

**BEFORE THE HON'BLE APPELLATE AUTHORITY FOR
ADVANCE RULING,
GOODS AND SERVICE TAX, UTTAR PRADESH
4, VIBHUTI KHAND GOMTI NAGAR LUCKNOW-006010
(Constituted under Section 99 of the Uttar Pradesh Goods
and Service Tax Act, 2017)**

Appeal Order No. 05/AAAR/-10/-03-/2023
Dated:10.03.2023

Before the Bench of:

Dr. Uma Shanker
Member, Central Tax
Smt. Ministhy S,
Member, State Tax

Legal Name of the Appellant	M/s The Indian Hume Pipes Company Ltd.
Trade Name of the Appellant	M/s The Indian Hume Pipes Company Ltd.
GSTIN Number of the Appellant	09AAACT4063D1ZK
Registered address	Gwalior Road, Karari Jhansi, Uttar Pradesh
Order of Advance Ruling Against which the appeal is filed	UP ADRG – 12/2022 dated 23.11.2022

[Proceedings under Section 101 of the Central Goods and Service Tax Act, 2017 and Uttar Pradesh State 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 (here-in-after referred to as " the CGST Act and UPSGST Act") by M/s The Indian Hume Pipes Company Ltd., Gwalior Road, Karai Jhansi, Uttar Pradesh(here-in-after referred to as the " Appellant") against the Advance Ruling Order No. UP ADRG –

12/2022 dated 23.11.2022 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 UPSGST 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 UPSGST Act, 2017 and the vice versa.

Brief facts of the case

The instant appeal has been preferred against Advance Ruling No. UP ADRG-12/2022 dated 23.09.2022 passed in the case of applicant i.e. M/s Indian Hume Pipe Company Ltd. Gwalior Road, Karari Jhansi, Uttar Pradesh. The Brief facts of the case are as under:

1. The Applicant undertakes contracts for construction of head works sumps, pump rooms, laying jointing of pipe line and commissioning and maintenance of the entire work for water supply projects/sewerage projects/facilities.
2. The Customers of the Applicant include Government bodies/entities/authorities mainly, M/s Uttar Pradesh Jal Nigam for the aforementioned work.
3. M/s Uttar Pradesh Jal Nigam hold PAN AALU0256C under Income Tax Act, 1961 and GSTIN- 09AAALU0256C320 under the Goods and Service Tax Act, 2017.
4. Notification No. 15/2021 Central Tax (Rate) seeks to amend Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017 prescribing the rate of tax on construction services at Sl.No. 3 of the table therein, viz- " (iii) composite supply of

works contract as defined in clause 119 of section 2 of Central Goods and Service Tax Act, 2017" at 9% CGST and 9% SGST. However, Notification 20/2017-Central Tax (Rate) dated 22.08.2017 prescribed rate of GST at 12% (6% CGST + 6% SGST) in case such services are supplied to "the Government, a local authority or Governmental Authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, -

(a).....

(b) Canal, dam or other irrigation works;

(c) Pipeline conduit or plant for (i) water supply(ii) water treatment, or (iii) sewerage treatment or disposal." to be taxed at 12% GST (6% CGST + 6% SGST).

5. Notification No. 15/2021- Central Tax (Rate) dated 18.11.2021 read with Notification 22/2021-Central Tax (Rate) dated 31.12.2021 seeks to amend Sl.No. 3(iii) as – "union territory or a local authority" thereby deleting the words 'a Government Authority or a Government Entity' implying thereby that aforementioned services by way of works contract if provided to union territory or a local authority shall still continue to be taxed at 12% GST (6% CGST + 6% SGST).

6. Section 2(69) of the Goods and Service Tax Act, 2017 defines " Local Authority" as-

- (a) a "Panchayat" as defined in clause (d) of article 243 of the constitution;
- (b) a "municipality" as defined in clause (e) of article 243P of the Constitution;

- (c) a Municipal Committee, a Zila Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- (f) a Development Board constituted under article 371 and article 371J of the Constitution; or
- (g) a Regional Council constituted under article 371 J of the Constitution.

7. Based on the aforesaid facts the appellant had presented following question to seek advance ruling.

- (a) Whether the supply of services by the Appellant to M/s Uttar Pradesh Jal Nigam is covered by Notification No. 15/2021-Central Tax (Rate) dated 18th November, 2021 read with Notification No. 22/2021-Central Tax (Rate), dated 31.12.2021.
- (b) If the supplies as per Question 1 are covered by Notification No. 15/2021-Central Tax (Rate) dated 18th November, 2021 read with Notification No. 22/2021-Central Tax (Rate), dated 31.12.2021, then what is the applicable rate of Tax under the Goods and Service Tax Act, 2017 on such supplies made with effect from 01.01.2022; and
- (c) In case the supplies as per question 1 are not covered by the Notification above, then what is the applicable rate of tax on such supplies under the Goods and Service Tax Act, 2017 with effect from 01.01.2022.

8. The Authority for Advance Ruling in its impugned ruling held as under-

- (a) The supply of services by the Applicant to M/s Uttar Pradesh Jal Nigam is not covered by Notification No. 15/2021-Central Tax (Rate), dated 18th November, 2021 read with Notification No. 22/2021-Central Tax (Rate) dated 31st December, 2021.
- (b) Not answered as per reply of question above.
- (c) The applicable rate of tax shall be 18- CGST 9% and SGST 9%..

9.0 The appellant being aggrieved by the aforesaid ruling has preferred an appeal before the Appellate Authority for Advance Ruling as the Authority for advance ruling has failed to appreciate the fact that tax liability on Works Contract Services has to be determined as per Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017 (as amended from time to time).

The Appellant has prayed-

- (i) To set aside/modify the impugned Advance Ruling Order No. UP ADRG 12/2022 dated 23.11.2022 passed by the Authority for Advance Ruling.
- (ii) Passing such other order as may be deemed fit and proper in the facts and circumstances of the case.

10.0 GROUNDS OF APPEAL

Appellant has submitted following grounds of appeal as under-

10.1 The Authority for Advance Ruling has failed to appreciate the fact that tax liability under works contracts is to be

determined in terms of Notification 11/2017-Central Tax (Rate) dated 28.06.2017 as amended from time to time.

10.2 M/s Uttar Pradesh Jal Nigam is squarely covered under the definition of 'Local Authority' as provided under Section 2(69) of the CGST Act, 2017 and as per Notification 11/2017-Central Tax (rate) as amended, local authority is to be taxed at 12% GST [6% CGST +6% SGST].

10.3 The Appellant has submitted that M/s Uttar Pradesh Jal Nigam is not covered under the Government Authority as defined under the Act. As per definition to qualify as a 'Government Authority' an entity must be funded primarily by equity and not otherwise. In the instant case M/s Uttar Pradesh Jal Nigam has no equity funds. Further the term "with 90 per cent, or more participation by way of equity or control" as used in the definition has to be read as one condition because a person can control an organization by having prescribed equity holdings either directly or may control the same through equity holdings in some other entities.

10.4 The Constitutional Board of Jal Nigam has 8 Government Officials and 5 elected Heads of Local Bodies in the State. This would imply that Government is having control of about 61.54% only which is less than required 90%. This view has been confirmed By Karnataka Advance Ruling Authority in the case of M/s URC Construction Pvt. Ltd. vide their Advance Ruling NO. KAR ADRG 73/2019 dated 23.09.2019.

10.5 The opportunity of personal hearing was granted to the appellant on 13.02.2022. Shri Manish Goyal, Authorised Representative, appeared on behalf of the appellant to

represent the case. He argued the appeal and reiterated the submission already made by the appellant.

11.0 Discussion and Findings

We have gone through the submission made by the Appellant and examined the detailed reply submitted by them. We find that as per the scope of work submitted by the Appellant they are engaged in contracts for construction of head works sumps, pump rooms, laying jointing of pipe line and commissioning and maintenance of the entire work for water supply projects/sewerage projects/facilities. They are mainly supplying these services to Government Authorities/Government entities, mainly to M/s Uttar Pradesh Jal Nigam. The Appellant had sought Advance Ruling as to-

- (a) Whether supply of services by the Appellant to M/s Uttar Pradesh Jal Nigam is covered by Notification No. 15/2021-Central Tax (Rate) dated 18th November, 2021 read with Notification No. 22/2021-Central Tax (Rate), dated 31.12.2021.
- (b) If the supplies as per Question 1 are covered by Notification No. 15/2021-Central Tax (Rate) dated 18th November, 2021 read with Notification No. 22/2021-Central Tax (Rate), dated 31.12.2021, then what is the applicable rate of Tax under the Goods and Service Tax Act, 2017 on such supplies made with effect from 01.01.2022; and
- (c) In case the supplies as per question 1 are not covered by the Notification supra then what is the applicable rate of tax on such supplies under the Goods and Service Tax Act, 2017 with effect from 01.01.2022.

11.1 As per interpretation of the law by the Appellant the activities undertaken by them are composite supply of works contract

as defined in clause 119 of section 2 of Central Goods and Service Tax Act, 2017 attracting GST @ the rate of 18% [9% CGST and 9% SGST]. However in cases where such services are supplied to "the Government, a local authority or Governmental Authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, -

(d)

(e) Canal, dam or other irrigation works;

(f) Pipeline conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal." the GST would be levied @ 12% as amended vide Notification 20/2017-Central Tax (rate) dated 24.08.2017.

11.2 We find that Notification No. 15/2021- Central Tax (Rate) dated 18.11.2021 read with Notification 22/2021-Central Tax (Rate) dated 31.12.2021 seeks to amend Sl.No. 3(iii) as – " union territory or a local authority" thereby deleting the words 'a Government Authority or a Government Entity' implying thereby that aforementioned services by way of works contract if provided to an union territory or a local authority shall still continue to be taxed at 12% GST (6% CGST + 6% SGST).

11.3 In the aforesaid back drop the Appellant sought for advance ruling before the Authority for Advance Ruling. In Appellant opinion services supplied by them to M/s Uttar Pradesh Jal Nigam, are liable to be taxed under concessional rate of duty i.e. GST @ 12% even after 01.01.2022 , as M/s Uttar Pradesh Jal Nigam is a local authority. Contrary to Appellant's opinion the Authority for Advance Ruling ruled that M/s Uttar Pradesh Jal Nigam is not covered under 'Local Authority' however, it may be covered under 'Governmental

Authority'. Authority further ruled that by way of Notification 22/2021-Central Tax (Rate) dated 31.12.2021 the benefit of concessional tax rate of 12% as provided under Entry No. 3(iii) of Notification 11/2017-Central Tax (Rate) dated 28.06.2017 was restricted works contract services supplied to Central Government, State Government, Union Territory and a local authority only, with effect from 01.01.2022. Further, Entry No. 3(iii) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 was omitted vide Notification No. 03/2022-Central Tax (Rate) dated 31.07.2022, accordingly, the Authority for Advance Ruling Ruled that question raised by the Appellant has no significance in view of omission of entry no. 3(iii) with effect from 18.07.2022. However, this entry existed prior to 18.07.2022, therefore, the Authority ruled that supply of services by the Appellant provided to M/s Uttar Pradesh Jal Nigam is not covered by Notification No. 15/2021-Central Tax (Rate) dated 18.11.2021 read with Notification No. 22/2021-Central Tax (Rate) dated 31.12.2021. As the services provided by the Appellant not covered under aforementioned Notification the applicable Tax Rate on such supplies shall be 18% with effect from 01.01.2022.

12.0 We have gone through the submission made by the Appellant and arguments made by them in support of their claim. We also find that question raised by the Appellant before the Authority for advance ruling has been made in the light of amendment made in the Notification 11/2017-Central Tax (Rate) dated 28.06.2017 vide Notification No. 22/2021-Central Tax (Rate) dated 31.12.2021 when benefit of lower tax rate of 12% by way of supply of composite supply of works contract, was restricted to ' an Union Territory or Local Authority' only. We also find that the main contention of the Appellant is that their client i.e. M/s Uttar Pradesh Jal Nigam are

covered under 'Local Authority' and therefore, services provided by them to M/s Uttar Pradesh Jal Nigam are covered by Notification No. 22/2021-Central Tax (Rate) dated 31.12.2021 and benefit of lower tax rate of 12% is available to them even after 01.01.2022.

12.1 In the present case the question put forth before us for decision is whether M/s Uttar Pradesh Jal Nigam are covered under Local Authority as defined under Section 2(69) of Goods and Services Tax Act, 2017. We find that Section 2(69) of Goods and Service Tax Act, defines 'Local Authority' as under-

- (a) a "Panchayat" as defined in clause (d) of article 243 of the constitution;
- (b) a "municipality" as defined in clause (e) of article 243P of the Constitution;
- (c) a Municipal Committee, a Zila Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- (f) a Development Board constituted under article 371 and article 371J of the Constitution; or
- (g) a Regional Council constituted under article 371A of the Constitution.

13. We have gone through the constitution of Uttar Pradesh Jal Nigam (hereinafter referred to as the UPJN). We find that it was

created by Government of Uttar Pradesh by enacting the U.P. Water Supply and Sewerage Act, 1975 (hereinafter referred to as the UPWSS Act). It is a body corporate having perpetual succession and a common seal and capable of suing and being sued in its name. It has power to acquire, hold and dispose of the property. The relevant provisions of UPWSS Act are as under-

- (i) The preamble of the UPWSS Act indicates that U.P. Jal Nigam was brought into existence to provide for establishment of a corporation, authorities and organization for the development and regulation of water supply and sewerage services and for matters connected therewith.
- (ii) The Section 3(3) of the UPWSS Act provides that the assessee corporation shall for all purposes be deemed to be a local authority and Section 4 of the UPWSS Act relates to its constitution, according to which it shall consist of a Chairman, to be appointed by the State Government. It also provides that the Members other than the Chairman shall be a Managing Director, a Finance Director, both to be appointed by the Government and secretary to the State Government in the Finance Department (Ex-officio), Secretary to the State Government in the Local Self Government Department (Ex-officio), the Director of Local Bodies, Uttar Pradesh (Ex-officio), the Director of Medical and Health Services U.P. (Ex-officio) and three elected Heads of Local Bodies in the state to be nominated by the State Government.
- (iii) Section 40(1) of the UPWSS Act provides that the corporation shall have its own fund to be called the Nigam Fund which shall be deemed to be a local fund and to which shall be credited all moneys received otherwise than by way of loans by or on behalf of the corporation.

13.1 Now to examine whether M/s Uttar Pradesh Jal Nigam is a 'Local Authority' we find that the term local authority is defined in S. 2(69) of CGST Act. 2017. The definition of "local authority" in the CGST" Act includes within its ambit "any other authority" legally entitled to or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund". Thus, for the purpose of the GST Laws, any authority legally entitled to or entrusted by the Government with the control or management of a municipal or local fund qualifies as a 'Local Authority'. The definition of the 'local authority' is contained in Section 3(31) of the General Clauses Act, 1897 also which is as under-

" local authority" shall mean a municipal committee, district board, body of port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.

13.2 Thus, it is seen that the term 'local authority' has been similarly worded in CGST Act, 2017 as well as General Clauses Act, 1897. The Apex Court in the landmark decision of Union of India Vs. R.C. Jain (1981)2SCC308 while deciding whether the Delhi Development Authority is a 'local authority' or not, explained the scope of the term local authority under the General Clauses Act as follows- Let us, therefore, concentrate and confine our attention and enquiry to the definition of 'Local Authority' in Sec.3(31) of the General Clauses Act. A proper and careful scrutiny of the language of Sec.3(31) suggests that an authority in order to be a local Authority, must be of like nature and character as a Municipal Committee, District Board or Body of Port

Commissioners, possessing, therefore, many, if not all, of the distinctive attributes and characteristics of a Municipal Committee, District Board, or Body of Port Commissioners, but, possessing one essential feature, namely, that it is legally entitled to or entrusted by the Government with, the control and management of a municipal or local fund. What then are the distinctive attributes and characteristics, all or many of which a Municipal Committee, District Board or Body of Port Commissioners shares with any other local authority? First, the authorities must have separate legal existence as Corporate bodies. They must not be mere Governmental agencies but must be legally independent entities. Next, they must function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the area. Next, they must enjoy a certain degree of autonomy, with freedom to decide for themselves questions of policy affecting the area administered by them. The autonomy may not be complete and the degree of the dependence may vary considerably but, an appreciable measure of autonomy there must be. Next they must be entrusted with such Governmental functions and duties as are usually entrusted to municipal bodies, such as those connected with providing amenities to the inhabitants of the locality, like health and education services, water and sewerage, town planning and development, roads, markets, transportation, social welfare services etc. etc. Broadly we may say that they may be entrusted with the performance of civic duties and functions which would otherwise be Governmental duties and functions. Finally, they must have the power to raise funds for the furtherance of their activities and the fulfillment of their

projects by levying taxes, rates, charges, or fees. This may be in addition to moneys provided by Government or obtained by borrowing or otherwise. What is essential is that control or management of the fund must vest in the authority.

13.3 The Apex Court in the case of Union of India and others v. R.C. Jain and others (supra) has laid down the following ingredients, which are required to be fulfilled cumulatively before an authority can be said to be a 'local authority', in the light of the definition of 'local authority' as given under Section 3(31) of the General Clauses Act.

- (1) The authorities must have separate legal existence as corporate bodies. It must be legally independent entities.
- (2) The authority must function in a defined area and ordinarily, wholly or partly, directly or indirectly be elected by the inhabitants of the area.
- (3) The authority must enjoy a certain degree of autonomy, with freedom to decide for themselves questions of policy affecting the area administered by them.
- (4) The authority must be entrusted by Statute with such Governmental functions and duties as are usually entrusted to municipal bodies.
- (5) The authority must have the power to raise funds for the furtherance of their activities and the fulfillment of their projects by levying taxes, rates, charges, or fees.
- (6) Essentially, control or management of the funds must vest in such authority.

13.4 We find that M/s UPJN is not satisfying some of the above conditions for qualifying as local authority as discussed below-

13.5 The Apex court in the RC Jain case (supra) has held that the authority should be elected by the inhabitants of the area.

As per Section 4 of the UPWSS Act, the UPJN shall consist of Chairman and members appointed by the State Government. As such, the UPJN is not elected by the inhabitants of the area but the same is established by the state.

13.6 The Apex court in the RC Jain case (supra) has held that the authority must enjoy a certain degree of autonomy, with freedom to decide for themselves questions of policy affecting the area administered by them. The autonomy may not be complete and the degree of the dependence may vary considerably and an appreciable measure of autonomy there must be. Perusal of the UPWSS Act reveals that the UPJN is not enjoying appreciable nature of autonomy as discussed below.

(1) As per Section 4(1) of the UPWSS Act, the Chairman shall be appointed by the State Government.

(2) As per Section 6(3) of the UPWSS Act, the Managing Director and finance director shall hold office on such terms and conditions as the State Government may by order specify.

(3) As per Section 14 of the UPWSS Act, the UPJN is entrusted-

(i) to prepare State plans for water supply, sewerage and drainage on the directions of the State Government

(ii) to operate, run and maintain any waterworks and sewerage system, if and when directed by the State Government on such terms and conditions and for such periods as may be specified by the State Government.

(iii) such other functions as may be entrusted to the Nigam by the State Government by Notification in the Gazette.

(4) As per section 46(2) of the UPWSS Act, the UPJN may, from time to time, with the previous sanction of the State Government and subject to the provisions of this Act and to such conditions as the State Government may by general or special order determine, borrow any sum required for the purposes of this Act, whether by the issue of bond or stock or otherwise or making arrangements with bankers or other bodies or institutions approved by the State Government for this purpose.

(5) As per section 46(3) of the UPWSS Act, stock issued by the Nigam under the section shall be issued, transferred, dealt with and redeemed in such manner as the State Government may, general or special order direct.

(6) As per Section 50 of the UPWSS Act, the UPJN is obliged to submit a statement of programme of its activities to the State Government before the commencement of financial year and may at any time during financial year. Further, the accounts of UPJN shall be audited by such auditor as the State Government, may direct. Moreover, the accounts of the Nigam and Jal Sansthan, as certified by the Auditor together with the audit report thereon shall be forwarded annually to the State Government and the Nigam respectively, who may issue such directions the Nigam or the 'Jal Sansthan' as the case may be, as it may deem fit, and the Nigam or the Jal Sansthan shall comply with such directions. The State Government

shall-

(a) cause the accounts of the Nigam together with the audit report thereon, received by it under section 50(4) to be laid annually before each House of the State Legislature, and

(b) cause the accounts of the Nigam to be published in such manner as it thinks fit.

(7) As per Section 89 of the UPWSS Act, the UPJN shall be guided by such directions on questions of policy as may be given to it by the State Government.

(8) As per Section 90 of the UPWSS Act, the UPJN shall submit to the State Government an annual report giving an account of its activities during the previous financial year and the State Government shall cause every such report to be laid before the State Legislature.

Above provisions clearly indicate to the fact that UPJN does not enjoy autonomy of work and has little freedom to decide for themselves questions of policy affecting the area administered by them.

13.7 The Apex court in the RC Jain case (*supra*) has held that the main requirement to qualify as a 'local authority' is that the authority must be legally entitled to or entrusted by the Government with, the control and management of a Municipal or local fund. In case of UPJN, there is no local fund entrusted by the Government With UPJN.

14. A perusal of the UPWSS Act, would reveal that no municipal or local fund has been entrusted by the Government. The fund of UPJN is its own fund and cannot be equated with a fund entrusted by the Government. Thus, the important requirement in order to qualify as a local authority viz. control and management of a municipal/local fund is absent in the present case

14.1 Further, the Hon'ble High Court, Allahabad (Lucknow Bench) in the Income Tax Appeal No. 128/2008 has held that UP Jal Nigam is not a 'local authority. While passing the order, the Hon'ble High

Court has discussed various case laws including RC Jain case (*supra*).

The relevant portion of the order is reproduced below-

Order dated 22.09.2011 delivered by Hon'ble Justice Devi Prasad

Singh-

"43. Thus, to hold statutory body as an "authority", it shall be necessary that the authority must have 'local fund' which shall be spent for providing civic amenities and also shall have right to generate fund by imposing taxes within the statutory jurisdiction, managed by elected body. Merely because a corporation has local fund, does not mean that it shall be the "local authority" as contemplated under Section 3 (31) of General Clause Act.

*The UPWSS Act, 1975 does empower the State Government or the Jal Nigam to claim exemption from taxes only because the word, 'local authority' has been used in subsection (3) of Section 3 of the 1975 Act. Virtually this broader principle has been upheld by the Hon'ble Supreme Court in the case of CIT Vs. U.P. Forest corporation, 230 ITR 945 (*supra*) while declining to treat it 'local authority' under the Act. The provisions contained in the Section 10 (20) of the Income Tax Act, shall prevail over and above the U.P. Water Supply and Sewerage Act, 1975. After a close scrutiny of 1975 Act, the law settled by Hon'ble Supreme Court in the cases of Valjibhai Muljibhai Soneji (*Supra*), R.C. Jain (*Supra*), Commissioner of Income Tax. Vs. U.P. Forest Corporation (*supra*), Agricultural Produce Market Committee, Narela, Delhi (*supra*), read with Part IX and IXA of the Constitution and Section 3 (31) of General Clauses Act the U.P. Jal Nigam does not seem to be the 'local authority' under Section 10 (20) of the Income Tax Act, 1961 even prior to Finance Act, 2002. The word, "local authority" has been defined in the Section 3 (31) of the General Clause Act 1897. The Central Act, which has*

been interpreted by the Hon'ble Supreme court by catena of judgments (Supra)"

Order dated 22.09.2011 delivered by Hon'ble Justice Satish Chandra.

"Further, Hon'ble Apex Court held that the U.P. Forest Corporation is not an authority, though, under section 3(3) the U.P. Forest Corporation Act, 1974 it is provided that for all purposes, it shall be the 'Local Authority'. Hence on the similar analogy, provisions of Section 3 (3) of U.P. Act no. 1975 are of no use to the assessee. Thus, to hold statutory body as an "authority", it shall be necessary that the authority must have 'local fund' which shall be spent for providing civic amenities and also shall have right to generate fund by imposing taxes within the statutory jurisdiction, managed by elected body. Merely because a corporation has local fund, does not mean that it shall be the 'local authority' as contemplated under Section 3(31) of the General Clauses Act.

At the cost of repetition, it may be mentioned that in the instant case, the assessee has three wings namely; (i) Jal Nigam Wing; (ii) Nalkoop Wing; and (iii) Construction & Design Wing. In the case of R. C.Jain; AIR 1981 (SC) 951, it was observed that the "local authority" must be entrusted by statute with such governmental duties and functions as are usually entrusted to municipal bodies, such as those connected with providing amenities to the inhabitants of the locality, like health and education services, water and sewerage, town planning and development, roads, markets, transportation, social welfare services etc. Broadly, it may say that they may be entrusted with the performance of civic duties and functions which would otherwise be governmental duties and function. Finally, they must have the power to raise funds for the furtherance of their activities and the fulfillment of their projects by levying taxes, rates, charges,

or fees. This may be in addition to money provided by Government or obtained by borrowing or otherwise. What is essential is that control or management of the fund must vest in the authority".

14.2 Although, the aforesaid order in Income Tax Appeal No. 128/2008 denying UP Jal Nigam the status of local authority is in respect of dispute of Income Tax, the same is applicable to instant case as the order of the Hon'ble High Court has been passed after analyzing the definition of 'local authority' contained in General Clauses Act. As it has already been discussed that the term ' local authority' has been similarly worded in CGST Act, 2017 as well as General Clause Act, 1975. Further, the relevant clarification contained in Service Tax Educational Guide published in the erstwhile tax regime is reproduced below-

2.4.9 Are all local bodies constituted by a State or Central Law local authorities?

No. The definition of 'local authority' is very specific as explained in point no 2.4.8 and only those bodies which fall within the definition comprise 'local authorities'. It would not include other bodies which are merely described as a local body by virtue of a local law.

Thus, we are of the view that the UPJN is not a 'local authority'.

14.3 Now we proceed to examine as to whether the UPJN is 'Governmental Authority'. It is relevant to note that "Governmental Authority" is not defined in the CGST Act. However, Notification No. 31/2017-Central Tax (Rate) dated 13.10.2017, which amended the Notification No 11/2017 - Central Tax (Rate) dated 28.06.2017 defines 'Governmental Authority' as follows-

"Governmental Authority" means an authority or a board or any other body;

(I) set up by an Act of Parliament or a State Legislature; or
(II) established by any Government, with 90 per cent, or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243 G of the Constitution."

Thus, in order to qualify as a governmental authority, such authority must be set up by an act of Parliament/State Legislature, should have 90% or more stake of government, and should carry out any functions entrusted to a municipality under article 243W of the Constitution of India.

14.4 As already discussed, the UPJN is a body corporate formed by the State legislature under UPWSS Act enacted by the UP State Legislature. As such, the first requirement of a governmental authority stands fulfilled in the present case. Further, as per Section 3 of the UPWSS Act, UPJN is a body corporate established by the Government of U.P., as such, the second requirement of governmental authority has also been fulfilled in the present case. Moreover, the UPJN is constituted for the development and regulation of water supply and sewerage services in the State of U.P. Under Section 14 of UPWSS Act, UPJN is inter alia entrusted with the function to operate, run, and maintain any water works and sewerage system. As per Article 243W read with Twelfth Schedule of the Constitution of India, water supply for domestic, industrial and commercial purposes and public health, sanitation conservancy and solid waste management is a function of municipality. In view of the above, the requirement that the authority must be established to carry out any function entrusted to a Municipality under article 243 W of the constitution has been

fulfilled in the present case. Thus M/s UPJN is a 'Governmental Authority' in our view.

15.0 Now coming to legal provisions under Goods and Service Tax Act, 2017 as amended from time to time we find that Notification No.11/2017- Central Tax (Rate) dated 28.06.2017 was amended vide Notification No.15/2021-Central Tax (Rate) dated November 18, 2021, wherein, in Entry 3(iii), the words "Union territory, a local authority, a Governmental Authority or a Government Entity" were substituted with "Union territory or a local authority". Thus, as on date, the amended Entry 3(iii) of the Notification No. 11/2017 reads as follows-

Description of Service	Rate (percent)
(iii)Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the Central Government, State Government, Union territory or a local authority, by way of construction, erection, commissioning, installation, Completion, fitting out, repair, maintenance, renovation, or alteration of- (a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24of195) (b) canal, dam or other irrigation works; (c) pipeline, conduit or plant for- (i)water supply (ii)water treatment (iii) sewerage treatment or disposal	6

As such, by way of Notification No. 15/2021-Central Tax (Rate) dated November 18, 2021, the lower rate of tax of 12% provided by Entry 3(iii) of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 was restricted to works contract supplied to Central Government, State Government, Union territory and a local

authority only. As the UPJN does not qualify as a 'local authority' and it qualifies as a governmental authority, tax rate of 18% is applicable on the works contract services provided to UPJN by way of Entry 3(xii) of Notification No.11/2017-Central Tax(Rate) dated 28.06.2017.

The said Entry 3(xii) of the Notification No. 11/2017 reads as follows.

Description of Service	Rate (percent)
(xii) Construction services other than (i), (ia), (ib), (ic), (id), (ie), (if), (iii), (iv), (v), (va), (vi), (vii), (viii), (ix), (x) and (xi) above."	9

Accordingly we rule as under-

Ruling:

We uphold the impugned ruling UP ADRG – 12/2022 dated 23.11.22 passed by the Authority for Advance Ruling against the Appellant.



(Dr. Uma Shanker)
Member, AAAR
Central Tax



(Ministry S)
Member, AAAR
State Tax

To,

M/s Indian Hume Pipes Company Ltd,
Gwalior Road, Karari, Jhansi,
Uttar Pradesh

APPELLATE AUTHORITY FOR ADVANCE RULING
GODS & SERVICE TAX
UTTAR PRADESH

Copy to -

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & C. Ex, CGO, 117/7, Sarvodaya Nagar, Kanpur -208005
4. The Assistant Commissioner, CGST & C. Ex. , Division-Jhansi, 1984/1, Civil Lines, Jhansi-284001
5. Through the Additional Commissioner, Gr-I, Commercial Tax, Jhansi Zone, Jhansi, Uttar Pradesh to jurisdictional tax assessing officers.

