

ORDER

BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULINGS FOR
THE STATE OF UTTARAKHAND GOODS & SERVICE TAX, E-BLOCK,
NEHRU COLONY, DEHRADUN-248001

PRESENT:

Shri S.H Hasan (CGST Member)

Smt.Sowjanya (SGST Member)

The 27th day of February, 2019

Appeal No. UK/GSTARA03/05/30-11-2018

1.	Name and Address of Appellant	Smt. Preeti Manral Concerned Officer State tax.
2.	Appeal No/Date	UK/GSTARA03/05/30-11-2018
3.	Order No.	05 / 18 / 19 / 27.02.19
4.	Jurisdictional Officer	CGST Range-V Tanakpur /State Sector- 1 Pithoragarh.
5.	Date of Personal hearing	13-02-2019
6.	Concerned Officer	Smt Preeti Manral(Dc Tax Review State tax)
7.	Party Represented by	Sh. J.C Pant Sr Manager (Law)
8.	Date of Reg.of Appeal	30-11-2018

ORDER

(Proceedings under Section 101 of the Central Goods and Service Tax Act, 2017 and Uttarakhand Goods and Service Tax Act, 2017)

The present appeal has been filed under Section 100 of the Central Goods and Service Tax Act and Uttarakhand Goods and Service Tax Act, 2017 (hereinafter referred to as "the CGST Act and UKGST Act") by the Concerned Officer of the State Goods & Services Tax, Deharadun (hereinafter referred to as the "Applicant") against the Advance Ruling Order No.10/2018-19 dated 22.10.2018 by the Authority for Advance Ruling, Uttarakhand in an application made by them.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the UKGST 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 provisions under the UKGST Act.

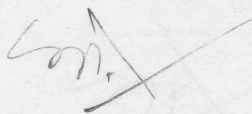
BRIEF FACTS OF THE CASE

1. In the instant case the Party M/s NHPC Limited, Tanakpur Power Station, Banbasa, Uttarakhand, vide their application under sub-section (1) of Section 97 of the CGST/SGST Act, 2017 sought an Advance Ruling on the 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 Uttaranchal CAMPA and reimbursed by MEA considering as part cost of the road is liable for GST.

2. Following the personal hearing given to the applicant on 27.09.2018, the Authority for Advance Ruling for the State of Uttarakhand vide Advance Ruling Order No. 10/2018-19 dated 22.10.2018 held that:

- (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)

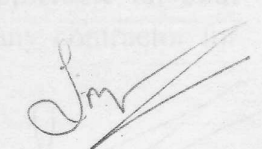
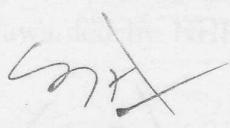


- (ii) On the issues of time of supply and applicability of GST on reimbursement, no provisions of GST is applicable on said issues as supply of service in question falls under exempted services.

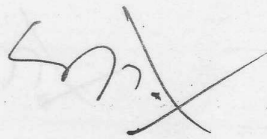
GROUND OF APPEAL

Aggrieved by the said order passed by the Authority for Advance Ruling for the State of Uttarakhand, the appellant Mrs Preeti Manral, Deputy Commissioner (Tax Review), State Tax, Dehradun, being vested with the responsibility for filing appeal before the appellate Authority for Advance Ruling for the state of Uttarakhand (Goods & Service Tax), has filed the instant appeal on the following grounds:

1. That, the impugned order passed by Advance Ruling Authority suffers from factual inaccuracies, legal impropriety and is based on wrong conjectures and surmises.
2. National Hydro Project Corporation in short NHPC Limited is a Government of India Enterprises primarily incorporated in the year 1975 with an objective to plan, promote and organise an integrated and efficient development of hydroelectric power in all aspects. Later on NHPC expanded its objects to include development of power in all aspects through conventional and non-conventional sources in India and abroad.
3. In the present case, MEA has entrusted the project to NHPC, which in fact, is the case of delegation of Work from Superior Government Organ i.e. "Ministry" to another Government Organ i.e. "Implementing Agency". [Both MEA and NHPC are the parts/organs of Central Government]. This delegation of project has been misconstrued by AAR as AWARD of WORK CONTRACT and has thus misconstrued the NHPC as a Contractor and MEA as a Contractee, which is not the factual position.
4. That the Budget release will be made by MEA to NHPC which is executing the project as "turnkey agency of MEA" based upon recommendation of Ministry of Power. Here two terms "Turnkey" and "agency of MEA" need special attention. The term Turnkey implies entire responsibility from design through completion and commissioning. The term agency of MEA in present context makes NHPC stand in place of MEA for the purpose of this project. Thus, the entire responsibility from design through completion and commissioning is with NHPC which itself working under delegation of project, stands at par with MEA for the purpose of this project. Hence NHPC is not a contractor rather in this present case it is Government Contractee.



5. Similarly, as per Para-6 of the order of AAR, an MoU is to be signed between NHPC and PWD Government of Uttarakhand for the said project. Thus, it is not the case where NHPC is awarding work-contract to PWD. Relation of contractee-contractor is also not created between NHPC and PWD by virtue of this MoU. This only creates the relationship of partners among the parties. This fact is also confirmed by Minutes of meeting of Ministry of External Affairs (Northern Division) to review implementation of 1.3 Km road connecting Tanakpur Barrage to Mahendranagar, Nepal dated 13.04.2018 (E-II/112/02/2018). Para-6 of the Minutes states that NHPC, along with the State Government of Uttarakhand, will work out the funding requirements for building the link road and will take necessary action steps on an urgent basis to construct the link road, including preparing a suitable alignment linking Tanakpur barrage to road head on the Nepalese side.
6. The AAR has misconstrued delegation of project as award of work contract from MEA to NHPC and further from NHPC to PWD. If we go by the logic and conception cited in the order passed by AAR then all work done by PWD Uttarakhand on behalf of Government of Uttarakhand will be treated as supply of service under contract by PWD Uttarakhand to Government of Uttarakhand. Since, it will be covered under the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, this service shall be treated as exempt service and all contracts awarded by PWD Uttarakhand to contractors for completion of any such works (as entrusted by the government of Uttarakhand to PWD Uttarakhand) shall be treated as sub-contractors and all such sub-contractors shall also be covered under the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. In such a scenario, all contractors shall be exempted from the purview of GST and no question of 12% or 5% tax rate on contractors working for government department will ever arise.
7. That, in page 8 of the impugned order, Authority for Advance Ruling has held that "The supply of service by M/s NHPC to Ministry of External Affairs, Govt. of India is exempted, therefore, sub-letting of the same is also exempted". This conclusion derived by the order of AAR that the TPS, NHPC is a principal contractor and PWD as a sub-contractor of NHPC is providing exempt works contract services to Government is grossly wrong. In the instant case, NHPC does not stand in the position of a contractor in relation to MEA rather it's in the role of an implementing agency of MEA. Further, the notion of assuming PWD as contractor/sub-contractor of MEA or NHPC is also wrong. PWD by virtue of MoU becomes the partner of NHPC for implementation of project work. Hence, although 0% GST is applicable on both NHPC/PWD, contract awarded by NHPC/PWD as contractee to any contractor for



carrying out the said work, shall come under the purview of GST and shall attract 12% rate of tax. Moreover, rules and provision of time of supply will attract accordingly as per GST statute.

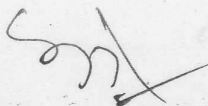
8. The settled law in interpretation of tax statute is that tax statute should be strictly interpreted. That, in the case of Commissioner of Customs (Imports) Mumbai Vs M/s Dilip Kumar & Company & Ors [2018-TIOL-302-SC-CUS-CB], the Constitutional bench of Apex Court, has examined the correctness of the ratio laid down in Sun Export Corporation, Bombay Vs. Collector of Customs, Bombay [(1997) 6 SCC 564], i.e. namely the question-

“What is the interpretative rule to be applied while interpreting a tax exemption provision/notification when there is an ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied?”, and had held that-

- (1) Exemption notification should be interpreted strictly;.....
- (2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.
- (3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export Case (supra) stands over-ruled.

In light of the ratio, laid down by the constitutional bench of the Hon'ble Apex Court in above case, the hypothetical & liberal interpretation of the legal provisions as decided by the Authority of Advance Ruling cannot be allowed usurp the actual and strict interpretation of the law.

9. In the present case, AAR has extrapolated the recommendations made on GST rate changes on services by 25th GST council meeting. In the said meeting it was decided “to reduce GST rate (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 Government Authority or a Government Entity, which attract GST of 12%. Likewise, WCS attracting 5% GST, their Sub-contractor would also be liable @5%.” There was no mention of zero tax rate or exempt services in the said decision of GST council. Thus, the logic given by AAR that “ if GST rate on the said work contract is exempted or 0% then supply of services in the form of work contract by the sub-contractor will also come in the purview of exempted or 0%” fails the test of strict interpretation of tax law. Thus, such extrapolations stand incorrect in the eyes of law.



10. It is further stated that the interpretation of the order exempts whole chain of supply here. That, exempting the whole chain of contractors and sub-contractors in instant case, is incorrect and against the law. Advance Ruling has a limited implication and is legally binding only on the applicant who has sought it. However, precedence may be taken in other cases to claim exemption in all the contracts awarded by PWD.

PERSONAL HEARING

An opportunity for personal hearing was granted to the appellant {Mrs Preeti Manral, Deputy Commissioner (Tax Review), State Tax, Dehradun} and the same was attended by her on 13.02.2019. During the course of the personal hearing Mrs. Preeti Manral reiterated the points covered in the grounds of appeal filed with the Appellate Authority vide Appeal No. UKGSTARA03/05/30.11.2018.

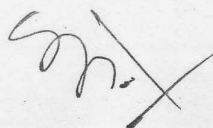
Shri J.C. Pant, Sr. Manager (Law), appealed for personal hearing and reiterated the points made before the Advance Ruling Authority, Uttarakhand. Further he submitted that he will submit additional documents within a week's time.

DISCUSSIONS AND FINDINGS

We have gone into the ruling of the AAR, the appeal memorandum and the submissions made at the time of personal hearing. We have also perused the copies of minutes of meetings, MoU, correspondences between different agencies related to the project etc. and all other relevant documents submitted by M/s NHPC subsequent to personal hearing.

Scrutiny of the records clearly shows that M/s NHPC was the implementing agency of the project entrusted with getting the project completed, by the Ministry of External Affairs. No specific aid or grant was made in the name of M/s NHPC; rather its expenses were to be repaid by MEA from their account head 'Aid to Nepal'. So the government aid was allotted to MEA and not to NHPC. In the minutes of meeting dated 19-04-18 to review the implementation of the said project (Supra), it was agreed upon that the NHPC, along with State government of Uttarakhand will take necessary steps on an urgent basis to construct the link road, including preparing a suitable alignment linking Tanakpur barrage to road head on the Nepalese side. It was also agreed that the road alignment would be shared with the Nepalese side on a priority basis. NHPC along with the State government of Uttarakhand, will work out the funding requirement for building the link road.

Following the same, NHPC as the implementing agency delegated the responsibility of completing the project to PWD (construction agency) and a




Memorandum of Understanding was made between these two agencies. To implement the project, works contract was allotted by PWD through an open tender to their contractor M/s RG Buildwell Engineering Pvt. Ltd. In view of these facts, it is clear that no GST is payable by M/s NHPC on reverse charge or otherwise on the payments for this project that is/will be made by them to PWD as the issue is squarely covered by the entry serial 9c of the notification no. 32/2017-CT(R) dated 13.10.2017, as rightly concluded by the Ld. AAR. This issue is not contested by the appellant also. Thus from MEA to NHPC up to the stage of PWD it is an exempt supply between one government entity to other govt entity.

The only point that has been contested by the appellant is on the apparent effect of the ruling of AAR based on the finding that since the M/s NHPC is providing Works Contract service which is exempted under notification. No. 12/2017-CT(R) dated 28.06.2017, so all the subsequent sub contracts will be also exempted. Here, we would like to make it clear that AAR ruling has a limited implication and is legally binding only on the applicant who has sought it and is specific to the questions raised by the applicant. Nothing should be read into except what has been categorically ruled in such an order. In the present case, M/s NHPC had raised a specific query as to whether they need to pay GST on reverse charge to PWD and to that extent, the ruling was that they are not required to do so. Whether the taxability on provision of works contract will be applicable on the works contract allotted by PWD is not an issue raised in the advance ruling application, Hence, we refrain from going into specifics of the same, thus, without going into the merits, we are of the view that since there was no taxability till the stage of PWD on account of entry 9c of notification 12/2017 as amended time to time, so discussions and findings of the Learned AAR on this issue become irrelevant and hence infructuous and need to be set aside.

RULING

Ruling No. 10/2018-19 dated 23.10.2018 of the Authority on Advance Rulings for the State of Uttarakhand is modified to the extent as discussed in the foregoing paragraphs.


(S.H. HASAN)
CGST MEMBER


(SOWJANYA)
SGST MEMBER

I am directed to transmit herewith a certified copy of the order passed by the Appellate Authority for Advance Ruling for the State of Uttarakhand, Goods & Service Tax under Section 101 of the CGST/SGST Act 2017.

Registrar

AAAR Uttarakhand

अपीलीय प्राधिकारी

Copy To:- 8718 Dt 28-02-19

1. The Chief Commissioner, CGST, Meerut Zone, Meerut.
2. The Commissioner, CGST, Commissionerate Dehradun.
3. The Commissioner, SGST, Uttarakhand.
4. Members of Advance Ruling Authority.
5. Appellant Concerned Officer, State Tax, Dehradun.
6. Jurisdictional Officers.
7. M/s NHPC Limited, Tanakpur Power Station, Banbasa, Uttarakhand,.
8. Guard File.