

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

**4, Vibhuti Khand, Gomti Nagar, Lucknow-**

**ADVANCE RULING NO. UP ADRG 76 /2021**

**DATED 16/4/2021**

**PRESENT:**

**1. Shri Abhishek Chauhan**

Additional Commissioner, Central Goods and Service Tax

Audit Commissionerate, Lucknow

.... Member (Central Tax)

**2. Shri Dinesh Kumar Verma**

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

|    |  |  |
|----|--|--|
| 1. | Name of the Applicant  | M/s Lucknow Producers Cooperative Milk Union Ltd.<br>22, Jopling Road, Lucknow |
| 2. | GSTIN or User ID   | 09AAAAL0278L1ZE  |
| 3. | Date of filing of Form GST ARA-01                                  | 27.01.2021   |
| 4. | Represented by   | Shri T.K. Srivastava (Advocate)  |
| 5. | Jurisdictional Authority-Centre                                    | Range-III, Division-Lucknow-I  |
| 6. | Jurisdictional Authority-State                                     | Lucknow, Sector-12   |
| 7. | Whether the payment of fees discharged and if yes, the amount CPIN | Yes<br>21010900344930  |

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

1. M/s Lucknow Producers Cooperative Milk Union Ltd., 22, Jopling Road, Lucknow-226001 (here in after referred to as the applicant) is a registered assessee under GST having GSTN: **09AAAAL0278L1ZE**.

2. The applicant is engaged in processing of milk and manufacturing of various milk products. The applicant is availing the services of various manpower supply agencies. The applicant has sought advance ruling on following question-

I. GST liability on reimbursement of Employee Provided Fund & ESI.

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.

4. The applicant has submitted that-

- (i) they had agreement with different parties for supply of manpower.
- (ii) The agreement had two elements one is payment against services and second one is the discharge of their statutory liabilities against the workers compensation act like EPF, ESI or other statutory liabilities.
- (iii) These statutory liabilities as per Act rest with the factories or the working place and in order to minimize their work burden, they had shifted the liability of deposit of said statutory liabilities to service providers, which is subsequently reimbursed to them.
- (iv) As per agreement, service providers raise two bills one for charges for the service and the other for reimbursement of discharge of statutory liabilities.
- (v) Rule 33 of the GST Rules says that expenditure or cost incurred by supplier as a pure agent of the recipient of supply shall be excluded from the value of supply.
- (vi) The Advance Ruling Authority, Karnatka {reported in 2020(32)GSTL49(AAR-GST-Kar)} had pronounced that Group Insurance and workmen compensation scheme is meant for benefit of workers and not for the profit of service recipient or service providers and so it is not taxable under GST.
- (vii) The bills raised for reimbursement of EPF & ESI fulfill all the ingredients as above and therefore not to be made subjected to GST.

5. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report in the matter. The Deputy Commissioner, Commercial Tax, Khand-12, Lucknow (who is jurisdictional officer as the applicant falls in state jurisdiction) vide his C.No. 976/Di. Com.Va.Ka./Khand-12/Lucknow dated 17.03.2021 had not offered any comment on the question raised by the applicant and simply informed the tax rate on milk products supplied by the applicant. The Dy. Commissioner, CGST & CX Division-1, Lucknow vide/TECH./Misc(23/10/19)/2019/Pt-I dated 07.04.2021 has opined that the GST shall be charged by Manpower Recruitment Agency (the supplier) to the applicant on the gross value which includes EPF, ESI contribution, service charge and actual reimbursement to the person/labor (manpower).

6. The applicant was granted a personal hearing on 15.04.2021 which was attended by Shri T.K. Srivastava, Advocate during which he reiterated the submissions made in the application of advance ruling.

### **DISCUSSION AND FINDING**

7. 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'.



8. 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-

*(v) determination of the liability to pay tax on any goods or services or both*

As such, 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.

9. 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 question-

1. GST liability on reimbursement of Employee Provided Fund & ESI.

10. We find that the applicant had enclosed Work Order dated 22.02.2017 along with the application of advance ruling. The said Work Order is for manpower supply and loading/unloading work. As per the Work Order, the applicant pay wages and service charge to contractor and reimburse EPF, ESI, Service Tax, Bonus after payment by the contractor. The applicant had sought ruling on GST liability on reimbursement of EPF and ESI.

11. In order to find the value of supply of goods or supply of services in GST, we need to examine the term Consideration which is defined under Section 2 (31) of CGST Act, 2017 as under:-

*“(31) “consideration” in relation to the supply of goods or services or both includes—*

*(a) 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;*

*(b) the monetary value of any act or forbearance, 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;*

*Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply”*

12. Thus, the above definition of ‘consideration’ includes 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. It also includes the monetary value of any act or forbearance, 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.

However, as can be seen from the above, consideration would include the entire payment received by the contractor (manpower supplier) from the applicant and GST would be payable on the entire amount collected by them from the applicant which includes the



salary amount/wages to be paid to the labours as well as the reimbursement of EPF and ESI contribution.

13. We would also like to refer to Section 15 of the CGST Act, 2017, which pertains to Valuation of taxable supply and reads, as under:

***Relevant portion of Section 15 of the CGST Act:***

*"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.*

*(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."*

14. On going through the above, it can be seen that Section 15(1) clearly stipulates that the value of 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. Further, sub-section(2) of Section 15 elaborates in detail, the items that are



required to be included in the value of supply, whereas sub-section (3) of Section 15 specifically elaborates the items that are not to be included in the value of supply.

15. As per Section 15 of the CGST Act, 2017, there is intent to include even all taxes, duties, cesses, fees and all charges in the value of supply and there can be no exception for ESI and EPF amount. Therefore, taking into the view the definition of 'consideration' and the aspect of 'valuation of supply' as discussed above, it is apparent that the GST is chargeable on the entire amount received by contractor from the applicant.

16. Now as per the applicant's submission regarding pure agent, we find that Rule 33 of CGST Rules, 2017 states that-

*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 authorisation 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.*

**Illustration.-** Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

17. The condition contained in rule 33(iii) of the CGST Rules, 2017 provides that "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". In the instant case,



Labour contractor cannot be treated as pure agent as the contractor is not procuring any additional services from the third party and instead of this the contractor is providing/supplying the single service of manpower supply and the contractor is charging for the said service only. Further, there is no contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of services as the Work Order dated 22.02.2017 simply provides that after deposit of EPF and ESI in the concerned department, the reimbursement will be done as per rule and there is no mention in the said Work Order that the contractor will deposit EPF and ESI as the pure agent of the applicant. Moreover, having gone through the challan/ Payment Confirmation Receipt of EPF Organization and E-challan Payment Receipt of Employees State Insurance Corporation, it is evident that the contractor of the applicant does not fulfil the conditions of pure agent of the recipient of service (i.e. the applicant).

18. Accordingly, we hold that GST is liable to be paid @18% (9% CGST and 9% SGST) on the reimbursement of EPF and ESI contribution as the same is liable to be included in the value of supply as per Section 15 of the CGST Act, 2017.

19. In view of the above discussions, we, both the members unanimously rule as under;

### RULING

20. **Que 1.** GST liability on reimbursement of Employee Provided Fund & ESI?

**Answer-** GST is liable to be paid @18% (9% CGST and 9% SGST) on the reimbursement of EPF and ESI contribution as the same is liable to be included in the value of supply as per Section 15 of the CGST Act, 2017.

21. 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.



(Dinesh Kumar Verma)  
Member of Authority for Advance  
Ruling



(Abhishek Chauhan)  
Member of Authority for Advance  
Ruling

To,

M/s Lucknow Producers Cooperative Milk Union Ltd,  
22, Jopling Road  
Lucknow- 226001

## 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, 7-A, Ashok Marg, Lucknow, 226001
4. The Deputy/Assistant Commissioner, CGST & Central Excise, Division-Lucknow I, 12<sup>th</sup> Floor, Kendriya Bhawan, Aliganj, Lucknow 226024
5. Through the Additional Commissioner, Gr-I, Commercial Tax, L.K.O.T., 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, VibhutiKhnad, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.