

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

4, Vibhuti Khand, Gomti Nagar, Lucknow-

ADVANCE RULING NO. UP ADRG - 23/2023 Dated. 21/4/2023

PRESENT:

1. Shri Rajendra Kumar

Additional Commissioner, Central Goods and Service Tax

Audit Commissionerate, Lucknow

....Member (Central Tax)

2. Shri Harilal Prajapati

Joint Commissioner, State Goods and Service Tax

.....Member (State Tax)

1.	Name of the Applicant	M/s PURVANCHAL VIDYUT VITRAN NIGAM LIMITED, MD Office, Vidyut Nagar, Ground Floor, DLW Road, Bhikharipur , Varanasi Uttar Pradesh-221004
2.	GSTIN or User ID	09AADCP4092M5ZT
3.	Date of filing of Form GST ARA-01	04.01.2023
4.	Represented by	Shri Ajay Kumar Mishra, CA
5.	Jurisdictional Authority-Centre	Range-East Varanasi, Division- Varanasi, Commissionerate-Varanasi
6.	Jurisdictional Authority-State	Sector- Corporate Circle Varanasi I, Range-Varanasi (A), Zone-Varanasi I
7.	Whether the payment of fees discharged and if yes, the CIN	Paid through cash ledger DC0901230018414

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

1. M/s PURVANCHAL VIDYUT VITRAN NIGAM LIMITED, MD Office, Vidyut Nagar, Ground Floor, DLW Road, Bhikharipur , Varanasi Uttar Pradesh-221004 (here in after referred to as the applicant) is a registered assessee under GST having GSTN: 09AADCP 4092M5ZT.

2. The applicant has submitted an application for Advance Ruling dated 04.01.2023 enclosing dully filled Form ARA-01 (the application form for Advance Ruling) along with annexure and attachments. The applicant in his application has sought advance ruling on following question-

1. *Whether in the given facts and circumstances (In Annexure 1) value of material and cost of execution work for installation of lines will be included in the value of supply for determination of taxable value under GST where all such cost are taken as reimbursement while our supply is only supervision charges.*
2. *Whether in the given facts and circumstances (In Annexure No 1) value of material and cost of execution work for installation of lines will be included in the value of supply for determination of taxable value under GST where all such costs are born by the recipient of service and we charge only supervision charges.*
3. As per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant.

The applicant has submitted that-

- 3.1 We are Electricity Distribution Company. Being expertise in the area, Electricity Lines are installed in our supervision where electricity lines needs to be installed to supply the electricity at the designated location advised by customers. Installation of lines is done at cost of customers. Thus entire cost is born by the customers. But for safe and proper installation of line it is done in our supervision.
- 3.2 There are two methods of installing the line. One where entire works with material are arranged by customers and installation work is done by the contractors hired by them. Our role is limited to supervise the work.
- 3.3 Second, where entire material and installation work is arranged by us on behalf of customers and work is done in our supervision. We charge from the customers as reimbursement towards cost of material and installation cost. Towards our fee for our supply of service we charge only supervision charges.
- 3.4 Only supervision charges are our fees and all other amount are reimbursement of expenses by us on behalf of our customers. Here it is important to mention that cost of material and installation work is sole responsibility of customers and we do not charge any amount on this behalf.
- 3.5 Only we claim reimbursement of amount incurred in this behalf. To install the lines is the liability of customers our condition is only that installation work has to be supervised by us.
- 3.6 We charge the prices on our work as under :
Cost of material, labour etc on installation of lines:

Add : Supervision charges @ 15 % on the cost of material
- 3.7 Cost of material, installation expenses etc is paid by us, on behalf of our customer in pure agent capacity and our consideration for work is supervision charges only. Our supply of service is in the form of supervision only. Cost of material and execution cost is born by the customer. We do not take any profit on it. We claim only reimbursement of expenses which is being incurred by us on behalf of customers. Thus value of supply of service is only price charged by

us i.e supervision charges. All other items i.e cost of material used, like cost of transformers, cost of poles wires and labour cost is only reimbursement of amount which was paid by us in pure agent capacity.

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

We are Electricity Distribution Company. Being expertise in the area, Electricity Lines are installed in our supervision where electricity lines needs to be installed, to supply the electricity at the designated location on the request of customers. Installation of lines is done at cost of customers. Thus entire cost is born by the customers. But for safe and proper installation of line it is done in our supervision.

There are two methods of installing the line.

- (1) One where entire work with material is arranged by customers and installation work is done by the contractors hired by them. Our role is limited to supervise the work.

In the first method of work, as discussed in first paragraph, customers themselves purchase the material and arrange installation work and they advise us to do only supervision work. Here in our opinion value of supply of our service is supervision work and GST should be payable on the value of transaction value i.e supervision work only.

Section 15 of CGST Act 2017 reads as under:

15. Value of Taxable Supply.— (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

As stated in Section 15 (1) value of supply will be transaction value for supply of goods or services. In our cases supply of service is only supervision work. Installation of line is responsibility of the customers and one part of that work is supervision of work. Thus here in all cases supply of services is supervision work and transaction value is amount received by us on account of supervision charges and accordingly GST on our supply of service i.e supervision work shall be payable.

Section 15 (2) reads as under :

any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

This section says that any costs where supplier is obligated to pay but recipient makes the payment for that then its value will be added to taxable value. **For example**— Fee on road contract where transportation charges paid by recipient and value to be paid to the supplier is reduced to that extent. In this case, the transportation charge which was reduced from the price payable will be added back to the taxable value. Another

example can be taken is 'buying commission' – obligation is always of recipient and does not included in value of supply but if selling commission then the obligation to pay the agent being that of the supplier is required to be included in the value of supply.

But in our case obligation to pay the cost of installation of lines and cost of material used therein is of recipient of service i.e our customers and that too is being paid by the recipient of service i.e our customers , hence here value of supply of service will be transaction value i.e supervision charges paid to us.

Thus as per valuation of supply rules our value of supply is supervision charges only and GST is payable on supervision charges collected from the customers only.

Estimate is being prepared before finalization of work to estimate the actual cost . It may be seen that cost of material and cost of installation of lines (which is done by contractors) are separately shown . Supervision charges for our supply of service are separately quoted . Rest are reimbursement of payment done by us on behalf of customers. Copy of estimate is enclosed herewith form where it may be seen that we charge for supervision of services provided to customers . Rest are on actual basis reimbursement of payment done by us towards the liability of customers to pay the material and installation cost. In case estimated cost of material and labour at the time of execution is found less than the estimated material then balance amount is refunded to the party.

(2) Second, where entire material and installation work is arranged by us on behalf of customers and work is done in our supervision. We charge from the customers as reimbursement towards cost of material and installation cost. Towards our fee for our supply of service we charge only supervision charges. Only supervision charges are our fees and all other amount are reimbursement of expenses by us on behalf of our customers. Here it is important to mention that cost of material and installation work is sole responsibility of customers and we do not charge any amount on this behalf. Only we claim reimbursement of amount incurred in this behalf. To install the lines is the liability of customers our condition is only that installation work has to be supervised by us. We charge the prices on our work as under:

Cost of material, labour etc on installation of lines:

Add : Supervision charges @ 15 % on the cost of material

Cost of material, installation expenses etc is paid by us , on behalf of our customer in pure agent capacity and our consideration for work is supervision charges only. Our supply of service is in the form of supervision only. Cost of material and execution cost is born by the our customer. We do not take any profit on it. We claim only reimbursement of expenses which is being incurred by us on behalf of customers .Thus value of supply of service is only price charged by us i.e supervision charges. All other items i.e cost of material used , like cost of transformers, cost of poles wires and labour cost is only reimbursement of amount which was paid by us in pure agent capacity.

• **Rule 33 of CGST Rules 2017: Value of supply of services in case of pure agent**

Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;*
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and*
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.*

Explanation.- For the purposes of this rule, the expression "pure agent" means a person who-

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;*
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;*
- (c) does not use for his own interest such goods or services so procured; and*
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.*

Thus GST is payable on only value of supervision charges which is being billed by us for our services.

However it is important to disclose here that after construction of lines it will be kept by us as custodian of these lines and in our books of accounts and by the amount of construction of lines, customer contribution is credited in our books of accounts.

5. As per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant.
6. The application for advance ruling was forwarded to Assistant Commissioner, Central Tax & Central Excise, Division-Varanasi vide letter dated 22.03.2023 to offer their comments/views/verification report on the matter. No views/comments has been offered from the concerned officer on the ground that this office is not competent authority to offer any comment under Advance Ruling as communicated vide letter dated 06.04.2023.
7. The applicant was granted a personal hearing on 11.04.2023 which was attended by Shri Ajay Kumar Mishra, the authorized representative of the applicant during which he reiterated the submissions made in the application of advance ruling.

DISCUSSION AND FINDING

8. At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the UPGST Act. Further for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act'.

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

(1) Determination of time and value of supply of goods or services or both.

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

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

1. *Whether in the given facts and circumstances (In Annexure 1) value of material and cost of execution work for installation of lines will be included in the value of supply for determination of taxable value under GST where all such cost are taken as reimbursement while our supply is only supervision charges.*

2. *Whether in the given facts and circumstances (In Annexure No 1) value of material and cost of execution work for installation of lines will be included in the value of supply for determination of taxable value under GST where all such costs are born by the recipient of service and we charge only supervision charges.*

11. The Applicant is Electricity Distribution Company. Being expert in the area , Electricity Lines are installed in their supervision where electricity lines needs to be installed, to supply the electricity at the designated location on the request of customers. Installation of lines is done at cost of customers. Thus entire cost is born by the customers. But for safe and proper installation of line it is done in their supervision.

12. To determine whether the said transaction is a supply, the relevant portion of Section 7 of GST Act, 2017 is reproduced below:-

1 (a) "supply" includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

We find that, the above referred section emphasize on three dimensions to declare an activity a supply under GST Act:-

- (i) The activity should be sale / transfer of goods or services or both etc.
- (ii) There should be consideration involved.
- (iii) The activity should be in course or furtherance of business.

13. We can now examine the constructed power transmission lines in relation to definition of goods as mentioned in the GST Act, 2017:-

(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

In view of above definition we find that the assets created by the applicant being an immovable property does not fall under the definition of goods as mentioned in the GST Act, 2017.

14. The definition of consideration in Section 2 (31) of the GST Act, 2017 is reproduced below:-

"Consideration" means any payment made or to be made, whether in money or otherwise in respect of, in response to or for the inducement of the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.

In view of above facts, we observe that the element of consideration is not involved in the activity and therefore the said activity is not a supply under the Section 7 of GST Act, 2017.

15. Further, the Schedule II of GST Act, 2017 has provision on transfer of business assets made with or without consideration. As the asset is a kind of business asset, we can look in to relevant entry for examination:-

4. Transfer of business assets

(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;

While going through the above provision of Schedule II, we find that it provides a transfer of business assets where goods form part of the assets. As the constructed power transmission lines are not goods as explained above, the said schedule is not applicable.

16. There are two methods of installing the line as per Applicant

(A.) Where entire material and installation work is arranged by Applicant on behalf of customers and work is done in their supervision. Applicant charge from the customers

as reimbursement towards cost of material and installation cost. Towards their fee for supply of service, they charge only supervision charges. Only supervision charges are their fees and all other amount are reimbursement of expenses by them on behalf of their customers. Here it is important to mention that cost of material and installation work is sole responsibility of customers and they do not charge any amount on this behalf. Only they claim reimbursement of amount incurred in this behalf. To install the lines is the liability of customers our condition is only that installation work has to be supervised by them. They charge the prices on their work as under:

Cost of material, labour etc on installation of lines :

Add: Supervision charges @ 15 % on the cost of material

Cost of material, installation expenses etc is paid by the Applicant, on behalf of their customer in pure agent capacity and their consideration for work is supervision charges only. Their supply of service is in the form of supervision only. Cost of material and execution cost is born by the their customer. They do not take any profit on it. They claim only reimbursement of expenses which is being incurred by them on behalf of customers. Thus value of supply of service is only price charged by us i.e supervision charges. All other items i.e cost of material used, like cost of transformers, cost of poles wires and labour cost is only reimbursement of amount which was paid by the Applicant in pure agent capacity.

Rule 33 of CGST Rules 2017: Value of supply of services in case of pure agent

Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;*
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and*
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.*

Explanation.- For the purposes of this rule, the expression "pure agent" means a person who-

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;*
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;*
- (c) does not use for his own interest such goods or services so procured; and*

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Thus GST is payable on only value of supervision charges which is being billed by them for their services.

However it is important to disclose here that after construction of lines, it will be kept by the applicant as custodian of these lines and in their books of accounts and by the amount of construction of lines, customer contribution is credited in their books of accounts .

(B.) where entire work with material are arranged by customers and installation work is done by the contractors hired by them. Role of the Applicant is limited to supervise the work.

Section 15 of CGST Act 2017 reads as under :

15. Value of Taxable Supply.— (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

As stated in section 15 (1) value of supply will be transaction value for supply of goods or services. In our cases supply of service is only supervision work. Installation of line is responsibility of the customers and one part of that work is supervision of work. Thus here in all cases supply of services is supervision work and transaction value is amount received by us on account of supervision charges and accordingly GST on our supply of service i.e supervision work shall be payable.

Section 15 (2) reads as under:

any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

This section says that any costs where supplier is obligated to pay but recipient makes the payment for that then its value will be added to taxable value.

But in this case obligation to pay the cost of installation of lines and cost of material used therein is of recipient of service i.e customers of Applicant and that too is being paid by the recipient of service i.e customers , hence here value of supply of service will be transaction value i.e supervision charges paid to the Applicant.

17. (i) Discussion on methods of installing as discussed in point (A) of Para 17

As discussed above, all the work including cost of material and its supervision is being done by the applicant. The GST charged on the cost of material and supervision charge

is tenable. In case materials have to be provided by the applicant including supervision charge, the GST shall be charged under single invoice raised by the applicant.

(ii) Discussion on methods of installing as discussed in point (B) of Para 17

As discussed above, customers of the Applicant purchase the material and arrange installation work and they advise applicant to do only supervision work. Here taxable value of supply for applicant is only supervision work and GST liable to be charged and payable on the transaction value i.e. supervision charge (as charged by applicant on total cost of work/material excluding GST on total taxable value of work/material) collected from customers by the applicant.

Further, value of material and cost of execution work for installation of lines will be included in the value of supply for determination of taxable value under GST liable to be charged by the Customers of the Applicant.

The GST liable to be charged and payable for the work with material arranged by customers of Applicant and should be collected by the firm/authority/person on the basis of invoice raised for the work/Service done.

The GST liable to be charged and payable for installation work done by the contractors hired by Customers on the basis of invoice raised for the work/service.

Applicant should raise invoice and Charge GST only for supervision charge (on total cost) as per applicant's terms and conditions excluding GST on cost of all materials.

18. In connection to the role of Applicant as Pure Agent, a SLP(C) No. 019431/2019 Registered on 13-08-2019 in the matter of Union Of India Vs Torrent Power Ltd at Hon'ble Supreme Court Of India is still pending. Hence, we can not offer any comments on this issue of Pure Agent.

19. We find that as per Annexure I, all the work including cost of material and its supervision is being done by the applicant. The GST charged on the cost of material and supervision charge is tenable. In case materials have to be provided by the applicant including supervision charge, the GST shall be charged under single invoice raised by the applicant.

In other case, if the materials are to be provided by the Consumers/receipients/Contractors hired by Consumers/recipients and they have GST invoice of materials and same is submitted to the applicant after completion of Project. Accordingly, applicant should raise invoice and charge GST for supervision charge only. To avoid double taxation, applicant should not charge GST on the cost of materials, as there is no provision in CGST Act 2017 and rules made thereunder for double taxation.

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

RULING

1. Whether in the given facts and circumstances (In Annexure 1) value of material and cost of execution work for installation of lines will be included in the value of supply for determination of taxable value under GST where all such cost are taken as reimbursement while our supply is only supervision charges.

Answer: Reply in affirmative


2. Whether in the given facts and circumstances (In Annexure No 1) value of material and cost of execution work for installation of lines will be included in the value of supply for determination of taxable value under GST where all such costs are born by the recipient of service and we charge only supervision charges.

Answer: Reply in Negative

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


(Harilal Prajapati)

Member of Authority for Advance
Ruling


(Rajendra Kumar)

Member of Authority for Advance
Ruling

To,

M/s PURVANCHAL VIDYUT VITRAN NIGAM LIMITED,
MD Office, Vidyut Nagar, Ground Floor, DLW Road,
Bhikharipur , Varanasi Uttar Pradesh-221004

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, 9, Maqbool Alam Road, Near Zila Kutchehari, Varanasi-221002, Uttar Pradesh.
4. The Deputy/Assistant Commissioner, CGST & Central Excise, Division-Varanasi, 9, Maqbool Alam Road, Near Zila Kutchehari, Varanasi-221002, Uttar Pradesh.
5. Through the Additional Commissioner, G.R. 1, Varanasi zone-I, Uttar Pradesh to jurisdictional tax assessing officers.

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