

**AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
UTTAR PRADESH
4, Vibhuti Khand, Gomti Nagar, Lucknow-**

ADVANCE RULING NO. UP ADRG 06/2024 Dated. 01.08.2024

PRESENT:

1. Shri Amit Kumar

Joint Commissioner, Central Goods and Service Tax
Commissionerate, Lucknow

....Member (Central Tax)

2. Shri Harilal Prajapati

Joint Commissioner, State Goods and Service Tax

.....Member (State Tax)

1.	Name of the Applicant	M/s Pashchimanchal Vidyut Vitran Nigam Limited, Urja Bhawan, Victoriya Park, Meerut, Uttar Pradesh-250001.
2.	GSTIN or User ID	09AAECP5610N1Z4
3.	Date of filing of Form GST ARA-01	22.09.2023(received on 13.05.2024)
4.	Represented by	Mr. Dishant Lodhi, Account Officer
5.	Jurisdictional Authority-Centre	Range-I, Div.-Division-I Meerut, Commissionerate – Meerut.
6.	Jurisdictional Authority-State	Sector – Corporate Circle Meerut , Range-Meerut (A) , Zone- Meerut, State –Uttar Pradesh
7.	Whether the payment of fees discharged and if yes, the CIN	Paid through debit in Cash Ledger

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

1. M/s Pashchimanchal Vidyut Vitran Nigam Limited (PVVNL), having registered office at Urja Bhawan, Victoriya Park, Meerut, Uttar Pradesh-250001 (hereinafter referred as "the applicant") having GSTIN- 09AAECP5610N1Z4, have filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 read with Rule 104 of the CGST Rules, 2017 and Section 97 of UPGST Act, 2017 read with Rule 104 of the UPGST Rules, 2017 in Form GST ARA-01 (the application form for Advance Ruling), discharging the fee of Rs. 5,000/-each under the CGST Act and the UPGST Act.

2. The applicant has submitted an application for Advance Ruling dated 22.09.2023 (received on 13.05.2024) enclosing dully filled Form ARA-01 (the application form for Advance Ruling) along with written statement in the form of attachment. The applicant in his application has sought advance ruling on following question-

- Whether undertaking of deposit works under both modes qualifies to be supply' in terms of Section 7 of the CGST Act?*
- If answer to the above question is yes, then what shall be the value of such supply under the First mode and under the Second mode?*

c. *When deposit work is executed Second method, whether DISCOM is eligible to avail ITC of GST on Material, labour, installation and other overhead ?*

3. The question is about applicable GST rate under the provisions of CGST Act and liability to pay GST, hence is admissible under Section 97(2)(a) of the CGST Act 2017. Further, as per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant..

4. The applicant has submitted statement of relevant facts as under:-

A. Paschimanchal Vidhyut Vitran Nigam Limited DISCOM ("Applicant") is the subsidiary company of Uttar Pradesh Power Corporation Ltd. is a state-owned Public Sector Undertaking situated in Meerut UP. The DISCOMs were set up vide Order dated 20.09.2002 issued by then Government of UP read with the Uttar Pradesh Power Sector Reforms (Transfer of Distribution Undertakings) Scheme, 2003, vide which the distribution business of the UPPCL was transferred to the DISCOMS.

B. Facts of the case on which we are seeking Advance Ruling:

- (i) Such DISCOMs are distribution licensees in accordance with the Electricity Act, 2003 ('Electricity Act'). As distribution licensees, it is upon the DISCOMs to develop the distribution system in the State of UP. In pursuance thereof, the DISCOMs build, maintain and operate the electricity distribution systems. The system so developed, is accounted for as fixed assets in the books of accounts of the DISCOMs, which is subject to depreciation over a useful life.
- (ii) In addition to the primary activity of providing services of distribution of electricity, then DISCOMs are also undertaking development of electricity infrastructure as requested by consumers / intending agencies ('consumer') for distribution of electricity, as 'deposit works'. Such deposit work is either in the form of making additions to the existing distribution system or augmenting / modifying / shifting the existing system to a new location.
- (iii) In terms of Section 40 of the Electricity Act, 2003 ('Electricity Act') and Clause 4 of the Electricity Supply Code, 2005 ('ES Code'), the exclusive right to carry out deposit works remains with the DISCOMs, as per the technical standards of operation and maintenance of distribution lines specified by the Central Electricity Authority / Central Electricity Regulatory Commission. The deposit works is carried out at the behest of the consumer via two methods:
- (iv) **First method (Deposit work is undertaken by consumers):** where entire work with material are arranged by consumer/ intending agencies and installation work is done by the contractors hired by them. Our role is limited to supervise the work in this case. The consumer is required to pay supervision charges and shut down charges to the DISCOM computed at a fixed percentage on total cost estimate and shutdown charges along with GST. As per the current practice, the DISCOM is computing GST on the total estimate of expenditure.

- (v) **Second method (Deposit work is undertaken by DISCOM):** where entire material and installation work is arranged by us on behalf/ instance of consumers/ intending agencies and work is done in our supervision. We charge material cost and installation cost from the customers as reimbursement on cost to cost basis. For our supply of service we charge only supervision charges plus GST on Estimated cost i.e the cost of Material and installation work plus supervision charge.

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

- A. It may be noted that the actual execution of works under both modes is undertaken by Licensed Electrical Contractor (LEC), as are licensed by Directorate, Electrical Safety. Under the First method, it will be engaged by the consumer/ intending agencies and in Second method, LEC will be engaged by DISCOM and under the. The cost of deposit works is calculated by the DISCOMs as per the estimation methodology which includes cost (material and labour), overhead charges, other charges, etc.
- B. It is the understanding of the Applicant that irrespective of the mode of execution of deposit works, the ownership of the distribution system shall vest in the DISCOMs only, in capacity of being distribution licensee. On being specifically asked about the legal provision providing for vesting of such ownership in DISCOMs, however, the Applicant has not pointed out any specific legal provision.
- C. It is the "Applicant" understanding that the DISCOM is exclusively liable and responsible for modification / alteration / extension of the distribution infrastructure. for this reason that the deposit work is to be executed under the supervision of the DISCOM only
- D. Estimate is being prepared before finalization of work to estimate the actual cost. It may be seen that cost of material and cost of installation of lines (Which is done by contractors) are separately shown. Supervision charges for our supply of service are separately quoted. Rest are reimbursement of payment done by us on behalf of customers. Copy of estimate enclosed herewith from where it may be seen that we charge for supervision of services provided to customers. Rest are on actual basis reimbursement of payment done by us towards the liability customers to pay the material and installation cost. In case estimated cost of material and labour at the time of execution is found less than the estimated material then balance amount is refunded to the party.
- E. However it is important to disclose here that after construction of lines it will be kept by us as custodian of these lines and in our books of accounts and by the amount of construction of lines, customer contribution is credited in our books of accounts.

6. The application for advance ruling was forwarded to Assistant Commissioner, Central Tax & Central Excise, Division- Meerut I vide letter dated 13.06.2024 to offer their comments/views/verification report on the matter. But no comments in the matter was offered.

7. The applicant was granted a personal hearing on 16.07.2024 which was attended by Mr. Dishant Lodhi, Account Officer, the authorized representative of the applicant during which he reiterated the submissions made in the application of advance ruling.

DISCUSSION AND FINDING

8. 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'.

9. We have gone through the Form GST ARA-01 filed by the applicant and observed that the applicant has ticked following issues on which advance ruling required-

- (1) *determination of time and value of supply of goods or services or both.*
- (2) *admissibility of input tax credit of tax paid or deemed to have been paid.*

At the outset, 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.

10. Applicant (PVVNL) is the subsidiary company of Uttar Pradesh Power Corporation Ltd. is a state-owned Public Sector Undertaking situated in Meerut UP.

11. Applicant undertakes development of electricity infrastructure as requested by consumers / intending agencies ('consumer') for distribution of electricity, as 'deposit works'. Such deposit work is either in the form of making additions to the existing distribution system or augmenting / modifying / shifting the existing system to a new location.

12. The deposit works is carried out at the behest of the consumer via two modes:

- I. **First method (Deposit work is undertaken by consumers):** where entire work with material are arranged by consumer/ intending agencies and installation work is done by the contractors hired by them. Our role is limited to supervise the work in this case. The consumer is required to pay supervision charges and shut down charges to the DISCOM computed at a fixed percentage on total cost estimate and shutdown charges along with GST. As per the current practice, the DISCOM is computing GST on the total estimate of expenditure.
- II. **Second method (Deposit work is undertaken by DISCOM):** where entire material and installation work is arranged by us on behalf/ instance of consumers/ intending agencies and work is done in our supervision. We charge material cost and installation cost from the customers as reimbursement on cost to cost basis. For our supply of service we charge only supervision charges plus GST on Estimated cost i.e the cost of Material and installation work plus supervision charge.

13. We have gone through the submissions made by the applicant and have examined the same. We observe that the applicant has sought advance ruling on the following questions-

- a. *Whether undertaking of deposit works under both modes qualifies to be supply' in terms of Section 7 of the CGST Act?*
- b. *If answer to the above question is yes, then what shall be the value of such supply under the First mode and under the Second mode?*
- c. *When deposit work is executed Second method, whether DISCOM is eligible to avail ITC of GST on Material, labour, installation and other overhead ?*

14. We discuss the first method where **Deposit work is undertaken by consumers :**

Under this method, the responsibility to undertake the deposit work is on the consumer/intending agencies through the contractors, under supervision of PVVNL. The consumer is required to pay supervision charges to the PVVNL computed at a fixed percentage on total cost estimate. Since supervision charges are recovered by applicant from the consumer under this mode, the same shall, inter-alia, constitute value of supplies as per the GST Act. The further question, however, is whether the cost of works is also includible in value of such supplies. To answer this question, reference needs to be made to certain provisions of the electricity law.

- i. In this method, the works contract service supplied in course of electric line installation are neither supplied by nor the consideration for same has been received by applicant. The contract for works contract services is executed between the concerned party and a third-party work contractor. Therefore, the applicant is a stranger to this contract. In a case where the third-party work contractor remains unpaid for the services supplied by him, he can sue only the concerned party not the applicant. There is no obligation to pay on the part of applicant. Hence, the case shall not be covered under section 15(2)(b) of the CGST Act 2017.
- ii. Here, PVVNL is not a supplier of goods and services as per provisions of section 2(105) of CGST Act, 2017 as the work is being undertaken by the customer itself. There is no relationship between the customer and PVVNL which can be categorized as that of supplier and recipient except for the services of the supervising the whole work.
- iii. It is also pertinent to note that in the present transaction there is no consideration which comes under the purview of section 2(31) of CGST Act, 2017. All the payments are being made by the customer directly to the vendor and contractors and no payment is being made to PVVNL except supervision charge for the work.
- iv. The work contract services supplied in the course of construction/dislocation/shifting are neither supplied by nor the consideration for the same has been received by PVVNL hence there is no supply of works contract services by the PVVNL.
- v. In this case the ownership of the property being dislocated / shifted is vested with PVVNL, the PVVNL receives money in the form of dislocation / shutting charges. The services supplied in such cases is related to an act of tolerance with respect to such immovable property and hence covered under “agreeing the obligation to refrain from an act, or to tolerate an act or a situation , or to do an act” and are classified under SAC999794.
- vi. The work contract services in the present case is being supplied by an independent contractor and is covered under SAC 9954, it is distinct service which is being supplied by a registered person other than PVVNL.
- vii. Though the property subjected to works contract services belongs to the PVVNL but the supply of works contract services is not made on behest of PVVNL. The contract for works contract services is executed between the concerned party and a third party works contractor and hence PVVNL is a stranger to this contract.

- viii. In a case where the third party works contractor remains unpaid for the services supplied by him, he can sue only the customer and not the PVVNL. So, there is no liability to pay on the part of PVVNL.
- ix. As the construction or dislocation work is not made on the behest of PVVNL and there is only a consent or tolerance for such shifting hence the PVVNL is not liable to pay for the expenses incurred in such shifting. Since there is no obligation to pay on part of PVVNL hence the provisions of section 15(2)(b) of CGST Act, 2017 are not applicable in this case.
- x. In this case the consideration for works contract services is fully paid by concerned party and there is no shared / part payment by the same. In such cases it is not feasible for having two considerations for a single supply.
- xi. Accordingly, we are of the view that in the facts and circumstances, where the value of materials and cost of execution of work for installation of electric lines are borne by the recipient of service and the applicant charges supervision fees only, the value of materials and cost of installation shall not be included in the value of supply for determination of taxable value under GST and the applicant shall be liable to pay GST only on the supervision charges.

15. Now we discuss the second method where Deposit work is undertaken by DISCOM:

As all the work including cost of material and its supervision is being done by the applicant. The GST charged on the cost of material and supervision charge is tenable. In case materials have to be provided by the applicant including supervision charge the GST shall be charged under single invoice raised by the applicant.

Further, the entire material and installation work is arranged by the applicant on behalf/ instance of consumers/ intending agencies and work is done in the supervision of the Applicant. The work done by applicant falls under "Works Contract" as per section 2 (119) of the CGST Act, 2017.

The structure created in this process is used in the furtherance of business by the Applicant.

In this regard, Section 17(5) (c) and (d) the CGST Act, 2017 is reiterated as under:

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub- section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

.....

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—For the purposes of clauses (c) and (d), the expression —construction includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

It is pertinent to note that the ownership of the property is vested with the PVVNL, after construction of lines the property will be kept by the applicant as custodian of these lines and it is credited in the applicant's books of account. However the construction of lines is being done on behalf of the customers of applicant, the applicant is not doing it on his own account, thus the ITC on the material, labour, installation and other overhead does not falls under block credit under section 17(5) of the CGST Act, 2017. Hence, applicant is eligible for Input Tax Credit as per Section 16 of the CGST Act, 2017.

16. In view of the above discussions, we pass the ruling as follows:

RULING

Question. A. Whether undertaking of deposit works under both modes qualifies to be supply in terms of Section 7 of the CGST Act?

Answer: Replied in affirmative

Question. B. If answer to the above question is yes, then what shall be the value of such supply under the First mode and under the Second mode?

Answer: In first mode, the value of materials and cost of installation shall not be included in the value of supply for determination of taxable value under GST and the applicant shall be liable to pay GST only on the supervision charges.

In second mode value of supply will be the value of material and cost of execution work reimbursed on cost basis for installation of for determination of taxable value under GST.

Question. C. When deposit work is executed Second method, whether DISCOM is eligible to avail ITC of GST on material, labour, installation and other overhead ?

Answer: Replied in affirmative subject to conditions of Section 17(5) (c) and (d) of the CGST Act, 2017 and other rules.

17. 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.



(Harilal Prajapati)

Member of Authority for Advance
Ruling



(Amit Kumar)

Member of Authority for Advance
Ruling

To,

M/s Pashchimanchal Vidyut Vitran Nigam Limited,
Urja Bhawan, Victoriya Park,
Meerut, Uttar Pradesh-250001

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 Principal Commissioner, CGST & C. Ex, Meerut, OPP. C.C.S. University, Mangal Pandey Nagar, Meerut-250004.
4. The Deputy/Assistant Commissioner, CGST & Central Excise Division –I, Meerut, Mangal Pandey Nagar, Meerut-250004.
5. Through the Additional Commissioner...ZONE-MEE.Rut....., 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.