

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

**ADVANCE RULING NO. UP ADRG-05/2022**

**DATED 28/6/2022**

**PRESENT:**

**1. Shri Rajendra Kumar**

Additional Commissioner, Central Goods and Service Tax

.....Member (Central Tax)

**2. Shri Vivek Arya**

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

1.	Name of the Applicant	M/s Suez India Private Limited C-103, Eldorado Apartment, Premises No. 7/88, Tilak Nagar, Kanpur – 208002
2.	GSTIN or User ID	09AAACD0136D1ZA
3.	Date of filing of Form GST ARA-01	31-03-2022
4.	Represented by	Ms. Priyanka Rathi, Advocate Ms. Ashwini Chandrasekaran, Advocate
5.	Jurisdictional Authority-Centre	Range-XVIII, Division-III, Kanpur
6.	Jurisdictional Authority-State	Sector- Kanpur Sector -17, Range-Kanpur (C )
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes, Reference No. DC0903220010990

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

1. M/s Suez India Private Limited, C-103, Eldorado Apartment, Premises No. 7/88, Tilak Nagar, Kanpur – 208002 (here in after referred to as the applicant) is a registered assessee under GST having GSTN: 09AAACD0136D1ZA.

2. The Applicant has submitted application for Advance Ruling dated 31-03-2022 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:–

- (1) Whether the services provided to Uttar Pradesh Jal Nigam would be considered as a service provided to a governmental authority under GST Laws?
- (2) What is the applicable GST rate on supply of works contracts services in relation to sewage treatment plant made by the Applicant to Uttar Pradesh Jal Nigam, on or after 1<sup>st</sup> Jan 2022?

4. As per the declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending in any proceedings nor decided in any proceedings in the applicant's case under any of the provisions of the CGST Act, 2017/UPGST Act, 2017.



5. The applicant has submitted that-

- (1) It is a Company incorporated and registered under the Companies Act, 1956, and is a leader in water resource management
- (2) Uttar Pradesh Jal Nigam ("UP Jal Nigam/UPJN") is a body corporate formed by the State legislature under the Uttar Pradesh Water Supply and Sewerage Act, 1975. The U.P. Jal Nigam is the apex body responsible for formulation, execution, promotion, financing, fixing tariffs etc., for implementation of water supply, sewerage, sewage treatment and disposal, river pollution abatement projects etc., including fixing State Standards for water supply and sewerage services.
- (3) UPJN invited bids for "*Design, Construction, Supply, Installation, Testing & Commissioning and Trial run of Tertiary Sewage Treatment Plant, laying of Pipe Line & other allied works for Treated Waste Water Reuse at 1X660 MW Panki Thermal Power Station Extension, Panki, Kanpur on UF and RO based technology to treat the secondary treated effluent from 210 MLD capacity Bingawan STP to produce 40 MLD water of desired quality including final effluent pump house, pipe line & other allied works for 1x660 MW Panki Thermal Power Station Extension at Panki, Kanpur on turnkey basis followed by Defect Liability period for 2 years*" ("work").
- (4) The Applicant submitted its application on January 01, 2019, and the same was accepted by UPJN vide Letter of Award dated May 27, 2019. Pursuant thereto, SUEZ and UPJN entered into Contract Bond No. 1/GM (P.M-I)/ 2019-20 dated June 14, 2019 ("Contract"), for execution of the work. As per the Contract, the Applicant had to undertake works including designing, construction, supply, installation, testing and commissioning of Sewage Treatment Plant and operation & maintenance of the constructed work.
- (5) The Applicant has entered into similar agreements for design, construction, and operation and maintenance of few other Water Treatment / Sewage Treatment Plants in the State of UP, with UPJN.
- (6) As per S. 2(119) of the Central Goods and Service Tax Act, 2017 ("CGST Act"), "works contract" has been defined to mean 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.
- (7) The services supplied by the Applicant to UPJN qualify as works contract service under the GST Laws.
- (8) Vide Notification No. 11/2017 Central Tax (Rate) dated June 28, 2017, the Ministry of Finance, Department of Revenue, notified the rate of tax on certain intra-State supply of services. Vide Entry 3 of the said notification, 18% tax rate was prescribed for works contract services.
- (9) The Central Govt. amended the Notification No.11/2017- Central Tax (Rate) dated June 28, 2017, 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".



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

**(10)** 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.

**(11)** As per the Applicant, UPJN qualifies as a governmental authority and thus, tax rate of 18% is applicable on the works contract services provided to UPJN by way of Entry 3(xii) of Notification No. 11/2017- Central Tax (Rate) dated June 28, 2017. The said Entry 3(xii) of the Notification No.11/2017 reads as follows:

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

**(12)** As of now, the Applicant is discharging tax at the rate of 18%. However, in order to obtain clarity, the Applicant is filing the present application seeking a ruling on the rate of tax applicable on the supply made to UPJN.

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

- (1)** The Applicant submits that in the present case, the services provided to UPJN are taxable at 18% since UPJN is a “governmental authority” for the purpose of Central Goods and Service Tax Act, 2017 .
- (2)** As per Notification No.11/2017- Central Tax (Rate) dated June 28, 2017, as amended by Notification No. 15/2021-Central Tax (Rate) dated November 18, 2021, rate of 12% is applicable only in case of works contract services provided to Central Government, State Government, Union territory and a local authority. In other words, in case of supply of works contract services to Governmental Authority / Government Entity, the applicable rate of tax will be 18%.
- (3)** As per section 2(53) of the CGST Act, ‘Government’ means the Central Government. In the same manner, Section 2(53) of the State GST enactment(s) define ‘Government’ to mean Government of the respective State. It is relevant to note that the term “Governmental Authority” is not defined in the CGST Act.



However, Notification No. 31/2017-Central Tax (Rate) dated October 13, 2017, which amended the Notification No 11/2017 - Central Tax (Rate) dated June 28, 2017, defined Governmental Authority as follows:

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

- (i) set up by an Act of Parliament or a State Legislature; or*
- (ii) established by any Government, with 90 per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution."*
- (iii) It is relevant to note that under the erstwhile service tax regime, services to governmental authority were exempt under the Mega Exemption Notification No. 25/2012-ST dated June 20, 2012. The definition of "Governmental Authority" as provided under clause (s) of Para 2 of the said Mega Exemption Notification read as follows:

*"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 Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution."*

(4) That as can be seen, the word "Governmental Authority" was worded similar to the meaning connoted to the term vide Notification No. 31/2017-Central Tax (Rate) dated October 13, 2017. Given this, reference may be made to the Education Guide issued under the erstwhile regime, the relevant paragraph of which is as follows:

*"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. However it may be noted that services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution are specifically exempt under the mega exemption. 'Governmental authority' has been defined in the said mega exemption as a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution.."*

(5) In *Shapoorji Paloonji & Company Pvt. Ltd. vs. C.C., C. Ex. & S.T., Patna 2016 (42) STR 681 (Pat.)*, the Patna High Court explained the scope of governmental authority. As per the said order, 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.

(6) In case of UPJN, it is a body corporate body formed by the State legislature under Uttar Pradesh Water Supply and Sewerage Act, 1975 ("UPWSS Act") enacted by the UP State Legislature. Thus, the first and foremost requirement of a governmental authority ( that Established by any Government with 90 per cent. or more participation by way of equity or control ) stands fulfilled in the present case.

(7) As per the definition of "governmental authority", the authority should be established by any Government 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.

(8) UPJN is *inter alia* entrusted with the function to operate, run, and maintain any waterworks and sewerage system, and for such period as may be specified by the



State Government. The functions of UPJN are clearly spelt out in S.14 of the UPWSS Act.

(9) That 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.

(10) 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.

(11) Reliance in this regard is also placed on the Advance Ruling passed in the case of *In Re. Indian Hume Pipe Company Ltd. 2020 (35) G.S.T.L. 217 (A.A.R. - GST - T.N.)* wherein Tamil Nadu Water Supply and Drainage Board, a body similar to UPJN, was held to be governmental authority for the purpose of GST Laws.

(12) Further, in *In Re. Sewerage & Infrastructural Dev. Corporation of Goa Ltd. 2019 (31) GSTL 116 (A.A.R. - GST)*, the Advance Ruling Authority held that the applicant incorporated under Companies Act, 1956 with 100% participation by way of equity by the State Government and responsible for overall management of all components of project on technical, financial and contractual matters during implementation of sewerage projects is a governmental authority.

(13) 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;
- (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;”

(14) As can be seen, the term “local authority” has been defined in the CGST Act and covers certain bodies/authorities mentioned in the said definition. That the definition contained in S. 2(69) of the CGST Act, among other authorities, 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”.

(15) It is pertinent to note that the term “local authority has been similarly worded in other statutes, and thus, the jurisprudence related to such legislations may be analysed in order to understand the scope of “any other authority” in S. 2(69) of the CGST Act. Some of the definitions in other statutes which are similar/identical to the one under the CGST Act are as follows:

“General Clauses Act, 1897

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(31) “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;..

..



**The Land Acquisition (Mines) Act, 1885**

16 ..

(a) "local authority" means any 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 any municipal or local fund; ...

(16) That as can be seen from the above, the term local authority has been similarly worded in all statutes *inter alia* to mean any other authority legally entitled to or entrusted by the Central or any State Government with the control and management of any municipal or local fund. Thus, the case-laws relating to the said laws can be gainfully relied upon to determine the scope of "any other authority" *via-a-vis* local authority.

(17) The Apex Court in the landmark decision of **Union of India v. R.C. Jain, (1981) 2 SCC 308** 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:

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

(18) In **Valjibhai Muljibhai Soneji v. State of Bombay, (1964) 3 SCR 686**, the Apex Court explained local authority as follows:

"The expression "local authority" is not defined in the Land Acquisition Act but is defined in Section 3(31) of General Clauses Act, 1897 as follows;

"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."



*The definitions given in the General Clauses Act, 1897 govern all Central Acts and Regulations made after the commencement of the Act, No doubt, this Act, was enacted later in point of time than the Land Acquisition Act; but this Act was a consolidating and amending Act and a definition given therein of the expression "local authority" is the same as that contained in the earlier Acts of 1868 and 1887. The definition given in Section 3(31) will therefore, hold good for the expression "local authority" occurring in the Land Acquisition Act. We have already quoted the definition.*

*12. It will be clear from the definition that unless it is shown that the State Transport Corporation is an "authority" and is legally entitled to or entrusted by the Government with control or management of a local fund it cannot be regarded as a local authority. No material has been placed before us from which it could be deduced that the funds of the Corporation can be regarded as local funds. It was no doubt submitted by the learned Attorney-General that the Corporation was furnished with funds by the Government for commencing for its business; but even if that were so, it is difficult to appreciate how that would make the funds of the Corporation local funds."*

(19) In **State Bank of India Staff Association, Local Head Office Unit, Patna v. Election Commission of India, 1993 SCC OnLine Pat 164**, the Apex Court while deciding the status of State Bank of India, held 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 is legally entitled to or entrusted by the Government with, the control and management of a Municipal or local fund. It must have a separate legal existence and function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the area. These and several other characteristics of a local authority were emphasised by the Supreme Court in *Union of India v. R.C. Jain* (supra).

(20) From the cases discussed above, any authority, in order to be called a local authority, must have following characteristics:

- Local authority must have a separate legal existence as a corporate body.
- The authority must function in a defined area, wholly or partly, directly, or indirectly, be elected by the inhabitants of the area.
- The authority must enjoy a certain degree of autonomy.
- The authority must be entrusted by statute with such governmental functions and duties as are usually entrusted to municipal bodies.
- The authority must have the power to raise funds for the furtherance of their activities and the fulfilment of their projects by levying taxes, rates, charges, or fees
- The authority must be legally entitled to or entrusted by the Government with, the control and management of a Municipal or local fund.

(21) The first requirement in order to qualify as a local authority is that the authority in question must be a separate corporate body. UPJN is a body corporate formed by the State legislature under S. 3 of the UPWSS Act. Thus, the first condition that the authority must be a separate corporate body having a legal existence stands fulfilled in the present case.

(22) That as per S. 1(2) of the UPWSS Act, the Act extends to the whole of Uttar Pradesh excluding cantonment area. Thus, UPJN, being a statutory body under the Act, can function only within the State of U.P.



(23) However, UPJN is not elected by the inhabitants of the area but is established by the State. As per S. 4 of the UPWSS Act, the UPJN shall consist of Chairman appointed by the State Government and other members specified therein. Thus, the second condition is not met in the present case.

(24) The third requirement to qualify as a local authority is that the said authority must have some autonomy. In *RC Jain (supra)*, the Apex Court held 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, there must be an appreciable measure of autonomy.

(25) In case of UPJN, a perusal of various provisions of the UPWSS Act clearly reveal that UPJN does not have autonomy in its functions-

- (i) That the Chairman is appointed by the State Government under Section 3 of the Act and shall hold office on such terms and conditions as the State Government may, by order, specify. He can also be suspended by the State Government under Section 6 of the Act.
- (ii) As per S. 14 of the UPWSS Act, UPJN is trusted with the function 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.
- (iii) That under S. 50 of the UPWSS Act, UPJN, in a financial year, is under an obligation to submit prepare a statement or a supplementary statement, of programme of its activities during that year as well as financial estimate in respect thereof to the State Government. That further, the accounts of the UPJN shall be audited by such Auditor, in such manner and at such times as the State Government may, by general or special order, direct. That UPJN shall, as per S. 90, also submit to the State Government an annual report giving an account of its activities during the previous financial year, and the State Government shall cause every such report to be laid before the State Legislature as soon as may be after it is received by the State Government.
- (iv) That as per S. 89 of the UPWSS Act, UPJN shall be guided by such directions on questions of policy as may be given to it by the State Government.

(26) Thus, as can be seen from the above discussion, UPWSS is controlled by the Government and thus, the requirement of a certain degree of autonomy cannot be said to have been fulfilled in the present case.

(27) UPJN is a board entrusted with the function of rendering all necessary services in regard to water supply and sewerage in the State of U.P. and thus, the requirement that the authority must be entrusted by statute with such governmental functions and duties as are usually entrusted to municipal bodies stands fulfilled in the present case.

(28) The fifth requirement to be categorised as a local authority is that the authority must have the power to raise funds for the furtherance of their activities and the fulfilment of their projects by levying taxes, rates, charges, or fees.

(29) As per section 52 of the UPWSS Act, Jal Sansthan, a body corporate constituted under the said Act, and guided by the policy of UPJN, has the power to



levy water tax and sewerage tax. Further, the Sansthan, as per S. 63, may charge such fees, for connection, disconnection, reconnection of any water supply or sewer or testing or supervision or for any other service rendered or work executed or supervised as may be provided by bye-laws.

(30) Further, as per S. 40, UPJN 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 UPJN. Further, UPJN 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 UPJN by way of loans.

(31) Therefore, the requirement that the authority must have the power to raise funds for the furtherance of their activities and the fulfilment of their projects by levying taxes, rates, charges, or fees, has been fulfilled in the present case.

(32) The last and the main requirement to qualify as a local authority is that such an authority must be legally entitled to or entrusted by the Government with, the control and management of a Municipal or local fund.

(33) In case of UPJN, there is no local fund entrusted by the Government with UPJN. That 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.

(34) In view of the above, it can be concluded that UPJN is not a "local authority" and thus, the Applicant is not eligible to pay 12% GST on the works contract service supplied to UPJN on or after 1<sup>st</sup> Jan 2022.

(35) The Applicant submits that when the Government has consciously, and deliberately excluded Governmental Authority and Government Entity from the ambit of lower tax rate prescribed in Notification No. 11/2017-Central Tax dated June 28, 2017, one cannot take view that an authority which is Governmental Authority and Government Entity will now get covered under the scope of "local authority" for the purpose of claiming lower rate of tax.

(36) It is a settled law that taxing statutes and notifications are to be strictly interpreted. Reliance in this regard is placed on the decision of the Apex Court in ***Commissioner of Central Excise, Surat-I vs. Favourite Industries 2012 (278) ELT 145 (S.C.)*** wherein the Court held that the notification requires to be interpreted in the light of the words employed by it and not on any other basis. There cannot be any addition or subtraction from the notification.

(37) In the present, Notification No. 11/2017-Central Tax (Rate) dated June 28, 2017, as amended, clearly states that 12% GST rate would be applicable only in cases where works contract service is provided to local authorities. It is relevant to note prior to the amendment, the lower of 12% was also applicable to Governmental Authorities. However, the same was consciously excluded by way of the



amendment vide Notification No. 15/2021-Central Tax (Rate) dated November 18, 2021.

(38) Thus, persons / entities claiming 12% GST rate as Governmental Authorities prior to the amendment cannot claim the same post the amendment vide Notification No. 15/2021-Central Tax (Rate) dated November 18, 2021.

(39) In view of the above, the Applicant humbly submits that the Applicant is liable to discharge tax at the rate of 18% on the works contract service provided to UPJN.

7. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer his comments/views/verification report on the matter. The Assistant Commissioner, CGST & Central Excise Division III, Kanpur vide his letter C.No. 37/DGARM Data/R-XV/D-III/2019/21 dated 19.05.2022 submitted that UPJN qualifies as a governmental authority and thus, 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.

8. The opportunity of personal hearing was granted on 27.06.2022 which was attended by Ms. Ms. Priyanka Rathi, Advocate and Ms. Ashwini Chandrasekaran, Advocate. During personal hearing, the applicant reiterated the submissions made in the application of advance ruling and cited the case law of Hon'ble High Court Allahabad in Income Tax Appeal No. 128/2008 which has upheld that the UP Jal Nigam is not a local authority.

#### **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) Applicability of a notification issued under the provisions of this Act.

(2) Determination of the liability to pay tax on any goods or services or both

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

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

(1) *Whether the services provided to Uttar Pradesh Jal Nigam would be considered as a service provided to a governmental authority under GST Laws?*

(2) *What is the applicable GST rate on supply of works contracts services in relation to sewage treatment plant made by the Applicant to Uttar Pradesh Jal Nigam, on or after 1<sup>st</sup> Jan 2022?*

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

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 4(1) of the UPWSS Act, the Chairman shall be appointed by the State Government.
- (2) As per Section 6(3) of the UPWSS Act, the Managing Director and finance director shall hold office on such terms and conditions as the State Government may, by order, specify.
- (3) As per Section 14 of the UPWSS Act, the UPJN is entrusted
  - (i) to prepare State plans for water supply, sewerage and drainage on the directions of the state government.
  - (ii) to operate, run and maintain any waterworks and sewerage system, if and when directed by the State Government, on such terms and conditions and for such periods as may be specified by the State Government;
  - (iii) such other functions as may be entrusted to the Nigam by the State Government by notification in the Gazette.
- (4) As per section 46(2) of the UPWSS Act, the UPJN may, from time to time, with the previous sanction of the State Government and subject to the provisions of this Act and to such conditions as the State Government may, by general or special order determine, borrow any sum required for the purposes of this Act, whether by the issues of bonds or stock or otherwise or making arrangements with bankers or other bodies or institutions approved by the State Government for this purpose.
- (5) As per section 46(3) of the UPWSS Act, stock issued by the Nigam under the section shall be issued, transferred, dealt with and redeemed in such manner as the State Government may, general or special order, direct.
- (6) As per Section 50 of the UPWSS Act, the UPJN is obliged to submit a statement of programme of its activities to the State Govt. before the commencement of financial year and may at any time during financial year. Further, the accounts of UPJN shall be audited by such auditor as the State Govt. may direct. Moreover, the accounts of the Nigam and a Jal Sansthan, as certified by the Auditor together with the audit report thereon shall be forwarded annually to the State Government and the Nigam respectively, who may issue such directions to the Nigam or the Jal Sansthan, as the case may be, as it may deem fit, and the Nigam or the Jal Sansthan shall comply with such directions. The State Government shall-
  - a) cause the accounts of the Nigam together with the audit report thereon, received by it under section 50(4) to be laid annually before each House of the State Legislature, and
  - b) cause the accounts of the Nigam to be published in such manner as it thinks fit.
- (7) As per Section 89 of the UPWSS Act, the UPJN shall be guided by such directions on questions of policy as may be given to it by the State Govt.
- (8) As per Section 90 of the UPWSS Act, the UPJN shall submit to the State Govt. an annual report giving an account of its activities during the previous financial year and the State Govt. shall cause every such report to be laid before the State Legislature.



Above provisions are clear indicators to the fact that UPJN does not enjoy autonomy of work and has little freedom to decide for themselves questions of policy affecting the area administered by them.

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.

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 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, -*

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

*(v) 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."*

*(vi)*

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)
“(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, - (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); (b) canal, dam or other irrigation works; (c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.	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)
“(xii) Construction services other than (i), (ia), (ib), (ic), (id), (ie), (if), (iii), (iv), (v), (va), (vi), (vii), (viii), (ix), (x) and (xi) above.”	9



29. Accordingly, we pass the following ruling.

### RULING

Question 1- Whether the services provided to Uttar Pradesh Jal Nigam would be considered as a service provided to a governmental authority under GST Laws?

Answer 1- Replied in affirmative.

Question 2- What is the applicable GST rate on supply of works contracts services in relation to sewage treatment plant made by the Applicant to Uttar Pradesh Jal Nigam, on or after 1<sup>st</sup> Jan 2022?

Answer 2- 18% (CGST 9%, SGST 9%)

30. This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.

  
(Vivek Arya)

Member of Authority for Advance  
Ruling

  
(Rajendra Kumar)

Member of Authority for Advance  
Ruling

To,

M/s Suez India Private Limited,  
C-103, Eldorado Apartment,  
Premises No. 7/88, Tilak Nagar,  
Kanpur – 208002

### **AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH**

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & C. Ex, CGO, 117/7, Sarvodaya Nagar, Kanpur -208005
4. The Assistant Commissioner, CGST & C. Ex. , Division-VI, 117/7, Sarvodaya Nagar, Kanpur -208005
5. Through the Additional Commissioner, Gr-I, Commercial Tax, *Kanpur zone-2, Kanpur*, 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.