

101774/26/11/2020/CRU



ODISHA AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX (GST)

RAJASWAVIHAR, BHUBANESWAR-751007(ODISHA)

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING

U/S.98 OF THE GOODS AND SERVICE TAX ACT, 2017

Members present :

1. Sri Hrushikesh Mishra, OFS(SAG), Addl. Commissioner of CT&GST
Office of the Commissioner, CT&GST, Odisha Banijyakar Bhawan,
Cantonment Road, Cuttack-753001-Odisha.
2. Sri Gopal Krishna Pati, IRS, Joint Commissioner, Office of the Chief
Commissionerate, GST, Central Excise & Customs, Bhubaneswar

P. K. Mishra / R. K. Mishra

1	Name and Address of the Applicant	M/s Tokyo Electric Power Company, Holding Inc., 1-3 uchisaiwal-cho 1 chome, chiyodaku, Tokyo.
2	GSTIN or User ID	212000000193ARK
3	Date of Filing of Form GST ARA-01	10.08.2020
4	Present for the Applicant (attended through video conference)	Ankit Bhardwaj, CA
5	Date of Personal Hearing	17.09.2020

ORDER NO.02/ODISHA-AAR/2020-21/DATED

Subject: Tokyo Electric Power Company, Holding Inc., (hereinafter referred as the "Applicant"), a Japan based Company having a GSTIN : 212000000193ARK, filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and Section 97 of the OGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the SGST Act.

- 1.0 The Applicant under his application dated 03.07.2020 (received in this office on 10.08.2020) sought for a ruling as to Whether the Applicant is required to be registered under Odisha Goods and Services Act, 2017 and Central Goods and Services Act, 2017 for the consultancy services provided to Odisha Power Transmission Corporation Limited?
- 1.1 At the outset, we would like to make it clear that the provisions of both the CGST Act and the OGST 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 provision under the OGST Act.
- 2.0 The applicant, while filing the application, submitted the Statement containing the Applicant's

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interpretation of law and/or facts, in respect of the question on which advance ruling is sought. It was submitted that M/s Tokyo Electric Power Company Service Limited ("TEPSCO"), a Japan based company, in association with Tokyo Electric Power Company, Holding Inc., (hereinafter referred as "Applicant"), a Japan based Company (collectively referred to as "Consultants") has entered into an agreement dated 13 April 2018 ("Agreement") with an Indian entity Odisha Power Transmission Corporation Limited (hereinafter referred as "OPTCL"), whereby consultants have agreed to provide consultancy services to M/s Odisha Transmission System Improvement Project ("Project"), Odisha, India.

- 2.1 It was also submitted that the Applicant will provide and transfer the technical knowledge in relation to the outdoor GIS equipment to OPTCL's engineer and staffs through the actual consulting activities during the design stage and implementation stage of the Project. The Applicant would carry out/provide consultancy services by the expert belonging. As per the time schedule mentioned in the Agreement, his stay in India would be as follows:

Year/ Month	No. of Days
October – 2021	15 days
November – 2021	15 days
December – 2021	15 days
January – 2022	30 days
February – 2022	15days

- 3.0 The personal hearing was fixed on 17.09.2020 under due intimation to the applicant. The applicant appeared personal hearing through its CA and Representatives (through video conference) . Sri Ankit Bhardwaj, CA re-iterated the submission already made in the Application Form (GST ARA-01). During personal hearing, the applicant was asked (1) whether the applicant holds office in India (2) whether the applicant holds PAN under Income Tax laws . In response, Sri Bhardwaj, CA stated that the applicant does not hold any office in India whether owned or rented. Further he added that Engineers/Professionals of the applicant visit India on certain occasions and stay in Hotels. In response to another query as to whether the applicant holds PAN under Income Tax laws, he replied that the company is registered as " Foreign Company" vide PAN AADCT2593H for specific purposes .

4.0 Discussion & Findings

We have considered the submissions made by the applicant in its application for advance ruling as well as the submissions made during personal hearing. We also considered the questions and

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issues on which advance ruling is sought for by the applicant, relevant facts having bearing on the question/issue raised, the applicant's understanding/interpretations of law in respect of the issue. We need to answer the only question asked in the application i.e. "Whether the applicant is required to be registered under Odisha Goods and Services Act, 2017 and Central Goods and Services Act, 2017 for the consultancy services rendered to M/s Odisha Power Transmission Corporation Limited"? We, observe that the issue before us is squarely covered under Section 97(2) of the CGST Act, 2017 and therefore we admit the application for consideration.

- 4.1 It has been argued by the applicant, at the time of personal hearing and through the submission made in the application that the applicant is neither liable to obtain registration as a regular taxpayer nor as a non-resident taxable person for the consultancy services provided to M/s OPTCL. It tries to establish that the supply is made by the Foreign Company, who is located in Japan is not the supplier in the context of rendering consultancy service. In support of its claim, the applicant inter-alia discussed in its application various provisions of Section 2, 7, 9, 22, 23 of the CGST Act, 2017 and Section 5 of the IGST Act, 2017. Further, the applicant also draws the attention of Notification No. 10/2017-Integrated Tax dated 28.06.2017.
- 4.2 The applicant contended that the project location from where the services are provided cannot be considered to be the 'location of the supplier of services'. In this regard, it was submitted that in terms of Section 2(71) of the CGST, Act the 'location of the supplier of services' can be considered any of the following three locations
- (a) a 'place of business' for which registration is taken
 - (b) a place which is a 'fixed establishment'
 - (c) in absence of such places, the location of the 'usual place of residence' of the supplier
- As per the applicant's understanding, the place of business in the instant case, would fall outside India as it has no fixed establishment in India and the usual place of residence is also not in India. Further, it was also submitted that the services supplied by Applicant to OPTCL would be covered under the ambit of Entry No. 1 of Notification No. 10/2017- Integrated Tax (Rate) dated 28th June, 2017 and OPTCL shall be liable to tax under RCM and therefore, Applicant is exempted from obtaining registration.
- 4.3 We see that the applicant has entered into an agreement with M/s OPTCL, Bhubaneswar, Odisha to provide consulting services. The scope of the services is Technology transfer for the outdoor GIS O&M and GIS operation Manual preparation. The applicant would carry out the services through its expert belonging/sub-station Engineer. At the time of PH, the applicant was asked whether the applicant holds any office India, in response, it was stated that the applicant does not hold any office in India whether owned or rented. But We find from the contract document that OPTCL has

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provided an office to the consultant and the office operation and maintenance charge etc also to be borne by OPTCL.

4.4 Before deciding the case, we need to analyze the definition of 'location of the supplier of services'. In terms of Section 2(15) of the IGST Act, 2017, the 'location of the supplier of services' means

- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
- (d) in absence of such places, the location of the usual place of residence of the supplier

Location of supplier is usually where a supply is made from, a place mentioned as a principal place of business on the GST registration certificate. But in the instant case, the place of supply and the location of supplier is at the project site which is different from the place of business. We see that it is a long-term contract spanning over 46 months followed by 6 months of defects liability period. The applicant is responsible for providing and transferring the technical knowledge in relation to the outdoor GIS equipment to OPTCL Engineer and staffs through the actual consulting activities during the design stage and implementation stage of the project. In order to carry out the aforementioned tasks, It would depute the support staff and expert belonging at the project site. OPTCL shall provide them access to the project site in respect of which access is required for the performance of the services. The expert so deputed to the project site by the applicant is to be paid at an agreed rate for the aforementioned tasks.

4.5 It is evident from the above discussion that the expert belonging maintains suitable structures in terms of human and technical resources at the sites of OPTCL. It ensures provision of supply of consulting services for the contract period, indicating sufficient degree of permanence to the human and technical resources employed at the sites. The applicant through its expert belonging, therefore, supplies the service at the sites from fixed establishments as defined under section 2 (7) of the IGST Act. The location of the supplier should, therefore, be in India in terms of section 2 (15) of the IGST Act. Therefore, We do not agree with the contention of the applicant that the services supplied to OPTCL would be covered under the ambit of Entry No. 1 of Notification No. 10/2017- Integrated Tax (Rate) dated 28th June, 2017 and shall be liable to tax under RCM.

4.6 Supply of consulting services through sub-station Engineer/ expert of the applicant to OPTCL is not, therefore import of service within the meaning of section 2 (11) of the IGST Act. The Engineer/expert belonging to the applicant should be treated as a supplier located in India, and made

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liable to pay GST, the place of supply being determined in terms of section 12 (2) (a) of the IGST Act. Since, applicant is liable for payment of GST, we hold that he is required to be registered under Odisha Goods and Services Act, 2017 and Central Goods and Services Act, 2017 for the consultancy services provided to Odisha Power Transmission Corporation Limited .

RULING

5.0 Supply of service to OPTCL is not import of service in terms section 2 (11) of the IGST Act . The recipient is not, therefore, liable to pay GST on reverse charge basis in terms of Notification No. 10/2017 - Integrated Tax (Rate) dated 28.06.2017. The applicant, being the supplier of service in India, is liable to pay tax and therefore, required to take GST registration under Odisha Goods and Services Act, 2017 and Central Goods and Services Act, 2017 for the consultancy services provided to Odisha Power Transmission Corporation Limited .

6.0 This ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104(1) of the GST Act.

7.0 The applicant, if aggrieved by the ruling given above, may appeal to the Odisha State Appellate Authority for advance ruling under Section 100 of the CGST/OGST Act, 2017 within 30 days from the date of receipt of the advance ruling.


(G K Pati)
Member, CGST


(H K Mishra)
Member SGST

C. No. V (1) ARA/ODISHA/BBSR/2020/1

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Dated: 19.11.2020

To

M/s Tokyo Electric Power Company, Holding Inc., C/o-Ankit Bhardwaj (Indirect Tax), BSR & Co LLP, KPMG, Building No.8th Floor, Tower-C, DLF Cyber City, Phase-II, Gurugram-122002 (India).

Copy forwarded to:

1. The Principal Commissioner, CGST & Central Excise, Bhubaneswar Commissionerate, C R Building, Rajaswa Vihar, Bhubaneswar-751007 (Odisha)
2. The Commissioner, SGST Odisha, Banijyakar Bhawan, Old Secretariat Compound, Cuttack-753001, Odisha.
3. Office copy.

