

पत्रांक 8929/08/03/2019

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 8th day of March, 2019

Appeal No. UK09/02-02-2019/18-19

1.	Name and Address of Applicant	M/s NHPC Ltd., Admin Building, Tanakpur Power Station, Banbasa, Uttarakhand.
2.	Appeal No/Date	UK09/02-02-2019/18-19
3.	Order No.	06 / 2018-19 / 08.03.2019
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	02-02-2019

ORDER

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

The present proceedings are in consequence to a reference to the Appellate Authority for hearing and decision, by the Authority on Advance Rulings for the State of Uttarakhand, in terms of Section 98(5) 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"), vide Ruling No.17/2018-19 dated 30.01.2019 passed against application no. 17 made by M/s NHPC Limited, Admn. Building, Tanakpur Power Station, Banbasa, Uttarakhand.

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 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 the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (as amended from time to time) is applicable to the contractors/sub-contractors involved in the construction of Indo-Nepal Border Road or otherwise.

2. Following the personal hearing given to the applicant on 11.01.2019, the members of the Advance Ruling Authority for the state of Uttarakhand viz. Shri Vipin Chandra, and Shri Amit Gupta differed in their opinions and thus gave different rulings.

(A) Shri Vipin Chandra, observed that: J— *In the background of the issue in hand, the applicant has earlier sought the advance ruling on the applicability of GST on the activity being carried out by them and vide Advance Ruling No.10/2018-19 dated 22-10-2018, it was held by the authority that their activity is exempted from GST in terms of Notification No. 12/2017-CT (Rate) dated*



28.06.2017. Now the applicant has sought the advance ruling whether the same work allotted to sub-contractor is also exempted or otherwise.

In this context, I find that there is no entry in the exemption Notification No. 12/2017-CT (Rate) dated 28.06.2017 which exempts the supply in question being carried out by the sub-contractors rather entry (iv) of serial no. 3 of Notification No. 11/2017-CT (Rate) dated 28.06.2017 prescribed GST rate @ 12% [CGST 6% + SGST 6%] for supply in question i.e 'construction of road'.

I further find that Notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017 was further amended vide Notification No. 1/2018-Central Tax (Rate) dated 25th January, 2018 and the relevant portion of the same reproduce as under:

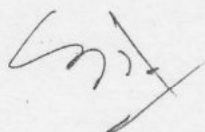
3	4	5
"(ix) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.	6	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be
(x) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods		Provided that where the services supplied to a Government Entity, they should have been

and Services' Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (vii) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.	2.5	procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.
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Thus I observe that there is no conflict between the two entries made in the aforesaid notifications in as much as the activity of the applicant i.e 'construction of road' is exempted vide serial no. 9C of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 whereas the entry no. (iv) of serial no. 3 of Notification No. 11/2017-CT (Rate) dated 28.06.2017 prescribed GST rate of 12% on the same work i.e 'construction of road'. I observe that the entries in Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 prescribing GST rates on service have to be read together with entries in exemption Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. A supply which is specifically covered by any entry of Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017 is exempt from GST notwithstanding the fact that GST rate has been prescribed for the same under Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017.

In view of the above I observe that since the supply in question i.e 'construction of road' by sub-contractor is not exempted vide Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017, therefore the sub-contractors are liable to pay GST @ 12% [CGST 6% + SGST 6%] .

(B) Shri Amit Gupta, observed that: In the present case I find that Ministry of External Affairs (herein after referred to as MEA) has allotted the work i.e 'construction of road' to the NHPC (applicant). The applicant sub-let the said




work to PWD, Uttarakhand who further sub-let the work to a contractor. The applicability of GST on the applicant for "construction of road" has already been decided by the authority vide Advance Ruling No 10/2018-19 dated 22-10-2018 wherein it was held that the services provided by the applicant to MEA is exempted in terms of Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017 [amended vide Notification No. 32/2017-Central Tax (Rate)] and the relevant portion of the same is reproduced as under:

S.No.	Chapter, Section, Heading, Group or Service Code (Tariff)	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	Nil	Nil

		authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants.		
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I find that the Notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017 supra (amended vide Notification No. 20/2017- Central Tax (Rate) dated 22.08.2017 , Notification No. 24/2017- Central Tax (Rate) dated 21.09.2017 & Notification No. 31/2017- Central Tax (Rate) dated 13.10.2017) notifies that the central tax, on the intra-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table.

Initially, the GST rate on works contract service was notified at 18%. Subsequently, various notifications were issued notifying the various GST rates for different situations in which works contract service is being provided. To remove the ambiguity on the applicability of GST rate on the sub-contractors, the GST council in its 25th meeting held on 18 January 2018, made following recommendation in this regard:

"to reduce GST rate (from 18% to 12%) on works contract services (WCS) provided by sub-contractor to the main contractor providing Works Contract Services to Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity from which attracts

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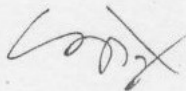
For

the GST rate of 12%. Likewise, WCS attracting 5% GST, their sub-contractor would also liable @ 5%."

I find that in the case of S P Gupta Vs UOI [reported in AIR 1982 SC 149], the Hon'ble Apex Court held that words used in the constitutional or statutory provision are shrouded in mystery, clouded with ambiguity and are unclear and unintelligible so that the dominant object of the legislature cannot be spelt out from the language, external and like parliamentary debates, the report of the select committees or its chairman, the statement made by the sponsor of the statute can be pressed into service so as to know the real purpose or intent of the legislature.

In this context I find that the legal facts given under "Fiscal Interpretation of Statutes" has to be read in conjunction with the recommendation of 25th GST Council (supra) and I observe that where literal interpretation may not serve the purpose or may lead to absurdity, the "doctrine of purposive interpretation" can be adopted which is based on the understanding that the authority is supposed to attach that meaning to the provisions which serve the purpose behind such a provision and the same was upheld by the Hon'ble Supreme Court in its judgment (supra).

Therefore I observe that the purpose or object of the GST Council is to extend benefit to the last chain of said supply and reason for the same is to provide equal opportunities and equal level playing fields to business entities and avoid discrimination. Thus I am of the view that the recommendations made by the GST Council in this regard 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-contractors will also come in the purview of exempted or 0%. Thus I observe that if the principal contractor is providing an exempt works contract service to Government in terms of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (as amended from time to time) and in such case if works contract is partially or wholly sub-contracted then the sub-contractors would also be exempted from payment of GST.



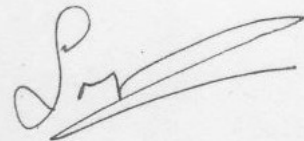
In support of my view, I rely on following case laws :

- (i) The Hon'ble Supreme Court in the case of Director of Enforcement Vs Deepak Mahajan [reported in (1994) 3 SCC 430] has observed that "mechanical interpretation of the words and application of legislative intent devoid of concept of purpose and object will render the legislation insane".*
- (ii) In the case of Siraj-ul-Haq Khan Vs Sunni Central Board of Waqf [reported in AIR 1959 SC 198], the Hon'ble Apex Court held that "an attempt must always be made to reconcile the relevant provisions so as to advance the remedy intended by statute. Where the liberal meaning of the words used in a statutory provision would manifestly defeat its object by making a part of it meaningless and ineffective, it is legitimate and even necessary to adopt the rule of liberal construction in such a way so as to give meaning to all parts of the Act and to make the whole of it effective and operative."*

I further observe that if the GST is made applicable to the sub-contractors in the instant case, the whole purpose of exemption extended to the applicant i.e NHPC vide Notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 will be lost as NHPC & PWD do not do the work on their own and they get their work completed through the sub-contractors. In such circumstances and facts of the case in hand the objective and purpose of the GST Council to give benefit to the work being undertaken will be defeated.

On harmonious reading of both notifications viz 11/2017-Central Tax (Rate) dated 28th June, 2017 and 12/2017-Central Tax (Rate) dated 28th June, 2017 together in light of object behind the GST Council to pass the benefit of tax to the downstream of the chain, I observe that sub-contractors of supply in question are exempted from payment of GST in as much as the main contractor namely NHPC is exempted from GST in terms of Notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 (as amended from time to time) vide Advance Ruling bearing No 10/2018-19 dated 22-10-2018.

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RULING:- In light of the aforementioned facts, as both the members have divergent views, as discussed supra, a ruling has been made, whereby, in terms of Section 98(5) of the Act *ibid*, a reference to the Appellate Authority for hearing and decision on said issue has been made.

PERSONAL HEARING

A personal hearing was held on 13.02.2019. Shri J.C. Pant, Sr. Manager (Law), appealed for personal hearing and reiterated the points made before the Advance Ruling Authority, Uttarakhand. He also mentioned the points contained in their fresh application before the Advance Ruling Authority. Further he submitted that he will submit additional documents within a weeks time.

Shri Sunil Kr. Shah, Superintendent, CGST, reiterated the reasoning given by the Shri Amit Gupta, Member, Advance Ruling Authority, Uttarakhand.

Ms. Preeti Manral, Deputy Commissioner, SGST, reiterated the reasoning given by Shri Vipin Chandra, Member, Advance Ruling Authority, Uttarakhand, in Ruling No. 17/2018 dated 30.01.2019, and prayed that the sub-contractor should pay GST on the services supplied to P.W.D.

DISCUSSIONS AND FINDINGS

We have carefully gone through the findings and ruling, records of the issue and the submissions made at the time of personal hearing.

The case under consideration referred by the Ld AAR on account of difference of opinion on the issue of taxability on sub-contractor has been examined in view of points raised by the both members. There is no dispute with regard to the construction of road being the taxable works contract service and exemption is available to Public Works Department, Uttarakhand and M/s NHPC Ltd. The point which is to be determined by us is as given below:-

Whether the exemption available to PWD Uttarakhand and M/s NHPC Ltd, can be extended to the sub contractor also?

Present case pertains to the GST period therefore we have to confine to the notification issued under CGST/SGST Act. With regard to the services rendered to

the Government, initially notification no 11/2017 Central tax (Rate) dated 28-06-2017 was issued by which contractor & sub contractor were made liable to pay GST 18% (9% CGST 9% SGST). Further Notification no 24/2017 CT (Rate) dated 21 September 2017 was issued making govt. contractors liable to pay GST 12% (6% CGST+ 6% SGST). After the issuance of this notification works contract services rendered to the govt. attracted tax liability @ 12% but the taxability for the same contract remained 18% for the sub contractor. In order to address this anomaly, notification no 11/2017 Central tax (Rate) dated 28-06-2017 was further amended vide notification no 1/2018- Central Tax (Rate) dated 25-01-2018 which made the supply of works contract services from sub contractor to the main contractor supplying works contract services to Central govt. State govt. Union territory, local authority or a govt. authority or a govt. entity, taxable @ 12% (CGST 6%+SGST 6%). Under GST, if any taxable supply of goods/services is exempted then certain conditions are specified in the notification. There is no specific entry in the notification no. 12/2019- CT (Rate) dated 28-06-2017 making sub contractor's supply of services to the main contractor as exempt. However, in the process, the sub contractors are to be taxed at the same rate as the main contractor not due to the reason of extrapolation. It is for the ease of calculation of ITC & tax liability, both the entities are made liable to be taxed at the same rate. The serial no. 9C of notification no. 12/2017 (amended vide notification no 32/2017), exempts the services by a govt. entity to another govt. entity. Neither this notification nor any other notification exempts the work contract services from govt. entity to private contractor or contractor to sub-contractor. The observation made by the GST Council in reducing the tax liability of such contractor was made for the ease of calculations. This fortifies the fact that only the notification and the conditions specified therein, determines the taxability on supply of goods/ services.

It is further to be mentioned that constitution Bench (Bench of five Judges) of the Hon'ble Supreme Court of India in the matter of Commissioner of Custom (Import) Mumbai (civil appeal No. 3327 of 2007) (Dated July 30, 2018) M/s Dilip Kumar and company has held that :-

- (1) Exemptions notification should be interpreted strictly, the burden of providing applicability would be on the assessee to show that his case

comes within the parameters of the exemptions clause or exemption notification.

- (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.

In the light of above observation by the Hon'ble Supreme Court and the fact along with the notifications issued under GST Act, the sub contractor cannot be exempted only for the reason that the main contractor being a govt. entity providing works contract service to another govt. entity, is exempted.

We can't refer to the pre GST circular no 147/16/2011- ST dated 21-10-2011 and Para 29(h) of the Mega exemption notification no. 25/2012- ST dated 20-06-2012 to exempt sub contractor, as Service Tax is now repealed and cannot be applied on the supply of services pertaining to GST regime. Thus the taxability on the sub contractor in such cases have to be decided in view of the notification issued under CGST/SGST Act.

RULING

We hold that the works contract services for the road construction provided by the sub contractor to PWD, Uttarakhand, who in turn is providing works contract services of road construction to M/s NHPC Ltd is **not exempted** from GST.



(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.

1/ancholi
Registrar 08/03/19
AAAR Uttarakhand
रजिस्ट्रार
उत्तराखण्ड अग्रिम विनिर्णय
अपीलीय प्राधिकारी

Copy To:- 8929

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. Concerned Officer, State Tax, Dehradun.
6. Jurisdictional Officers.
7. M/s Tanakpur Jalvidyut pariyojna (NHPC Limited), Tanakpur Power Station, Banbasa, Uttarakhand,.
8. Guard File.