18th November, 2021 seeks to amend parent Notification No. 11/2017 Central Tax (Rate) dated 28th June, 2017, which prescribed Rate of Tax on Construction Services at Serial No. 3 of the Table therein, viz-"(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017" at 9% under CGST Act; thereby implying total GST at 18% (CGST - 9% + SGST -9%).

(8) Notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017 was subsequently amended vide Notification No. 20/2017-Central Tax (Rate) dated 22nd August, 2017; whereby in Serial No. 3 of the Table therein item (iii) was inserted viz - "(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 Government, a local authority or a Governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,- (a)....., (b) canal, dam or other irrigation works; (c) pipeline, conduit or plant for (1) water supply (ii) water treatment, or (iii) sewerage treatment or disposal." to be taxed at 6% under CGST Act; thereby implying total GST at 12% (CGST 6% + SGST - 6%).

(9) Subsequently Notification No. 31/2017 dated 13th October, 2017 was issued to amend Serial No. 3(iii) viz - "Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity". Further, this Notification also clarified the meaning of the term Government Authority and Government Entity to mean as under -

"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.

"Government Entity" means an authority or a board or any other body including a society, trust, corporation, i) set up by an Act of Parliament or State Legislature; or ii) established by any Government, with 90 per cent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority."

(10) The functions entrusted to a Municipality under the Twelfth Schedule to Article 243W of the Constitution are as under:

- (a) Urban planning including town planning.
- (b) Regulation of land-use and construction of buildings.
- (c) Planning for economic and social development.
- (d) Roads and bridges.
- (e) Water supply for domestic, industrial and commercial purposes.
- (f) Public health, sanitation conservancy and solid waste management.
- (g) Fire services.
- (h) Urban forestry, protection of the environment and promotion of ecological aspects.
- (i) Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
- (j) Slum improvement and upgradation.
- (k) Urban poverty alleviation.
- (l) Provision of urban amenities and facilities such as parks, gardens, playgrounds.
- (m) Promotion of cultural, educational and aesthetic aspects.
- (n) Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
- (o) Cattle pounds; prevention of cruelty to animals.
- (p) Vital statistics including registration of births and deaths.
- (q) Public amenities including street lighting, parking lots, bus stops and public conveniences.
- (r) Regulation of slaughter houses and tanneries.

(11) Notification No. 15/2021-Central Tax (Rate) dated 18th November, 2021, r/w. Notification No. 22/2021- Central Tax (Rate), dated 31st December, 2021 now issued seeks to amend at Sr. No. 3 (iii) as - "Union territory or a local authority" thereby deleting the words - a Governmental Authority or a Government Entity.

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

- (1) The Contractee's of the Applicant in question are holding PAN AAALU0256C. 4th character in PAN denotes the Status of the PAN holder and as the 4th character in the case under consideration is "L" it denotes Local Authority.
- (2) Further, the Contractee's of the Applicant in question are holding GSTIN 09AAALU0256C320 and the Registration Certificate as issued by the GST Department classifies the Contractee under Local Authority.
- (3) As the Contractee's of the Applicant are classified as Local Authority as

per the GST Authorities, they are of the opinion that-

- (a) The said transaction is covered by Notification No. 15/2021 Central Tax (Rate) dated 18th November, 2021 r/w. Notification No. 22/2021- Central Tax (Rate), dated 31st December, 2021; which after amendment now reads as "(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 Central Government, State Government, Union territory or a local authority".
- (b) the said transaction is liable to tax under the GST Act @ 12%;
and
- (c) Not Applicable

7.1 The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer his comments/views/verification report on the matter. The Assistant Commissioner, CGST & Central Excise Division Jhansi vide his letter C.No. V(30)41-Tech/Misc/JHS/18/pt II/781 dated 01.09.2022 submitted that UPJN (Uttar Pradesh Jal Nigam) who will be the recipient of composite supplies qualifies as a "local authority" in terms of sub-section (3) of Section 3 of "The Uttar Pradesh Water Supply and Sewerage Act, 1975", and therefore supplies by the applicant seems to be covered under the Entry 3(iii) of the Notification No.11/2017 as amended. He further submitted that as per available records, no proceedings on the question raised in application is pending or decided, under any of the provisions of the Act.

7.2 The applicant is registered with the State GST and the Joint Commissioner (Corporate Circle), State Tax, Jhansi Zone vide his C.No. 112/PA/Joi. Comm (Ka. Sa.) Ra. Kar/Appeal-Akshya/Jhansi/2022-23 dated 15.07.2022 submitted his report as under-

- (a) the supply is not covered in Notification No. 15/2021-Central Tax (Rate) dated 18.11.2021 read with Notification No. 22/2021-Central Tx (Rate) dated 31.12.2021.
- (b) there is no significance of question at sl no. (b) in view of aforesaid answer of question (a).
- (c) the supply attracts rate of GST @ 18%.
- (d) no proceedings on the question raised in application is pending or decided, under any of the provisions of the Act

8. The opportunity of personal hearing was granted on 20.09.2022 which was attended by Mr. Manish Goel, 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) determination of the liability to pay tax on any goods or services or both.

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 questions on which advance ruling is sought by the applicant are as under-

- a. *Whether the supply of Services by the Applicant to M/s. UTTARPRADESH JAL NIGAM is covered by Notification No. 15/2021 Central Tax (Rate), dated 18th November, 2021 r/w. Notification No.22/2021- Central Tax (Rate), dated 31st December, 2021.*
- b. *If the supplies as per Question a are covered by Notification No.15/2021- Central Tax (Rate), dated 18th November, 2021, r/w. Notification No. 22/2021- Central Tax (Rate), dated 31st December,2021, then what is the applicable rate of Tax under the Goods and Services Tax Act, 2017 on such Supplies made w.e.f. 01-01-2022; and*
- c. *In case if the supplies as per Question a are not covered by the Notification supra then what is the applicable rate of tax on such supplies under the Goods and Services Tax Act, made w.e.f. 01-01-2022.*

12.1 The applicant vide their email dated 09.09.2022 have sought ruling on following additional question-

- d. Whether a "Person" can have different Constitution of Business-
 - i. Under the different Acts- Income Tax Act/GST Act
 - ii. Under the same act- GST Act.

12.2 As per Section 97(2) of the CGST Act 2017, advance ruling can be sought on following issues-

1. Classification of any goods and services or both under the act.
2. Determination of time, value, and supply of goods and services.
3. Applicability of a notification that affects the tax rate.
4. Whether input tax credit of tax paid or deemed to be paid.
5. Whether the applicant is required to be registered.
6. Determination of the liability to pay tax on any goods or services or both.
7. Whether any particular transaction is a supply of goods or services or both.

12.3 We are of the view that the additional question raised by the applicant is not covered in Section 97(2) of the CGST Act, 2017 as such we do not admit additional question.

13. 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". The Notification No. 15/2021-Central Tax (Rate) dated 18.10.2021 was superseded by the Notification No. 22/2021- Central Tax (Rate) dated 31.12.2021 and Notification No.11/2017- Central Tax (Rate) dated June 28, 2017 was amended by the said notification as under-

In the said notification, in the TABLE, against serial number 3,

-1) in column (3), in the heading "Description of Service", in items (iii), (vi), (ix) and (x), for the words "Union territory, a local authority, a Governmental Authority or a Government Entity" the words "Union territory or a local authority" shall be substituted.

Thus, as on date, the amended Entry 3(iii) of the Notification No.11/2017 with effect from 01.01.2022 reads as follows:

<i>Description of Service</i>	<i>Rate (percent)</i>
<p>“(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, -</p> <p>(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);</p> <p>(b) canal, dam or other irrigation works;</p> <p>(c) pipeline, conduit or plant for</p> <p>(i) water supply</p> <p>(ii) water treatment, or</p> <p>(iii) sewerage treatment or disposal.</p>	6

14. The questions raised by the applicant require examination as to whether the Uttar Pradesh Jal Nigam (hereinafter referred to as the UPJN) is local authority or not. The applicant have arrived at conclusion that UPJN is local authority on the basis of 4th character of PAN of UPJN being ‘L’ and the registration certificate of UPJN bearing constitution as ‘local authority’.

15. Now we proceed to examine the constitution of UPJN. 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.

16. 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;

17. 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".

18. 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;

19. 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 fulfilment 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.

20. 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.

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

21.1 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.

21.2 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.

21.3 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. 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.

22. 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.

23. 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.

24. 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.

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

26. 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."

(iii)

27. 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.

28. 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.

29. As such, by way of Notification No. 22/2021-Central Tax (Rate) dated 31.12.2021, 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 with effect from 01.01.2022. 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), (if), (iii), (iv), (v), (va), (vi), (vii), (viii), (ix), (x) and (xi) above.”	9

30. Further, the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 was amended vide Notification No. 03/2022-Central Tax (Rate) dated 13 July 2022 and following changes have been made in serial No. 3 of the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 with effect from 18.07.2022-

In the said notification, -

(A) in the Table, -

(I) against serial number 3, in column (3), -

(a) items (iii), (iv), (v), (va), (vi) and (ix) and the corresponding entries relating thereto in columns (4) and (5) shall be omitted;

(b) against items (vii) and (x), for the entry in column (4), the entry “6” shall be substituted;

(c) in item (xii), for the brackets and figures “(iii), (iv), (v), (va), (vi), (vii), (viii), (ix)”, the brackets and figures “(vii), (viii),” shall be substituted;

31. As the entry 3(iii) of the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 has been omitted vide Notification No. 03/2022-Central Tax (Rate) dated 13 July 2022 with effect from 18.07.2022 and entry 3(xii) has been amended to be read as under-

Table

Sl. No.	Chapter, Section or Heading	Description of service	Rate (per cent)	Condition
(1)	(2)	(3)	(4)	(5)
...
3	Heading 9954 (Construction services)	(i) ... (xii) Construction services other than (i), (ia), (ib), (ic), (id), (ie), (if), (vii), (viii), (x) and (xi) above	9	...

32. As such, the question raised by the applicant has no significance as of now in view of omission of entry 3(iii) of the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 with effect from 18.07.2022. However, prior to 18.07.2022, the said entry 3(iii) was existing and the questions raised by the applicant have been examined in the above paras.

33. Accordingly, we pass the following ruling.

RULING

Question a- Whether the supply of Services by the Applicant to M/s. UTTAR PRADESH JAL NIGAM is covered by Notification No. 15/2021 Central Tax (Rate), dated 18th November, 2021 r/w. Notification No.22/2021- Central Tax (Rate), dated 31st December, 2021.

Answer a- Answered in negative.

Question b- If the supplies as per Question a are covered by Notification No.15/2021- Central Tax (Rate), dated 18th November, 2021, r/w. Notification No. 22/2021- Central Tax (Rate), dated 31st December, 2021, then what is the applicable rate of Tax under the Goods and Services Tax Act, 2017 on such Supplies made w.e.f. 01-01-2022.

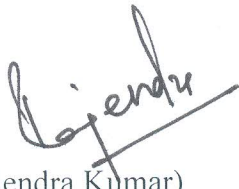
Answer b- Not answered as per reply of question a above.

Question c- In case if the supplies as per Question a are not covered by the Notification supra then what is the applicable rate of tax on such supplies under the Goods and Services Tax Act, made w.e.f. 01-01-2022.

Answer c- CGST 9% and SGST 9%.

34. 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 Indian Hume Pipe Company Ltd.,
Gwalior Road, Karari, Jhansi,
Uttar Pradesh, 284003

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, Vibhuti Khand, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.