

**AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
UTTAR PRADESH**

4, Vibhuti Khand, Gomti Nagar, Lucknow-

ADVANCE RULING NO. UP ADRG- 24/2023

DATED 02/5/2023

PRESENT:

1. Shri Rajendra Kumar

Additional Commissioner, Central Goods and Service Tax

Audit Commissionerate, Lucknow

.... Member (Central Tax)

2. Shri Harilal Prajapati

Joint Commissioner, State Goods and Service TaxMember (State Tax)

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| 1. | Name of the Applicant | M/s NATIONAL HIGHWAYS AUTHORITY OF INDIA, 26,Bisalpur Road,Green Park, Bareilly, Uttar Pradesh-243006 |
| 2. | GSTIN or User ID | 09LKNP06843E1DC |
| 3. | Date of filing of Form GST ARA-01 | 14.09.2022 |
| 4. | Represented by | Shri Kartikeya Singh, Advocate |
| 5. | Jurisdictional Authority-Centre | Range-Shyamganj, Division- I Bareilly |
| 6. | Jurisdictional Authority-State | Sector- 9,Range-Bareilly (B),Bareilly |
| 7. | Whether the payment of fees discharged and if yes, the CIN | Yes BARB22090900091529 |

1. M/s NATIONAL HIGHWAYS AUTHORITY OF INDIA, 26,Bisalpur Road, Green Park, Bareilly, Uttar Pradesh-243006 (here in after referred to as the applicant) is a registered assessee under GST having GSTN: 09LKNP06843E1DC.

2. The applicant has submitted an application for Advance Ruling dated 14.09.2022 enclosing dully filled Form ARA-01 (the application form for Advance Ruling) along with annexure and attachments. The applicant in his application has sought advance ruling on following question-

1. *Whether the work done by the applicant (NHAI) in shifting the transmission lines for the widening of road under the supervision of MVVNL comes under the definition of supply as per section 15(2)(b) of C.G.S.T. Act, 2017?*
2. *Whether GST is to be paid to MVVNL on the full amount of work done for shifting the transmission lines by NHAI?*
3. *Without prejudice to the submissions made hereinabove and hereinafter, if the NHAI pays GST on the entire value of work done to its contractors and also to MVVNL, then how will this payment of same amount of GST on the same transaction to two separate entities, not constitute double taxation?*

3. 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.

The applicant had submitted that-

3.1 That the applicant is currently doing the work of widening of National Highway no. 30 from Sitarganj to Bareilly, for which the existing electric poles are to be shifted from one place to another. These power lines are required to be shifted to keep the electrical clearances safe as per the Indian Electricity Rules 1956.

3.2 That for the purpose of highway modification, the existing transmission lines throughout the highway are required to be shifted/ raised for safe clearances.

3.3 That the shifting/ modification work of transmission lines for the widening of highway is done in two ways by MVVNL:-

a. That the whole shifting/ raising/ modification is done by the MVVNL itself for which MVVNL charges for the work done or,

b. That the whole work is done by NHAI under the supervision of MVVNL, for which MVVNL gets supervision charges, which are approximately 5% of the estimated value of the work for shifting / modification of the transmission lines.

3.4 That since these power lines are the assets of MVVNL and need to be shifted/modified as per the requirements of NHAI, all the expenses are borne by the applicant itself because the modification in transmission lines is a requirement of NHAI for the widening of road.

4. The application for advance ruling was forwarded to Assistant Commissioner, Central Tax & Central Excise, Division-I, Bareilly to offer their comments/views/verification report on the matter. No views/comments has been offered from the concerned officer on the ground that MVVNL does not fall under the jurisdiction of his formation as communicated vide letter dated 28.11.2022.

5. The applicant was granted a personal hearing on 30.11.2022 which was attended by Shri Kartikaya Singh, the authorized representative of the applicant during which they reiterated the submissions made in the application of advance ruling.

According, following Advance Ruling No. UP ADRG-17/2022 dated 08.12.2022 was given by the Members of Authority for Advance Ruling, Uttar Pradesh:-

ORDER

1. *Whether the work done by the applicant (NHAI) in shifting the transmission lines for the widening of road under the supervision of MVVNL comes under the definition of supply as per section 15(2)(b) of C.G.S.T. Act, 2017?*

Answer: Replied in Negative

2. *Whether GST is to be paid to MVVNL on the full amount of work done for shifting the transmission lines by NHAI?*

Answer: Replied in Negative.

3. *Without prejudice to the submissions made hereinabove and hereinafter, if the NHAI pays GST on the entire value of work done to its contractors and also to MVVNL, then how will this payment of same amount of GST on the same transaction to two separate entities, not constitute double taxation?*

Answer- Already explained in the answer No. 1 and 2 as above.

6. The Advance Ruling No. UP ADRG-17/2022 dated 08.12.2022 has been examined/reviewed in the light of Section 102 of the CGST Act, 2017 and it has been observed that Applicant has sought Advance Ruling on misrepresentation of the fact that Applicant is receiver of the Service/Goods in case of Shifting of Transmission Lines during the work of widening of National Highway No. 30 from Sitarganj to Bareilly as the power lines are the assets of MVVNL and shifting is done under supervision of MVVNL only.

7. For this we would like to review this matter in light of definitions of Advance Ruling under section 95 of the CGST Act 2017 and the same is reproduced as under:

Section 95. Definitions of Advance Ruling.— In this Chapter, unless the context otherwise requires,—

(a) —advance ruling means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

(b) —Appellate Authority means the Appellate Authority for Advance Ruling referred to in section 99;

(c) —applicant means any person registered or desirous of obtaining registration under this Act;

The meaning of the applicant defined in sub-section (c) of section 95 should be derived only in consonance with sub-section (a) of section 95 of the CGST Act 2017.

8. For further proceedings in matter, the applicant was again granted a personal hearing on 11.04.2023 which was attended by Shri Kartikaya Singh, the authorized representative of the applicant during which he reiterated the earlier submissions and submitted written submission dated 11.04.2023 in support of his defence.

The reply dated 11.04.2023 is as under:

1. That proceedings u/s 104 of the CGST Act, 2017 have been initiated to examine the AAR order no. 17/2022 dt. 08.12.2022 and for this an opportunity of personal hearing has been provided to the applicant on 11.04.2023. Section 104 of the CGST act states that:- Section 104. Advance ruling to be void in certain circumstances.-

(1) Where the Authority or the Appellate Authority [or the National Appellate Authority] finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 [or under section 101C] has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

Explanation-The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned officer and the jurisdictional officer.

2. That a bare perusal of section 104 will reveal that proceedings u/s 104 can only be initiated "Where the Authority or the Appellate Authority for the National Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 [or under section 101C] has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts". However, it has not been mentioned anywhere in the notice as to what fraud has been committed by the applicant or what material facts have been suppressed or misrepresented by the applicant. As such, the notice is vague and ambiguous because the reasons for initiating proceedings u/s 104 of the CGST Act have not been clearly stated/ specified in the notice.

3. That the applicant filed the GST ARA-01 (application form for advance ruling) on 14.09.2022, and a description of the case in brief is there on page nos. 2 & 3 (in 10 points) and also facts of the case in full detail have been stated from page nos. 4 to 7 (in 16 points) and thereafter, the applicant's interpretation of law has been stated from page nos. 7 to 12 (in 18 points). Thus the entire transaction between the applicant NHAI and MVVNL has been clearly stated in the pleadings in full detail and in the absence of the advance ruling order (no. 17/2022 dt. 08.12.2022), the applicant will be adversely taxed in gross violation of the provisions of the GST Act. It is categorically stated that the applicant has not concealed, suppressed or misrepresented any material fact and no fraud has been committed by the applicant in obtaining the advance ruling order (no. 17/2022 dt. 08.12.2022).

4. That the applicant M/s National Highways Authority of India (NHAI) was constituted by an Act of the Parliament namely, The National Highways Authority of India Act, 1988 and it is responsible for the development, maintenance and management of National Highways entrusted to it and/or matters connected or incidental thereto. If the Authority for Advance Ruling wishes to initiate proceedings u/s 104 of the CGST act against such a statutory body, then the reasons for such proceedings should have been clearly mentioned in the notice itself so as to enable the applicant to take proper legal recourse and prepare his defense. A mere allegation of "fraud or suppression of material facts or misrepresentation of facts" is vague and ambiguous unless and until it is not clearly and specifically stated as to what fraud has been committed by the applicant or what material facts have been suppressed or misrepresented by the applicant.

5. That the question no. 3 in the application for advance ruling deals with the issue of "double taxation" and the same has been answered in favour of the applicant vide the advance ruling order (no. 17/2022 dt. 08.12.2022). Hypothetically, if this advance ruling order is declared void ab-initio, then the applicant will have to pay GST on the same transaction to two (2) different entities, which is against the general principles of taxation and will also defeat the important aims and objectives of the GST Act.

6. That section 95(a) of the CGST Act defines "advance ruling" and section 95(c) defines the term "applicant". These definitions are as follows:-

Section 95(a)-"advance ruling" means a decision provided by the Authority or the Appellate Authority for the National Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 for under section 101C), in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

Section 95(c)-"applicant" means any person registered or desirous of obtaining registration under this Act;

Since M/s National Highways Authority of India (NHAI) is registered under the GST Act vide GSTIN-09LKNP06843E1DC, hence NHAI is covered by the definition of "applicant" as provided in section 95(c) of the CGST Act and as such, can apply for an "advance ruling" as defined in section 95(a). Moreover, the questions on which the advance ruling was sought were also covered by the provisions of section 97(2) of the CGST Act.

In view of these submissions, it is humbly requested that the notice u/s 104 of the CGST Act may kindly be vacated and oblige.

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. Before proceeding, we would like to refer section 102 and 104 of the CGST Act 2017 and are reproduced as below:

Section 102. Rectification of advance ruling.— The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order:

Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.

Section 104. Advance ruling to be void in certain circumstances.— (1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

We have examined the whole issue in the light of the definitions of Advance Ruling under section 95 of the CGST Act 2017 and submissions made by the Applicant.

After careful examination, We find that Applicant M/s National Highways Authority of India (NHAI) is receiver of the Goods/Services provided by the MVVNL. In light of sub-section (a) provided under Section 95 of CGST Act 2017, only supplier of the services/goods can file Application for Advance Ruling.


In conspectus of aforementioned findings, We find that no ruling can be given in the matter as discussed above. Hence, Advance Ruling No. UP ADRG-17/2022 dated 08.12.2022 is liable to void ab-initio in terms of Section 104 of CGST Act.

11. Accordingly, we pass the ruling as under:

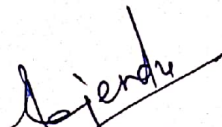
RULING

No ruling can be given in the matter as discussed above. Hence, Advance Ruling No. UP ADRG-17/2022 dated 08.12.2022 is declared void ab-initio in terms of Section 104 of CGST Act.

12. 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


(Rajendra Kumar)

Member of Authority for Advance
Ruling

To,

M/s NATIONAL HIGHWAYS AUTHORITY OF INDIA,
26, Bisalpur Road, Green Park,
Bareilly, Uttar Pradesh-243006

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, G.B. Nagar, 3rd Floor, Wegmans Business Park, K.P.-III, Greater Noida-201306.
4. The Deputy/Assistant Commissioner, CGST & Central Excise, Division-I, CR Building, Rampur Garden, Bareilly-243001, Uttar Pradesh.
5. Through the Additional Commissioner G.T. 1, Bareilly Zone, Bareilly, 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.