

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

PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING U/S.
98 OF THE GOODS AND SERVICES TAX ACT, 2017

Sub:- GST ACT, 2017 – Advance Ruling U/s 98 – liability to tax under GST Act in respect to application dated 31.07.2019 from M/s Hitachi Power Europe GmbH., PO Kodhar, Meja Thermal Power Project, Tehsil – Meja, Allahabad, Uttar Pradesh - 212301- Order– Reg.

1). M/s Hitachi Power Europe GmbH., PO Kodhar, Meja Thermal Power Project, Tehsil – Meja, Allahabad, Uttar Pradesh (here in after called 'the applicant') is a registered assessee under GST having GSTN: 09AACCH4870N1Z2.

SUBMISSION OF THE APPLICANT:

2). M/s Hitachi Power Europe GmbH (*hereinafter referred as 'Head Office' or 'foreign company'*) is a Company incorporated under the Laws of Germany. M/s Hitachi Power Europe GmbH has been awarded with contracts for supply of goods and supervisory services by M/s. BGR Boilers Private Limited in relation to Projects of M/s. NTPC Limited, M/s. Meja Urja Nigam Private Limited and M/s. Damodar Valley Corporation being Mega power projects, located in Solapur (Maharashtra), Meja (Uttar Pradesh) and Raghunathpur (West Bengal) respectively.

3). M/s Hitachi Power Europe GmbH has constituted 3 Project Offices for undertaking onshore portion of the Project in India, vide Foreign Company Registration Number F04681. As per the applicant, under the Foreign Exchange Management Act, 1999, a Foreign Company executing projects in India is

permitted to open an office in India to undertake such projects, commonly referred to as "Project Office".

4) The key roles and responsibilities of project office are described as under:

- i. The Project Office is set up for a specific project and hence cannot engage itself in any other activity/business other than the business in relation to the Project.
- ii. The project should be funded directly or indirectly from abroad by the Foreign Company to the Project Office.
- iii. The funds arising out of the Project can be remitted to the Foreign Company subject to the condition that the remittance of funds to Foreign Company should not affect the completion of projects in India.
- iv. Any shortfall of funds for meeting any liability of the Project Office in India would be met by the Foreign Company by way of inward remittance. In other words, the Foreign Company would be responsible for the liabilities outstanding for the Project Office.
- v. The Project Office *cannot directly sign or enter into any contracts/agreements* in India for supply of goods/services from the said Project Office.
- vi. The Project Office *should close down* its operations in India *after completion of the specified project*.

5). For carrying out the projects in India, the Expat employees (employees of the Head Office) would work out from the Project Office in India. As the Project Office is not a separate legal entity and merely an extension of Head Office in India, these Expat employees are employees of Project Office.

6). With regard to these Expat employees, the Applicant submitted that:



- a The VISA has been issued by the Indian Bureau of Immigration by mentioning the name of Head Office i.e., '*Hitachi Power Europe GmbH*' under the column 'Organizational Name' with the address of the Project Office in India.
- b The Applicant has deducted Tax Deducted at Source ('TDS') under the head '*Income under Salaries*' for these employees under the Income Tax Act, 1961 in India.
- c Form-16 under the Income Tax Act, 1961 for salary deduction has been issued in India for these employees by the Applicant.
- d For the purpose of administrative convenience, the quantification of the above salary cost and payment of the same to most of these Expat employees were made from the Head Office's bank accounts to the employees' bank account outside India.
- e Under the Indian Companies Act, 2013, the Foreign Company is required to prepare it's financial statement accounting for all expenses and its corresponding income earned in India from the India Projects.
- f In order to comply with the above requirements, the Foreign Company makes an accounting entry amongst others for the cost of Expat employees' salary cost in its books of accounts based on the accounting debit note provided by the Head Office.
- g It is important to note that the above accounting of the salary costs is made for the purpose of compliances under the Indian Companies Act, 2013 and the Project Office is not obligated to make any remittances to Head Office for the above entry.
- h The Permanent Account Number (PAN') and Tax Deduction and Collection Account Number ('TAN') for a Project Office is issued in the name of the Foreign Company by the Income Tax Department. HPE Germany has obtained the Income tax PAN for the Project Office in India and holds PAN: AACCH4870N.



7). As per applicant, the transaction under reference would not fall under the meaning of the term 'supply' for the following reasons:-

- a No intention to provide or receive services and hence do not fall under the scope of the term 'Supply';
- b The said transaction is covered under the scope of activities or transactions specified in Schedule III – “services by an employee to the employer in the course of or in relation to his employment” and is hence outside the ambit of GST; and
- c The transaction will not qualify as 'import of services'.

8). Accordingly, the following question has been posted by the applicant, in its application dated 31.07.2019 (received by the Authority on 14.08.2019), before the Authority: –

- i. Whether the Goods and Services Tax is applicable on the accounting entry made for the purpose of Indian accounting requirements in the books of accounts of Project Office for salary cost of Expat employees.

9). The applicant also paid reliance on various case laws including the Advance Ruling pronounced by the Rajasthan Authority for Advance Ruling in the case of M/s. Habufa Meubelen B.V, to vindicate their stand.

10). The applicant was granted a personal hearing on 11th November 2019. Sh. Pravesh P Jain, Legal Representative of HPE Project Office, Chennai, Sh. Hari Sudhan M, CA and Sh. Hari ganesh V, CA, Authorized representatives of the applicant, appeared for hearing. Sh. Shalin Srivastava, Inspector, Range-Naini-I, Division-I, Allahabad, represented the department in personal hearing.



11). During the course of personal hearing the authorized representative of the applicant reiterated their earlier submissions and also filed some additional submissions, gist of which is as under: -

a. The applicant has obtained Permanent Account Number ('PAN') and Tax Deduction Account Number ('TAN') in the name of the Head Office, as the applicant is only an extension of the office of Hitachi Power Europe GmbH Germany and not an independent entity.

b. For the purpose of execution of projects, certain foreign nationals (*'Expat Employees'*) who are employees of Hitachi Power Europe GmbH Germany and in turn also the employees of the applicant, have been sent to India, whose TDS deduction on the salaries, issuance of Form-16, payment of Professional Tax and assistance in obtaining employment visa as an 'Employer', is being done by the applicant.

c. The applicant is only an extension of the Head Office and entire fund for meeting its expenses in case of any shortfall is being managed by the Head Office. Thus, the salary for these employees is disbursed by the Head Office directly to the expat employees, who have their primary bank accounts outside India.

d. As per Explanation 2 to Section 8 of the Integrated Goods and Services Tax Act, 2017 ('IGST Act, 2017') *"A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory."*

e. The applicant also paid reliance on various case laws including the Advance Ruling pronounced by the Tamil Nadu Authority in the case of M/s. Takko Holding GmbH.

12). The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer his comments/views/verification report on the matter, which was received in this office vide letter C. No. V (30) Tech./Alld-I/Adv. Rul./HPEG/30/2019/929 dated 30.09.2019, wherein it has been reported that remittance of salary by M/s Hitachi Power Europe GmbH to its expat employees



working in Indian Project located at Meja Thermal Power Project, Tehsil-Meja, Allahabad shall not be leviable to GST due to the reason that the service by an employee to his employer in the course of or in relation to his employment shall be treated neither a supply of goods nor a supply of service.

DISCUSSION AND FINDING

13). *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 to the earlier, henceforth 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'.*

14). *We have gone through the submissions made by the applicant and have examined the explanation submitted by them. At the outset, we find that the issue raised in the application is squarely covered under Section 97(2)(g) of the CGST Act 2017 being a matter related to whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term. We therefore, admit the application for consideration on merits.*

15). We observe that the issue before us to decide is-

- i. Whether the transaction between M/s Hitachi Power Europe GmbH and its project office located at Meja Thermal Power Project, Allahabad is a transaction between same company or a transaction between two distinct legal entities?
- ii. If the said transaction is an intra-company transaction, whether the amount paid to the expat employees falls under the definition of "Supply" under GST laws or will it fall under the Schedule III of the CGST Act, 2017 i.e. "Services by an employee to the employer in the



course of or in relation to his employment.”

16). As regard to the first question, we observe that Reserve Bank of India has framed Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016, vide Notification No. FEMA 22 (R)/2016-RB dated 31 March 2016. As per the said Notification, a “Project Office” has been defined as:-

‘Project Office’ means a place of business in India to represent the interests of the foreign company executing a project in India but excludes a Liaison Office.

16.1) Further, para 4(f) of the said Notification dated 31st march 2016, defines the conditions for project office, which are as under:-

“f. A foreign company may open project office/s in India provided it has secured from an Indian company, a contract to execute a project in India, and

- i. the project is funded directly by inward remittance from abroad; or*
- ii. the project is funded by a bilateral or multilateral International Financing Agency; or*
- iii. The project has been cleared by an appropriate authority; or*
- iv. A company or entity in India awarding the contract has been granted term loan by a Public Financial Institution or a bank in India for the project.*
.....”

16.2) With reference to the “Remittance of profit or surplus”, Para i (II) of the said Notification reads as under:-

“II. Authorised Dealer Category-I bank may permit intermittent remittances by project office pending winding up/completion of the project subject to submission of the following:

- i. *certified copy of the final audited project accounts;*
- ii. *the statutory auditor's certificate showing the manner of arriving at the remittable surplus and confirming that sufficient provisions have been made to meet the liabilities in India including Income Tax, etc; and*
- iii. *An undertaking from the project office that the remittance will not, in any way, affect the completion of the project in India and that any shortfall of funds for meeting any liability in the India will be met by inward remittance from abroad."*

16.3) From the documents filed by the applicant, we observe that the PAN and TAN for the Project Office has been issued by the Income Tax department in the name of the Foreign Company i.e., Hitachi Power Europe GmbH. Further, they have obtained registration under the Companies Act, 2013, as a 'Foreign Company' vide Registration Number F04681, by mentioning the name of the Company as 'Hitachi Power Europe GmbH'.

16.4) We also observe that M/s BGR Boilers Private Limited has entered into an agreement with the foreign company i.e. Hitachi Power Europe GmbH and in-turn, as per RBI guidelines, the foreign company has opened their project office in India to undertake /complete the contractual obligations. We also observe that as per the FEMA regulations any shortfall of funds for meeting any liability in India will be met by inward remittance from abroad and the project will be funded directly by inward remittance from abroad. This fact is also verified from the fact that in the balance sheet of the Project office, under the shareholder's fund, "Head Office balance" is mentioned, which shows that project office is receiving funds from their head office.

16.5) From the discussions above, we are in unison with the applicant that a Project Office is merely an extension of the foreign company in India to undertake the project in India and limited to undertake compliances required

under various tax and regulatory requirements in India. Accordingly, we observe that the Head Office and project office are the same legal entity and they cannot be treated as different legal entities. We also observe that the project office is merely an extension of Head Office for administrative convenience/ to fulfill legal obligations.

17). Now coming to the second question, as per the details/documents provided by the applicant, we observe that:-

- i TDS is deducted by the Project Office as an Employer on salaries paid to Expat Employees in accordance with the Income Tax Act, 1961;
- ii Project Office issues Form 16 as an Employer to the Expat Employees;
- iii In the VISA issued by the Indian Bureau of Immigration the organizational name of the expat employees has been written as 'Hitachi Power Europe GmbH';
- iv Professional tax is deducted from the salaries of the Expat employees and paid by the Project Office in India.

17.1) From the foregoing facts, we observe that the project office and the head office are single business entity and the project office is acting as an extended arm of the Head Office. Further the project office is fulfilling all the obligations as employer with reference to expat employees and "Employee-Employer relation exist between the project office and expat employees.

17.2) Further as per Section 7(2) of the CGST Act, 2017;

"(2) notwithstanding anything contained in sub-section (1),

(a) activities or transaction specified in Schedule III; or

(b)



Shall be treated neither as supply of goods nor a supply of services."

17.3) Further, as per Schedule III of the CGST Act, 2017, "the services by an employee to the employer in the course of or in relation to his employment" shall be treated neither as supply of goods nor a supply of service.

17.4) Accordingly, in view of the forgoing paras we observe that as the service provided by the expat employees to the project office fall under the category of "Services by an employee to the employer in the course of or in relation to his employment". Accordingly, no GST is leviable on the salary paid to the expat employees and reflected in the books of accounts of the project office.

RULING

18). The advance Ruling on question posed before the Authority is answered as under:-

I. Whether the Goods and Service Tax is applicable on the accounting entry made for the purpose of Indian accounting requirement in the books of accounts of Project Office for salary cost of Expat employees.

Ans: In view of aforementioned discussions, the question is answered in negative.

19). This ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104(1) of the CGST Act, 2017.


(Ajay Kumar Misra)

Member of Authority for Advance
Ruling


(Dinesh Kumar Verma)

Member of Authority for Advance
Ruling

To,

M/s Hitachi Power Europe GmbH,
PO Kodhar, Meja Thermal Power Project,
Tehsil – Meja, Allahabad,
Uttar Pradesh – 212301



AUTHORITY FOR ADVANCE RULING -UTTAR PRADESH

Order No. 43(ii)

Date: 11.11.2019

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 & CX, Allahabad Commissionerate, Allahabad, Uttar Pradesh.
4. The Assistant Commissioner, CGST & Central Excise, Division-I, Allahabad;
5. Through the Additional Commissioner, Commercial Tax, Allahabad, 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 Khnad, Gomti Nagar, Lucknow - 226010, within 30 days from the date of service of this order.

