

**BEFORE THE AUTHORITY FOR ADVANCE RULINGS FOR THE
STATE OF UTTARAKHAND**

(Goods and Services Tax)

Advance Ruling 02/2022-23 , Dated 1st April, 2022

Present:

Shri Anurag Mishra (Member)

Shri Rameshvar Meena (Member)

In Application No: 08/2021-22

1	Applicant	M/s Garhwal Mandal Vikas Nigam Limited, Rajpur Road, Dehradun Uttarakhand. 248001.
2	Jurisdictional Officer	—
3	Present for the Applicant	Sh. Amrit Aswal, Chartered Accountant
4	Concerned Officer	None
5	Present for the Jurisdictional Officer	Mrs. Preeti Manral, Deputy Commissioner, SGST- Dehradun
6	Date of receipt of application	17.01.2022
7	Date of Personal Hearing	22.02.2022 (Through video Conferencing)

Note: An appeal against this ruling lies before the appellate authority for advance ruling under Section 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, constituted under Section 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order.

1. This is an application under Sub-Section (1) of Section 97 of the Central Goods & Service Tax Act, 2017 and Uttarakhand State Goods & Service Tax Act, 2017 (hereinafter referred to as CGST/SGST Act) and the rules made there under filed by M/s Garhwal Mandal Vikas Nigam Limited, Rajpur Road, Dehradun Uttarakhand, 248001, (herein after referred to as the "applicant"), an undertaking of Government of Uttarakhand and registered with GSTIN-

05AACCG6021E1Z7 under the CGST Act, 2017 read with the provisions of the UKGST Act, 2017. In the application dated 17.01.2022, the applicant submitted that they are receiving consideration for implementation of various projects from Government/ Government Departments in the form of Grants and the said grants are utilized by way of procurement of services/goods from contractors for executing those projects.

2. In view of the above facts, 'the applicant' is seeking an advance ruling on following issues:

(a) Whether the activities undertaken for implementing various construction/repair/renovation/addition/alteration projects by GMVN Ltd. for Central Government, State Government, Local Authority or Governmental Authority the consideration for which is received in the form of grants amounts to supply under the provisions of Goods & Services Tax laws and are thus chargeable to GST?

(b) In case the above activities amount to supply, whether the supply is classified as supply of goods or supply of services?

(c) In case the above activities amount to supply, whether the supply is exempt under the provisions of GST Law?

(d) Whether supply of any service by GMVN Ltd., to the Central Government, State Government, Local Authority or Governmental Authority for which the consideration is received in the form of Grants is exempt under notification No. 12/2017- Central Tax (Rate) (As amended) dated the 28th June, 2017?

3. At the outset, we would like to state that the provisions of both the CGST Act and the SGST 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 SGST Act.

4. The Advance Ruling under GST means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in sub-section (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.

5. As per the said sub section (2) of Section 97 of the Act advance ruling can be sought by an applicant in respect of:

- (a) Classification of any goods or services or both
- (b) Applicability of a notification issued under the provisions of this Act,
- (c) Determination of time and value of supply of goods or services or both,
- (d) Admissibility of input tax credit of tax paid or deemed to have been paid
- (e) Determination of the liability to pay tax on any goods or services or both
- (f) Whether the applicant is required to be registered
- (g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both within the meaning of that term.

5.2 In the present case applicant has sought advance ruling on classification of services and determination of the liability to pay tax on supply of services, therefore, in terms of said Section 97(2)(a), (b), (c), (e) 86 (g) of CGST/SGST Act, 2017, the present application is hereby admitted.

6. Accordingly opportunity of personal hearing was granted to the applicant on 22.02.2022. Sh. Amrit Aswal, Chartered Accountant, on behalf of the applicant appeared for personal hearing on the said date and re-iterated the submission already made in their application. Ms. Preeti Manral, Deputy Commissioner, SGST-Dehradun, Concerned Officer from State Authority was also present during the hearing proceedings. She presented the facts and requested the authority to decide the case on merits.

7. From the record submitted by the applicant we find that applicant is registered in Uttarakhand with GSTIN bearing no. 05AACCG6021E1Z7. Before proceeding in the present case, we would first go through the submissions filed by the applicant and the same is summarized as under:

(i) Garhwal Mandal Vikas Nigam Limited (GMVN Ltd.) is an undertaking of Government of Uttarakhand and their main activity is to promote steady and sustained growth phase of the travel and tourism sector in Uttarakhand by making the destinations more accessible, more attractive with many facilities and amenities for the tourists in the Uttarakhand State. Further, they have two sections which are Engineering Section and Tourism Section. And this application pertains to the engineering section and reference to M/s GMVN Ltd. would refer to the engineering section.

(ii) They also undertakes activities of restoration and repair works of wayside amenities, tourist rest houses, tourist bus stands and development and reconstruction and maintenance of other infrastructure facilities for the tourist. And at present they are implementing various projects of Central and State Government. Two examples of such grants are as under:

a) Grant received from Directorate of Culture; Government of Uttarakhand through its GO dated 17th February, 2021 for construction of "Shaheed Dwaf at Banjarawala, Dehradun.

b) Grant from Department of Social Justice & Empowerment, Government of India through its GO dated 16th September, 2021 for construction of "Creation of barrier free environment for PWDs and tourist rest houses in various district of Uttarakhand State'.

8. In the present case we are not deciding any wider question but restricting our conclusion to the facts and circumstances which were filed for our consideration in the application. Now we proceed by taking the issues one by one:

8.2 Firstly let us find what constitutes the term Supply. We find that Section 7 of the CGST Act, 2017 defines the Scope of supply. For better perspective the same is reproduced as under:

"Scope of supply "- (1) - For the purposes of this Act, the expression supply includes-

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;"

(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II. "

As per Schedule II the following shall be classified as supply of goods or supply of services. The relevant extracts are:

"Section 6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:—

(a) works contract as defined in clause (119) of section 2f

Further, in Section 2 of the CGST Act, 2017, "works contract" has been defined as:

"2(119)- works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;"

Further, the definition of 'person' has been defined in section 2 of the CGST Act, 2017, which is as under;

"Section 2(84) - person includes-

(g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;

(j) a local authority;

(k) Central Government or a State Government;"

From the above it is clear that any activity undertaken by one person to another for a consideration amounts to supply and Central State Government and Government Company are separate persons.

Further, as per the Section 2 the 'Consideration' has been defined as under;

"Section. 2 (31) —consideration in relation to the supply of goods or services or both includes-

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;"

8.3 In view of the above, in the instant case we find that the applicant has received payment for execution of a specific work i.e. the type and scope of the work is predetermined, hence, we hold that money transferred by the Government into the accounts of the applicant in the form of grant is a "consideration" under the provision of CGST Act, 2017, consequently the activity undertaken by the applicant for the State/Central Government or local authority amount to supply as defined in section 7 of the CGST Act, 2017.

8.4 We observe that the applicant in their application under reference has accepted on their own that the amount received is consideration, the activity undertaken by them for the Government amount to Supply as defined in section 7 of the CGS Act, 2017 and that the work undertaken is a service and hence not under dispute.

8.5 Now, we take up the issue of the type of supply i.e. whether the works referred to in by the applicant is supply of goods or supply of services.

8.5.2 We find that from the definition of scope of supply, Composite supply and works contract as discussed at Para 8.2 above and the terms of reference appearing in the work allocated to the applicant namely "construction of 'Shaheed Dwaf at Banjarawala, Dehradun" and "construction of 'Creation of barrier free environment for PWDs and tourist rest houses in various district of Uttarakhand State', involves civil construction work viz. construction, repairs, etc. and hence falls under the definition of works contract service.

8.5.3 However, we find that the applicant has referred to and submitted the details of only two works contract in their application; hence we observe that on the basis of these two works contract, generalized view cannot be in respect of to any other work/ contract, by applying the same yard stick.

8.6 Now we take up the issue of applicability of GST on the grants. We find that vide Notification No. 32/2017-CT(Rate) dated 13.10.2017, amendment has been made in the exemption Notification No. 12/2017-CT(Rate) dated 28.06.2017 to exempt "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 authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants'.

8.6.2 We observe that by virtue of Notification No. 12/2017-CT (Rate) dated 28.06.2017 any supply of services 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 authority is exempt from payment of GST, if the consideration received from Central Government, State Government, Union Territory or local authority, is in the form of grants. We find that from the wordings of the said notification it is clear that exemption is available, only, if the consideration received is in the form of grants and has to be utilized for the intended purpose only. The litmus

test in such cases would be the character of the consideration and if it qualifies to be a grant then and only then the benefit under the provisions of Notification No. 12/2017-CT (Rate) dated 28.06.2017, is available.

8.6.4 In the instant case we find that in the letter No. 41/VI/2021-80(51) 2020 of the Secretary, Uttarakhand Government the word 'Anudaan' at Para 16 and in the letter dated 16.09.202, Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice and Empowerment, GOI, Para 3 specifies that 'Purpose for which this grant is sanctioned: - creation of barrier free environment for PwDs in 44 No. Tourist Rest House in 07 Districts of Uttarakhand State under administrative charge of GMVNL, Dehradun under the SIPDA scheme during 2020-21" , establish that the consideration is in the form of grants and hence, we hold that the benefit of exemption Notification No. 12/2017-CT(Rate) dated 28.06.2017 is available to the applicant in respect of these two works.

11. In view of the discussions held above, we rule as under:

RULING

(1) Only the services /activities undertaken for Central Government, State Government, Local Authority or Governmental Authority, for which the consideration is in the form of grants, are exempt from the payment of applicable GST.

(2) The work of "construction of 'Shaheed Dwar' at Banjarawala, Dehradun" and "construction of 'Creation of barrier free environment for PWDs* and 'tourist rest houses in various district of Uttarakhand State" are classified as supply of services.

(3) Exemption from payment of GST is available for the work of 'Shaheed Dwar' at Banjarawala, Dehradun and construction of 'Creation of barrier free environment for PWDs and tourist rest houses in various district of Uttarakhand State'.

(4) Exemption at Sl. No. 9C of the Notification No. 12/2017-CT (Rate) dated 28.06.2017 is available, only if the consideration is in the form of Grants.

ANURAG MISHRA (MEMBER)	RAMESHVAR MEENA (MEMBER)
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