

Appellate Authority for Advance Ruling for Goods and Service Tax,

Uttar Pradesh

(Constituted under Section 99 of the Uttar Pradesh Goods and Service Tax Act, 2017)

Order No. 12/AAAR/29/06/2020

Date: 29-062020

Before the Bench of:-

Shri Ajay Dixit, Member

Smt. Amrita Soni, Member

GSTIN Number	09AAAJU0103AFZF
Legal name of the Appellant	M/s Uttar Pradesh Avas Evam Vikas Parishad
Trade Name of the Appellant	M/s Uttar Pradesh Avas Evam Vikas Parishad
Registered address/Address provided while obtaining user ID	Global Construction and Consultancy Cell, UP Avas Evam Vikas Parishad, Neelgiri Complex, Indira Nagar, Lucknow
Order of Advance Ruling Against which the appeal is filed	Order No. 45 dated 13.12.2019 issued by the Authority for Advance Ruling, Uttar Pradesh

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

The present appeal has been filed under Section 100 of the Central Goods and Service Tax Act and Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as "the CGST Act and UPGST Act") by M/s. Uttar Pradesh Avas Evam Vikas Parishad, Global Construction and Consultancy Cell, UP Avas Evam Vikas Parishad, Neelgiri Complex, Indira Nagar, Lucknow (hereinafter referred to as the "appellant") against the Advance Ruling Order No. 45 dated 13.12.2019 issued by the Authority for Advance Ruling, Uttar Pradesh.

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, 2017 would also mean a reference to the same provisions under the UPGST Act, 2017.

Brief Facts of the Case

- 1) M/s. Uttar Pradesh Avas Evam Vikas Parishad, Global Construction and Consultancy Cell, Neelgiri Complex, Indira Nagar, Lucknow (here in after called the appellant) is a registered assessee under GST having GSTN: 09AAAJU0103AFZF.
- 2). The appellant is a Board constituted under Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 and entrusted with the work to execute housing and improvement schemes in the State, whether chalked out by itself or by any local authority. Further, as per Section 46 of the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965, the applicant may also undertake the execution of any housing or other building project at the request of the State Government on such terms and conditions as may be agreed upon. This work is popularly known as "Deposit Work".
- 3). The appellant receives funds, in advance, for said "Deposit Work", with certain prefixed conditions such as:
 - i. All the money should be used for execution of particular project only and not for any other purpose.
 - ii. If any interest is earned on the money received for execution of the project, the same will be transferred back in the head of account from which it was drawn.
- 4). As per the appellant the said fund received can neither be classified as "Advance Payment" nor as "Loans", but can only be classified as "Deposit". Further the appellant can use the funds only in the execution of earmarked project. Accordingly, the appellant submitted an application for Advance Ruling and sought Advance Ruling on the following issues : —

a) *What is the time of supply in case of 'Deposit Works' being executed by the applicant- whether it is the time of receipt of funds from the client government department or the time when expenditure incurred towards execution of the work is debited to 'Deposit Works account'?*

b) *What shall be the value of supply in aforementioned two alternatives?*

5). The Authority for Advance Ruling, vide Order No. 45 dated 13.12.2019 ruled that:

a. As regard to the first question it was ruled by the Authority that *"The time of supply in case of 'Deposit Works' being executed by the applicant will be the time of receipt of funds from the client government department."*

b. With reference to the value of the supply it was ruled by the Authority that *"The value of the supply, on the advance payment received by the applicant, will be the amount of advance received by the applicant towards that particular work/supply."*

6). Being aggrieved with the aforesaid Order No. 45 dated 13.12.2019, the appellant filed this appeal application before us.

Grounds of appeal submitted by the appellant:-

7). The appellant has filed the appeal on the following grounds:

7.1) Funds received for execution of "Deposit Work" is wrongly classified as "Advance Payment" by the Authority. The amount received by the appellant is attached with certain restrictions and the appellant are never in constructive control of the unspent fund.

7.2) Any amount cannot be constituted as payment or advance payment unless the recipient gets the unbridled rights to spend it. Any amount given to a person with restricted right to spend it is either a "loan" or "deposit". Further, as the funds in question were never procured as loan therefore they can only be identified as "deposit" which has to be spent only as per conditions impose on it.

7.3) The Authority has erred in describing the term "Deposit", mentioned in proviso to sub section 31 of the Section 2 of the CGST Act, 2017, as "Security Deposit". As per appellant, the term "deposit", mentioned in the said Section, refers to an amount given to the supplier which can be adjusted against the consideration receivable later on.

7.4) Accordingly the Authority has erred by holding the date of receipt of funds as the "time of supply" and the total amount of funds received as "value of supply".

8). The appellant was granted personal hearing on 11th March 2020 and 10th June 2020. Sh. M. K. Singh, Consultant and Sh. A. K. Sinha, Consultant/ Authorized representatives

appeared for hearing on behalf of appellant on 10th June 2020. During the personal hearing they submitted additional written submission and also reiterated their submission already made vide their application dated 24.01.2020. Gist of the additional submission filed by the appellant is as under:

8.1). The funds required for execution of such projects are provided entirely by Government, generally in lump sum before the start of the work, with conditions that funds cannot be diverted for any other work/project and any interest earned on the said amount are to be paid back to the Government.

8.2) In view of conditions and restrictions imposed on spending, the funds so received cannot be treated as "Advance Payment" rather they are to be classified as "Deposit" which can be used only in the execution of earmarked project. Accordingly the "Time of Supply" in this case would be the date on which the appellant utilize the funds.

8.3) As per the interpretation of the appellant the term "deposit", as referred in sub-section (31) of Section 2 of the CGST Act, 2017, refers to an amount given to the supplier for being held in reserve and to be utilized as per instructions given by the principal in this regard. The Authority has failed to take cognizance of the restrictions that the appellant was never in constructive control of these funds and he won't get poorer if the unspent funds are not given to him at all.

8.4) Because of strict conditions attached to spending of funds in question, the funds which have never been procured as a loan, can only be identified as "Deposit" which are to be spent only as per conditions imposed on it.

8.5) As per Annexure II i.e. "Written argument" of the additional submission, submitted by the Authorized Representative at the time of personal hearing *"The Advance Payments are always shown as income in the Profit & Loss account of the business whereas the deposits are always shown under the head of "liabilities" in the Balance Sheet."*

DISCUSSION AND FINDING

9). We have gone through the submissions made by the appellant and examined the detailed explanation submitted by them. We observed that the appeal is mainly based upon the following points viz:-

- a. Funds received by the appellant are not "advance payment" but it is rather "deposit" as the amount can be used for the earmarked project only.
- b. The appellant is paying back, any interest earned on the said "Deposit work" amount to the Government.
- c. Accordingly the "Time of Supply" in this case would be the date on which the appellant utilize the funds.

10). Before proceeding further, we observe that the term "Deposit work" has been defined in Chapter II of "Financial Handbook- Vol-VI, (Annexure 3 of additional submission submitted by the Authorized representative of the appellant at the time of personal hearing) as :-

"15. Deposit Works- This term is applied to works of construction or repair the cost of which is met not out of government funds but out of funds from non-government sources, which may either be deposited in cash or otherwise placed at the disposal of divisional officer. Works executed for municipalities and other public bodies fall under this category when the cost is chargeable either to cash deposits made for the purpose or to their credit balances at treasuries."

11). We observe that apart from entrusted work of executing housing and improvement schemes in the State, the applicant may also undertake the execution of any housing or other building project at the request of the State Government or, with the previous approval of the State Government, at the request of any other person on such terms and conditions as may be agreed upon. This work is known as "Deposit Work". As per the appellant the funds required for execution of such projects are provided entirely by the Government, generally in lump sum before the start of the work string with certain restrictions viz. the funds cannot be diverted to any other project and any interest accruing from these funds will be paid back to the Government by depositing it in the relevant Head of Accounts.

12). Now coming to the first query raised by the appellant that whether the advance received by the appellant, for the said deposit work, is to be treated as "Advance Payment" received for the said work or as "Deposit", we observe that as per the appellant the money received for the said "deposit work" to be treated as "deposit" in terms of proviso of Sub Section (31) of Section 2 of the CGST Act, 2017 which is as under:-

"Provided that a deposit given in respect of supply of goods or service or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply"

The appellant has contended that the said amount received for deposit work cannot be treated as advance as:-

- i. The appellant was never in constructive control of the amount.
- ii. The interest earned on the said amount is to be paid back to the Government.

13). As regard to the absolute control of the money, we observe that advances are generally given so that the work get completed smoothly without any hindrances and may not get delay due to lack of fund. Restrictions regarding use of advance are normally attached so that the amount cannot be diverted for any other project and to avoid any

delay in timely completion of the project. Even the appellant, in its additional submission, given at the time of personal hearing, has submitted that *"this arrangement obviates the need of frequent demands for funds and also eliminates delays in completion of the project as well as escalation in its cost."* We observe that any condition/restrictions attached with the advance do not alter its character, it remains advance which later on get adjusted in payment once bills /invoices are issued).

14). As regard to the interest paid back to the Government we observe that, as per the definition of "Deposit Work" given in the Chapter 2 of Financial Handbook, Vol-VI, "Deposit work" are those works which are assigned to government construction agencies for execution in such capacity. IN such case, the funds are provided by the Government through the department for whom the building or any other structure is to be constructed. In order that such work may qualify as deposit work the funds must be provided from non-governmental sources. Further the advance amount is also routed through Government i.e. amount received by the appellant is provided by the service recipient agency but through Government. However as per the interest payment challans provided by the appellant the interest amount is being credited to the Government account and not in the account of the service recipient agency.

15). Further we also observe that as per general accounting standard the "Advances" are reflected as "liability" in the balance sheet of the recipient and as and when the portion of work get completed / invoice is issued, that amount of advance get transferred from liability head to the income head of the recipient. This fact is also confirmed by the appellant in their additional submission that the "Deposit Work" amount is reflected as liability in their balance sheet. Accordingly we are in unison with the Authority for Advance Ruling that the said "Deposit Work" amount received by the appellant is an "Advance Payment" and not "Deposit".

16). As regard to the appellant's contention regarding proviso of Sub Section (31) of Section 2 of the CGST Act, we observe that the proviso itself makes it clear that if the deposit are applied towards consideration for the said supply then such deposit will be treated as payment towards said supply. Accordingly, in our opinion, the said proviso envisages a condition wherein the funds are not at all used for the provision of service and in such case no GST will be applicable on it. However, in the instant case the appellant have themselves informed that once any expenditure is incurred towards execution of the earmarked project, the advance amount, received by them, get debited. This itself shows the applicability of GST on the said amount and now the only question left to decide, is the time and value of the supply.

17). As regard to the time of supply of service for the amount received towards the "Deposit Work, we observe that, Section 13 of the CGST Act, 2017 deals with the same and as per sub section 2 of Section 13 of the CGST Act, 2017 the time of supply for service is defined as:-

"(2) The time of supply of services shall be the earliest of the following dates, namely:—

a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation.—For the purposes of clauses (a) and (b)-

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier."

In view of above, we observe that in term of above Sub Section 2(a) and 2(b), the time of supply of services shall be the earliest of the following:-

- i. *the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed, or*
- ii. *the date of provision of service, if the invoice is not issued within the period prescribed, or*
- iii. *the date of receipt of payment.*

Accordingly, in our opinion, the law is crystal clear in this regard that once any advance amount is received towards provision of any service that will be treated as the time of supply. We, therefore, opined that the Authority has rightly ruled that the time of receiving of advance payment will be time of supply with reference to discharge of GST liability.

18). Now coming to the value of taxable supply in case of advance payment, we observe that explanation given in the sub Section 2 of Section 13 of the CGST Act, 2017 provides that:-

"Explanation- For the purpose of clause (a) and (b)-

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment."

We also observe that the issue regarding advance payment received has been addressed in the flyer issued by the Central Board of Indirect Taxes and Customs

"Advance received for future supply" under GST. Para 2 of the said flyer deals with the advance payment, which is as under:-

"As per the explanation 1 to Section 12 of the CGST Act, 2017 a "supply" shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment. For instance, an advance of Rs. 10 lacs is received for a supply worth Rs. 1 crore to be made in future. The time of supply to the extent of advance received i.e. Rs.10 lacs shall be at the time of receipt of advance and for the balance amount of Rs. 90 lacs, it shall be determined with reference to date of issue of invoice and other parameters."

From the above discussion we observe that issue has been aptly clarified and the Authority of Advance Ruling has correctly ruled that the value of the supply, on the advance payment received by the applicant, will be the amount of advance received by the applicant towards that particular work/supply.

19). In view of discussions held above, we give the following ruling unanimously,

RULING

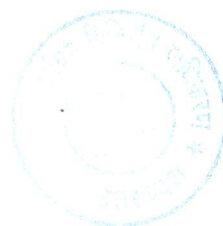
The Ruling passed by the Authority for Advance Ruling, Uttar Pradesh, vide Order No. 45 dated 13.12.2019, is just and proper and merits no interference.


(Amrita Soni)
Member AAAR
SGST


(Ajay Dixit)
Member AAAR
CGST

To,

M/s Uttar Pradesh Avas Evam Vikas Parishad,
Global Construction and Consultancy Cell,
Neelgiri Complex, Indira Nagar,
Lucknow Uttar Pradesh-



Appellate Authority for Advance Ruling for Goods and Service Tax

Order No. **12**

Date: **29-06-2020**

Copy to –

1. The Joint Commissioner, CGST & Central Excise, Lucknow, Member, Authority for Advance Ruling.
2. The Joint Commissioner (Legal), Commercial Tax, Uttar Pradesh, Member, Authority for Advance Ruling.
3. The Commissioner, CGST & CX, Lucknow Commissionerate, Uttar Pradesh.
4. The Assistant Commissioner, CGST & Central Excise, Lucknow Division-I, 12th Floor, Kendriya Bhawan, Aliganj, Lucknow, Uttar Pradesh;
5. Through the Additional Commissioner, Commercial Tax, Lucknow, Uttar Pradesh to jurisdictional tax assessing officers.

