
 सत्यमेव जयते	RAJASTHAN AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX KAR BHAWAN, AMBEDKAR CIRCLE, NEAR RAJASTHAN HIGH COURT JAIPUR – 302005 (RAJASTHAN)	 राजस्थान कर बाजार
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ADVANCE RULING NO. RAJ/AAR/2022-23/24

Umesh Kumar Garg Joint Commissioner	Member (Central Tax)
Mahesh kumar Gowla Special Commissioner	Member (State Tax)
Name and address of the applicant	M/s Vishwas Green Energy , B-1, Tapovan Vihar, Jagatpura, Jaipur 302020 (Rajasthan)
GSTIN of the applicant	08AAMFV3606R1ZE
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised.	c) determination of time and value of supply of goods or services or both;
Date of Personal Hearing	03.02.2023 and 14.12.2022
Present for the applicant	Manoj Kumar Choudhary, (Authorized Representatives)
Date of Ruling	21.02.2023

Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

At the outset, we would like to make it clear 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 provision under the SGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / SGST Act would be mentioned as being under the "GST Act".

The applicant M/s Vishwas Green Energy, B-1, Tapovan Vihar, Jagatpura, Jaipur 302020 (Rajasthan) (hereinafter the Applicant) being a registered person (GSTIN is 08AAMFV3606R1ZE) as per the declaration given by him in Form (ARA-01) the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs. 5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017

The appellant i.e M/s Vishwas Green Energy, B-1, Tapovan Vihar, Jagatpura, Jaipur (Rajasthan) has raised the following question for advance ruling in the application for Advance Ruling filed by it.

Is GST Applicable on GOVT Subsidy? How to Generate GST including Subsidized Invoice?

A. SUBMISSION OF THE APPLICANT :(in brief)

- 1) The Applicant that M/s. Vishwas Green Energy, B-1, Tapovan Vihar, Jagatpura, Jaipur (Rajasthan) is involved in installation of Solar system on roof top and subsidy is provided by Central Govt. for this work through Renewable Energy Corporation.
- 2) The Applicant that M/s. Vishwas Green Energy, B-1, Tapovan Vihar, Jagatpura, Jaipur (Rajasthan) submitted a GST invoice for reference in which mechanism of raising invoice is given.

B Interpolation and understanding of applicant on question rose (in Brief)

1. The applicant submitted that “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;
 - b. the monetary value of any act or forbearance, 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:

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

इस प्रकार स्पष्ट है कि प्रतिफल की परिभाषा में केन्द्र सरकार एवं राज्य सरकार द्वारा प्रदत्त सब्सिडी को शामिल नहीं किया गया है।

इस सम्बन्ध में **RGST /CGST Act 2017** की धारा 15(2)(c) में स्पष्ट प्रावधान अंकित है कि

2. The applicant referred the Section 15(2)(e) of Act in his support-

Value of taxable supply

(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include—

- a. any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;
- b. any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;
- c. incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;
- d. interest or late fee or penalty for delayed payment of any consideration for any supply; and
- e. Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.— For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

3. The Applicant further submitted the mechanism or way of raising invoice which is as under-

“ विश्वास ग्रीन एनर्जी द्वारा रूफटॉप सोलर के इन्स्टालेशन का कार्य किया जाता है जिसके लिये केन्द्र सरकार द्वारा सब्सिडी जरिये Rajasthan Renewable Energy Corporation प्रदान की जाती है। प्रकरण में उदाहरण स्वरूप एक GST invoice की प्रति संलग्न की गई है। उक्त इनवाइस में एक 4.69 किलो वाट क्षमता के सोलर प्लांट का इन्स्टालेशन Amount 197964.90 रुपये GST Including पर किया गया है। इसमें 64918.98 रु सब्सिडी को घटाकर बेनिफिशियरी से 133045.92 रु प्राप्त किये गये हैं।

C. Question(s) on which advance ruling is sought

Q.1 Is GST Applicable on GOVT Subsidy? How to Generate GST including Subsidized Invoice?

D. PERSONAL HEARING

In the matter personal hearing was granted to the applicant on 14.12.2022 and on 03.02.2023. On behalf of the applicant Manoj Kumar Choudhary, (Authorized Representatives) appeared for PH. During the PH, he reiterated the submissions already made in the application.

E. COMMENTS OF THE JURISDICTIONAL OFFICER

In the matter, comments were asked from Jurisdictional CGST Division C Bhiwadi vide F.No. 5/Comm/AAR/Stae/2022-23/194 dated 14.10.2022 and even no 222-223 dated 01.11.2022 , but no response has been received in this matter hence no option left to decide case without comments of jurisdictional officer.

F. FINDINGS, ANALYSIS & CONCLUSION:

1) We have carefully examined the statement of facts, supporting documents filed by the Applicant along with application, oral and written submissions made at the time of Virtual hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts. We would like to discuss the submission made by applicant and will take up the above question for discussion one by one.

2) The applicant is engaged in installation of Solar system on roof top and subsidy is provided by Central Govt. for this work through Renewable Energy Corporation for which subsidy is provided by the Govt.

3) We find that –

(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;**

(b) the monetary value of any act or forbearance, 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: Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

4) We observe that –

(1) *The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*

(2) *The value of supply shall include—*

(a) *any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*

(b) *any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;*

(c) *incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;*

(d) *interest or late fee or penalty for delayed payment of any consideration for any supply;*
and

(e) *Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.*

Explanation.—*For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.*

(3) *The value of the supply shall not include any discount which is given—*

(a) *before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and*

(b) *after the supply has been effected, if—*

(i) *such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and*

(ii) *Input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.*

5) We observe that here applicant is supplier of services, not recipient of services. However in the definition of consideration phrase of "any other person" is mentioned. It is not cleared by the applicant whether the subsidy provided by the Central Govt. is to be credited directly in account of recipient of services or it is to be accorded to applicant.

6) We observes from the Invoice submitted by the applicant that subsidy amount has been shown separately and no GST has been charged on it. Thus in light of Section 15 of Act such subsidy which is not claimed from recipient of services should not be taxable.

7) We shall now examine the provisions of laws as laid down under the GST Act for the purposes of advance rulings. Chapter XVII of the GST Act comprising of Sections 95 is relevant provisions for advance ruling purposes.

7.1) As per Section 95 of CGST Act, 2017; this authority shall decide on matters or on questions specified in sub-section (2) of Section 97, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken, by the applicant and "Authority" means the Authority for Advance Ruling, constituted under Section 96. Thus Section 95 allows this authority only to decide on matters or on questions in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant i.e. in the subject case this application can be entertained only if the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant itself. In this case, the supplies of Services has already been undertaken by the applicant and applicant is regularly filing returns.

7.2) We observe that purpose of Advance ruling is to provide certainty of tax liability in advance in relation to a future activity to be undertaken by the applicant and help the applicant in planning about GST liability on activities well in advance along with proper interpretation and understanding of tax laws. Advance rulings can be given only for a proposed transaction & matters related to qualify for advance ruling whether it will be undertaken or proposed to be undertaken. We also observe that advance ruling under GST can be obtained for a proposed transaction as well as a transaction already undertaken by the appellant but the transactions' on which GST is being paid are out of preview of advance ruling.

7.3) Moreover, on gone through the facts of the case, we observe that applicant filed their application before the Rajasthan Authority for Advance Ruling (RAAR) on 14.10.2022 i.e. much later from the supply of services. Applicant is discharging his GST liability since starting on the service supplied by him and asked advance ruling when subsidy has not been given to him from concern department. We observe that applicant motto is to find out whether the mechanism opted by him for payment of GST on said service is right or wrong, which is against the spirit of advance ruling.

8) Since the Applicant has asked for ruling on the transactions effected prior to the date of filing of the application before the RAAR, we find it appropriate to visit the definition of the 'Advance Ruling' given under Section 95(a) of the CGST Act, 2017 which is reproduced as under: -

"95. Definitions of Advance Ruling— In this Chapter, unless the context otherwise requires—

(a) —advance ruling 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;".

From the above definition, it is very much clear that the scope of the ruling for Authority for Advance Ruling (AAR) is limited to the transactions being undertaken or proposed to be undertaken.


In the instant case, as already narrated, the application seeking advance ruling was filed on 14.10.2022 before the RAAR with respect to supplies already being undertaken and GST being paid. Hence, the case is out of the purview of the Advance Ruling.


In view of the foregoing, we rule as under: -

RULING

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Rajasthan Goods and Services Tax Act, 2017)

The subject application for advance ruling made by the applicant is not maintainable and hereby rejected under the provisions of the GST Act, 2017.


21.02.2023
(Umesh Kumar Garg)
MEMBER
CENTRAL TAX


21/02/2023
(Mahesh Kumar Gowla)
MEMBER
STATE TAX

SPEED POST

✓ M/s Vishwas Green Energy , B-1, Tapovan Vihar, Jagatpura, Jaipur 302020 (Rajasthan F. No. AAR/SF/2022-23/ 303

Date: 21/02/2023

Copy to: -

1. The Chief Commissioner, CGST and central Excise, (Jaipur Zone), NCRB, Statue Circle, Jaipur, Rajasthan 302005
2. The Chief Commissioner, State Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
3. The Pr. Commissioner, CGST and Central Excise Commissionerate Jaipur, Rajasthan.
4. The Deputy Commissioner, CGST Division G, Vidhyadhar Nagar, Jaipur Rajasthan.

SAG