

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 26.09.2019 from M/s Uttar Pradesh Avas Evam Vikas Parishad, Lucknow, Uttar Pradesh – Order– Reg.

1) M/s Uttar Pradesh Avas Evam Vikas Parishad, 104 Mahatma Gandhi Marg, Lucknow, Uttar Pradesh - 226001 (here in after called the applicant) is a registered assessee under GST having GSTN: 09AAAJU0103AFZF.

2) The applicant is a Board constituted under Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 and entrusted with the work to execute housing and improvement schemes in the State, whether chalked out by itself or by any local authority. Further, as per Section 46 of the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965, the applicant may also undertake the execution of any housing or other building project at the request of the State Government or, with the previous approval of the State Government, at the request of any other person on such terms and conditions as may be agreed upon.

3) The Applicant, in its application dated 26.09.2019, has submitted that:

- i. Projects being executed by the applicant for others are called 'Deposit Works', because of their close analogy with similar works often executed by Public Works Department of the State Government.
- ii. The applicant, in case of such works, realises an additional amount @12.5% as 'Supervision and Centage charges' on the total cost of construction which is permitted under Section 48 of the Act.

iii. Since most of such 'Deposit Works' undertaken by the applicant are the projects of Government of UP and 'Deposit Works' when executed by Public Works Department are governed by accounting rules contained in Financial Hand Book Volume-VI, the terms and conditions of such works are invariably the same as are applicable to 'Deposit Works' undertaken by Public Works Department.

iv. The important terms and conditions associated with such 'Deposit Works', are as follows-

- a. The money received by the applicant for execution of the project shall not be utilised for any other purpose and shall be used in execution of the project only.
- b. If the applicant earns any interest in any manner on the money received for execution of the project, it will be paid back in the head of account from which the money was drawn.

v. The consequence of aforesaid terms and condition is that the money received for execution of the project is held by the applicant solely as a deposit which can be spent only in execution of the project. Accordingly, the applicant spends from the deposit only when any expenditure is incurred towards execution of the project.

4) Accordingly, the applicant in his application has sought Advance Ruling as follows : -

- i. What is the time of supply in case of 'Deposit Works' being executed by the applicant- whether it is the time of receipt of funds from the client government department or the time when expenditure incurred towards execution of the work is debited to 'Deposit Works account'?
- ii. What shall be the value of supply in aforementioned two alternatives?

5) The applicant further submitted that:

- i. the nature of such deposits is different from advance payments received by suppliers in course of normal business dealings wherein the supplier gets uninhibited right to use such money in the manner he likes.

- ii. The applicant pays tax only when any amount is spent from this fund because it gets the consideration for the services provided by it only at this juncture. The value of supply in this case also includes the 'Supervision and Centage charges' apart from the cost of the work executed.
 - iii. The applicant generally receives the funds for the execution of the project in lump sum before the start of the work. However, he can spend it only for execution of the work so that the balance money remains parked with the applicant only as a deposit. This arrangement can be compared with an 'Escrow Account' opened in a bank wherein one party deposits money in it for payment to the other party but the other party can not withdraw any amount from it until he has fulfilled certain prescribed conditions.
 - iv. Keeping in view the restrictions imposed on the use of funds received for execution of the work, these funds can be easily distinguished from the advance payments generally received by suppliers, for supply of goods/services wherein he has full freedom to use the money in the manner he likes.
 - v. Since the funds received as above from the State Government do not qualify as advance payments and are essentially in nature of deposits, the applicant shall be held, as per provisions contained in the proviso to section 2(31)(b) of CGST Act, to have received the consideration when he debits the funds by the expenditure incurred towards execution of the project.
 - vi. Accordingly, the time of supply of services by the applicant, as per provisions contained in section 13(2) of CGST Act, shall be date of receipt of consideration determined as above i.e. the date of debit of the expenditure to the account of funds obtained for execution of the project, if no tax invoice has been issued prior to this date.
- 6)** The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter, which were received in the office vide letter C. No. 132/CGST/Lko-1/R-V/Misc Report/2018/6110 dated 30.10.2019, wherein it was submitted that the

applicant is receiving payment in advance and therefore in view of provisions of Section 13(2) of the CGST Act, 2017, the time of supply of service will be the date of receipt of such payment in advance and the value of supply of service will be the amount which has been received in advance.

7) The applicant was granted a personal hearing on 31st October 2019. Shri Mritunjai Kumar Singh, authorized representative, appeared in the personal hearing, on behalf of the applicant and Ms. Smita Roy, Assistant Commissioner, Division-I, Lucknow represented the department.

8) During the course of personal hearing, the authorized representative reiterated the submissions already made vide application dated 26.09.2019 (received by the Authority on 01.10.2019) and also filed additional submission, gist of which is as under:-

- a. Any interest or other monetary benefit accruing from these funds can also not be pocketed by the Construction Agencies and if any interest accrues on the unutilised funds lying in their bank accounts, it will have to be returned back to the department from whom the funds were received.
- b. An 'Advance Payment' is simply a payment received in advance for a supply wherein the only obligation of the supplier is to make the supplies as per terms of the contract. There are no strings attached to the money received in this type of payment and the supplier can use the money for any purpose he likes. The 'Advance Payments' are always shown as 'income' in the Profit and Loss a/c of the business.
- c. 'Deposit', on the other hand, is an amount of money given to a supplier to be used in accordance with the instructions given for it and is further subject to restrictions imposed for its use. In such cases, though the money stands transferred to the supplier, yet the supplier does not own it or have any beneficial interest in it and except for making contracted supplies, the money is of no use to him. The 'Deposits' are always shown under the head 'Liabilities' in the Balance Sheet of the business.

- d. The handing over of the funds to a Government Construction Agency for execution of the 'Deposit Work' is not an advance payment but simply a deposit made with it for use in execution of the work. The applicant cannot have any beneficial interest in the unutilised funds which can be used only for further execution of the work. The applicant gets the consideration for the work only when any expenditure incurred in execution of the work is debited to the funds.
- e. Since the applicant gets the consideration for the work only as aforesaid, the time of supply, as determined by the provisions of section 13(2) of CGST Act, happens to be the date on which the funds are debited with the expenditure incurred in execution of the work and the value of supply comes out to be the amount of such consideration.
- f. Finally, since the liability to pay tax arises at the time of supply, the liability of applicant arise at the time when they appropriate the funds for meeting any expenditure incurred towards execution of the work, the value of supply being the amount of funds appropriated as such.

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 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' 2017.

10). 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)(c) of the CGST Act 2017, being a matter related to determination of time and value of supply of goods or service or both. We therefore, admit the application for consideration on merits.

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

- i. What is the time of supply in case of 'Deposit Works' being executed by the applicant- whether it is the time of receipt of funds from the client government department or the time when expenditure incurred towards execution of the work is debited to 'Deposit Works account'?
- ii. What shall be the value of supply in aforementioned two alternatives?

12) We observe that as per the applicant's version, the amount received by them as "Deposit Work" is not an advance but a deposit made with them for use in execution of the work. Now, before proceeding further we would like to differentiate between "Advance" and "Deposit/Security Deposit". The term "Advance", as such is not defined under the CGST Act, 2017, however, in common parlance, "Advance" is referred as an amount of money paid before it is due or for work only partly completed/before commencement. As per accounting standard the "Advance" is reflected as "liability" in the financial records/Balance sheet of the recipient and as and when the portion of work get completed / invoice is issued, that amount of advance get transferred from liability head to the income head of the recipient. Whereas, on the other hand "Deposit/Security deposit" is referred, in common parlance, as a value (both in money and things) that is paid as mutual guarantee for a particular transaction, only to confirm the said transaction and the same is generally refunded to the client once the work/transaction is complete.

13) We observe that the amount received by the applicant is for certain supply of service, to be carried out by them. Further, as and when some part of the work gets completed, the proportionate amount gets debited from advance amount. Accordingly, we observe that the contention of the applicant that the amount received by them as "Deposit Work" is a deposit and not advance, is not tenable. The amount received by them is rightly classifiable under advance received for supply of service. As regard to the contention of the applicant that the fund cannot be used elsewhere but only for execution of demarcated project, we observe that this is an additional condition imposed so that the

funds of one project cannot be diverted to other project and work get completed within the stipulated timeframe.

14) As regard to the proviso to sub section 31 of Section 2 of CGST Act 2017 i.e. *“Provided that a deposit given in respect of supply of goods or service or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply”*, we observe that the above said provision envisages a situation wherein the amount is received by the service provider as “Security deposit” for any particular work and the same get refunded after the completion of said work. Whereas, in the instant case, as discussed supra, the amount received by the applicant is in the nature of “Advance payment” and not “Security deposit”. Thus the proviso in question does not apply in the instant case.

15). Now coming to the first question of the applicant regarding the time of supply of service, we observe that, Section 13 of the CGST Act, 2017 deals with that, and sub section 2 of Section 13 of the CGST Act, 2017 defines the time of supply for service as:-

“(2) The time of supply of services shall be the earliest of the following dates, namely:—

a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation.—For the purposes of clauses (a) and (b)-

(i) *the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;*

(ii) *"the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier."*

16) Accordingly, we observe that as per the said provisions, the time of supply is determined with reference to the time when the supplier receives payment with respect to the supply as well as a few other references like issue of invoice, receipt of goods etc. In general, the time of supply is earliest of issuance of invoice or receipt of payment. Therefore, in case of advance received for any supply, time of supply is fixed at the point when advance is received, irrespective of the fact whether the supply is made or not. Accordingly, GST needs to be paid with reference to the time at which advance is received. In view of this we observe that the time of supply in case of 'Deposit Works' being executed by the applicant would be the time of receipt of funds from the client (Government department).

17) Now coming to the second question of the applicant regarding what shall be the value of supply we observe that Section 15 of the CGST Act' 2017 defines the value of taxable service, which is as under:-

"15. (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.

(2) The value of supply shall include—

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) 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;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(3) The value of the supply shall not include any discount which is given—

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if—

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Explanation.—For the purposes of this Act,—

(a) persons shall be deemed to be “related persons” if—

(i) such persons are officers or directors of one another’s businesses;

(ii) such persons are legally recognised partners in business;

(iii) such persons are employer and employee;

(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family;

(b) the term “person” also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.”

18) Further, we observe that as per explanation given in the sub Section 2 of Section 13 of the CGST Act:

“Explanation- For the purpose of clause (a) and (b)-

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.”

We also observe that the Central Board of Indirect Taxes and Customs has issued flyer on the “Advance received for future supply” under GST. Para 2 of the said flyer deals with the advance payment, which is as under:-

“As per the explanation 1 to Section 12 of the CGST Act, 2017 a “supply” shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment. For instance, an advance of Rs. 10 lacs is received for a supply worth Rs. 1 crore to be made in future. The time of supply to the extent of advance received i.e. Rs.10 lacs shall be at the time of receipt of

advance and for the balance amount of Rs. 90 lacs, it shall be determined with reference to date of issue of invoice and other parameters.”

19) In view of aforementioned discussion, we observe that the value of the supply, on the advance payment received by the applicant, will be the amount of advance received by the applicant towards that particular work/supply.

20) In view of the above, both the members unanimously rule as under;

RULING

i. What is the time of supply in case of ‘Deposit Works’ being executed by the applicant- Whether it is the time of receipt of funds from the client government department or the time when expenditure incurred towards execution of the work is debited to ‘Deposit Works account’?

Ans: The time of supply in case of ‘Deposit Works’ being executed by the applicant will be the time of receipt of funds from the client government department.


ii. What shall be the value of supply in aforementioned two alternatives?

Ans: The value of the supply, on the advance payment received by the applicant, will be the amount of advance received by the applicant towards that particular work/supply.

21). 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)

o/c
Member of Authority for Advance
Ruling


(Dinesh Kumar Verma)
Member of Authority for Advance
Ruling

To,

M/s Uttar Pradesh Awas Evam Vikas Parishad,
104, M.G. Marg,
LUCKNOW – 226 001.
Uttar Pradesh.

AUTHORITY FOR ADVANCE RULING -UTTAR PRADESH

Order No. 45

Date: 13-12-19

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, Lucknow, Uttar Pradesh.
4. The Assistant Commissioner, CGST & Central Excise, Division-I, Lucknow, Uttar Pradesh;
5. Through the Additional Commissioner, Commercial Tax, Lucknow, Uttar Pradesh to jurisdictional tax assessing officers.