

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

**ADVANCE RULING NO. UP ADRG 04 /2022**

**DATED 20/06/2022**

**PRESENT:**

**1. Shri Abhishek Chauhan**

Additional Commissioner, Central Goods and Service Tax

Audit Commissionerate, Lucknow

.....Member (Central Tax)

**2. Shri Vivek Arya**

Joint Commissioner, State Goods and Service Tax .....Member (State Tax)

1.	Name of the Applicant	M/s Elegant Infra Developers 4C-3019, Vasundhara, Ghaziabad 201012
2.	GSTIN or User ID	09AAEFE8717A1Z
3.	Date of filing of Form GST ARA-01	24-03-2022
4.	Represented by	-
5.	Jurisdictional Authority-Centre	Range-28, Division-VI, Ghaziabad
6.	Jurisdictional Authority-State	Ghaziabad Sector-16, Range- Ghaziabad (C )
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes HDFC22030900150962

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

1. M/s Elegant Infra Developers Ltd, 4C-3019, Vasundhara, Ghaziabad 201012 (here in after referred to as the applicant) is a registered assessee under GST having GSTN: 09AAEFE8717A1ZM.

2. The Applicant has submitted application for Advance Ruling dated 24-03-2022 enclosing duly filled Form ARA-01 (the application form for Advance Ruling) along with certain annexure and attachments.

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

*With effect from 01.01.2022, whether the works contract services provided by way of construction of non-commercial establishments by Elegant Infra Developers to the Construction & Design Services Division of the Uttar Pradesh Jal Nigam be subject to GST at the rate of 12% (6% CGST + 6% SGST) by virtue of item (vi) of serial number 3 of the Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 by considering the Construction & Design Services Division of the Uttar Pradesh Jal Nigam as a “Local Authority” or the same will be subject to GST at the rate of 18% (9% CGST + 9% SGST) under item (xii) of serial number 3 of the Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 by considering the Construction & Design Services Division of the Uttar Pradesh Jal Nigam as a “Governmental Authority”?*



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 predominantly engaged in the business of providing works contract services to the Construction & Design Services Division of the Uttar Pradesh Jal Nigam (hereinafter referred to as "the C&DS division of the U.P. Jal Nigam").
- (2) U.P. Jal Nigam has been established under the Uttar Pradesh Water Supply and Sewerage Act, 1975 (hereinafter referred to as the "said Act").
- (3) As per sub-section (3) of section 3 of the said Act, U.P. Jal Nigam shall for all purposes be deemed to be a local authority and not a company or a corporation owned by the State Government having shares and shareholders. Moreover, the Permanent Account Number ("PAN") of U.P. Jal Nigam under the Income Tax Act, 1961 is AAALU0256C. All the divisions of U.P. Jal Nigam, including the C&DS division, are housed within this PAN. The fourth letter of PAN denotes the constitution of an assessee. Therefore, the fourth letter of the PAN of U.P. Jal Nigam is "L" which denotes that U.P. Jal Nigam is a "Local Authority".
- (4) Section 40 of the said Act provides that U.P. Jal Nigam shall have its own fund to be called the Nigam Fund, which shall be deemed to be a local fund and to which shall be credited all moneys received otherwise than by way of loans by or on behalf of U.P. Jal Nigam. Further, the said section provides that U.P. Jal Nigam shall also have another fund to be called the Local Fund, which shall also be deemed to be a local fund and to which shall be credited all moneys received by or on behalf of the Nigam by way of loans.
- (5) U.P. Jal Nigam houses three divisions – Jal Nigam wing, Nalkoop wing and the Construction & Design Services wing. The Jal Nigam wing carries out the primary objectives of the said Act and is principally engaged in effecting supply of water and to provide sewerage facilities to public and maintenance thereof. The Nalkoop Wing is entrusted with the task to construct and maintain tubewell and water supply system. The Construction & Design Services wing is the commercial offshoot of the U.P. Jal Nigam also established by virtue of the powers conferred on the Government of Uttar Pradesh by the said Act and has been vested with vast authority to undertake any activity as a construction agency of the Government of Uttar Pradesh not merely restricted to the activities of water supply and sewerage treatment.
- (6) C&DS division of the U.P. Jal Nigam was approved as a construction agency by the Government of Uttar Pradesh vide *G.O. No. 2401/9-3-91-249-C/91 dt. 6th June 1991*. From a perusal of the said G.O., it can be inferred that the scope of the operations of the C&DS division of the U.P. Jal Nigam has been augmented by the Government of Uttar Pradesh by virtue of the powers conferred by clause (xiv) of section 14 of the said Act and has authorised the C&DS division of the U.P. Jal Nigam to carry out any construction or related activity whether or not bearing a direct nexus to the water supply and sewerage treatment.
- (7) Until 31.12.2021, by virtue of item (vi) of serial no. 3 of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended, the GST rate of 12% (CGST 6% + SGST 6%) was applicable on the works contract services provided to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of



a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession or a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment.

- (8) By virtue of Notification No. 22/2021 – Central Tax (Rate) dated 31.12.2021, items (iii), (vi), (vii), (ix) and (x) against serial number 3 of the Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 have been amended with effect from 01.01.2022, to, *inter alia*, substitute the words “Union territory, a local authority, a Governmental Authority or a Government Entity” with the words “Union territory or a local authority”.
- (9) Consequently, the rate of GST applicable on the works contract services of the nature specified in items (iii), (vi), (vii), (ix) and (x) of serial number 3 of Notification 11/2017 – Central Tax (Rate) dated 28.06.2017 provided to a Governmental Authority or Government Entity shall no longer be governed by the said items with effect from 01.01.2022 and shall, thenceforth, be governed by the residuary entry which is item (xii) of serial number 3 of the said Notification levying GST at the rate of 18%. Therefore, the rate of GST has been increased with effect from 01.01.2022 from 12% to 18% on the works contract services provided to a Governmental Authority or a Government Entity only. The said services will, however, continue to be eligible to GST at the rate of 12% if the same are provided to a local authority.
- (10) Upon the request of several contractors engaged by the U.P. Jal Nigam to clarify the ambiguity regarding the amendment made by the above Notification, U.P. Jal Nigam had obtained a legal opinion from its GST consultant as to whether works contract services provided to U.P. Jal Nigam would attract GST rate of 18% with effect from 01.01.2022. In the said legal opinion, the learned consultant has emphatically stated that all the divisions including C&DS and other divisions of the U.P. Jal Nigam have been registered under the Income Tax Act with PAN AAALU0256C and the fourth letter being “L” in the PAN would unequivocally establish that U.P. Jal Nigam is a Local Authority and the like status would apply in so far as the provisions of GST law are concerned and such consequences would ensue as would have ensued had the U.P. Jal Nigam been accorded a status of Local Authority even under GST. Accordingly, the said legal opinion has clarified that GST rate of 12% shall continue to apply to the works contract services provided to all the divisions of U.P. Jal Nigam even after 31.12.2021 and there is no change in the rate of GST applicable on account of Notification No. 22/2021 – Central Tax (Rate) dated 31.12.2021 on the works contract services provided to the U.P. Jal Nigam including its C&DS division.
- (11) Notwithstanding the fact that, being an integral unit of the U.P. Jal Nigam, the C&DS division has been registered under the provisions of the Income Tax Act, 1961 under one PAN as a “Local Authority”, the commercial nature of the C&DS division of the U.P. Jal Nigam carrying out activities as an independent contractor undertaking projects of tremendous magnitudes in areas outside the State of Uttar Pradesh and not having any direct nexus to the water supply and sewerage treatment as was envisioned by the parent statute has fuelled a conundrum as to whether the C&DS division of the U.P. Jal Nigam can be considered a “Local Authority” at all. The nature of activities and the scope of the operations of the C&DS division of the U.P. Jal Nigam ostensibly stretch beyond the confines of the responsibilities which are ordinarily entrusted to a local authority.



- (12) The provisions of the Uttar Pradesh Water Supply and Sewerage Treatment Act, 1975 apply only to the extent of the actions taken or omitted to be taken which are subservient to the principal objectives of the said Act viz, to provide for the development and regulation of water supply and sewerage services and for matters connected therewith. A harmonious interpretation of the said Act would lead to an obvious unambiguous intent of its enactment to promote the said objectives with no explicit or implicit exception to deviate therefrom.
- (13) The financial independence highlighted in the narrative of the C&DS division above further reinforces its outgrown stature. The C&DS wing is now self-supported and effectively caters to the needs of its clients. The work of the C&DS wing also has the element of making it self-reliant by generating independent resources. It competes with the other contractors engaged in the similar line of business as a commercial independent contractor for undertaking construction for which it charges its clients at competitive rates. The C&DS wing is engaged not merely by the Government of Uttar Pradesh but also by the various departments of Central Government (such as Ministry of Human Resource Development for Jawahar Navodaya Vidyalaya) and has workplaces in other States.
- (14) Considering the facts set forth above and the legal position explicated in the section "Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s)", the C&DS division of the U.P. Jal Nigam appears to qualify both as a Local Authority as well as a Governmental Authority. In view of the aforesaid amendment, it has become imperative to distinguish between a "Local Authority" and a "Governmental Authority" so that the C&DS division of the U.P. Jal Nigam may be decisively classified as one of the two to determine the extent to which the amendment made by the Notification No. 22/2021 – Central Tax (Rate) dated 31.12.2021 applies to the works contract services provided by the applicant to the C&DS division of the U.P. Jal Nigam.
- (15) In the light of the aforesaid amendment, the applicant seeks advance ruling as to whether the C&DS division of the U.P. Jal Nigam would be construed as a Governmental Authority or the same would be construed as a local authority and, as a corollary thereto, whether the rate of GST applicable on the works contract services provided by the applicant to the C&DS division of the U.P. Jal Nigam would be 18% or 12% with effect from 01.01.2022.

6. The applicant in their application of advance ruling has further submitted as under:-

- (1) Clause (119) of section 2 of the CGST Act defines the term "works contract" as under.
- (119) "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;*
- (2) On a perusal of the Letter of Acceptance ("LOA"), it can be observed that since the applicant has entered into a contract for the construction of various structures which constitute an immovable property and the said contract involves application of goods for the construction of the immovable property resulting into transfer of property in goods, the activity of the applicant qualifies to be a "works contract services" within the meaning of clause (119) of section 2 of the CGST Act.
- (3) On perusal of the LOA, it can be deduced that the immovable property so



constructed is intended to be used for non-commercial purposes. Accordingly, the works contract services rendered by the applicant to the C&DS division of the U.P.

- (4) Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 has been amended by Notification No. 22/2021 – Central Tax (Rate) dated 31.12.2021 with effect from 01.01.2022 so as to substitute the words “Union territory, a local authority, a Governmental Authority or a Government Entity” by the words “Union territory or a local authority”, *inter alia*, in item (vi) of serial number 3 of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017. Pursuant to the above amendment, the works contract services provided to a Local Authority shall continue to be governed by item (vi) of serial number 3 of the Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended if the nature of works contract services carried out falls within the scope of description specified therein. However, the works contract services of the same nature provided to a Governmental Authority or a Government Entity shall henceforth be governed by the residual entry in item (xii) of serial number 3 of the said Notification.

- (5) Clause (69) of section 2 of the CGST Act, defines the term “local authority” as under.

(69) “local authority” means—

- (a) a “Panchayat” as defined in clause (d) of article 243 of the Constitution;
- (b) a “Municipality” as defined in clause (e) of article 243P of the Constitution;
- (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006 (41 of 2006);
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- (f) a Development Board constituted under article 371 and article 371J of the Constitution; or
- (g) a Regional Council constituted under article 371A of the Constitution;

- (6) Explanations (ix) and (x) in para 4 of the Notification No. 11/2017 – Central Tax dated 28.06.2017 define the term “Governmental Authority” and “Government Entity” respectively as under.

- (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 243W of the Constitution or to a Panchayat under article 243G of the Constitution.

- (x) “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.

- (8) U.P. Jal Nigam appears to qualify as a “Local Authority” by virtue of sub-clause (c) of clause (69) of section 2 of the CGST Act since, as can be found on a perusal of the Uttar Pradesh Water Supply and Sewerage Act, 1975, U.P. Jal Nigam has been entrusted by the Government of Uttar Pradesh with the management of local fund which



shall be called the Nigam Fund by virtue of section 40 of the Uttar Pradesh Water Supply and Sewerage Act, 1975 and the same shall be deemed to be a local fund. Accordingly, even though C&DS division of the U.P. Jal Nigam constitutes an integral unit of the U.P. Jal Nigam, it has progressively gained growth and autonomy in its affairs and operations that cannot be said to be circumscribed by the principles, when harmoniously inferred, of the statute under which the U.P. Jal Nigam has been constituted.

- (9) The U.P. Jal Nigam, including its C&DS division, also appears to qualify the definition of "Governmental Authority" mentioned *supra*. Ensuing paragraphs elucidate the manner in which C&DS division of U.P. Jal Nigam qualifies the definition of "Governmental Authority".

**Criteria – 1 : Governmental Authority – Set up by an Act of Parliament or State Legislature**

U.P. Jal Nigam commenced its operations as Public Health Engineering Department 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 (43 of 1975). The C&DS division of the U.P. Jal Nigam is governed by clause (xiv) of section 14 of the Uttar Pradesh Water Supply and Sewerage Act, 1975.

**Criteria – 2 : Governmental Authority – 90% or more participation of Government by way of equity or control**

Chairman and members of U.P. Jal Nigam are nominated by the State Government. All the members shall hold office on the terms and conditions specified by the State Government. Accordingly, U.P. Jal Nigam is wholly (100%) controlled by the Government of Uttar Pradesh.

**Criteria – 3 : Governmental Authority – carries out any function entrusted to a municipality under article 243W of the Constitution read with Twelfth Schedule to the Constitution of India**

Following are the functions of the U.P. Jal Nigam as provided in Section 14 of the Uttar Pradesh Water Supply and Sewerage ACT, 1975:

- (i) the preparation, execution, promotion and financing the schemes for the supply of water and for sewerage and sewage disposal;
- (ii) to render all necessary services in regard to water supply and sewerage to the State Government and local bodies, on request to private institutions or individuals;
- (iii) to prepare State plans for water supply, sewerage and drainage on the directions of the State Government;
- (iv) to review and advise on the tariff, taxes and charges of water supply in the areas of Jal Sansthans and local bodies which have entered into an agreement with the Nigam under Section 46;
- (v) to assess the requirement for materials and arrange for their procurement and utilisation;
- (vi) to establish State standards for water supply and sewerage services;
- (vii) to perform all functions, not stated herein which were being performed by the Local Self-Government Engineering Department before the commencement of this Act;
- (viii) to review annually the technical, financial, economic and other aspects of water supply and sewerage system of every Jal Sansthan or local bodies which have entered into an agreement with the Nigam under Section 46;



- (ix) to establish and maintain a facility to review and appraise the technical, financial, economic and other pertinent aspect of every water supply and sewerage scheme in the State;
- (x) 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 period as may be specified by the State Government;
- (xi) to assess the requirements for manpower and training in relation to water supply and sewerage services in the State;
- (xii) to carry out applied research for efficient discharge of the functions of the Nigam or a Jal Sansthan;
- (xiii) any other functions entrusted to the Nigam by or under this Act; and
- (xiv) such other functions as may be entrusted to the Nigam by the State Government by notification in the Gazette.

By virtue of G.O. No. 2401/9-3-91-249-C/91 dt. 6th June 1991 issued in exercise of powers conferred by clause (xiv) of section 14 of the Uttar Pradesh Water Supply and Water Supply Act, 1975, the C&DS division of the U.P. Jal Nigam has been vested with the authority to undertake any activity in addition to water supply and sewerage treatment as a construction agency of the Government of Uttar Pradesh.

Accordingly, the activities envisaged to be carried out by the C&DS division of the U.P. Jal Nigam are encompassed by clauses 1, 2, 3, 4, 5, 6, 10, 12, 13 and 17 of the Twelfth Schedule to the Constitution of India.

- (10) Since the question of advance ruling under consideration on which a legal opinion was sought by U.P. Jal Nigam is founded on the status of U.P. Jal Nigam (including all its divisions) as a "Local Authority" under the provisions of the Income Tax Act, 1961, it would not be out of context to do a cursory examination of the status of the C&DS division of the U.P. Jal Nigam from the standpoint of Income Tax Act, 1961 more so when the definition of "Local Authority" in the CGST Act is *parimateria* to the definition of "Local Authority" in the Income Tax Act, 1961. Section 10 of the Income Tax Act, 1961 dealing with "Incomes which do not form a part of total income" has defined the expression "local authority" in the Explanation to clause (20) as under.

*Explanation.—For the purposes of this clause, the expression "local authority" means—*

- (i) Panchayat as referred to in clause (d) of article 243 of the Constitution; or
- (ii) Municipality as referred to in clause (e) of article 243P of the Constitution; or
- (iii) Municipal Committee and District Board, legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund; or
- (iv) Cantonment Board as defined in section 3 of the Cantonments Act, 1924 (2 of 1924);

- (11) A perusal of the definition of the expression "Local Authority" in the above provision of the Income Tax Act, 1961 reveals that precisely the same definition has been borrowed in the provisions of the CGST Act. Clauses (i) to (iv) in the Explanation to clause (20) of section 10 of the Income Tax Act, 1961 have been echoed by clauses (a) to (d) of the clause (69) of section 2 of the CGST Act in the same order. The ambit of the expression "Local Authority" has been enlarged under the provisions of CGST Act by appending clauses (e) to (g) so as to cover "Regional Council", "District Council" and "Development Board" within the meaning of the term "Local Authority".

- (12) Even though all the divisions of the U.P. Jal Nigam have been registered under the



Income Tax Act, 1961 as a "Local Authority", the ambiguity in the said status exists more particularly for the C&DS division emanating from the fact that the C&DS division of the U.P. Jal Nigam has been granted unbridled authority to carry out any type of construction activity not merely within the jurisdiction of the U.P. Jal Nigam but also beyond, i.e., outside the State of Uttar Pradesh.

7. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer his comments/views/verification report on the matter. The Deputy Commissioner, Commercial Tax, Sector-16, Ghaziabad vide his letter C.No. 75/डीकमि0ख0-16 दिनांक 19.04.2022 has submitted that UP Jal Nigam is not covered in the definition of 'local authority' contained in Section 2(69) of the CGST Act, 2017 as such works contract services provided to UP Jal Nigam by the applicant is liable to GST @ 18%.

The Assistant Commissioner, CGST Division IV, Ghaziabad vide his letter C.No. V(30)Tech./Elegant/CGST/Div.-VI/GZB/40/2022/202 dated 26.04.2022 submitted his comments that the applicant provided service to UP Jal Nigam (C&DS Division) and UP Jal Nigam registered under Income Tax Act, 1961 as a local authority. He further submitted that as per Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended, the GST rate applicable on works contract to a Central Government, State Government, Union territory, a local authority is 12%.

8.1 The applicant vide their e-mail dated 25.05.2022 submitted as under-

*This has reference to the Advance Ruling Application of M/s Elegant Infra Developers (GSTIN 09AAEFE8717A1ZM) ("the applicant") filed vide ARN AD090322018130R dated 16.03.2022. We would like to submit that the hard copy of the advance ruling application of the applicant submitted with the Registrar Advance Ruling Authority on 24.03.2022 contains all the submissions which we would like your goodself to consider. We do not have any more submissions to make.*

*Accordingly, we humbly request your goodself to omit the requirement of personal hearing in our case and pass an appropriate ruling on the question mentioned in the Advance Ruling Application of the applicant. This email may be construed as a request to waive the requirement of personal hearing in respect of the said application.*

8.2 However, the opportunity of personal hearing was granted a personal hearing on 15.06.2022. The applicant vide email dated 14.06.2022 again requested to omit the requirement of personal hearing in their case and pass an appropriate ruling on the question mentioned in the Advance Ruling Application of the applicant. As such, personal hearing was not conducted in the aforesaid case.

### **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) Classification of any goods or services or both
- (2) Applicability of a notification issued under the provisions of this Act.

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

11. We observe that the question sought by the applicant is as under-

*'With effect from 01.01.2022, whether the works contract services provided by way of construction of non-commercial establishments by Elegant Infra Developers to the Construction & Design Services Division of the Uttar Pradesh Jal Nigam be subject to GST at the rate of 12% (6% CGST + 6% SGST) by virtue of item (vi) of serial number 3 of the Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 by considering the Construction & Design Services Division of the Uttar Pradesh Jal Nigam as a "Local Authority" or the same will be subject to GST at the rate of 18% (9% CGST + 9% SGST) under item (xii) of serial number 3 of the Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 by considering the Construction & Design Services Division of the Uttar Pradesh Jal Nigam as a "Governmental Authority"?*

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

- (i) The preamble of the UPWSS Act indicates that U.P. Jal Nigam was brought into existence to provide for the establishment of a corporation, authorities and organization for the development and regulation of water supply and sewerage services and for matters connected therewith.
- (ii) The Section 3(3) of the UPWSS Act provides that the assessee corporation shall for all purposes be deemed to be a local authority and Section 4 of the UPWSS Act relates to its constitution, according to which it shall consist of a Chairman, to be appointed by the State Government. It also provides that the Members other than the Chairman shall be a Managing Director, a Finance Director, both to be appointed by the Government, and the Secretary to the State Government in the Finance Department (Ex-officio), Secretary to the State Government in the Local Self Government Department (Ex-officio), the Director of Local Bodies, Uttar Pradesh (Ex-officio), the Director of Medical and Health Services U.P. (Ex-officio) and three elected Heads of Local Bodies in the State, to be nominated by the State Government.
- (iii) Section 40(1) of the UPWSS Act provides that the corporation shall have its own fund to be called the Nigam Fund which shall be deemed to be a local fund and to which shall be credited all moneys received otherwise than by way of loans by or on behalf of the corporation.

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

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

(69) "local authority" means-

- (a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution;
- (b) a "Municipality" as defined in clause (e) of article 243P of the Constitution;



- (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006 (41 of 2006);
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- (f) a Development Board constituted under article 371<sup>8</sup>[and article 371J] of the Constitution; or
- (g) a Regional Council constituted under article 371A of the Constitution;

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

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

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

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

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



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

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

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

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

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

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

- (1) As per Section 6(3) of the UPWSS Act, the Chairman shall hold office on such terms and conditions as the State Government may, by order, specify.
- (2) As per Section 14 of the UPWSS Act, the UPJN is entrusted to prepare State plans for water supply, sewerage and drainage on the directions of the state government.
- (3) 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.
- (4) 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.
- (5) 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.

19.3 The Apex court in the RC Jain case (supra) has held that the main requirement to qualify as a local authority is that the authority must be legally entitled to or entrusted by the Government with, the control and management of a Municipal or local fund. In



case of UPJN, there is no local fund entrusted by the Government with UPJN. A perusal of the UPWSS Act would reveal that no municipal or local fund has been entrusted by the Government. The fund of UPJN is its own fund and cannot be equated with a fund entrusted by the Government. 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.

20. Further, the Hon'ble High Court, Allahabad (Lucknow Bench) in the Income Tax Appeal No. 128/2008 has held that UP Jal Nigam is not a 'local authority'. While passing the order, the Hon'ble High Court has discussed various case laws including RC Jain case (supra). The relevant portion of the order is reproduced below-

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

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

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

76. After a close scrutiny of 1975 Act, the law settled by Hon'ble Supreme Court in the cases of Valjibhai Muljibhai Soneji (supra), R.C. Jain (supra), Commissioner of Income Tax. Vs. U.P. Forest Corporation (supra), Agricultural Produce Market Committee, Narela, Delhi (supra), read with Part IX and IXA 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.*

21. Although, the aforesaid order in Income Tax Appeal No. 128/2008 denying UP Jal Nigam the status of local authority is in respect of dispute of Income Tax, the same is applicable to instant case as the order of the Hon'ble High Court has been passed after analyzing the definition of 'local authority' contained in General Clauses Act. It has already been discussed that the term 'local authority' has been similarly worded in CGST Act, 2017 as well as General Clauses Act, 1897. Moreover, the applicant have themselves submitted that the definition of 'local authority' is similarly worded in Income Tax Act as well as CGST Act. Further, the main argument of the applicant that the fourth letter of their PAN being 'L', they are local authority does not stand in view of denying of their status as 'local authority' by the Hon'ble High Court.

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

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

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

23. Thus, we are of the view that the UPJN and also its branch 'Construction & Design Service' is not a 'local authority'.

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

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

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

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

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

26. As already discussed, the UPJN is a body corporate formed by the State legislature under UPWSS Act enacted by the UP State Legislature. As such, the first requirement of a



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

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

Description of Service	Rate (percent)
<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

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

Description of Service	Rate (percent)
<p>"(xii) Construction services other than (i), (ia), (ib), (ic), (id), (ie), (if), (iii), (iv), (v), (va), (vi), (vii), (viii), (ix), (x) and (xi) above."</p>	9

29. Accordingly, we pass the following ruling.



## RULING

Question- With effect from 01.01.2022, whether the works contract services provided by way of construction of non-commercial establishments by Elegant Infra Developers to the Construction & Design Services Division of the Uttar Pradesh Jal Nigam be subject to GST at the rate of 12% (6% CGST + 6% SGST) by virtue of item (vi) of serial number 3 of the Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 by considering the Construction & Design Services Division of the Uttar Pradesh Jal Nigam as a “Local Authority” or the same will be subject to GST at the rate of 18% (9% CGST + 9% SGST) under item (xii) of serial number 3 of the Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 by considering the Construction & Design Services Division of the Uttar Pradesh Jal Nigam as a “Governmental Authority”?

Answer- The works contract services provided by way of construction of non-commercial establishments by applicant to the Construction & Design Services Division of the Uttar Pradesh Jal Nigam will be subject to GST at the rate of 18% (9% CGST + 9% SGST) under item (xii) of serial number 3 of the Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 by considering the Construction & Design Services Division of the Uttar Pradesh Jal Nigam as a “Governmental Authority”.

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

  
(Abhishek Chauhan)

Member of Authority for Advance  
Ruling

To,

M/s Elegant Infra Developers Ltd,  
4C-3019, Vasundhara,  
Ghaziabad 201012



### **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 Complex-2, Kamla Nehru Nagar, Ghaziabad-201002
4. The Deputy/Assistant Commissioner, CGST & Central Excise, Division-VI, CGO Complex-2, Kamla Nehru Nagar, Ghaziabad-201002
5. Through the Additional Commissioner, Gr-I, Commercial Tax, *Ghaziabad, Zone-2*, Uttar Pradesh to jurisdictional tax assessing officers.

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