

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

**Present:**

**Shri Vipin Chandra (Member)**

**Shri Amit Gupta (Member)**

In

Application No: 01/2020-21

**Advance Ruling 07/2020-21, Dated 18th September, 2020**

1	Applicant	M/s. Om Prakash Sharma, 890- Sarva Priya Vihar Colony, Opp- Dadu Bagh, Haridwar. Uttarakhand
2	Jurisdictional Officer	-----
3	Present for the Applicant	Mr. Gaurav Babbar, Advocate
4	Concerned Officer	None
5	Present for the Jurisdictional Officer	Ms. Preeti Manral, DC (SGST)
6	Date of receipt of application	11.06.2020
7	Date of Personal Hearing	07.08.2020

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.

**AUTHORITY FOR ADVANCE RULING  
GOODS & SERVICE TAX UTTRAKHAND  
RULING**

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. Om Prakash Sharma, 890-Sarva Priya Vihar Colony. Haridwar, Uttarakhand (here in after referred to as the applicant\*) is registered with the GSTN having Registration No. 05AWTPS6940G1ZY and seeking advance ruling on the following questions:-

a. Whether the composite supply of construction service to the Forest Department is a exempted service under Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 or any other exemption notification;

b. If above composite supply of construction service is not included in any exemption notification, then what will be the rate of GST on such supply of service;

c. Whether the Forest Department is correct in not giving GST to the applicant on the composite supply as the said department classified the same as exempted service.

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. As per the said subsection (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

Since applicant has sought advance ruling on applicability of notification & determination of tax liability, therefore, in terms of said Section 97(2) (b) & (e) of the Act, the two questions of the application filed by the applicant was admitted. Accordingly hearing was fixed on 07.08.2020 which was attended by the Shri Gaurav Babbar, Advocate on behalf of the applicant and reiterated the submissions given with the application. During the course of hearing Ms. Preeti Manral (DC), concerned officer of SGST-Uttarakhand was also present and stated that composite supply is taxable and pure services supply should be decided as per law.

5. On perusal of application, we find that the applicant is providing composite supply (works contract) like construction of Machan, laying of foundation, construction of pillars etc as well as supply of labour service of clearing paths & areas in forest, loading & unloading of plants etc directly to the Forest Department.

6. 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. In this context, the relevant legal provisions are reproduced as under:

**A. Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017**

G.S.R....(E).- In exercise of the powers conferred by sub-section (1) of section 9, subsection (1) of section 11, sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby notifies that the central tax, on the intra-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table:-

<b>Sl No.</b>	<b>Chapter, Section or Heading</b>	<b>Description of Service</b>	<b>Rate (per cent.)</b>	<b>Condition</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
3	Heading 9954 (Construction services)	(i) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	9	
		(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	9	

	<p>"(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 Government, a local authority or a Governmental authority by way Of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-</p> <p>(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 (24 of 1958);</p> <p>(b) canal, dam or other irrigation works;</p> <p>(c) pipeline, conduit or plant for</p> <p>(i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.</p>	6	
	<p>(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,</p> <p>(a) a road, bridge, tunnel, or terminal for road</p>	6	

		<p>transportation for use by general public;</p> <p>(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;</p> <p>(c) a civil structure or an other original works pertaining to the "InSitu rehabilitation of existing slum dwellers using land as a resource through private participation" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers;</p> <p>(d) a civil structure or any other original works pertaining to the "Beneficiary led individual house construction / enhancement" under the Housing for All (Urban) Mission/pradhan Mantri Awas Yojana;</p> <p>(e) a pollution control or effluent treatment plant, except located as a part of a factory; or</p> <p>(f) a structure meant for funeral, burial or cremation of deceased.</p>		
		<p>(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation</p>	6	

		<p>of original works pertaining to,-</p> <p>(a) railways, excluding monorail and metro;</p> <p>(b) a single residential unit otherwise than as a part of a residential complex;</p> <p>(c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;</p> <p>(d) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under-</p> <p>(1) the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;</p> <p>(2) any housing scheme of a State Government;</p> <p>(e) post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes; or</p> <p>(f) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food</p>		
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		stuff excluding alcoholic beverages		
		<p>"(vi) Services provided to the Central Government, State Government, Union Territory, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-</p> <p>(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;</p> <p>(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment; or</p> <p>(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.</p>	6	
		<p>(vii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75per cent. of the value of the works contract) provided to the Central Government, State Government, Union territory, local authority, a</p>	2.5	<p>Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central</p>

		Governmental Authority or a Government Entity.		Government, State Government, Union territory or local authority, as the case may be
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**B. The said Notification was further amended vide Notification No. 01/2018-Central Tax (Rate) dated 25.01.2018 and the same is reproduced as under:**

<b>Sl No.</b>	<b>Chapter, Section or Heading</b>	<b>Description of Service</b>	<b>Rate (per cent.)</b>	<b>Condition</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
3	Heading 9954 (Construction services)	"(ix) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.	6	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be
		(x) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (vii)	2.5	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local



		above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.		authority, as the case may be.
		(xi) Services by plumbing, person supplying electronic for registration section 22 of the of housekeeping, such as etc, where the such service through operator is not liable under subsection (1) of Central Goods and Services Tax Act, 2017.	2.5	Provided that credit of input tax charged on goods and services has not been taken
		(xii) Construction services other than (i), (ii), (iii), (iv), (v), (vi), (vii), (viii),(ix), (x) and (xi) above.	9	

**C. Section 2(119) of the Act:** "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;

**D. Section 2(30) of the Act** "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration.- Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.

**E. Section 2(90) of the Act** "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

**F. Section 8 of the Act ibid:** The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:-

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

**G. SCHEDULE II appended to the Act:** Activities to be treated as supply of goods or supply of services

**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 2; and

(b) -----

7. On perusal of aforesaid legal provisions, we find that a works contract is essentially a contract of service which may also involve supply of goods in the execution of the contract. It is basically a composite supply of both services and goods, with the service element being dominant in the contract between parties. On perusal of documents submitted by the applicant we find that the contract has been awarded by the Forest Department to the applicant for construction as well as for repair & maintenance of immovable property wherein transfer of property in goods is involved in the execution of such contracts. Thus the said contracts are duly covered under the definition of "work contract" service and thus it is a composite service. We further find that as per Para 6 (a) of Schedule II to the CGST Act, 2017, works contracts as defined in section 2(119) of the Act shall be treated as a composite supply of services. Thus, there is a clear demarcation of a works contract as a composite supply of service under the Act.

8. As regards to the taxability of said service provided to Government department, we find that there is no exemption available to the said service provided by the applicant to the Forest Department. However the said service is a taxable event in terms of entry no. 3(vi) (a) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (as amended from time to time) in as much as the services provided by the applicant to the Forest Department is not for commerce, industry or any other business or profession and attract GST 12% [ 6% CGST + 6% SGST].

9. As regards to the question whether the Forest Department is correct in not giving GST to the applicant on the composite supply as the said department classified the same as exempted service, the authority cannot pass the ruling on the same in as much as the said question do not qualify for ruling in terms of section 97(2) of the Act.

10. In view of the above, we pass the following order:

**ORDER**

i. The service in question provided by the applicant to the Forest Department, Uttarakhand is not a exempted service, however the same is a taxable event in terms of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (as amended from time to time).

ii. The said service attract GST @ 12% [6% CGST + 6% SGST].

iii. The ruling cannot be issued in respect of third question as the same do not qualify for ruling in terms of section 97(2) of the Act.

VIPIN CHANDRA (MEMBER)	AMIT GUPTA (MEMBER)
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