

BEFORE THE AUTHORITY FOR ADVANCE
RULINGS FOR THE STATE OF UTTARAKHAND
(Goods and Services Tax)

समक्ष अग्रिम विनिर्णय प्राधिकारी उत्तराखण्ड (माल और सेवा कर)

Present:

Shri Vipin Chandra (Member)

श्री विपिन चन्द्र (सदस्य)

Shri Amit Gupta (Member)

श्री अमित गुप्ता (सदस्य)

The 11th day of September, 2018

Ruling No: 08/2018-19

अग्रिम विनिर्णय संख्या.

In

Application No: 06/2018-19

आवेदन संख्या. 06/2018-19

1	Applicant आवेदक	M/s. Purewal Stone Crusher, Ramnagar Nainital(Uttarakhand).
2	Jurisdictional Officer अधिकारिता अधिकारी	Deputy Commissioner, Ramnagar, SGST (Uttarakhand).
3	Present for the Applicant आवेदक की ओर से उपस्थित	Shri Ashwarya Sharma (Advocate)
4	Present for the Jurisdictional Officer अधिकारिता अधिकारी की ओर से उपस्थित	None
5	Concerned officer	Ms. Preeti Manral, Deputy Commissioner, SGST-Uttarakhand
6	Date of receipt of application आवेदन प्राप्ति की तिथि	20.06.2018
7	Date of Personal Hearing सुनवाई की तिथि	28.08.2018

Note : Under Section. 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, an appeal against this ruling lies before the appellate authority for advance ruling 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.

नोट : इस अग्रिम विनिर्णय की प्राप्ति के 30 दिन के अन्दर उत्तराखण्ड माल और सेवा कर अधिनियम 2017 की धारा- 99 के अन्तर्गत गठित अग्रिम विनिर्णय अपील प्राधिकारी के समक्ष धारा- 100(1) के अन्तर्गत अपील दायर की जा सकती है।

1. This is an application under Sub-Section (1) of Section 97 of the CGST/SGST Act, 2017 (herein after referred to as Act) and the rules made thereunder filed by M/s. Purewal Stone Crusher, Ramnagar (Nainital) Uttarakhand, primarily engaged in the business of supplying goods namely "Grit and Sand to its customers" after purchasing from the Uttarakhand Forest Development Corporation (UFDC) Mining Division, Ramnagar and seeks an advance ruling on the question, details of which given below as:

- (a). Nature of Road Usage charges and Government Fee paid by the applicant in respect of following services:

Head	Description of activity	Nature	Government Body
Road Usage charges	Abhivahan Sulk	Road Usage charges paid to the Govt.(Services)	Tarai Paschimi, Van Prabhag, Ramnagar(Nainital)
	Road Usage charges		
Government Fee	Fee for Ambient Air Monitoring	Pollution expenses paid to the Govt.(Services)	U.K Environment Protection Control Board, Haldwani
	Khanij Sampada Sulk	Pollution & Mining charges paid to the Govt.	Dist. Geology & Mining Dept. (U.K)
	Motor Vehicle Tax	Amount paid to State Transport Dept.(Services)	ARTO, Kashipur, State Transport Department

- (b). Road Usage charges and Government Fee paid by the applicant to multiple Government Departments (tabled in sl.no. a above) falls within the category of Exempted Government Services as mentioned under s.no. 4, 5, 6, 9, 23 & 47 of the Exemption Notification and accordingly no GST is required to be paid on such charges under s.no.5 of the RCM notification.
- (c). GST applicability on penalty paid by the applicant on unaccounted stock of River Bed Material (RBM) on the orders of the District Magistrate to the Govt. department under s.no. 5 of Reverse Charge Mechanism (RCM) notification.
- (d). Vehicles (Pokland, JCB, Dumper & Tipper) purchased and used by the applicant in its day to day business activities for movement of goods from one place to another would fall within the definition of Motor Vehicle under the provisions of GST law.
- (e). Availability of GST paid by the applicant at the time of purchase or repairs including spares w.r.t Vehicles (Pokland, JCB,

Dumper & Tipper) used by it for movement of goods in its palace of business as Input Tax Credit.

2. 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.
3. In the present case applicant has sought advance ruling in respect of applicability of notification issued under the provisions of the Act ibid on "Road Usage charges, Government Fee, penalty paid by them" and "input tax credit". Therefore, in terms of said Section 97(2) (b) (d) & (e) of Act, the present application is hereby admitted for the question **(b) (c) & (e)** except **(a) & (d)**, as these two issues, are out of the jurisdiction of Advance Ruling in terms of Section 97(2) of Act. The provisions of said section are reproduced below :

Section 97. (2) The question on which the advance ruling is sought under this Act, shall be 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 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.

4. Accordingly opportunity of personal hearing was granted to the applicant on 28.08.2018. Shri Ashwarya Sharma (Advocate) appeared for personal hearing on 28.08.2018 and submitted documents describing therein

exact nature of work being undertaken. Nobody appeared from the side of Revenue for the hearing.

5. In the present application, applicant has requested for advance ruling on different issues which are mentioned in (b) (c) & (e) of the **Point no.1** above and are now discuss as under:

5.1 Road Usage charges and Government Fee paid by the applicant to multiple Government Departments (tabled below) whether falls within the category of Exempted Government Services as mentioned under s.no's. 4, 5, 6, 9, 23 & 47 of the Exemption Notification:

Head	Description of activity	Nature	Government Body
Road Usage charges	Abhivahan Sulk	Road Usage charges paid to the Govt.(Services)	Tarai Paschimi, Van Prabhag, Ramnagar(Nainital)
	Road Usage charges		
Government Fee	Fee for Ambient Air Monitoring	Pollution expenses paid to the Govt.(Services)	U.K Environment Protection Control Board, Haldwani
	Khanij Sampada Sulk	Pollution & Mining charges paid to the Govt.	Dist. Geology & Mining Dept. (U.K)
	Motor Vehicle Tax	Amount paid to State Transport Dept.(Services)	ARTO, Kashipur, State Transport Department

A. It is pertinent to mention here that the Authority has earlier dealt with the same issue in the case of Forest Department wherein the advance ruling was sought by them on the question whether GST is leviable on the "Marg Sudharan Shulk" and "Abhivahan Shulk". The findings of the Authority in the said case is reproduce as under:

GST on "Marg Sudharan Shulk" : From the documents submitted by the applicant we find that the said "marg sudharan shulk" is charged and collected by applicant from non government, private and commercial vehicles engaged in mining work in lieu of use of forest road. Stated purpose of said "marg sudharan shulk" is for maintenance of forest road. Under GST, "the services by way of access to a road or a bridge on payment of toll charges" are included in the list of exempted services. Further, A **toll** road, also known as a turnpike or tollway, is a public or private road for which a fee (or **toll**) is assessed for passage. It is a form of road pricing typically implemented to help recoup the cost of road construction and maintenance. In the present case we find that the said "marg sudharan shulk" is nothing but toll charges collected by the applicant from the users for using forest road and the said toll charges are being used for the maintenance of forest road. Therefore we conclude

that no GST is leviable as on date on the said "marg sudharan shulk" charged and collected by the applicant.

GST on "Abhivahan Shulk" From the documents submitted by the applicant we find that the said "Abhivahan Shulk" is charged and collected by applicant in respect of forest produce carried out by a person. On going through "The Uttarakhand Transit of Timber and Other Forest Produce Rules 2012", authority observe that a person who desires to obtain forest produce is required to be registered with the forest department after paying applicable fee and the said "Abhivahan Shulk" is charged on the basis of quantum and quality of forest produce and the said forest produce must be accompanied with a transit pass issued by forest authorities in this regard. Authority further observe that charges for carrying forest produce through road or water are different and determined according to quality and quantity. Therefore said "Abhivahan Shulk" cannot be termed as toll tax and rather is a form of consideration received by the applicant in lieu of services provided to the person for carrying forest produce. Under GST regime under Section 2(102) services means anything other than goods..... and all services but for list of exempted services as provided under Chapter 99 of GST Tariff, 2017 are liable for GST. Since the services provided by the applicant do not find mention in the list of exempted services, therefore the applicant is liable to pay GST @ 18% on the said "**Abhivahan Shulk**" under Service Code 9997 and to be treated as "**other services**".

Since the facts of the present case are similar to facts earlier dealt by the authority in the case of Forest Department, therefore, we find no reason to deviate from earlier ruling on the same issue. However on the issue of "**Abhivahan Shulk**", the applicant is liable to discharge GST liability under reverse charge in terms of Serial No. 5 of the Notification no. 13/2017 - Central Tax (Rate) dated 28.06.2017 (as amended) and the extract of said notification is reproduce below:

Notification no. 13/2017 – Central Tax (Rate) dated 28.06.2017

S.No.	Categories of Supply of Services	Supplier of service	Recipient of service
5	<p>Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, -</p> <p>(1) renting of immovable property, and</p> <p>(2) services specified below-</p> <p>(i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority;</p> <p>(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) transport of goods or passengers.</p>	<p>Central Government, State Government, Union territory or local authority</p>	<p>Any business entity located in the taxable territory.</p>

B. From the documents submitted by the applicant we find that the **‘Fee for Ambient Air Monitoring’** has to be paid to the Uttarakhand Environment Protection Control Board, Haldwani as a pollution expenses. We also find that the function of the Uttarakhand Environment Protection Control Board, Haldwani is to safeguard the environment as well as general public from the negative impact of working of stone crushers and other pollution generating plants, for which a prescribed amount of fee is levied by the State Board. We also find from the official website of Uttarakhand Environment Protection and Pollution Control Board (herein after referred to as UEPPCB) that it is a statutory Organization constituted under the section 4 of Water (Prevention and Control of Pollution) Act, 1974 to implement Environmental laws and rules within the jurisdiction of Uttarakhand. The said Board has been entrusted with the powers and functions under the Water (Prevention and Control of Pollution) Act 1974. Subsequently the implementation of Water (Prevention and Control of Pollution) Cess Act, 1977; Air (Prevention and Control Of Pollution) Act, 1981; Environment Protection Act (1986) and the Public Liability Insurance Act, 1991 was also entrusted to the State Board.

Now the first question arises whether the said board is a state government or local authority. In this context we have to first appreciate

the legal position in this matter and the relevant portions of the Act are reproduced below:

Section 2(53) of the Act: "Government" means the Central Government/ State Government

Section 2(69) of the Act: "Local Authority" means-

(a)-----

(b)-----

(c) a Municipal Committee, a Zilla 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) to (g)-----

On going through the legal position (supra) we find that UEPPCB is not State Government however covered under the definition of local authority in terms of Section 2(69)(c) of the Act.

It is established that UEPPCB is a local authority, now second question arises whether the services rendered by them are liable to GST or not. In this context we find that the services rendered by UEPPCB is covered under Article 243 W of the Constitution and the same is extracted below:

(a) Urban planning including town planning.

(b) Regulation of land-use and construction of buildings.

(c) Planning for economic and social development.

(d) Roads and bridges.

(e) Water supply for domestic, industrial and commercial purposes.

(f) Public health, sanitation conservancy and solid waste management.

(g) Fire services.

(h) Urban forestry, **protection of the environment and promotion of ecological aspects.**

(i) Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.

(j) Slum improvement and upgradation.

- (k) Urban poverty alleviation.
- (l) Provision of urban amenities and facilities such as parks, gardens, playgrounds.
- (m) Promotion of cultural, educational and aesthetic aspects.
- (n) Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
- (o) Cattle pounds; prevention of cruelty to animals.
- (p) Vital statistics including registration of births and deaths.
- (q) Public amenities including street lighting, parking lots, bus stops and public conveniences.
- (r) Regulation of slaughter houses and tanneries.

Further the services rendered by local authority by way of any activity in relation to any function entrusted to a municipality under Article 243 W of the Constitution is also covered under Notification No.12/2017-Central Tax(Rate) dated 28th June' 2017 and the relevant portion of the same is reproduced as under:

Notification No.12/2017-Central Tax(Rate) dated 28th June' 2017

Sl.no	Chapter heading (Tariff)	Description of Services	Rate (per cent)	Condition
4	Chapter 99	Services by Central Government, State Government Union territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243 W of the Constitution	Nil	Nil

In view of the above we find that functions, under article 243W of the Constitution, entrusted to municipality specifically mention "**protection of the environment and promotion of ecological aspects**". Thus we observe that providing protection to the environment and promotion of ecological aspects is one of the functions entrusted to the municipality under the said article. It is evident that primary function of UEPPCB is also to safeguard the environment as well as general public from the negative impact of polluting generating plants. Thus both the conditions namely service has to be provided by local authority and activity should

falls under Article 243 of the Constitution, has been fulfilled, hence the said activity of UEPPCB is exempted in terms of serial no. 4 of the Notification No.12/2017-Central Tax(Rate) dated 28th June' 2017. Therefore there is no liability of GST arises on the fee collected by UEPPCB in respect of said activity as the same is exempted service.

C. Khanij sampada sulk as per document submitted by the applicant is related to " environmental and mining property fee" which is charged on transportation/release of Natural Sand & Grit and other similar River Bed Material (RBM) from the applicant and credited to the State Government Exchequer on monthly basis. Therefore we observe that the said "Khanij sampada sulk" is a form of consideration received by the State Department in lieu of services provided to the applicant for carrying river produce. As per Section 2(102) of the Act 'service' is defined as under:

(102) "**services**" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;"

We further find that services which are exempted from GST are notified vide Notification No.12/2017-Central Tax(Rate) dated 28th June' 2017. On going through the said notification we find that in totality 81 services are exempted services which includes 12 services provided by government or local authority and we observe that service in question provided by the State Government does not find place in said 12 services. Thus the service in question rendered by State Government is liable for GST @ 18% under Service Code 9997 and to be treated as "**other services**". However the applicant is required to discharge GST liability under reverse charge in terms of serial No. 5 of the Notification no. 13/2017 - Central Tax (Rate) dated 28.06.2017 as discussed in point A above.

D. For functioning of any motor -vehicle or any kind of earth moving machinery on road, there is a mandatory registration fee required to be paid as per Regional Transport Office of the State.

In this context we find that the Regional Transport Office is a State Government Department and covered under definition of section 2(53) of the Act as discussed above. We further find that services rendered by State Transport Office is covered under Notification No.12/2017-Central Tax(Rate) dated 28th June 2017 and the relevant portion of the same is extracted below:

Sl.no	Chapter heading (Tariff)	Description of Services	Rate (per cent)	Condition
47	Heading 9983 or Heading 9991	Services provided by the Central Government, State Government, Union territory or local authority by way of - (a) registration required under any law for the time being in force; (b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force.	Nil	Nil

Thus we observe that the said registration fee is covered under exempted service (supra) under "Services provided by the Central Government, **State Government**, Union Territory or local authority by way of- (a) *registration required under any law for the time being in force*. Accordingly the services of registration rendered by State Transport Office is a exempted service and no GST is payable on the same.

5.2 GST applicability on penalty paid by the applicant on unaccounted stock of River Bed Material (RBM) on the orders of the District Magistrate to the Govt. account under s.no. 5 of Reverse Charge Mechanism (RCM) notification.

We observe that GST is applicable on 'supply' of goods or services or both and is charged on the 'value of supply'. Section 15(1) of the Act defines 'value of taxable supply' as 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 supply are unrelated and the price is the sole consideration for the supply. We further find that Schedule II of the Act provides activities to be treated as supply of goods

or supply of services. The relevant portion of the same is extracted and read as under:

"5(c) *agreeing to the obligation to refrain from an act, or to tolerate an act or situation, or to do an act*"

Before coming to any conclusion on this issue we first analyze the provisions (supra) as under:

(i) Obligation to refrain from an act:-It means any act, which binds a person, for not doing a particular act in the given circumstance.

(ii) Obligation to tolerate an act or a situation: It means to accept the occurrences or existence of an act or a particular thing, which is imposed by a condition or circumstances, in a contract, agreement or any other document which is legally enforceable by law

(iii) Obligation to do an act: It means to perform or to do something, necessarily, prescribed in an agreement, contract, or any other document which is required under any law for the time being in force.

Further, to satisfy the definition of service (defined in section 2(102) of Act *ibid*), the activity should be carried out by a person for another for consideration. Here it must be emphasized that the service is 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act', not 'to refrain from an act, or to tolerate an act or a situation, or to do an act'.

We find that a service has been stated to mean the 'tolerating' of any act among other things. Since a service is any activity for a consideration, such tolerating can be a service if it is in exchange of some consideration. According to the definition given by the Act, 'tolerating' an act signifies the foregoing of a benefit by the receiver in exchange for a consideration that compensates the act that is being tolerated. For example, when delivery date has been set and the person making the delivery delays it, but the receiver allows such a delay for a certain amount as delivery charges, it is tolerating an act for a certain consideration i.e. the delay charges. Thus, it is the service of tolerating for which the receiver is extracting a certain amount from the other party. Similarly Airlines, Railways and Roadways Services- all deduct cancellation charges from the passengers. These charges are for tolerating the act of not taking the reserved transport by the passenger. Therefore, these charges are liable to GST under this supply of service as the provision of cancellation charges is already informed to the customer and, therefore, it is an agreement to the obligation to tolerate an act or

situation. Further penal provisions for non-performance of service or for deficiency in service also imply consideration in lieu of tolerating an act or situation.

In view of the above we observe that the penalty is to be treated as supply of service in terms of Schedule II of the Act and is liable for GST @ 18% under Service Code 9997 and to be treated as "**other services**". However the applicant is required to discharge GST liability under reverse charge in terms of serial No. 5 of the Notification no. 13/2017 - Central Tax (Rate) dated 28.06.2017 as discussed in point A above.

5.3 Availability of GST paid by the applicant at the time of purchase or repairs including spares w.r.t Vehicles (Pokland, JCB, Dumper & Tipper) used by it for movement of goods in its palace of business as Input Tax Credit.

We find that the Section 17(5) of the Act restrict availment of ITC in respect of GST paid on inputs, capital goods and services. The relevant portion of the same is reproduce as under:

- (a) *motor vehicles and other conveyances except when they are used-*
 - (i) *for making the following taxable supplies, namely;*
 - (A) *further supply of such vehicles or conveyances; or*
 - (B) *transportation of passengers; or*
 - (C) *imparting training on driving, flying navigating such vehicles or conveyances;*
 - (ii) *for transportation of goods;*

We also find that in terms of the provisions of Section 2(76) of the Act the expression "motor vehicle" shall have the same meaning as assigned to it in Clause (28) of Section 2 of the Motor Vehicle Act, 1988 and the same read as under:

Section 2(28) in The Motor Vehicles Act, 1988: "*motor vehicle*" or "*vehicle*" means *any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an*

external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding 4[twenty-five cubic centimetres]; 1[twenty-five cubic centimetres];"

In view of the above we observe that as per Section 17(5) (a) of the Act, Input Tax Credit shall not be available on "motor vehicle", unless it is used for specified purposes, viz transport, training etc, listed therein. One very important thing in the said section is the definition of the term "Motor Vehicle" under GST. It generally take it to mean that all types of vehicles, as nowadays everything is run by motor. But as per Section 2(76) of the Act the expression 'motor vehicle' shall have the same meaning as assigned to it in clause (28) of Section 2 of the Motor Vehicle Act, 1988.

We observe that definition in clause (28) of Section 2 of the Motor Vehicle Act, 1988 is an extensive definition which includes all kinds of mechanically propelled vehicles including a trailer. The scope of the Motor Vehicles Act is to bring into its fold all kinds of moving objects plying on the roads under its ambit so as to provide safety measures and regulate traffic. Therefore, any objects which moves on the road by itself requires registration under the Motor Vehicles Act. Now, when we look at that definition, it does not include the vehicles used as mining equipment, like, tippers, dumpers etc. Therefore, under the provisions of GST law, the GST paid on purchase of "Pokland, JCB, Dumper & Tipper" used for transportation of goods will be allowed as ITC. Our view get support from answer to question 21 of FAQ published in GST Sectoral Series- Mining and the same is extracted as under:

Question 21: Will GST charged on purchase of all earth moving machinery including JCB, tippers, dumpers by a mining company be allowed as input credit?

Answer: The provision of Sec. 17(5) (a) of the CGST Act, 2017 restricts credit on motor vehicle for specified purposes listed therein. Further, in terms of the provision of Section 2(76) of the CGST Act, 2017 the expression 'motor vehicle' shall have the same meaning as assigned to it in Clause (28) of Section 2 of the Motor Vehicle Act, 1988, which does not include the mining equipment, viz., tippers, dumpers. Thus, as per present provisions, the GST charged on purchase of earth moving machinery

including tippers, dumpers used for transportation of goods by a mining company will be allowed as input credit.

6. In view of the above, we order as under:

ORDER

- (i) "Abhivahan Shulk" is different from toll tax and is covered under Service Code 9997 and to be treated as "other services" and is liable for GST. The applicant is liable to pay GST @ 18% as on date on the same under reverse charge in terms of Serial No. 5 of the Notification no. 13/2017 - Central Tax (Rate) dated 28.06.2017 (as amended);
- (ii) The fee collected by UEPPCB is exempted in terms of serial no. 4 of the Notification No.12/2017-Central Tax(Rate) dated 28th June' 2017. Therefore there is no GST on the same;
- (iii) Khanij sampada sulk is a supply of service. The applicant is liable to pay GST @ 18% as on date on the same under reverse charge in terms of Serial No. 5 of the Notification no. 13/2017 - Central Tax (Rate) dated 28.06.2017 (as amended);
- (iv) The services of registration rendered by State Transport Office is a exempted service and no GST is payable on the same;
- (v) The penalty imposed by the authority is liable for GST @ 18% as on date under reverse charge in terms of Serial No. 5 of the Notification no. 13/2017 - Central Tax (Rate) dated 28.06.2017 (as amended);
- (vi) Input Tax Credit will be admissible on GST paid on purchase of "Pokland, JCB, Dumper & Tipper".


VIPIN CHANDRA (MEMBER)


AMIT GUPTA (MEMBER)

AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX, UTTRAKHAND

F.no.: 06/ 2018-19/ Advance Ruling/DW 4546 Dated: 11/09/18

Copy to :

1. The Chief Commissioner, CGST, Meerut Zone, Meerut.
2. The Commissioner, CGST, Commissionerate Dehradun.
3. The Commissioner, SGST, Commissionerate Uttarakhand.
4. Assistant Commissioner, CGST, Division Kashipur.
5. Deputy Commissioner, SGST, Ramnagar.

6. Guard File.