

**BEFORE THE AUTHORITY FOR ADVANCE
RULINGS FOR THE STATE OF UTTARAKHAND
(Goods and Services Tax)**

- समक्ष अग्रिम विनिर्णय प्राधिकारी उत्तराखण्ड (माल और सेवा कर)

Present:

Shri Vipin Chandra (Member)
श्री विपिन चन्द्र (सदस्य)
Shri Amit Gupta (Member)
श्री अमित गुप्ता (सदस्य)

The 22nd day of October' 2018

Ruling No: 10/2018-19

अग्रिम विनिर्णय संख्या.

In

Application No: 44/2018-19

आवेदन संख्या. 44/2018-19

1	Applicant आवेदक	M/s NHPC Limited, Admin. Building, Tanakpur Power Station, Banbasa, Uttrakhand .
2	Jurisdictional Officer अधिकारिता अधिकारी	
3	Present for the Applicant आवेदक की ओर से उपस्थित	Shri N K Gupta, Senior Manager Shri J C Pant, Manager (Law)
4	Present for the Jurisdictional Officer अधिकारिता अधिकारी की ओर से उपस्थित	None कोई नहीं
5	Present for Concerned Officer	None
6	Date of receipt of application आवेदन प्राप्ति की तिथि	15.09.2018
7	Date of Personal Hearing सुनवाई की तिथि	27.09.2018

Note : Under Section. 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, an appeal against this ruling lies before the appellate authority for advance ruling constituted under section- 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order.

नोट : इस अग्रिम विनिर्णय की प्राप्ति के 30 दिन के अन्दर उत्तराखण्ड माल और सेवा कर अधिनियम 2017 की धारा- 99 के अन्तर्गत गठित अग्रिम विनिर्णय अपील प्राधिकारी के समक्ष धारा- 100(1) के अन्तर्गत अपील दायर की जा सकती है।

**AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX
UTTRAKHAND**

RULING

1. This is an application under Sub-Section (1) of Section 97 of the CGST/SGST Act, 2017 (herein after referred to as Act) and the rules made thereunder filed by M/s NHPC, Admin Building, Tanakpur Power Station, Banbasa, Uttarakhand seeking an advance ruling on following issues:
 - (a) Whether they are required to pay GST under reverse charge in terms of Notification No. 13/2017 dated 28.06.2017 while making payment to PWD, Uttarakhand for construction of road;
 - (b) What is the time of supply when advance payment is released to PWD, Uttarakhand;
 - (c) Whether the amount deposited with Central Fund i.e. Uttranchal CAMPA and reimbursed by MEA considering as part cost of the road is liable for GST.
2. Advance Ruling under GST means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in sub section (2) of section 97 or sub section (1) of section 100 in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.
3. As per the said subsection (2) of Section 97 of the CGST/SGST Act, 2017 advance ruling can be sought by an applicant in respect of :
 - (a) Classification of any goods or services or both
 - (b) Applicability of a notification issued under the provisions of this Act,
 - (c) Determination of time and value of supply of goods or services or both,
 - (d) Admissibility of input tax credit of tax paid or deemed to have been paid
 - (e) Determination of the liability to pay tax on any goods or services or both
 - (f) Whether the applicant is required to be registered
 - (g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both within the meaning of that term
4. In the present case applicant has sought advance ruling on applicability of Notification No. 13/2017 dated 28.06.2017 on their activity and time & value of supply of services. Therefore, in terms of said Section 97(2)(b) & (c) of CGST/SGST Act, 2017, the present application is hereby admitted.

5. Accordingly opportunity of personal hearing was granted to the applicant on 27.09.2018. Shri. N K Gupta (Senior Manager) and Shri J C Pant (Manager Law) of the applicant appeared for personal hearing on said date and submitted documents describing therein exact nature of work being undertaken. Nobody appeared from the side of Revenue for the hearing.
6. From the documents submitted by the applicant we find that applicant is registered in Uttarakhand with GSTIN bearing no. 05AAACN0149C4Z2. We further find that MOU to be signed between TPS, NHPC and PWD Govt. of Uttarakhand for construction of road from Tanakpur Barrage to Brahmdev (Nepal) on deposit work basis under Mahakali Treaty signed between India & Nepal. M/s NHPC (implementing agency) in consultation with State Government of Uttarakhand will submit the road alignment and prepare project report. The said work has been entrusted by MEA to NHPC and PWD, Uttarakhand and the funding for the said project will be done by MEA from its own budget under the head "**Aid to Nepal**". Initially NHPC can spend the money, if required, subsequently the same can be recouped from the budget of MEA to NHPC directly. Budget releases will be made by MEA to NHPC which is executing the project as a turnkey agency of MEA based on the recommendation of the Ministry of Power.
7. In the present case we are restricting our conclusion to the facts and circumstances which was filed for our consideration in the application. Now we proceed by taking the issue one by one:

(A) Whether they are required to pay GST under reverse charge in terms of Notification No. 13/2017 dated 28.06.2017 while making payment to PWD, Uttarakhand for construction of road.

In the instant case the work allotted to the applicant is related to "construction of road" which involves both supply of goods as well as supply of services. As per Schedule II of the Act *ibid* the following activity shall be treated as supply of service-

- i. construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly,
- ii. works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract

Thus the activity of the applicant comes under the purview of supply of services.

Before initiating proceedings, we have gone through the official web-site of NHPC Ltd & Ministry of Power, Govt. of India and we find that the promoter of M/s NHPC Limited is Hon'ble President of India through Ministry of Power, Govt. of India. M/s NHPC Limited is a Govt. of India Enterprise, incorporated in the year 1975 with an objective to plan, promote and organize an integrated and efficient development of hydroelectric power in all aspects. At present, NHPC Ltd is a Mini Ratna Category-I Enterprise of the Govt. of India. M/s NHPC Ltd is under the administrative control of power ministry.

From the record we find that NHPC Ltd & PWD, Govt. of Uttarakhand has been entrusted the work of construction of road by Ministry of External Affairs, Govt. of India (in short "MEA") wherein the funds will be provided by MEA from its head "**Aid to Nepal**" to M/s NHPC Ltd. It means that the funds provided by MEA to M/s NHPC Ltd is in the form of grants. The function of M/s NHPC Ltd in the said work has been define as "implementing agency". Now question arises before us whether the said grants received from Central Government come under the purview of GST.

To appreciate the law position in this regard we find that Notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 deals with exempted services. The said notification was further amended vide Notification No. 32/2017-Central Tax (Rate) dated 13th October, 2017 vide which entry no. 9C was inserted and the same is extracted as under:

S.No.	Chapter, Heading, or Service (Tariff)	Section, Group Code	Description of Services	Rate (per cent.)	Condition
1	2		3	4	5
9C	Chapter 99		Supply of service by a Government Entity to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form	Nil	Nil

	of grants.		
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We also find that that "Government Entity" has been defined in the said amended notification and the same read as under:

"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."

From the aforesaid definition we observe that condition of 90% 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 is relatable to only sub-clause (ii) of the definition of "Government Entity". This fact confirm from the judgment dated 03.03.2016 in Civil Writ Jurisdiction Case No.16965 of 2015 of Hon'ble High Court of Patna in the case of Shapoorji Paloonji & Company Pvt. vs CCE. The relevant portion of the said judgment is extracted below:

6. -----In the said notification, in the paragraph 2, for clause(s), the following shall be substituted, namely:-

(s) "governmental authority" means an authority or a board or any other body;

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;"

11. The provisions contained in sub-clause (i) and sub-clause (ii) of Clause 2(s) are independent dis-conjunctive provisions and the expression "90% or more participation by way of equity or control to carry out any function entrusted to a municipality under Article 243W of the Constitution" is related to sub-clause (ii) of Clause 2(s) alone. The clause (i) is followed by ";" and the word "or". Therefore, each of the sub-clauses is independent provision. The condition of 90% or more participation by way of equity or control to carry out any function entrusted to a municipality under Article 243W of the

Constitution is relatable to only sub-clause (ii) of Clause 2(s). It means that an authority established by Government should have 90% or more participation by way of equity or control to carry out any function entrusted to a municipality under Article 243W of the Constitution to be eligible for exemption. The Authority set up by an Act of Parliament or State Legislature is not and cannot be made subject to the condition of 90% or more participation by way of equity or control to carry out any function entrusted to a municipality under Article,243W of the Constitution.

We find that in India, there are various entities 'established' by the Government by way of 90% or more participation in equity or control; however, after the 'establishment' of such entities, the Government participation by way of equity or control is usually diluted to less than 90%. The definition of 'governmental entity' merely contemplates that an entity is required to be 'established' by the Government by way of 90% or more equity or control. The definition does not contemplate continuous fulfillment of such requirement post 'establishment' of the entity. Therefore the intention of the above amended notification is to enlarge the scope of the definition to cover Government Companies incorporated under the Companies Act also within the ambit of the definition of "Government entity". Thus, if the criterion is fulfilled, at the time of 'establishment' by way of 90% or more Government participation in the equity or by way of control, the entity would be considered as 'governmental entity', within the meaning assigned under the said amended notification. Accordingly we observe the M/s NHPC Ltd falls under the definition of "Government entity" in as much as at the time of establishment of the company the Hon'ble President of India and its nominees hold 100% equity shares of the company.

There can be no "government entity" if the very essential ingredients for being recognized as a "government entity" gets lost over a period of time and the control **or** equity by way of 90% or more does not vest with the Government. We observe that a Company or a Society or a trust in addition to a authority or a board may continue to be in existence as

they get incorporated and brought into existence under different Acts and law, for example a Company gets incorporated under the Companies Act, a society gets incorporated under Societies Registration Act etc, however such a incorporated legal entity/person cannot claim the benefits or rights which are extended in favour of such incorporated bodies recognizing them as "Government Entity" until and unless they continue to fulfill the requirements for being recognized as Government Entity, as per law.

We observe that to come in the purview of afore stated exemption notification, following requirements has to be fulfilled:

- (a) Service provider shall be Government entity
- (b) Service receiver shall be Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority
- (c) Consideration is in the form of grants
- (d) Work has been entrusted by Central Government, State Government, Union Territory or a local authority

As per record & aforesaid requirement we find that.

- iii. M/s NHPC Ltd is covered under the definition of "Government Entity" in as much as the promoter of M/s NHPC Ltd is Hon'ble President of India which confirm the fact that it is established by the Central Government and it is under the administrative control of Ministry of Power, Government of India.
- iv. In the present case the service receiver is Central Government i.e Ministry of External Affairs, Govt. of India
- v. The funds provided by MEA from its head "**Aid to Nepal**" to M/s NHPC Ltd. This means that the funds provided by MEA or consideration received by NHPC Ltd from MEA is in the form of grants
- vi. Work has been entrusted by Central Government i.e Ministry of External Affairs, Govt. of India

Thus we observe that the applicant has fulfilled all the required criteria which leads their activity to exemption under Notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 (as amended time to time) and accordingly we hold that the supply of service by M/s NHPC to Ministry of External Affairs, Govt. of India is an exempted service. Since original supply of service i.e. work contract is exempted, therefore, sub-letting of the same is also exempted. On this matter we have gone through the recommendations made on GST Rate changes on services by the 25th GST Council Meeting wherein it was decided as under:

*To reduce GST rate (from 18% to 12%) on the Works Contract Services (WCS) provided by sub-contractor to the main contractor providing WCS to Central Government, State Government, Union territory, a local authority, a Governmental Authority or a **Government Entity**, which attract GST of 12%. Likewise, WCS attracting 5% GST, their sub-contractor would also be liable @ 5%.*

We are of the view that the above recommendations makes it clear that if GST rate on the work contract is 12% or 5% then sub-contractor is also liable to discharge his GST liability @ 12% or 5% as the case may be. Similarly if GST rate on the said work contract is exempted or 0%, then supply of service in the form of work contract by the sub-contractor will also come in the purview of exempted or 0%. Thus we are of the firm view that if the principal contractor is providing an exempt works contract service to Government and in such case if works contract is partially or wholly sub-contracted then the sub-contractor would also be exempt from payment of GST. In support of our view we place reliance upon the Government view on the issue in hand in pre-GST regime and the same are reproduce as under:

- (i) *serial No. 29 sub-clause (h) of the mega exemption Notification 25/2012-ST dated 20.06.2012, which provides that service provided by following person in respective capacities are exempt from service tax :*

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt

(ii) Circular No. 147/16/2011 - Service Tax dated 21.10.2011

Clarification has been requested as to whether the exemption available to the Works Contract Service providers in respect of projects involving construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., is also available to the sub-contractors who provide Works Contract Service to these main contractors in relation to those very projects.

It has clarified that the main infrastructure projects of execution of works contract in respect of roads, airports, railways, transport terminals, bridges tunnels and dams, is sub-divided into several sub-projects and each such sub-project is assigned by the main contractor to the various sub-contractors. In such cases, if the sub-contractors are providing works contract service to the main contractor for completion of the main contract, then service tax is obviously not leviable on the works contract service provided by such sub-contractor.

In the instant case, M/s NHPC is providing services to Central Government i.e. Ministry of External Affairs and will attract GST @ 12% but by virtue of Notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 (as amended time to time), the supply of service in question, as discussed above, is exempted, thus sub-contracting of the said work contract to PWD, Govt. of Uttarakhand is also exempted.

In view of the above we observe that the said activity comes under the purview of exempted category as discussed supra, therefore, question of payment of GST under reverse charge in terms of Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017 does not arise.

(B) Since their activity is a exempted service, issues of time of supply and applicability of GST on reimbursement lost its relevancy.

Accordingly we hold that the no provisions of GST are applicable on said issues.

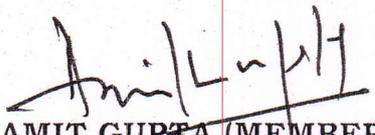
ORDER

In view of the above discussions & findings we order as under:

(i) No GST is applicable on the activity of the applicant since the same falls under exempted services in terms of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (as amended time to time)

(ii) On the issues of time of supply and applicability of GST on reimbursement, no provisions of GST is applicable on said issues as supply of service in question falls under exempted services.


VIPIN CHANDRA (MEMBER)


AMIT GUPTA (MEMBER)

To,

M/s NHPC Ltd,
Admin Building, Tanakpur Power Station,
Banbasa, Uttarakhand

**AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX, UTTRAKHAND
OFFICE OF THE COMMISSIONER, SGST, UTTRAKHAND
LADPUR RING ROAD, UPPER NATHANWALA, DEHRADUN**

F.NO. : State Tax Commr-UKD/GST/Section-97/2018-19/DDN 5456

Date: 22-10-2018

Copy to :

1. The Chief Commissioner, CGST, Meerut Zone, Meerut
2. The Commissioner, CGST, Commissionerate Dehradun
3. The Commissioner, SGST, Commissionerate Uttarakhand
4. Assistant Commissioner, CGST, Division Dehradun
5. Deputy Commissioner, SGST, Dehradun-II
6. Guard File