

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

4, Vibhuti Khand, Gomti Nagar, Lucknow-

ADVANCE RULING NO. UP ADRG- 17/2021 DATED 08/12/2021
PRESENT:

- 1. Shri Rajendra Kumar**
Additional Commissioner, Central Goods and Service Tax
Audit Commissionerate, LucknowMember (Central Tax)
- 2. Shri Vivek Arya**
Joint Commissioner, State Goods and Service TaxMember (State Tax)

1.	Name of the Applicant	M/s NATIONAL HIGHWAYS AUTHORITY OF INDIA, 26,Bisalpur Road,Green Park, Bareilly, Uttar Pradesh-243006
2.	GSTIN or User ID	09LKNP06843E1DC
3.	Date of filing of Form GST ARA-01	14.09.2022
4.	Represented by	Shri Kartikeya Singh, Advocate
5.	Jurisdictional Authority-Centre	Range-Shyamganj, Division- I Bareilly
6.	Jurisdictional Authority-State	Sector- 9,Bareilly (B),Bareilly
7.	Whether the payment of fees discharged and if yes, the CIN	Yes BARB22090900091529

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

1. M/s NATIONAL HIGHWAYS AUTHORITY OF INDIA, 26,Bisalpur Road, Green Park, Bareilly, Uttar Pradesh-243006 (here in after referred to as the applicant) is a registered assessee under GST having GSTIN: 09LKNP06843E1DC.
2. The applicant has submitted an application for Advance Ruling dated 14.09.2022 enclosing dully filled Form ARA-01 (the application form for Advance Ruling) along with annexure and attachments. The applicant in his application has sought advance ruling on following question-
 1. *Whether the work done by the applicant (NHAI) in shifting the transmission lines for the widening of road under the supervision of MVVNL comes under the definition of supply as per section 15(2)(b) of C.G.S.T. Act, 2017?*
 2. *Whether GST is to be paid to MVVNL on the full amount of work done for shifting the transmission lines by NHAI?*
 3. *Without prejudice to the submissions made hereinabove and hereinafter, if the NHAI pays GST on the entire value of work done to its contractors and also to MVVNL, then how will this payment of same amount of GST on the same transaction to two separate entities, not constitute double taxation?*

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.

The applicant has submitted that-

- 3.1 That the applicant is currently doing the work of widening of National Highway no. 30 from Sitarganj to Bareilly, for which the existing electric poles are to be shifted from one place to another. These power lines are required to be shifted to keep the electrical clearances safe as per the Indian Electricity Rules 1956.
- 3.2 That for the purpose of highway modification, the existing transmission lines throughout the highway are required to be shifted/ raised for safe clearances.
- 3.3 That the shifting/ modification work of transmission lines for the widening of highway is done in two ways by MVVNL:-
 - a. That the whole shifting/ raising/ modification is done by the MVVNL itself for which MVVNL charges for the work done or,
 - b. That the whole work is done by NHAI under the supervision of MVVNL, for which MVVNL gets supervision charges, which are approximately 5% of the estimated value of the work for shifting / modification of the transmission lines.
- 3.4 That since these power lines are the assets of MVVNL and need to be shifted/modified as per the requirements of NHAI, all the expenses are borne by the applicant itself because the modification in transmission lines is a requirement of NHAI for the widening of road.
- 3.5 That the MVVNL charges 5% as supervision charge of the estimated value of the work of shifting of the transmission lines (also called the Deposit Work) and fixed amount of shut down charges along with GST on both the components. The NHAI has already paid supervision charges and shut down charges along with GST to MVVNL.
- 3.6 That the estimated value (Deposit Work) is for the purpose of calculating the supervision charges which is to be paid by NHAI to MVVNL.
- 3.7 That MVVNL has issued a demand notice to NHAI asking for 18% of GST on the Deposit work which was solely done by the contractor appointed by NHAI under the supervision of MVVNL according to the cost estimate provided by MVVNL. As stated hereunder :-

“It shall be ensured that asset/ infrastructure built by intending agency/ consumer shall have to be transferred to MVVNL. Any expenditure or taxes incurred or to be incurred on such transfers shall be borne by intending agency/ consumer.”

- 3.8 That it is pertinent to mention here that the entire shifting work is done by the contractors of intending agency/ applicant (NHA), who purchases the material required for shifting/ modification of the transmission lines as per the technical specifications of MVVNL.
- 3.9 That the contractor who has made purchases of the material for shifting of transmission lines, has claimed I.T.C. on the same, has done the work of shifting / modification which includes cost of dismantling the existing sections, civil work for erection and cost of new work according to the specification of MVVNL.

Therefore the aforesaid transaction is done between NHAI and its contractor, who has made the required purchases and has completed the work according to the specification of MVVNL. The NHAI also deducts and deposits TDS on payments made to contractors.

- 3.10 That MVVNL is demanding 18% GST on the work done because as per MVVNL, it is an asset transfer from NHAI to MVVNL and in this regard it is submitted that prior to and even after the shifting / modification, the transmission line belongs to MVVNL. That it is pertinent to mention here that the ownership and operational control of the transmission lines remains with MVVNL and are not at all transferred in any form to NHAI. The NHAI is only concerned with the shifting of these transmission lines from one place to another for obtaining safe clearances and that too is done under the expert supervision of MVVNL. The entire shifting work is done by the contractors of NHAI and the NHAI duly deducts and deposits TDS on payments made to contractors. The MVVNL only supervises the shifting work and for this supervision charges are paid to MVVNL along with GST. The only service for which MVVNL is liable to get payment along with GST is supervision charges which have been already paid to MVVNL.
4. Statement of relevant facts having a bearing on the question(s) raised
- 4.1 That the National Highway Authority of India (hereinafter referred to as NHAI or the applicant) is an authority established under the National Highway Authority of India Act 1956 for the development, maintenance and management of national highways and having its registered office at G 5 & 6, Sector 10, Dwarka, New Delhi-110075.
- 4.2 That the applicant is having its regional office at 3/248, Near SRS mall, Vishal Khand, Gomti Nagar, Lucknow, and concerning office at 26, Green park, Beesalpur Road, Bareilly, Uttar Pradesh.
- 4.3 That Madhyanchal Vidhyut Vitran Nigam Limited (hereinafter referred to as MVVNL) is a company incorporated under Companies Act 1956, having its registered office at 4-A, Gokhle Marg, Lucknow, and it's concerning office at Bahadurganj, Shahjanpur, Uttar Pradesh.
- 4.4 That the applicant is currently doing the work of widening of National Highway no. 30 from Sitarganj to Bareilly, for which the existing electric poles are to be shifted from one place to another. These power lines are required to be shifted to keep the electrical clearances safe as per the Indian Electricity Rules 1956.
- 4.5 That for the purpose of highway modification, the existing transmission lines throughout the highway are required to be shifted/ raised for safe clearances.
- 4.6 That the shifting/ modification work of transmission lines for the widening of highway is done in two ways by MVVNL:-
- c. That the whole shifting/ raising/ modification is done by the MVVNL itself for which MVVNL charges for the work done or,
 - d. That the whole work is done by NHAI under the supervision of MVVNL, for which MVVNL gets supervision charges, which are approximately 5% of the estimated value of the work for shifting / modification of the transmission lines.
- 4.7 That since these power lines are the assets of MVVNL and need to be shifted/modified as per the requirements of NHAI, all the expenses are borne by the applicant itself

because the modification in transmission lines is a requirement of NHAI for the widening of road.

- 4.8 That the MVVNL charges 5% as supervision charge of the estimated value of the work of shifting of the transmission lines (also called the Deposit Work) and fixed amount of shut down charges along with GST on both the components. The NHAI has already paid supervision charges and shut down charges along with GST to MVVNL.
- 4.9 That the estimated value (Deposit Work) is for the purpose of calculating the supervision charges which is to be paid by NHAI to MVVNL.
- 4.10 That MVVNL has issued a demand notice to NHAI asking for 18% of GST on the Deposit work which was solely done by the contractor appointed by NHAI under the supervision of MVVNL according to the cost estimate provided by MVVNL. As stated hereunder :-

“It shall be ensured that asset/ infrastructure built by intending agency/ consumer shall have to be transferred to MVVNL. Any expenditure or taxes incurred or to be incurred on such transfers shall be borne by intending agency/ consumer.”

- 4.11 That it is pertinent to mention here that the entire shifting work is done by the contractors of intending agency/ applicant (NHAI), who purchases the material required for shifting/ modification of the transmission lines as per the technical specifications of MVVNL.
- 4.12 That the contractor who has made purchases of the material for shifting of transmission lines, has claimed I.T.C. on the same, has done the work of shifting / modification which includes cost of dismantling the existing sections, civil work for erection and cost of new work according to the specification of MVVNL. Therefore the aforesaid transaction is done between NHAI and its contractor, who has made the required purchases and has completed the work according to the specification of MVVNL. The NHAI also deducts and deposits TDS on payments made to contractors.
- 4.13 That MVVNL is demanding 18% GST on the work done because as per MVVNL, it is an asset transfer from NHAI to MVVNL and in this regard it is submitted that prior to and even after the shifting / modification, the transmission line belongs to MVVNL. That it is pertinent to mention here that the ownership and operational control of the transmission lines remains with MVVNL and are not at all transferred in any form to NHAI. The NHAI is only concerned with the shifting of these transmission lines from one place to another for obtaining safe clearances and that too is done under the expert supervision of MVVNL. The entire shifting work is done by the contractors of NHAI and the NHAI duly deducts and deposits TDS on payments made to contractors. The MVVNL only supervises the shifting work and for this supervision charges are paid to MVVNL along with GST. The only service for which MVVNL is liable to get payment along with GST is supervision charges which have been already paid to MVVNL.

- 4.14 That MVVNL is relying on section 15 (2)(b) of C.G.S.T. which states that:-
“ 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 include in the price actually paid or payable for the goods or services or both.”

- 4.15 That MVVNL raised a demand notice for the payment of GST on the work done for shifting the transmission lines. Against this notice, the NHAI has deposited the full amount of GST on Deposit Work under protest, so that the work of widening of National Highway can be done smoothly. It is pertinent to mention here that the work of widening of roads is in public interest and is being carried on by an authority established by an act of the Parliament and was formed only for public interest.
- 4.16 That on the basis of the above facts this application is being preferred before the Honorable Authority of Advance Ruling to determine whether there is any 'Asset Transfer' by NHAI to MVVNL in shifting of transmission lines of MVVNL, which is a supply leviable to GST.
5. The applicant has submitted their interpretation of law as under-
1. That the term, "supply" has been inclusively defined in the Act. The meaning and scope of supply under GST can be understood in terms of following six parameters, which can be adopted to characterize a transaction as supply:
 - a. Supply of goods or services. Supply of anything other than goods or services does not attract GST
 - b. Supply should be made for a consideration
 - c. Supply should be made in the course or furtherance of business
 - d. Supply should be made by a taxable person
 - e. Supply should be a taxable supply
 - f. Supply should be made within the taxable territory
 2. That the main parameter of supply is that there must be some consideration and transfer of ownership involved for a transaction to be treated as a supply. In the instant case, there is no consideration involved regarding the shifting of transmission lines. No amount, whatsoever, is being paid by NHAI to MVVNL for shifting work. The NHAI makes payment for shifting work to its contractors and since the MVVNL only supervises the work of shifting, only supervision charges are paid to MVVNL (along with GST). As stated earlier, the ownership and operational control of the transmission lines remains with MVVNL and are not at all transferred in any form to NHAI. The NHAI is only concerned with the shifting of these transmission lines from one place to another for obtaining safe clearances and that too is done under the expert supervision of MVVNL.
 3. That the MVVNL does not transfer any asset to the applicant (NHAI). The transmission lines were the assets of MVVNL prior to and even after the shifting or modification. That even during the process of shifting, the entire revenue generated from the operation of these transmission lines belongs to MVVNL and not NHAI.
 4. That MVVNL has not supplied any material to the applicant which can be used in the shifting/modification of the transmission lines. Each and every material used in the shifting/modification was purchased by the contractor of NHAI on which I.T.C. has been claimed by the contractor and also TDS has been deducted by the NHAI on payments made to contractor.
 5. That the transmission lines are the assets of MVVNL prior to and even after the shifting / modification. The NHAI does not claim any asset addition/formation from these transmission lines. Therefore the transmission lines were and will remain the

assets of MVVNL and not NHAI. The NHAI is only facilitating in shifting the transmission lines for the widening of existing roads.

6. That if there is no transfer of assets, it means that there is no supply in the furtherance of business. The NHAI is just facilitating in shifting of transmission line and there is no "buyer and seller" relation between NHAI and MVVNL in this project. The only relation is that MVVNL is supervising the shifting /modification of transmission lines as it is their asset and needs expert supervision while shifting/modification for which MVVNL is being paid the supervision charges along with GST.
7. That it is also pertinent to mention here that GST is payable on the taxable amount of supply of service or goods. If the supply of goods and services in shifting of transmission line is being made by the contractor to NHAI, then why GST on that taxable amount is to be paid to MVVNL?
8. That if the amount of GST on the work done is paid to MVVNL then how will the contractor justify his supply of service and goods in shifting the transmission lines? If the GST on the work done is paid to MVVNL and contractor both, then there will be double taxation on the same taxable amount which is against the provisions of law and natural justice.
9. That paying GST twice will be a heavy burden on NHAI, which is working in public interest for the betterment of road infrastructure in the country and the double tax will ultimately be a financial burden on the citizens of India.
10. That MVVNL is relying on section 15 (2)(b) of C.G.S.T. which states that:-

" 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 include in the price actually paid or payable for the goods or services or both."
11. That it appears that MVVNL is misinterpreting the section 15(2)(b) and is mixing two separate transactions namely (1) between NHAI and MVVNL and (2) between NHAI and its contractors. The plain and simple interpretation of this section is as follows:-

The above provision states that the expenses which ought to be incurred by the supplier but has been incurred by the recipient and provided to the supplier shall be added by the supplier in the invoice to be raised on his customer/ recipient. It is merely seen in the construction project where the receiver of the service i.e. contractee procures some crucial material as per his choice of quality and price and provides it to supplier i.e. contractor for using it in the construction work. The contractor will have to add value of the goods received from contractee in his running bill and charge G.S.T. on total value.
12. That in view of the above submissions, the MVVNL is not the contractor or supplier because shifting/modification work is not done by MVVNL and the transmission lines are the assets of MVVNL and not NHAI. There is no contractor contractee relation between NHAI and MVVNL. The only relation is that the assets belonging to MVVNL were occupying the space, which was intended to be used by NHAI, and therefore, NHAI is only shifting those assets after giving prior notice and seeking technical assistance from MVVNL to some other place.
13. That hypothetically, if the applicant (NHAI) complies with the demand notice issued by MVVNL, then the natural and obvious consequence will be that the applicant (NHAI) will end up paying the value of the work of shifting of the transmission lines to its contractor along with GST and also the same amount of GST to MVVNL as

well. This will be a clear cut case of double taxation as the same amount GST is being paid to the contractor as well as MVVNL in respect of the same transaction. This kind of transaction is not envisaged by any applicable law.

14. That even if MVVNL is treating the work of shifting of transmission lines as addition / acquisition of assets in its books of accounts, then also the demand of GST on the same is illegal and against accounting standards because addition of assets, either by purchase or acquisition, will involve payment of GST by MVVNL and not receiving of GST. As a general principle, any person purchasing any taxable commodity as an asset, will have to pay GST to the seller. Likewise, any registered person (except a composition taxable person) selling any taxable commodity shall charge GST (at applicable rates) from the intending purchaser. Since MVVNL is not selling anything to NHAI and it is only supervising the work of shifting of the transmission lines, for which the NHAI is already paying supervision charges along with GST, the MVVNL is not justified in demanding GST on the full value of work of shifting of the transmission lines and as such, this demand is arbitrary and illegal.
15. That as a general principle, indirect tax is always levied on the basic value of any goods sold/transferred or service provided. The MVVNL has not sold/transferred anything to NHAI and as such no consideration is being paid by NHAI to MVVNL in respect of value of goods on which NHAI is liable to pay GST to MVVNL. The NHAI is already paying the value of the work of shifting of the transmission lines to its contractor along with GST. The only service which MVVNL is providing to NHAI is supervision over the work of shifting of the transmission lines, for which the NHAI is already paying supervision charges along with GST. The demand of only GST by MVVNL, without any basic value of goods, is totally false and misconceived and against the provisions of CGST Act and UPGST Act.
16. That if MVVNL was itself performing the work of shifting the transmission lines and had raised running bills for the same, then it would have been possible to pay G.S.T. But since this is not the case, GST is only being paid on the supervision charges and not on the entire work done because the entire work of shifting is being performed by the contractors of NHAI. The MVVNL is not justified in demanding GST on an amount which is being paid by NHAI to its contractors.
17. That in the exactly identical matter of NHAI, the Rajasthan Authority of Advance Ruling has ruled in favour of the applicant (NHAI) vide its ruling no. RAJ/AAR/2019-20/09 dt. 28.05.2019. Similar work of shifting of transmission lines, belonging to Rajasthan Rajya Vidyut Prasaran Nigam Ltd. (MVVNL), was being carried on by NHAI in Rajasthan. The questions on which advance ruling was sought are as follows:-
 - a. *Whether there is any "asset transfer" involved which is a supply leviable to GST in the work of shifting & raising of transmission lines owned by MVVNL by NHAI in the course of widening, modification & diversification of its highways after completion of this work?*
 - b. *Without prejudice to the submissions made above, if there is an "asset transfer" which is a supply under GST, then who is liable to pay GST?*
 - c. *If the above GST is to be paid by the applicant, then the same will be exempt vide Entry 4 of notification no. 12/2017 – Central Tax (rate) dt. 28.06.2017?*

That in response to these questions, the Rajasthan Authority of Advance Ruling has ruled that *"the asset constructed by the applicant does not fall under the category of 'goods' (as defined under GST Act, 2017), therefore no supply is involved and accordingly GST is not leviable"*. A copy of this ruling is enclosed herewith for your kind perusal.

18. That the applicant (NHAI) performs similar work for the Power Grid Corporation of India Ltd. (a Central Govt. PSU) as well and the Power Grid is realizing GST only on the supervision charges and not on the entire value of the work done. Relevant correspondence between the Power Grid and NHAI is enclosed herewith for your kind perusal.

6. 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.

7. The application for advance ruling was forwarded to Assistant Commissioner, Central Tax & Central Excise, Division-I, Bareilly to offer their comments/views/verification report on the matter. No views/comments has been offered from the concerned officer on the ground that MVVNL does not fall under the jurisdiction of his formation as communicated vide letter dated 28.11.2022.

8. The applicant was granted a personal hearing on 30.11.2022 which was attended by Shri Kartikaya Singh, the authorized representative of the applicant during which they reiterated the submissions made in the application of advance ruling.

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 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 Form GST ARA-01 filed by the applicant and observed that the applicant has ticked following issues on which advance ruling required-

(1) 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.

11. 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 questions-

1. *Whether the work done by the applicant (NHAI) in shifting the transmission lines for the widening of road under the supervision of MVVNL comes under the definition of supply as per section 15(2)(b) of C.G.S.T. Act, 2017?*
2. *Whether GST is to be paid to MVVNL on the full amount of work done for shifting the transmission lines by NHAI?*

3. Without prejudice to the submissions made hereinabove and hereinafter, if the NHAI pays GST on the entire value of work done to its contractors and also to MVVNL, then how will this payment of same amount of GST on the same transaction to two separate entities, not constitute double taxation?

12. We observe that Applicant is undertaking shifting the transmission lines for the widening of road. The Applicant will bear the overall cost of Highway diversification along with cost of shifting, dismantling and raising of transmission lines owned by MVVNL. There is no consideration or reimbursement flowing from MVVNL to the applicant in this regard. We further observe that the contention of the applicant is that the only services regarding supervision charges and shut down charges by MVVNL to the applicant for shifting/raising of power transmission lines is liable for GST.

13. As per letter No. RW/NH-33044/29/2015-S&R(R)pt. issued by Superintendent Engineer(S&R)(R) dated 11.02.2021 of Ministry of Road Transport & Highways, The amended provisions(Clause No. 9.2) of EPC contract agreement in respect of Shifting of Obstructing Utilities is as under:

The contractor shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility (including electric lines, water pipes and telephone cables), to an appropriate location or alignment, if such utility or obstruction adversely affected the execution of works or maintenance of the project Highway in accordance with this Agreement, as per the scope given in Schedule B and in accordance with applicable standards and specifications of concerned utility owning entity. The cost of shifting of such utilities indicated in Schedule B is payable to the Contractor as per Schedule H. Cost of shifting utilities not included in the Schedule B, if any, shall be treated as Change of Scope. The Authority will provide assistance to the Contractor for obtaining the estimates for shifting of such utilities from the entity owning such electric lines, water pipes or telephone cables, as the case may be. The Contractor shall execute such utility shifting works under the supervision of utility owning agency and Authority Engineer (AE) in accordance with the provision of agreement. The supervision charges only shall be paid by the Authority to the Utility Owning Entity. In the event of any delay in shifting thereof, the Contractor shall be responsible for failure to perform any of its obligations here under if such failure is not as a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be. The dismantled material/scrap of existing Utility to be shifted dismantled shall belong to the Contractor who would be free to dispose-off the dismantled materials as deemed fit by them. The work of shifting of utilities can be taken up by the Contractor any time after signing of the Agreement.

As per above clause, the supervision charges only shall be paid by the Authority i.e. National Highway Authority of India to the Utility Owning Entity i.e. MVVNL.

14. While going through the submission (cost estimate and correspondence letters between the applicant and MVVNL), we find that applicant is/will:-

- (a) Purchase the material with GST charged on them;
- (b) The dismantled component of previous transmission lines will be handed over to MVVNL;
- (c) MVVNL is stating that GST is applicable on not only supervision charges but also on

cost estimate which includes supervision charges, a proper case of double taxation.

15. We observe that the applicant is a Central Government entity whose primary work is building roads and bridges. Shifting, dismantling and raising of transmission lines is done by the applicant as and when required for safe electrical clearances during the widening of the National Highways, which is an ancillary to its main work. In the process of the activity, nowhere any assets are transferred to the applicant and therefore ownership lies with the MVVNL. It is merely an activity where just shifting of power transmission towers/lines is done to widening of the National highways.

16.1 To determine whether the said transaction is a supply, the relevant portion of Section 7 of GST Act, 2017 is reproduced below:-

1 (a) "supply" includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

We find that, the above referred section emphasizes on three dimensions to declare an activity a supply under GST Act:-

- (i) The activity should be sale / transfer of goods or services or both etc.
- (ii) There should be consideration involved.
- (iii) The activity should be in course or furtherance of business.

16.2 It is observed that MVVNL is not supplying any material or goods or services to the applicant, except the supply of services of supervision and shut down with GST duly charged thereon, which can be used in the shifting or modification of transmission lines. Every material and labour involved in the work is being purchased by the NHAI or its contractors and ITC is claimed against this transaction and TDS is being deducted by the NHAI on payments made to their contractors. The MVVNL is only supplying the services of supervision and shutdown to the NHAI.

16.3 It is pertinent to examine what does a Supplier mean in GST. Section 2(105) of the CGST Act defines the word supplier as such:

In this Act unless the context otherwise requires:

"Supplier in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services both supplied."

In view of the above, it is observed that MVVNL is not a supplier of goods or services in relation to shifting of transmission lines and other assets which are required to be shifted during construction or widening of roads, the work being undertaken by NHAI itself. Hence, there is no relationship between NHAI and MVVNL which can be categorized as that of supplier and recipient except for the services of the supervising the whole operation for which NHAI is paying consideration along with GST leviable thereon. The supplier in the instant operation is the contractor who is undertaking the work of shifting transmission lines and not the MVVNL who are just supplying services of supervision and not that of construction or replacement of transmission lines.

6.4 We have gone through the relevant letters/instruction of UP Power Corporation Limited wherein section 15(2)(b) of CGST Act has been quoted as a 'sine qua non' for demanding GST on estimated value of work to be done although there is nothing to establish supplier-recipient relationship between MVVNL and NHAI.

Section 15(2) (b) defines value of supply as under-

"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"

We observe that UP Power Corporation Limited and their sister concerns have presumed themselves to be a supplier of goods or services or both. But going through the facts of the case, it is not so construed. The shifting of transmission lines is being done by NHAI through its contractors who are supplying their goods and services to the NHAI where recipient is NHAI. MVVNL is involved in this project only to the extent of supervision of shifting work and they are neither paying nor liable to pay the cost of shifting of transmission lines. If they had paid for the cost of project to NHAI or to contractors of NHAI or vice-versa then only a supplier-recipient relation may be contemplated between MVVNL and NHAI. Hence the supply of goods or services in the matter under consideration do not fall under the purview of section 15(2) (b) of CGST Act with respect to the transactions between MVVNL and NHAI.

17. We can now examine the constructed power transmission lines in relation to definition of goods as mentioned in the GST Act, 2017:-

(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

In view of above definition we find that the assets created by the applicant being an immovable property does not fall under the definition of goods as mentioned in the GST Act, 2017.

18.1 The definition of consideration in Section 2 (31) of the GST Act, 2017 is reproduced below:-

"Consideration" means 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 is observed that in the instant case no consideration whatsoever whether in money or otherwise is being paid to MVVNL by the NHAI so far as the task of shifting of transmission lines is concerned. Because the NHAI is making payment to its contractors for shifting of transmission lines in relation to widening of roads. No payment is made to MVVNL except supervision charges for the entire operation. If there is any consideration being paid, it is only to the contractors of the NHAI who are engaged in the shifting of transmission lines and NHAI is paying GST on the payment made to their contractors apart from deducting TDS

thereon. The consideration involved between NHAI and MVVNL is confined to the limited task of supervision of the shifting work being done by NHAI and its contractors.

18.2 We have gone through the demand letter of Kesco dt 26-8- 2022 wherein the estimated cost of widening of roads is shown as Rs 1,71,74,060 where as demand has been made only for the supervision charge Rs 632795/ and GST Rs 26,19,772/ which is calculated on the amount of total project cost. Again letter of MVVNL dt 11-08-22 asks for supervision charge Rs 37,17,146 and GST Rs 14050812 against estimated project cost of Rs 1,77,67,955/. It is amply clear that MVVNL is not demanding the cost of total project of shifting of transaction lines rather they are only concerned with supervision charges and GST on the estimated project cost. It is nothing but a case of double taxation because the project cost is being borne by NHAI through its contractors where GST is charged and paid and ITC being availed. But by demanding GST only and not the cost of project being undertaken by NHAI, M/s MVVNL have shown utter disregard to canons of taxation.

In view of above facts, we observe that the element of consideration is not involved in the activity and therefore the said activity i.e. shifting of transmission lines for widening of roads is not a supply under Section 7 of GST Act, 2017.

19. Further, the Schedule II of GST Act, 2017 has provision on transfer of business assets made with or without consideration. As the asset is a kind of business asset, we can look in to relevant entry for examination:-

4. Transfer of business assets

(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;

While going through the above provision of Schedule II, we find that it provides for transfer of business assets where goods form part of the assets. As the constructed power transmission lines are not goods as explained above, the said schedule is not applicable.

20. In view of the facts discussed above in relation to definition of goods, supply and consideration under GST act, 2017 we find that assets constructed by the applicant do not fall under category of goods, thus no supply is involved. Therefore, the applicability of GST does not arise.

21. In view of the above discussions, we pass an order as follows:

ORDER

1. Whether the work done by the applicant (NHA) in shifting the transmission lines for the widening of road under the supervision of MVVNL comes under the definition of supply as per section 15(2)(b) of C.G.S.T. Act, 2017?

Answer: Replied in negative.

2. Whether GST is to be paid to MVVNL on the full amount of work done for shifting the transmission lines by NHAI?

Answer: Replied in negative.

GST is only leviable on supervision charges charged by MVVNL.

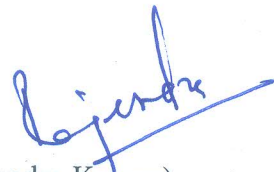
3. Without prejudice to the submissions made hereinabove and hereinafter, if the NHAI pays GST on the entire value of work done to its contractors and also to MVVNL, then how will this payment of same amount of GST on the same transaction to two separate entities, not constitute double taxation?

Answer- Already explained in the answer No. 1 and 2 as above.

22. 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


(Rajendra Kumar)

Member of Authority for Advance
Ruling

To,

M/s NATIONAL HIGHWAYS AUTHORITY OF INDIA,
26, Bisalpur Road, Green Park,
Bareilly, Uttar Pradesh-243006

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, G.B. Nagar, 3rd Floor, Wegmans Business Park, K.P.-III, Greater Noida-201306.
4. The Deputy/Assistant Commissioner, CGST & Central Excise, Division-I, CR Building, Rampur Garden, Bareilly-243001, Uttar Pradesh.
5. Through the Additional Commissioner. *Cor: 1, Bareilly Zone, Bareilly* 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 Khand, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.