

**THE APPELLATE AUTHORITY FOR ADVANCE RULING**  
**GOODS AND SERVICE TAX, UTTAR PRADESH**  
**4, VIBHUTI KHAND, GOMTI NAGAR, LUCKNOW – 226 010.**

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

Appeal Order No. 18/AAAR/29/09/2021

Date: 24.09.2021

Before the Bench of:-

**1. Shri Ajay Dixit,**  
Member, Central Tax

**2. Smt. Ministhy S.,**  
Member, State Tax

Legal name of the Appellant	M/s LUCKNOW PRODUCERS COOPRATIVE MILK UNION LTD
Trade Name of the Appellant	M/s LUCKNOW PRODUCERS COOPRATIVE MILK UNION LTD
GSTIN Number	09AAAAAL0278L1ZE
Registered address/Address provided while obtaining user ID	22, Jopling Road, Lucknow
Order of Advance Ruling Against which the appeal is filed	ORDER NO. UP ADRG 76/2021 dated 16.04.2021 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, 2017 and Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as “the CGST Act and UPGST Act”) by M/s. Lucknow Producers Cooperative Milk Union Ltd, 22, Jopling Road, Lucknow, Uttar Pradesh (hereinafter referred to as the “Appellant”) against the Advance Ruling Order No. UP ADRG 76/2021 dated 16.04.2021 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 and vice versa.

### **Brief Facts of the Case**

1) M/s Lucknow Producers Cooperative Milk Union Ltd, (the Appellant) is a registered cooperative society involved in processing of milk and milk products and registered under GST having GSTN: 09AAVPD9061B1ZK.

2) As per Appellant, in order to complete the business they are availing the service of various man power supply agencies under an agreement. As per the agreement the Appellant is making payment to the service providers for services provided as well as for other statutory liabilities like EPF, ESIC etc. As per the Appellant, in order to minimize the work burden, the service recipient i.e. the Appellant shifted the responsibility of deposit of these statutory liabilities on the service provider which is subsequently reimbursed by the Appellant. Further as per the provisions of GST Act the Appellant discharge the tax liability on gross amount i.e. service charges as well as statutory liabilities.

3). Now, the Appellant had came to know that the GST is payable only on the value of service and not on the statutory liabilities. Accordingly, the Appellant has submitted an application dated 27.01.2021, before the Authority for Advance Ruling Uttar Pradesh and sought Advance Ruling on following question:-

(i) GST Liability on reimbursement of Employee Provident Fund & ESI.

4). The Authority for Advance Ruling, vide Order No. 76/2021 dated 16.04.2021 ruled that:

*GST is liable to be paid @18% (9% CGST and 9% SGST) on the reimbursement of EPF and ESI contribution as the same is liable to be included in the value of supply as per section 15 of the CGST Act, 2017.*

5) Being aggrieved with the Order No. 76/2021 dated 16.04.2021, the Appellant filed this appeal application before us.

### **Grounds of appeal submitted by the Appellant:-**

6) The Appellant made the following grounds for filing of appeal:

6.1) the Authority for Advance Ruling, Lucknow, Uttar Pradesh had passed an order without proper appreciation of Law as they have ignored the ruling issued by the Karnataka Advance Ruling Authority on similar issue.

**6.2)** Bills raised for reimbursement of EPF & ESI fulfill all the ingredients of Rule 33 of GST Rules and not to be made subjected to GST for the purpose of imposition of tax.

**6.3)** The amount of reimbursement has been made to discharge the legal obligation resting with the service receiver and it is no way related with the consideration of services payable to the contractor.

**6.4)** The Authority has wrongly understood the contain of Rule 33 (iii) of GST Rules so as to say that contractor is not procuring any additional service from the third party.

**6.5)** The service provider is discharging the burden of service receiver to full fill the statutory obligation of the service receiver as a pure agent for which he is getting the reimbursement of that money which he is paying to the insurance companies for and behalf of the service receiver.

**7)** Following the principle of natural Justice, the Appellant was granted personal hearing on 1<sup>st</sup> September 2021. Sh. T.K. Srivastava, Advocate /Authorised Representative appeared in personal hearing on behalf of the Appellant.

During the course of personal hearing, he reiterated the submissions already made vide appeal application dated 23.06.2021. Further, vide his letter dated 03.09.2021 Sh. T.K. Srivastava, Advocate /Authorised Representative submitted that: -

- i. *On account of certain confusion on my part I had submitted that the applicant "furthermore the service covered in the subject issue is covered under the provisions of reverse charge as provided in the Act which has been defined under sub-section 98 of Section 2 of the CGST Act wherein it is provided that "reverse charge means the liability to pay tax by recipient of service..."*
- ii. *In this regard it is submitted that applicant is not covered under the reverse charge mechanism, but they are paying the entire tax to the service provider, as the applicant is a service receiver having the liability to assess and discharge the tax liability through service provider on the value of service."*

#### **DISCUSSION AND FINDING**

**8)** We have gone through the submissions made by the Appellant and examined the detailed explanation submitted by them. We observe that as per Section 95, the term "*advance ruling*" means a decision provided by this authority or the Appellate Authority to an applicant on matters or questions specified in subsection

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”.


9) Before we decide the question raised by the appellant in this appeal, it is essential that we first determine whether or not the activities undertaken by the appellant pertains to the supply of goods or services or both, being undertaken or proposed to be undertaken by them.

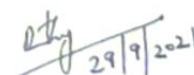
10). In this regard, we observe that Sh. T. K. Srivastava, Advocate/Authorised Representative of the appellant, in his letter dated 03.09.2021, has himself admitted that appellant is not covered under the reverse charge mechanism, but they are paying the entire tax to the service provider. In view of this, we find that, the appellant is a recipient of services in the subject case. The impugned transactions are not in relation to the supply of goods or services or both undertaken or proposed to be undertaken by the appellant and therefore, we are of the view, that it is outside the purview of mandate given to Advance Ruling Authority/Appellate Authority on Advance Ruling. The subject application cannot be admitted as per the provisions of Section 95 of the CGST Act and should have been rejected ab-initio by the Advance Ruling Authority. Hence without discussing the merits of the case, we reject the subject appeal as not being maintainable.

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

#### ORDER

The present appeal is rejected, as being non- maintainable as per the provision of law.

  
(Ajay Dixit)  
Member AAAR  
CGST

  
(Ministhy S)  
Member AAAR  
SGST

To,

M/s Lucknow Producers Cooperative Milk Union Ltd,  
22, Jopling Road,  
Lucknow,  
Uttar Pradesh.

**APPELLATE AUTHORITY FOR ADVANCE RULING**  
**GOODS & SERVICE TAX**  
**UTTAR PRADESH**

Copy to –

1. The Additional Commissioner, CGST & Central Excise, Audit Commissionerate, Lucknow, Member, Authority for Advance Ruling.
2. The Joint Commissioner (Law), Commercial Tax, Uttar Pradesh, Member, Authority for Advance Ruling.
3. The Commissioner, CGST & CX, Lucknow Commissionerate, Uttar Pradesh.
4. Through the Additional Commissioner, Commercial Tax,  
*Zone-I, Lucknow*, Uttar Pradesh to jurisdictional tax assessing officers.