

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 22.10.2019 from M/s Uttar Pradesh Power Transmission Corporation Limited, Lucknow, Uttar Pradesh – Order– Reg.

1) M/s Uttar Pradesh Power Transmission Corporation Limited, Shakti Bhawan, 14-A, Ashok Marg, Lucknow, Uttar Pradesh - 226020 (here in after called the applicant) is a registered assessee under GST having GSTN: 09AAACU8823E1Z9.

2) The applicant, in their application informed that they are a company incorporated under the Companies Act, 1956 in the year 2006. They have been entrusted with the business of transmission of electrical energy to various licensees within the State of Uttar Pradesh. Further, Government of Uttar Pradesh (GoUP), in exercise of powers vested under Section 30 of The Electricity Act, 2003 vide notification No. 2974(1)/24-P-2-2010 Dated 23 December 2010 notified them as the state transmission utility of Uttar Pradesh.

3) It has also been informed by the applicant that they have been incorporated with the main objective to acquire, establish, construct, take over, erect, lay, operate, run, manage, hire, lease, buy, sell, maintain, enlarge, alter, renovate, modernize, work and use electrical transmission lines and/or network through extra high voltage, high voltage and associated sub-stations, cables, wires, connected with transmission ancillary services, telecommunication and telemetering equipment in the State of Uttar Pradesh.

4) The Applicant has submitted application for Advance Ruling dated 22.10.2019 enclosing duly filled Form ARA-01(the application form for Advance Ruling) along with its annexures and attachments.

5) The Applicant in his aforesaid application sought clarification and Advance Ruling as follows : –

- I. Whether Uttar Pradesh Power Transmission Corporation Limited is covered under the definition of the term 'Government Entity' as per Notification No. 31/2017 – Central Tax (Rate) dated 13 October 2017.

6) The applicant further made the following submissions:

6.1) With an objective of separation of the activities of bulk purchase/sale of energy and transmission of energy under separate corporate entities respectively by Uttar Pradesh Power Corporation Ltd (UPPCL in short) and the applicant, with effect from 01.04.2007 under the Provision of the notification no 2974(1)/24-P-2-2010 dated 23.12.2010 i.e. Uttar Pradesh Electricity Reform (Transfer of Transmission and related activities including the assets & Liabilities and related proceeding) Scheme, 2010, issued by Urja Anubhag-2, the Government of Uttar Pradesh vide Power conferred Under Sub-Section (4) of Section 131 of the Electricity Act 2003(Act No 36 of 2003) and in partial modification of Scheme formulated under Section 23 of The of Uttar Pradesh Electricity Reform Act, 1999 (Uttar Pradesh Act No 24 of 1999), the Government of Uttar Pradesh issued Provision Transfer Scheme for Transfer of Transmission and related activities including the assets & Liabilities and related proceeding from UPPCL to the applicant along with determination of terms and conditions of Incorporation, according to which in the Context of Transmission Undertaking (the applicant), Unless stated otherwise by the state Government and/or UPPCL, the entire Assets, Liabilities and Proceeding related to transmission shall provisionally vest in the transmission undertaking. The applicant has started functioning /operating, independently with effect from 01.04.2007. The applicant is a state transmission Utility in terms of Section 39 of the Electricity Act, 2003.

6.2) The provisions of the Electricity Act, 2003 provides for the establishment of Sate Transmission Utility by State Government. In lieu of the powers exercised by the State Government, M/s UPPTCL was formed by virtue of a transfer scheme introduced vide Notification Number 1529/XXIV-P-2-2015-Sa(218)-2014 dated November 3, 2015.

6.3) As regard to the shareholding pattern of the applicant, 83.7% % share holding is of Government of Uttar Pradesh and remaining 16.28% shares are owned by UPPCL, a company whose 100% equity share is owned by the Government of Uttar Pradesh.

6.4) Also the main objects of the applicant, as mentioned in its Memorandum Of Association clearly stipulates that the functions that are being carried out are those as assigned by State of Uttar Pradesh, which are as under:-

i. To acquire, establish, construct, take over, erect, lay, operate, run, manage, hire, lease, buy, sell, maintain, enlarge, alter, renovate, modernize, work and use electrical transmission lines and/or network through extra high voltage, high voltage and associated sub-stations, cables, wires, connected with transmission ancillary services, telecommunication and telemetering equipment in the State of U.P. and elsewhere.

To undertake, for and on behalf of others the erection, operation, maintenance, management of extra high voltage, high voltage transmission lines and associated sub-stations, equipment, apparatus, cables and wires.

ii. To execute agreements for transmission of power to distribution companies and other persons and to coordinate, aid and advise on the activities of other companies and concerns, including subsidiaries, associates and affiliates engaged in transmission of wheeling of electrical energy.

iii. To undertake the functioning of State Load Dispatch Centre in terms of Electricity Act, 2003.

iv. To schedule and dispatch generation of all units connected to the State power system including the centrally owned generating stations, in respect of the share assigned to the State and electricity purchased from other States undertakings.

v. To study, investigate, collect information and data, review operations, plan, research, design, prepare project reports, diagnose operational difficulties and weaknesses, and advise on the remedial measures to improve and modernize existing EHV, HV lines and sub-stations.

vi. To undertake planning and coordination activities of the power system and the works connected with among other Generation, Transmission, Distribution the Electricity requirements in the state and NRPC region, Load-Dispatch functions and such other functions as may be assigned to the Company by law or otherwise by Government Govt./SERC/CERC.

6.5) Accordingly the applicant has submitted that they are entirely established and owned by the State Government and they perform the functions entrusted to them by the State Government and accordingly covered by the definition of "Government Entity" as per the Notification No. 31/2017-Central Tax (Rate) dated 13th October 2017.

7) The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer his comments/views/verification report on the matter, but no report was received from the jurisdictional GST Officer.

8) The applicant was granted a personal hearing on 15th January 2020. Shri Chetan Garg, Accounts Officer and Sh. Prakhar Gupta, Authorized representatives of the applicant, appeared for hearing on behalf of the applicant.

During the course of personal hearing, they reiterated the submissions already made vide their application dated 22nd October 2019. Also vide their letter dated 15.01.2020, they further submitted that the Board of Directors of M/s UPPTCL are appointed by Uttar Pradesh State Government, so it can be held that Uttar Pradesh State Government has 100% control over M/s UPPTCL and hence satisfy conditions of definition of "Government Entity" as mentioned in Notification no. 31/2017- Central Tax.

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'.*

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)(b) of the CGST Act 2017 being a matter related to applicability of a notification issued under the provisions of this Act. We therefore, admit the application for consideration on merits.*

11). We have gone through the submissions made by the applicant and examined the detailed explanation submitted by them. We observe that the question sought by the applicant is-

- I. Whether Uttar Pradesh Power Transmission Corporation Limited is covered under the definition of the term 'Government Entity' as per Notification No. 31/2017 – Central Tax (Rate) dated 13 October 2017.

12) As regard to the term 'Government Entity', we observe that the same has been defined in the Notification No. 11/2017- Central Tax (Rate) dated 28th June 2017, as amended by Notification No. 31/2017- Central Tax (Rate) dated 13th October 2017, which is as under:-

"(x) "Government Entity" means an authority or a board or any other body including a society, trust, corporation,

i. set up by an Act of Parliament or State Legislature; or

ii. established by any Government,

With 90 per cent, or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority."

13) Now the first question before us is to decide whether the applicant is either set up by an act of Parliament or state legislature, or, established by any Government. The term Government has been defined under sub Section 53 of Section 2 of UPGST Act, 2017 as, "Government" means Government of Uttar Pradesh."

14) Further, Section 39 of the Electricity Act, 2003 defines the term "State Transmission Utility and functions" as :-

(1) The State Government may notify the Board or a Government company as the State Transmission Utility:

Provided that the State Transmission Utility shall not engage in the business of trading in electricity:

Provided further that the State Government may transfer, and vest any property, interest in property, rights and liabilities connected with, and personnel involved in transmission of electricity, of such State Transmission Utility, to a company or companies to be incorporated under the Companies Act, 1956 to function as transmission licensee through a transfer scheme to be effected in the manner specified under Part XIII and such company or companies shall be deemed to be transmission licensees under this Act.

(2) The functions of the State Transmission Utility shall be -

(a) to undertake transmission of electricity through intra-State transmission system;

(b) to discharge all functions of planning and co-ordination relating to intra-State transmission system with -

(i) Central Transmission Utility;

(ii) State Governments;

(iii) generating companies;

- (iv) Regional Power Committees;
- (v) Authority;
- (vi) licensees;
- (vii) any other person notified by the State Government in this behalf;
-

15) Section 131 of the Electricity Act, 2003 discuss about the transfer scheme, which is as under:-

"Section 131. (Vesting of property of Board in State Government)

(1) With effect from the date on which a transfer scheme, prepared by the State Government to give effect to the objects and purposes of this Act, is published or such further date as may be stipulated by the State Government (hereafter in this Part referred to as the effective date), any property, interest in property, rights and liabilities which immediately before the effective date belonged to the State Electricity Board (hereinafter referred to as the Board) shall vest in the State Government on such terms as may be agreed between the State Government and the Board.

(2) Any property, interest in property, rights and liabilities vested in the State

Government under sub-section (1) shall be re-vested by the State Government in a Government company or in a company or companies, in accordance with the transfer scheme so published along with such other property, interest in property, rights and liabilities of the State Government as may be stipulated in such scheme, on such terms and conditions as may be agreed between the State Government and such company or companies being State Transmission Utility or generating company or transmission licensee or distribution licensee, as the case may be :

Provided that the transfer value of any assets transferred hereunder shall be determined, as far as may be, based on the revenue potential of such assets at such terms and conditions as may be agreed between the State Government and the State Transmission Utility or generating company or transmission licensee or distribution licensee, as the case may be.

(3) Notwithstanding anything contained in this section, where,-

(a) the transfer scheme involves the transfer of any property or rights to any person or undertaking not wholly owned by the State Government, the scheme shall give effect to the transfer only for fair value to be paid by the transferee to the State Government;

(b) a transaction of any description is effected in pursuance of a transfer scheme, it shall be binding on all persons including third parties and even if such persons or third parties have not consented to it.

(4) The State Government may, after consulting the Government company or company or companies being State Transmission Utility or generating company or transmission licensee or distribution licensee, referred to in sub-section (2) (hereinafter referred to as the transferor), require such transferor to draw up a transfer scheme to vest in a transferee being any other generating company or transmission licensee or distribution licensee, the property, interest in property, rights and liabilities which have been vested in the transferor under this section, and publish such scheme as statutory transfer scheme under this Act.

Accordingly, in terms of provisions of the Electricity Act, 2003 (which provides for the establishment of State Transmission Utility by State Government) the applicant was formed by virtue of a transfer scheme introduced through Notification Number 1529/XXIV-P-2-2015-Sa(218)-2014 dated 3rd November, 2015. In view of this, we are of the opinion that M/s UPPTCL was established by the Government of Uttar Pradesh.

16) Now coming to the second question regarding holding of 90 percent or more equity or control, we observe that out of the total share of M/s UPPTCL, 83.72% shares are held by the Government of Uttar Pradesh and remaining 16.28 % are held by M/s UPPCL (a company in which 100% shares are held by the Government of Uttar Pradesh). The Notification No. 11/2017- Central Tax (Rate) dated 28th June 2017 (as amended) envisages an entity as "Government Entity" wherein 90 per cent or more participation by way of equity or control is held by the Government. In the instant case, direct equity held by the Government in M/s UPPTCL is 83.72% and remaining 16.28 % is held indirectly by the Government through a company in which 100% equity is held by the Government. Another situation envisaged by the Notification No. 11/2017- Central Tax (Rate) dated 28th June 2017 (as amended) is the "control" held by the Government. In this regard, the applicant, vide their letter dated 15.01.2020, has informed that the Board of Directors, Chairman of M/s UPPTCL are appointed by the Government of Uttar Pradesh, which shows that the control in M/s UPPTCL is held by the Government. In view of this, we are of opinion that although 90% equity in M/s UPPTCL is not directly held by the Government (16.28% hold through another Government company), even then the Government holds control over M/s UPPTCL due to the reason that the Board of Directors, Chairman of M/s UPPTCL are directly appointed by the Government of Uttar Pradesh. Accordingly, we observe that the applicant fulfills

the condition "established by any Government with 90 percent or more participation by way of equity or control" as given in the Notification No. 11/2017 - Central Tax (Rate) dated 28th June 2017 (as amended).

17) As regard to the condition "to carry out the function entrusted by the Central Government, State Government, Union Territory or a local authority", we observe that the main objects of M/s UPPTCL, as mentioned in its Memorandum of Association, are:-

- i. . To acquire, establish, construct, take over, erect, lay, operate, run, manage, hire, lease, buy, sell, maintain, enlarge, alter, renovate, modernize, work and use electrical transmission lines and/or network through extra high voltage, high voltage and associated sub-stations, cables, wires, connected with transmission ancillary services, telecommunication and telemetering equipment in the State of U.P. and elsewhere.

To undertake, for and on behalf of others the erection, operation, maintenance, management of extra high voltage, high voltage transmission lines and associated sub-stations, equipment, apparatus, cables and wires.

- ii. To execute agreements for transmission of power to distribution companies and other persons and to coordinate, aid and advise on the activities of other companies and concerns, including subsidiaries, associates and affiliates engaged in transmission of wheeling of electrical energy.
- iii. To undertake the functioning of State Load Dispatch Centre in terms of Electricity Act, 2003.
- iv. To schedule and dispatch generation of all units connected to the State power system including the centrally owned generating stations, in respect of the share assigned to the State and electricity purchased from other States undertakings.
- v. To study, investigate, collect information and data, review operations, plan, research, design, prepare project reports, diagnose operational difficulties and weaknesses, and advise on the remedial measures to improve and modernize existing EHV, HV lines and sub-stations.
- vi. To undertake planning and coordination activities of the power system and the works connected with among other Generation, Transmission, Distribution the Electricity requirements in the state and NRPC region, Load-Dispatch functions and such other

functions as may be assigned to the Company by law or otherwise by Government Govt./SERC/CERC.

18). From the above discussion, we are in unison with the applicant that they fulfill the conditions required of being a "Government Entity", in terms of Notification No. Notification No. 11/2017- Central Tax (Rate) dated 28th June 2017, as amended by Notification No. 31/2017- Central Tax (Rate) dated 13th October 2017.

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

RULING

- I. Whether Uttar Pradesh Power Transmission Corporation Limited is covered under the definition of the term 'Government Entity' as per Notification No. 31/2017 – Central Tax (Rate) dated 13 October 2017.

Ans: The applicant is covered under the definition of the term 'Government Entity' in terms of Notification No. 11/2017- Central Tax (Rate) dated 28th June 2017, as amended by Notification No. 31/2017- Central Tax (Rate) dated 13th October 2017.


(Ajay Kumar Misra)

Member of Authority for Advance
Ruling


(Dinesh Kumar Verma)

Member of Authority for Advance
Ruling

To,

M/s Uttar Pradesh Power Transmission Corporation Limited,
Shakti Bhawan,
14, Ashok Marg, Lucknow,
Uttar Pradesh – 226020

AUTHORITY FOR ADVANCE RULING -UTTAR PRADESH

Order No. 50

Date: 17-01-2020

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.

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.