

समक्ष अग्रिम विनिर्णय प्राधिकारी उत्तराखण्ड(माल और सेवा कर)
BEFORE THE AUTHORITY FOR ADVANCE RULINGS FOR THE
STATE OF UTTARAKHAND
(Goods and Services Tax)

Present:

श्री अनुराग मिश्रा(सदस्य)

Shri Anurag Mishra (Member)

श्री रामेश्वर मीणा (सदस्य)

Shri Rameshvar Meena (Member)

The 16th day of March, 2022

अग्रिम विनिर्णय संख्या. 09 /2021-22

Ruling No: 09 /2021-22

in

आवेदन संख्या . 10/2021-22

Application No: - 10 /2021-22

1	आवेदक Applicant	Divisional Forest Office, Bageshwar, Forest Compound, Kathayatbara, Bageshwar (Uttarakhand)- 263645.
2	अधिकारिता अधिकारी Jurisdictional Officer	-----
3	आवेदक की ओर से उपस्थित Present for the Applicant	Mr. Himanshu Bagri Divisional Forest Officer, Bageshwar
4	अधिकारिता अधिकारी की ओर से उपस्थित Present for the Jurisdictional Officer	None
5	Concerned Officer	Mrs. Preeti Manral, Deputy Commissioner, SGST-Dehradun
6	आवेदन प्राप्ति की तिथि Date of receipt of application	24.12.2021
7	सुनवाई की तिथि Date of Personal Hearing	14.03.2022 (Through video Conferencing)

नोट: इस अग्रिम विनिर्णय की प्राप्ति के 30 दिन के अन्दर उत्तराखण्ड माल और सेवाकर अधिनियम 2017 की धारा-99 के अन्तर्गत गठित अग्रिम विनिर्णय अपीलप्राधिकारी के समक्ष धारा- 100(1) के अन्तर्गत अपील दायर की जा सकती है।

Note: An appeal against this ruling lies before the appellate authority for advance ruling under Section 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, constituted under Section 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order.

AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX
UTTARAKHAND

PROCEEDINGS

1. This is an application under Sub-Section (1) of Section 97 of the Central Goods & Service Tax Act, 2017 and Uttarakhand State Goods & Service Tax Act, 2017 (hereinafter referred to as CGST/SGST Act) and the rules made there under filed by M/s Divisional Forest Office, Bageshwar, Forest Compound, Kathayatbara, Bageshwar (Uttarakhand)- 263645, (herein after referred to as the "applicant"), a corporate body (LLP) and registered with GSTIN- 05AAALD1881A1ZR under the CGST Act, 2017 read with the provisions of the UGGST Act, 2017 (hereinafter referred to as 'the applicant').

2. In the application dated 24.12.2021, the applicant submitted that:

1. They are a division of Forest Department of State Government of Uttarakhand and registered with GSTIN-05AAALD1881A1ZR in Uttarakhand and engaged in various works for conservation, protection and management of natural resources, forests and wildlife. In this process, they carry out works like collection of seeds from forest, nursery management, plantation in forest, digging contour trenches, chal-khal (water conservation pits in hills) and making stone dry check dam for soil and moisture conservation, clearing of fire lines in forest to protect forest from fire which causes damage to forest, controlled burning of portion of forest to prevent spread of fire and repairing Kaccha walking trails and roads in forests.
2. The activities like collection of seeds from forest, digging contour trenches, chal-khal (water conservation pits in hills) for soil and moisture conservation, clearing of fire lines in forest to protect forest from fire which causes damage to forest, controlled burning of portion of forest to prevent spread of fire are purely labour services and for execution of above said works contractor is selected through various methods.
3. The activity of raising seedlings in nursery includes purchase of polybags and rest is purely labour work. However, the cost of polybags is less than 25% of total supply and services of contractor are taken for execution of above said entire nursery development work.
4. The activity of plantation in forest includes transportation of seedlings from nursery to the plantation site and rest is purely labour work. However, the cost of transportation of seedlings from nursery to site is less than 25% of total supply. The applicant takes services of contractor for entire plantation work.
5. The activity of creation of check-dam for Soil and Moisture Conservation is purely labour services. However, the stones required for check-dam is collected from the forest area and department deduct royalty of stone and contract is engaged only for labour services.
6. Most the works referred to above are small in nature and therefore, the value of single contract in most cases is less than Rs 2,50,000. However, the service provider registered with the department provides services for many works like one contract

for nursery, second for plantation, third for fire lines and so on. The value of all contract combined may become more than Rs 10 Lakhs in some cases.

3. In view of the above facts the applicant has sought advance ruling on the following questions:

1. Whether the supply of labour services for collection of seeds from forest, digging contour trenches, chal-khal (water conservation pits in hills) for soil and moisture conservation, clearing of fire lines in forest to protect forest from fire which causes damage to forest, controlled burning of portion of forest to prevent spread of fire and damage to environment is included in exempted services in Notification No. 12/2017 Central Tax (Rate) dated 28-06-2017 or any other related exemption notification.
 2. If above supply of service is not included in any exemption notifications as per Question 1, the rate of goods and service tax applicable to such supply of services.
 3. Whether the supply of services for raising seedlings in nursery is exempted services in Notification No. 12/2017 Central Tax (Rate) dated 28-06-2017 or any other related exemption notification.
 4. If above supply of service is not included in any exemption notifications as per Question 3, the rate of goods and service tax applicable to such supply of services.
 5. Whether the supply of services for plantation in forest is exempted services in Notification No. 12/2017 Central Tax (Rate) dated 28-06-2017 or any other related exemption notification.
 6. If above supply of service is not included in any exemption notifications as per Question 5, the rate of goods and service tax applicable to such supply of services.
 7. Whether the supply of services for creation of check-dam for Soil and Moisture Conservation is exempted services in Notification No. 12/2017 Central Tax (Rate) dated 28-06-2017 or any other related exemption notification.
 8. If above supply of service is not included in any exemption notifications as per Question 7, the rate of goods and service tax applicable to such supply of services.
 9. The section 51 of the CGST specifies that TDS is to be deducted when total value of taxable goods or services or both under a contract exceeds Rs 2,50,000. Most the mentioned works in this application are small in nature. Therefore, the value of single contract in most cases is less than Rs 2,50,000. However, the service provider registered with the department provides services for many works like one contract for nursery, second for plantation, third for fire lines and so on. The value of all contract combined may become more than Rs 10 Lakhs in some cases. Whether, TDS is to be deducted if applicant gives contract for multiple works to the contractor, the cumulative contract value is more than Rs 2,50,000. However, work order of single contract is less than Rs 2,50,000.
4. At the outset, we would like to state that the provisions of both the CGST Act and the SGST 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 provisions under the SGST Act.

5. The Advance Ruling under GST 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.

6. As per the said sub-section (2) of Section 97 of the Act advance ruling can be sought by an applicant in respect of:

- (a) Classification of any goods or services or both
- (b) Applicability of a notification issued under the provisions of this Act,
- (c) Determination of time and value of supply of goods or services or both,
- (d) Admissibility of input tax credit of tax paid or deemed to have been paid
- (e) Determination of the liability to pay tax on any goods or services or both
- (f) Whether the applicant is required to be registered
- (g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both within the meaning of that term.

6.2 In the present case applicant has sought advance ruling on Applicability of a notification issued under the provisions of this Act, therefore, in terms of said section 97(2) the present application is hereby admitted.

7. Accordingly opportunity of personal hearing was granted to the applicant on 14.03.2022. Mr. Himanshu Bagri, Divisional Forest Officer, Bageshwar, on behalf of the applicant appeared for personal hearing on the said date and re-iterated the submission already made in their application. Ms. Preeti Manral, Deputy Commissioner, SGST-Dehradun, Concerned Officer from State Authority was also present during the hearing proceedings. She presented her facts and requested the authority to decide the case on merit.

8. We find that the applicant i.e. M/s Divisional Forest Office, Bageshwar, Forest Compound, Kathayatbara, Bageshwar (Uttarakhand)- 263645, a division of Forest Department of State Government of Uttarakhand, registered with GSTIN-05AAALD1881A1ZR in Uttarakhand and engaged in various works for conservation, protection and management of natural resources, forests and wildlife and in the process carry out works like collection of seeds from forest, nursery management, plantation in forest, digging contour trenches, chal-khal (water conservation pits in hills) and making stone dry check dam for soil and moisture conservation, clearing of fire lines in forest to protect forest from fire which causes damage to forest, controlled burning of portion of forest to prevent spread of fire and repairing Kaccha walking trails and roads in forests, has sought advance ruling on following issues:-

1. Whether the supply of labour services for collection of seeds from forest, digging contour trenches, chal-khal (water conservation pits in hills) for soil and moisture conservation, clearing of fire lines in forest to protect forest from fire which causes damage to forest, controlled burning of portion of forest to prevent spread of fire and damage to environment is included in exempted services in Notification No. 12/2017 Central Tax (Rate) dated 28-06-2017 or any other related exemption notification.
2. If above supply of service is not included in any exemption notifications as per Question 1, the rate of goods and service tax applicable to such supply of services.
3. Whether the supply of services for raising seedlings in nursery is exempted services in Notification No. 12/2017 Central Tax (Rate) dated 28-06-2017 or any other related exemption notification.
4. If above supply of service is not included in any exemption notifications as per Question 3, the rate of goods and service tax applicable to such supply of services.
5. Whether the supply of services for plantation in forest is exempted services in Notification No. 12/2017 Central Tax (Rate) dated 28-06-2017 or any other related exemption notification.
6. If above supply of service is not included in any exemption notifications as per Question 5, the rate of goods and service tax applicable to such supply of services.
7. Whether the supply of services for creation of check-dam for Soil and Moisture Conservation is exempted services in Notification No. 12/2017 Central Tax (Rate) dated 28-06-2017 or any other related exemption notification.
8. If above supply of service is not included in any exemption notifications as per Question 7, the rate of goods and service tax applicable to such supply of services.
9. The section 51 of the CGST specifies that TDS is to be deducted when total value of taxable goods or services or both under a contract exceeds Rs 2,50,000. Most the mentioned works in this application are small in nature and therefore, the value of single contract in most cases is less than Rs 2,50,000. However, the service provider registered with the department provides services for many works like one contract for nursery, second for plantation, third for fire lines and so on. The value of all contract combined may become more than Rs 10 Lakhs in some cases. Whether, TDS is to be deducted if applicant gives contract for multiple works to the contractor, the cumulative contract value is more than Rs 2,50,000. However, work order of single contract is less than Rs 2,50,000.

9. We find that the applicant in their application has contended that :

1. The Ministry of Finance, Government of India via Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017 at Serial no. 3 of Table has exempted "Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity

in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.”

2. The Ministry of Finance, Government of India via Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017 at Serial no. 3A of Table has exempted “Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.”

3. Under Article 243G in Schedule 11 of Constitution of India, function entrusted to Panchayat are listed. The entry 2, 3, 6, 7 and 13 covers the activities performed by the forest department thus exempt from GST i.e. 2. Land improvement, implementation of land reforms, land consolidation and soil conservation; 3. Minor irrigation, water management and watershed development; 6. Social Forestry and farm forestry; 7. Minor Forest Produce; 13. Road, culverts, bridges, ferries, waterways and other means of communication

4. Under Article 243W in Schedule 12 of Constitution of India, function entrusted to Municipalities are listed. The entry 4, 7 and 8 covers the activities performed by the forest department thus exempt from GST i.e. 4. Roads and bridges; 7. Fire Services; 8. Urban Forestry, protection of environment and promotion of ecological aspects.

5. In a similar question raised in Kerala Authority of Advance Ruling, GST in Advance Ruling No. KER/27/2019 order dated 24.05.2019 has ruled that “ The services for setting up fire lines, plantation of trees in forest, river maintenance in forest, clearing of truck path in forest are pure services that are clearly falling within the purview of term “ Protection of Environment, Road/ Fire Services as covered in 12th Schedule under Article 243 W of the constitution. Therefore, these services are exempted as per Sl.No. 3 of the Notification No. 12/2017- Central Tax (Rate) dated 28-06-2017”

10. Now we take up the case for discussion:

10.2 We find that at Sl. No. 3 of the Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017 under Chapter Head for the service code 99 exemption has been granted to Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity, by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

10.3 We further find that vide Notification No. 2/2018-C.T. (Rate), dated 25-1-2018, the Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017 has been amended to mandate *"Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution."*

10.3.2 We find that vide Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017, pure services provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G, has been exempted and the functions entrusted to a Panchayat under the Eleventh Schedule to Article 243G of the Constitution are as under:

- (i) *Agriculture, including agricultural extension.*
- (ii) *Land improvement, implementation of land reforms, land consolidation and soil conservation.*
- (iii) *Minor irrigation, water management and watershed development.*
- (iv) *Animal husbandry, dairying and poultry.*
- (v) *Fisheries.*
- (vi) *Social forestry and farm forestry.*
- (vii) *Minor forest produce.*
- (viii) *Small scale industries, including food processing industries.*
- (ix) *Khadi, village and cottage industries.*
- (x) *Rural housing.*
- (xi) *Drinking water.*
- (xii) *Fuel and fodder.*
- (xiii) *Roads, culverts, bridges, ferries, waterways and other means of communication.*
- (xiv) *Rural electrification, including distribution of electricity.*
- (xv) *Non-conventional energy sources.*
- (xvi) *Poverty alleviation programme.*
- (xvii) *Education, including primary and secondary schools.*
- (xviii) *Technical training and vocational education.*
- (xix) *Adult and non-formal education.*
- (xx) *Libraries.*
- (xxi) *Cultural activities.*
- (xxii) *Markets and fairs.*
- (xxiii) *Health and sanitation, including hospitals, primary health centres and dispensaries.*
- (xxiv) *Family welfare.*
- (xxv) *Women and child development.*
- (xxvi) *Social welfare, including welfare of the handicapped and mentally retarded.*
- (xxvii) *Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.*
- (xxviii) *Public distribution system.*

(xxix) Maintenance of community assets.

10.3.3 Likewise we find that vide Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017, pure services provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any Municipality under article 243W of the Constitution, has been exempted and 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.

10.4 Hence we find that to avail the benefit of the provisions of above said notification, two conditions of the notification has to be fulfilled in letter and spirit, **first one being that "the receiver of services should be the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution"** and the second one being that the service provided should be either be a **"Pure services" or "Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply"**.

10.5 In view of the above position of law we hold that exemption under Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017, is available only to the provider of "Pure services (excluding works contract service or other composite supplies involving supply of any goods)" and "Composite supply of goods and services in which the value of

supply of goods constitutes not more than 25 per cent. of the value of the said composite supply", when the receiver of such services is Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity and also the services so provided should fall in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution. We find that although the applicant has submitted that the value of supply of goods in composite supply is not more than 25% of the value of the said composite supply, but has not provided any documentary evidences for their claim, even more so there is reference of "digging contour trenches, chal-khal (water conservation pits in hills) for soil and moisture conservation" and "creation of check-dam for Soil and Moisture Conservation" in their application, hence we observe that this criterion cannot be applied to each and every work/ contract, given by the applicant to the contractors by same yard stick, and hence each and every contract for Composite supply of goods and services has to be examined individually, for ascertaining the eligibility of exemption Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017.

10.6 In view of the above provisions of the Act, we hold that the in relation to the nature of works cited at Sl. 1, 3, 5 and 7 of Para 3 above, the benefit of exemption Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017, is available only if the contract is either for pure service or for Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply and on activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W of the Constitution only and not in any other cases.

11. With respect to applicant's query on the provisions of TDS under section 51 of the Central Goods and Services Tax Act 2017, we observe that under Section 51 of the Act, Tax Deduction at Source has to be made, while making payments by specified person. The relevant portion is reproduced as under:

"Section 51. Tax deduction at source.-

(1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate,-

- (a) a department or establishment of the Central Government or State Government; or*
- (b) local authority; or*
- (c) Governmental agencies; or*
- (d) such persons or category of persons as may be notified by the Government on the recommendations of the Council, (hereafter in this section referred to as "the deductor"), to deduct tax at the rate of one per cent, from the payment made or credited to the supplier (hereafter in this section referred to as "the deductee") of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:"*

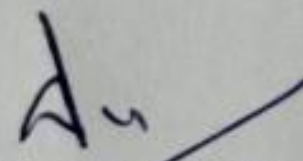
11.2 In the instant case, the applicant has declared that in most cases the value of total contract is less than Rs. 2.5 Lakhs and this appears to be a generalized statement and not a specific one.


11.3 In view of the above provisions of the Act, we hold that TDS is not required to be deducted on payment made to the supplier of taxable goods or services or both, only when the value of such supply **under a contract does not exceeds Rs. 2.5 Lakhs** and in any other case, the provisions of Section 51 of the Act, has to be followed scrupulously.

12. In view of the discussions held above, we rule as under:

RULING

- 1 to 8.** The benefit of exemption Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017, is available only, if the contract is either for pure service or for Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply and on activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W of the Constitution only and not in any other cases.
- 9.** TDS is not required to be deducted on payment made to the supplier of taxable goods or services or both, only when the value of such supply under a contract does not exceeds Rs. 2.5 Lakhs.


ANURAG MISHRA
(MEMBER)


RAMESHVAR MEENA
(MEMBER)

**AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX: UTTARAKHAND
OFFICE OF THE COMMISSIONER, SGST, UTTARAKHAND
LADPUR RING ROAD, UPPER NATHANWALA, DEHRADUN**

F. No.: 10 /S.Tax-UKD/GST/Sec-97/2021-22/DDN/ 7525 /Date: 16/03/2022

Copy to:

1. The Chief Commissioner, CGST, Meerut Zone, Meerut for information please.
2. The Commissioner, SGST, Commissionerate, Uttarakhand for review please.
3. The Commissioner, CGST, Commissionerate, Dehradun for review please.
4. The Assistant Commissioner, Rang-V, Almora for information and necessary action.
5. The Assistant Commissioner, SGST, Bageshwar for information and necessary action.
6. The Concerned officer, CGST, Dehradun.
7. The Concerned officer, SGST, Dehradun.
8. The Appellate Authority of Advance Ruling, Uttarakhand for information please.
9. Guard File.