

**THE AUTHORITY FOR ADVANCE RULLING  
GOODS AND SERVICE TAX  
UTTAR PRADESH**

4, VIBHUTIKHAND, GOMTINAGAR, LUCKNOW-226010

ADVANCE RULING NO. UP ADRG-64 /2020 DATED 17.09.2020

**PRESENT:**

**1. Shri Abhishek Chauhan**

Joint Commissioner, Central Goods and Service Tax

Audit Commissionerate, Lucknow

.....Member (Central Tax)

**2. Shri D K Verma**

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

1.	Name of the Applicant	UP POWER CORPORATION LTD., SHAKTI BHAWAN, 14, ASHOK MARG, LUCKNOW
2.	GSTIN or User ID	09AAACU5088M4ZM
3.	Date of filing of Form GST ARA-01	30.04.2020
4.	Represented by	Shri Dharmendra Srivastava & Associates
5.	Jurisdictional Authority- Centre	Range-V, CGST Division-I, Lucknow
6.	Jurisdictional Authority- State	Lucknow, Sector-12
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, CIN- HDFC20040900059281

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

1. Uttar Pradesh Power Corporation Limited, Shakti Bhawan, 14, Ashok Marg, Lucknow (hereinafter referred to as "**Applicant**") is a State Government undertaking and is registered under GST having GSTIN: 09AAACU5088M4ZM.
2. The Applicant has submitted an Application for Advance Ruling dated 30.04.2020 alongwith duly filled Form ARA-01 ( the Application Form for Advance Ruling) accompanied with the requisite fee and alongwith certain annexures and documents.
3. The Applicant in their Application has sought the Advance Ruling on the following issues:

- i. Whether there is a supply of service by the applicant Corporation in recovery of expenses from DISCOMs as well as UPPTCL and other power companies by way of book entries and hence, liable to GST;
  - ii. Whether inclusion clause in subsection (2) of Section 15 of CGST Act, 2017 providing for inclusion of incidental expenses in value of supply apply to applicant's case (i.e. recovery, by way of book entries, of O&M expenses from DISCOMs as well as UPPTCL and other power companies) when there is no supply of a service by the Corporation to the DISCOMs as well as UPPTCL and other power companies so as to make the stated recoveries from DISCOMs, UPPTCL and other power companies liable to GST, if answer to question 1 is negative;
  - iii. If the answer to (i) or (ii) is in affirmative, whether recovery against certain expenses such as interest cost, salary, depreciation etc. which do not attract GST due to either they being exempt or non taxable will also be liable to GST.
  - iv. Whether transfer of miscellaneous incomes of applicant Corporation to DISCOMs, UPPTCL and other power companies will attract GST;
  - v. If the answer to (i) or (ii) is in affirmative, whether GST paid on all taxable expenditures will be allowed as ITC to the Applicant for further adjustment of GST Payable on recovery of expenses by way of book entries.
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 not decided in any proceedings in the Applicant's case under any of the provisions of the Act.
5. The Applicant was granted a personal hearing on 28.08.2020. Shri Dharmendra Srivastava, Chartered Accountant and Authorised Representative alongwith some officers of UPPCL appeared for hearing through video conferencing on behalf of the applicant. During the personal hearing they reiterated the submissions already made under their Application dated 30.04.2020. An additional submission to buttress their point of view was also forwarded through mail dt 30.08.2020.

### **Discussion & Findings**

6. At the outset, we would like to make it clear that the provisions of the both the CGST Act and the UPGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dis-similar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the UPGST Act. Further, to the



earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar under the CGST Act / UPGST Act would be mention as being under the 'CGST Act.'

7. 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 issues raised in the application are squarely covered under Section 97(2)(e) & 97(2)(g) of the CGST Act, 2017 being a matter related to the determination of liability to pay tax on any goods or services or both and whether the activity of the applicant with respect to goods or services resulting in to supply or not under the CGST Act. The additional question pertaining to admissibility of input tax credit of tax paid on supplies is also covered under section 97(2)(d) of the Act. We, therefore, admit the application for consideration on merit.
8. It is stated by the Applicant that they are engaged in purchase and supply of electricity through its distribution companies. The Applicant purchase power centrally in bulk and supply to consumers through DISCOMs.

They have further stated that during this process certain activities / administrative works were undertaken on behalf of DISCOMs and the expenses so incurred on the said activities referred as 'Operational & Management Expenses (O & M Expenses)' have been passed on to them. Under para 5 of the Statement of Facts to the Application, a list of such expenses have been given. It is however, not clear whether the same is exhaustive or for the illustrative purpose only. It is also submitted that certain Incomes are earned which are also distributed to DISCOMs.

The activities which are subject matter of impugned Advance Ruling application are being examined below so as to ascertain whether these have ingredients which constitute 'Supply' under the provisions of the CGST Act. Let us examine the term 'Supply'

#### Section 7 (1) – Supply

*The term Supply has been defined under section 7 (1) of the CGST Act by way of Scope of Supply which includes:*

*(a) All forms of Supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*

*(b) import of services for a consideration whether or not in the course or furtherance of business; and*

*(c) the activities specified in Schedule I, made or agreed to be made without a consideration.*

Thus, Supply has two important elements:

- Supply is done for a consideration
- Supply is done in course of furtherance of business

Under the CGST Act, a transaction will attract GST only if it qualifies as a 'supply' as defined above. The term 'supply' has been defined to include all forms of supply of goods or services, such as sale, transfer, barter, license, or lease made or agreed to be made for a consideration in the course of or in furtherance of business. The term 'supply' also seeks to include within its purview transactions in goods or services between related parties or distinct persons (including the offices of an entity in different states with separate GST registrations), when provided with or without consideration. Therefore, it appears that for an activity to be treated as a 'supply' it should be a transaction in either goods or services. While 'goods' have been defined as movable property, the definition of services includes within its ambit 'anything other than goods', which widens the scope of the term and has the effect of including within its purview a wide variety of activities. Additionally, by virtue of a deeming fiction, the CGST Act clarifies that if a supplier agrees to an obligation to engage in an act, such activity will be construed as a service.

It is not disputed that the Applicant Corporation and its subsidiaries are separate business entities registered under the Corporate Law and are engaged in the activity of providing electricity in the state of UP. The relationship between Applicant Corporation and its subsidiaries is undoubtedly commercial. The fact that subsidiaries i.e. DISCOMs are providing exempt supply is immaterial for the purpose of determination of nature of activity between Corporation and its subsidiaries. The activities which are listed in para 5 of the Application and for which "Operational & Management Expenses" are being incurred and passed on are apparently carrying a 'Consideration.' There is also no denying in the fact that it is for the furtherance of business. Thus, the activities as mentioned above squarely meet the twin test laid down under Section 7(1) of the CGST Act for the purpose of being identified as 'Supply'. As we hold that the activities for which O & M Expenses are being passed on and collected are 'Supplies' for the purpose of Section 7(1) of CGST Act, the same would be liable to be charged to GST as per the applicable rate laid down under the law and in accordance with the provisions of Section 15 of CGST Act.

9. Now, taking up the question no.2, as we held in para 8 above that the said recovery of O & M Expenses of supplies and the answer to question no.1 is affirmative, therefore, the question no.2 becomes infructuous.
10. The third question pertains to the quantum of O & M Expenses chargeable to GST. It is the contention of the Applicant with reference to certain expenses such as Interest Cost,



Salary, Depreciation do not attract GST as being exempt or non-taxable and therefore, not liable to GST.

In this regard, we have considered each individual head for the purpose of examining the applicability of GST on the same. We find that most of the expenses on individual basis are taxable e.g. expenses passed on for the employees benefit or salary or for reimbursement purpose are not relatable to normal employer-employee relationship, thereby covered under Schedule III under Section 7 of the CGST Act. The employees recruited by the one office and working in another office does not have any employer-employee relationship with the office where they are actually working. The expenses incurred on such employees claimed from the actual employer would constitute supply and accordingly liable to pay GST. Same is the case with 'Medical Expenses' or 'Recruitment Expenses'. Accordingly, we hold that the expenses incurred on account of heads claimed to be exempted are also liable to be charged to GST.

11. As regards, the transfer of miscellaneous income of the Applicant Corporation to DISCOMs which is the subject matter of question no.4. as we held that recovery of expenses are classifiable as 'Supply', so would be the 'Income'. The same is also classifiable as 'Supply' and would be chargeable to GST as per discussion made in para 8 above.
12. Coming on to the final question i.e. question no.5 regarding the availability and admissibility of Input Tax Credit of GST paid on the supplies discussed above, we find that the provisions governing Input Tax Credit are separately mentioned under CGST Act. Whether ITC is admissible on any Input Supply of Goods and Services has to be examined with reference to provisions of Section 16 & 17 of the CGST Act read with Rule 36 of CGST Rules. Therefore, at this stage it can only be said that the admissibility of Input Tax Credit of GST paid on supplies mentioned in paras above would depend upon meeting on the criteria / conditions specified under Section 16 & 17 read with Rule 36 as discussed above.

In view of the foregoing discussions, we pass the following ruling:-

#### **RULING**

1. The Applicant is liable to pay GST on the O & M Expenses charged from its subsidiary companies.
2. As the supplies have been held as taxable as per 1 above, the question no.2 becomes infructuous.

3. With regard to the specific heads as mentioned in the question no.3, the GST would be chargeable.
4. Income shared with the subsidiaries by the Applicant would also be chargeable to GST.
5. While ITC may be availed, in principle, but the admissibility of the same would depend upon the provisions of Section 16 & 17 of the CGST Act read with Rule 36 of the CGST Rules.

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

  
(D. K. Verma)  
Member

  
(Abhishek Chauhan)  
Member

To

**M/s UP POWER CORPORATION LTD.,  
SHAKTI BHAWAN, 14, ASHOK MARG,  
LUCKNOW**

#### **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 & Central Excise, Lucknow, Uttar Pradesh
4. The Assistant Commissioner, CGST & Central Excise, Division-III, Lucknow at 12<sup>th</sup> Floor, CGO Complex, Sector-H, Aliganj, Lucknow, Uttar Pradesh.
5. Through the Additional Commissioner, Grade-1, 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 & Service Tax, 4, Vibhuti Khand, Gomti Nagar, Lucknow-226010 within 30 days from the date of service of this order.