

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

4, Vibhuti Khand, Gomti Nagar, Lucknow-

ADVANCE RULING NO. UP ADRG 78 /2021

DATED 27-05-2021

PRESENT:

1. Shri Abhishek Chauhan

Additional Commissioner, Central Goods and Service Tax

Audit Commissionerate, Lucknow

.....Member (Central Tax)

2. Shri Vivek Arya

Joint Commissioner, State Goods and Service TaxMember (State Tax)

1.	Name of the Applicant	M/s UP STATE BRIDGE CORPORATION LIMITED 16, Setu Bhawan, Madan Mohan Malviya Marg, Lucknow-226001
2.	GSTIN or User ID	09AAACU3258KSZA
3.	Date of filing of Form GST ARA-01	15.02.2021
4.	Represented by	Shri Ashish Kumar Mishra (CA)
5.	Jurisdictional Authority-Centre	Range-I, Division-Lucknow-I
6.	Jurisdictional Authority-State	Lucknow, Sector-12
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes BARB21020900043696

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

1. M/s UP STATE BRIDGE CORPORATION LIMITED, 16, Setu Bhawan, Madan Mohan Malviya Marg, Lucknow-226001 (here in after referred to as the applicant) is a registered assessee under GST having GSTN: 09AAACU3258KSZA.

2. As per Form GST ARA-01, the applicant is a company incorporated under Companies Act by the Govt. of UP and is engaged in construction of bridges and civil engineering works assigned by the Public Works Department (PWD), which is called Deposit Work. The applicant provides an estimate of cost for construction of bridges to the PWD and the PWD gives a fixed percentage on that amount commonly known as Centage for incurring administrative expenditure on the construction of such bridges. The applicant is paying GST on centage and labour cess in compliance with Section 15(2) of the CGST Act, 2017 but the UP Govt is not reimbursing the same to the applicant.

3. The applicant has sought advance ruling on following question-

- I. Centage included in total value of work done taxable or not under the CGST Act, 2017.
- II. Whether Labour Cess is taxable or not under the CGST Act, 2017.

4. 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.

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. 1005/ Di. Com.Va.Ka./Khand-12/Lucknow dated 24.03.2021 had not offered any comment on the question raised by the applicant and simply informed that the applicant is engaged in construction of bridges and no proceedings are pending against the applicant. The Deputy Commissioner, CGST & Central Excise Division-1, Lucknow vide her letter under F.No. CGST/LKO/Tech/Misc (23/10/2019)/2019/Pt-I dated 20.05.2021 has submitted that Centage charges is Consultancy Charges received by the applicant in respect of consultancy provided by it in terms of providing estimate of cost for construction of bridges to the PWD. In relation to pure services provided to State Government by way of activity in relation to function entrusted to a Panchayat/Municipality under 243G/243W of Constitution is exempt from goods and service tax as per S.No. 3 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017. However, in the instant case the said activity of the applicant do not fall under the 243G/243W of the Constitution and thus appears to be taxable at the rate of 18%. As regards taxability of Labour Cess, it is clear from Section 15 of CGST Act, 2017 that no deduction on account of Labour Welfare Cess is allowed from transaction value to arrive at taxable value.

6. The applicant was granted a personal hearing on 25.05.2021 which was attended by Shri Ashish Kumar Mishra (CA and Authorized representative of the applicant) 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 issue on which advance ruling required-

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

At the outset, 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-

I. Centage included in total value of work done taxable or not under the CGST Act, 2017.

II. Whether Labor Cess is taxable or not under the CGST Act, 2017.

10. We find that the applicant has sought advance ruling on leviability of GST on centage. The applicant had submitted that they are undertaking 'Deposit Work' of construction of bridges assigned by the Public Works Department (PWD) and the PWD grants them an amount as a centage in addition to the cost of construction. The centage is certain percentage of cost of construction which is for meeting the administrative expenses of the applicant. We find that the 'Deposit Work' is execution of work against funds from other Government Agencies or Ministries. The consideration received by the applicant from the Deposit work is cost of construction plus centage.

11. We find that the applicant has also sought advance ruling on leviability of GST on labour cess. In the truest sense, there is no cess called Labour Cess. It is the Building & Other Construction Workers' Welfare Cess [BOCWW Cess] which is often referred as labour cess by certain section/ individual. BOCWW Cess is levied on the cost of construction incurred by an employer as per the provisions of the Building and Other Construction Workers' Welfare Cess Act, 1996.

12. 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"

13. Thus the above definition of 'consideration' clearly 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. As can be seen from the above, consideration would include the entire payment received by

10 supplier of service (i.e. the applicant) and GST would be payable on the entire amount collected by them from the recipient of service (i.e. the PWD) which includes the centage and labour cess.

14. 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:

"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."

15. 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.

As per Section 15 of the CGST Act, 2017, there is intent to include all taxes, duties, cesses, fees and all charges in the value of supply and there can be no exception for centage and BOCWW Cess (labour cess). 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 the applicant {including centage and BOCWW Cess (labour cess)} from the recipient of service.

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

RULING

17. **Que 1.** Centage included in total value of work done taxable or not under the CGST Act, 2017?

Answer- Centage will be included in the value of supply and the same is taxable under the CGST Act, 2017.

Que 2. Whether Labor Cess is taxable or not under the CGST Act, 2017.

Answer- Labour Cess will be included in the value of supply and the same is taxable under the CGST Act, 2017.

18. 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.


(Vivek Arya)

Member of Authority for Advance
Ruling


(Abhishek Chauhan)

Member of Authority for Advance
Ruling

To,

M/s U P State Bridge Corporation Ltd,
16, Setu Bhwan,
Madan Mohan Malviya Marg
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, 12th Floor, Kendriya Bhawan, Aliganj, Lucknow 226024
5. Through the Additional Commissioner, Gr-I, Commercial Tax, ...L.K.O-I... 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.