

**AUTHORITY FOR ADVANCE RULING
 GOODS AND SERVICE TAX
 UTTAR PRADESH
 4, Vibhuti Khand, Gomti Nagar, Lucknow-**

ADVANCE RULING NO. UP ADRG 89 /2021

DATED 17-12-2021

PRESENT:

1. **Shri Abhishek Chauhan**
 Additional Commissioner, Central Goods and Service Tax
 Audit Commissionerate, LucknowMember (Central Tax)
2. **Shri Vivek Arya**
 Joint Commissioner, State Goods and Service TaxMember (State Tax)

1.	Name of the Applicant	M/s Broadcast Engineering Consultants India Limited 2C-56, A/17, C-Block, Phase-2, Industrial Area, Sector-62, Noida-201301
2.	GSTIN or User ID	09AAACB2575L1ZG
3.	Date of filing of Form GST ARA-01	22.09.2021
4.	Represented by	Shri Mukesh Gupta, Chartered Accountant Shri Mayank Gupta, Account Executive
5.	Jurisdictional Authority-Centre	Range-9 Division-II, Noida
6.	Jurisdictional Authority-State	Noida Sector-9
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes UBIN21070900144919

ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017

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UNDER SECTION 98 (4) OF THE UPGST ACT, 2017

1. M/s Broadcast Engineering Consultants India Limited, 2C-56, A/17, C-Block, Phase-2, Industrial Area, Sector-62, Noida-201301 (here in after referred to as the applicant) is a registered assessee under GST having GSTN: 09AAACB2575L1ZG.
2. The applicant has sought advance ruling on following questions-

Whether we should charge GST @18% for taking reimbursement of expenses i.e., Basic Salary, ESIC, EPF, Bonus with service charge or only on service charge for providing pure service by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution?

And, whether this services i.e. taking reimbursement of expenses for deployed Manpower is NIL rated supply in GST?
3. The applicant have submitted statement of facts in Form GST ARA-01 as under-
 - (i) the applicant is a Central Public Sector Enterprise under Ministry of Information Broadcasting and was established on 24th March, 1995 under the Companies Act, 2013 with 100% equity share capital held by Govt. of India.

(ii) the applicant was awarded contract from Madhya Pradesh Paschim Keshetra Vidyut Vitaran Company Limited (Govt. Entity) for providing "skilled, semi-skilled and Unskilled" manpower for miscellaneous work under the three circles, AGAR, JHABUA & SHIVPURI.

(iii) the applicant are deploying manpower to the government entity as under-

Sl. No.	Name of party	Division	Constitution of party
1	Madhya Pradesh Paschim Keshetra Vidyut Vitaran Company Limited-O&M Circle-Agar	Agar and Susner	Rural Electrification or Distribution of Electricity
2	Madhya Pradesh Paschim Keshetra Vidyut Vitaran Company Limited-O&M Circle-Jhabua	Jhabua, Alirajpur & STM Jhabua	Rural Electrification or Distribution of Electricity
3	Madhya Pradesh Madhya Keshetra Vidyut Vitaran Company Limited-O&M Circle-Shivpuri	Shivpuri	Rural Electrification or Distribution of Electricity

(iv) As per Chapter Heading 9954 (Construction service) of Sl. No. 3 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, the GST rate is NIL on the pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the CG, SG or UT or LA or a GA or a GE by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to Municipality under article 243W of the Constitution.

(v) the primary work of MPPKVV Co. Ltd is distribution of electricity in Rural Area and the said function fall under the article of 243G of the Constitution of India.

(vi) manpower provide for activity which fall under the article 243G of the Constitution is considered as Nil rated supply.

(vii) hence, the applicant only charged GST on consultancy part and not required to charge any GST on taking reimbursement of expenses i.e. Basic salary, ESIC, EPF and Bonus due to the same is considered as Nil rated supply.

4.1 The applicant had enclosed following Work Orders alongwith the application of advance ruling-

SN	Work Order issued by	Work Order No	Work Order date	Subject
1	Superintending Engineer (O&M), MP Paschim Kshetra Vidyut Vitran Co. Ltd, Agar	NO/SE/O&M/PU R/20-21/979-80	26.03.2021	Work Order for deployment of Skilled, Semi-skilled and unskilled manpower required for misc. work under jurisdiction of SE O&M Circle Agar
2	Superintending Engineer (O&M), MPPKVV Co Ltd, Jhabua	NO/SE/O&M/PU R/20-21/979-80	27.03.2021	Work Order for deployment of Skilled, Semi-skilled and unskilled manpower required for misc. work under jurisdiction of SE O&M/City Circle Jhabua
3	MPMKVV Co. Ltd, Bhopal	8062	31.03.2021	Work Order for outsourcing of manpower required for misc work in O&M Circle Shivpuri

4.2 The applicant had enclosed following Invoices alongwith the application of advance ruling-

SN	Tax Invoice issued by applicant to	Invoice No.	Date	Particulars
1	Ex. En., MPPKVCo Ltd, Agar	BE/MP/20/21-22	19.06.2021	Cost of Skilled, Semi-skilled, unskilled employees (Urban) and BECIL Commission
2	Ex. En., MPPKVCo Ltd, Susner	BE/MP/17/21-22	19.06.2021	Cost of Skilled, Semi-skilled, unskilled employees (Rural) and BECIL Commission
3	Ex. En., MPPKVCo Ltd, Susner	BE/MP/18/21-22	19.06.2021	Cost of Skilled, Semi-skilled, unskilled employees (Urban) and BECIL Commission
4	Ex. En., MPPKVCo Ltd, Jhabua	BE/MP/23/21-22	19.06.2021	Cost of Skilled, Semi-skilled, unskilled employees (Rural) and BECIL Commission
5	Ex. En., MPPKVCo Ltd, Jhabua	BE/MP/24/21-22	19.06.2021	Cost of Skilled, Semi-skilled, unskilled employees (Urban) and BECIL Commission
6	Ex. En., MPPKVCo Ltd, Alirajpur	BE/MP/22/21-22	19.06.2021	Cost of Skilled, Semi-skilled, unskilled employees (Urban) and BECIL Commission
7	Ex. En., MPPKVCo Ltd, Alirajpur	BE/MP/21/21-22	19.06.2021	Cost of Skilled, Semi-skilled, unskilled employees (Rural) and BECIL Commission
8	Ex. En., MPPKVCo Ltd, Jhabua	BE/MP/25/21-22	19.06.2021	Cost of Semi-skilled, unskilled employees and BECIL Commission
9	GM (O&M), MPMKVCo Ltd, Shivpuri	BE/MP/27/21-22	19.06.2021	Cost of Skilled, unskilled employees (Urban) and BECIL Commission
10	GM (O&M), MPMKVCo Ltd, Shivpuri	BE/MP/27/21-22	19.06.2021	Cost of Skilled, unskilled employees (Rural) and BECIL Commission

5. As per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant.

6. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report in the matter. The Assistant Commissioner, CGST Division-II, Noida vide his C.No. V(30)TECH./D-II/Misc Correspondance/205/2020/1117 dated 14.10.2021 forwarded report dated 13.10.2021 of the Superintendent, CGST Range 9, Noida wherein it has been opined that the value of taxable supply of the manpower services of the applicant shall be the transaction value i.e. the total bill amount inclusive of amounts paid under any head name and further Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 is in relation to the construction services only and is not applicable to the present case. The Assistant Commissioner, CGST Division-II, Noida vide his C.No. V(30)TECH./D-II/Misc Correspondance/205/2020 dated 09.12.2021 has submitted that no proceedings are pending or decided on the question raised by the applicant.

7. The applicant was granted a personal hearing on 06.12.2021 which was attended by Shri Mukesh Gupta, Chartered Accountant and Shri Mayank Gupta, Account Executive during which they reiterated the submissions made in the application of advance ruling and submitted copy of letter C.No. 361/9700/Bills/2340 dated 11.11.2021 of Senior Accounts Officer, MPPLVVCL, Ujjain and GST Circular-11 dated 10.05.2018 issued by the Chief Financial Officer, MPPKVCL, Indore wherein it is mentioned that-

- (i) services which are received within the area of gram panchayat are exempt from GST.
- (ii) in view of definition of Government entity, the company is Govt. entity.

DISCUSSION AND FINDING

8. At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST 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 UPGST Act. Further for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act'.

9. We have gone through the Form GST ARA-01 filed by the applicant and observed that the applicant has ticked following issues on which advance ruling required-

- (ii) applicability of a notification issued under the provisions of the Act.

As such, we find that the issue raised in the application is squarely covered under Section 97(2) of the CGST Act 2017. We therefore, admit the application for consideration on merits.

10. We have gone through the submissions made by the applicant and have examined the same. We observe that the applicant has sought advance ruling on the following questions-

Whether we should charge GST @18% for taking reimbursement of expenses i.e., Basic Salary, ESIC, EPF, Bonus with service charge or only on service charge for providing pure service by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution?

And, whether this services i.e., taking reimbursement of expenses for deployed Manpower is NIL rated supply in GST?

11. We find that Work Orders produced by the applicant is for supply of skilled, semi-skilled and unskilled manpower and the applicant is presently charging GST on gross amount charged for supply of service as per invoices produced by the applicant. The applicant is desirous to know as to whether exemption contained in sl. No. 3 of the Notification No. 12/2017-CT (Rate) dated 28.06.2017 is applicable to reimbursement of expenses i.e. Basic Salary, ESIC, EPF, Bonus paid to deployed manpower as the service recipient M/s MPPKVV Co. Ltd and M/s MPMKVV Co. Ltd are Govt. entity as per the understanding of the applicant.

12. We find that there is mention of only rate per manpower per month in the Work orders and total amount of work order is excluding EPF/ESIC/WC contribution/commission charges & taxes. Further, in the tax invoice raised by the applicant, there is mention of cost of employees and the commission and there is no mention of EPF/ESIC/WC contribution on the invoice.

13.1 Now, we first proceed to examine applicability or otherwise the benefit of exemption contained in sl. No. 3 of the Notification No. 12/2017-CT (Rate) dated 28.06.2017 as amended by notification No. 2/2018-Central tax (Rate) dated 25.01.2018 to the applicant. The same is reproduced below-

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
1	2	3	4	5
3	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental Authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	NIL	NIL

13.2 The applicant have submitted that service recipients MP Paschim Kshetra Vidyut Vitran Co. Ltd (MPPKVVCL) and MP Madhya Kshetra Vidyut Vitran Co. Ltd (MPMKVVCL) are government entity but have not produced any evidence to this effect.

13.3 We find that Government Entity has been defined as under-

“Government Entity” means an authority or a board or any other body including a society, trust, corporation,

- (i) *set up by an Act of Parliament or State Legislature; or*
- (ii) *established by any Government, with 90 per cent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.”*

13.4 As per the website of MP Paschim Kshetra Vidyut Vitran Co. Ltd. (<http://www.mpwz.co.in/#/about>), the Government of Madhya Pradesh vide order dated 1st July, 2002 has incorporated Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Limited as a wholly owned Government of Madhya Pradesh Corporations under the Companies Act, 1956 to undertake activities of distribution and retail supply for and on behalf of Madhya Pradesh State Electricity Board in the areas covered by the Commissioners of Indore and Ujjain.

13.5 As per the website of MP Madhya Kshetra Vidyut Vitran Co. Ltd (<https://portal.mpcz.in/web/about-us/company-profile/>), Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited (MPMKVVCL) was incorporated as a wholly owned Government Company on 31st May 2002, under the Companies Act 1956, the same has been notified vide order No. 5555/RS/4/13/2001 dated 1st July 2002 of the Government of Madhya Pradesh. The Company undertakes the activities of distribution and retail supply in the areas covered by the Commissioners of Bhopal, Hoshangabad, Gwalior, and Chambal. The Company obtained a certificate of commencement of business on 16th July 2002 from Registrar of Companies, Madhya Pradesh and Chattisgarh, Gwalior. Subsequently vide Government of Madhya Pradesh notification No. 3679/FRS/18/13/2002 dated 31.05.2005, the Company has been provided functional autonomy with effect from 01.06.2005. The CIN Number of Company is U40109MP2002SGC015119. The Government of Madhya Pradesh vide its order no. 2671/12/13 dated 29th March 2012 had transferred all the shares of the Company to M. P. Power Management Company Limited and subsequently, our Company is now a subsidiary of M. P. Power Management Company Limited, Jabalpur.

13.6 We find that the website of MPMKVVCL has clear mention that Govt. of MP vide its order dated 29.03.2012 had transferred all the shares of the company to MP Power Management Company

Limited and subsequently their company is now a subsidiary of MP Power Management Company Limited.

As such, it is abundantly clear that MPMKVVCL is presently not an establishment with 90 per cent or more participation by way of equity or control, to carry out a function entrusted by the State Government. There is also nothing on record that MPMKVVCL is set up by an Act of Parliament or State Legislature. As such, we hold that MPMKVVCL is not a Govt. entity.

13.7 We are of the view that although there is no such mention on the website of MPPKVVCL, it is all likelihood that the same is also presently not an establishment with 90 per cent or more participation by way of equity or control, to carry out a function entrusted by the State Government like MPMKVVCL. There is also nothing on record that MPPKVVCL is set up by an Act of Parliament or State Legislature. Further, the Chief Financial Officer, MPPKVVCL, Indore in his GST Circular-11 issued under F.No. MD/WZ/02/Tax/259/9425 dated 10.05.2018 has only given the definition of 'Government Entity' and declared the Company as Government Entity without giving any criterion of the applicability of the said definition on the Company. As such, we hold that MPPKVVCL also is not a Govt. entity.

13.8 We find that the term 'Panchayat' has not been defined in the CGST Act, 2017. However, Section 2(69) of the CGST Act which defines local authority states that the definition of Panchayat can be borrowed from clause (d) of Article 243 of the Constitution of India. It defines Panchayat to mean an institution of self-government of the rural area constituted under article 243B. As per Article 243B, there shall be constituted in every state, Panchayats at the village, intermediate and district levels. Article 243G of the Constitution of India entrusts powers, authority and responsibilities to the Panchayat. The Constitution of India endows the Panchayat with such powers and authority to enable them to function as institution of self-government. Also, it allows enactment of laws for the devolution of powers and responsibilities upon Panchayat subject to certain conditions with respect to the following:

- (a) *the preparation of plans for economic development and social justice*
- (b) *the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule-*

The activities specified within the Eleventh Schedule are Agriculture, including agricultural extension; Land improvement, implementation of land reforms, land consolidation and soil conservation; Minor irrigation, water management and watershed development; Animal husbandry, dairying and poultry; Fisheries; Social forestry and farm forestry; Minor forest produce; Small scale industries, including food processing industries; Khadi, village and cottage industries; Rural housing; Drinking water; Fuel and fodder; Roads, culverts, bridges, ferries, waterways and other means of communication; Rural electrification, including distribution of electricity; Non-conventional energy sources; Poverty alleviation programme; Education, including primary and secondary schools; Technical training and vocational education; Adult and non-formal education; Libraries; Cultural activities; Markets and fairs; Health and sanitation, including hospitals, primary health centers and dispensaries; Family welfare; Women and child development; Social welfare, including welfare of the handicapped and mentally retarded; Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes; Public distribution system; Maintenance of community assets.

13.9 Although we accept that rural electrification including distribution of electricity is covered in function entrusted to a Panchayat but we are of the view that the invoices issued to the Executive Engineer, MPPKVVCL or GM, MPMKVVCL by the applicant with description of supply of

manpower (Rural) is not a sufficient document to conclude that the manpower will be actually used for distribution of electricity in rural area as a sub-station supplying electricity covers large area which include rural as well as urban area.

13.10 As such, we are of the view that the applicant is not entitled for exemption contained in sl. No. 3 of the Notification No. 12/2017-CT (Rate) dated 28.06.2017.

14.1 Further, in order to find the value of supply of goods or supply of services in GST, we need to examine the term Consideration which is defined under Section 2 (31) of CGST Act, 2017 as under :-

“(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”

14.2 Thus, the above definition of ‘consideration’ includes 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. It also includes 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.

As such, the consideration would include the entire payment received by the applicant against manpower supply and GST would be payable on the entire amount collected by the applicant from the service recipients which includes the salary amount/wages to be paid to the labours as well as the reimbursement of EPF and ESI contribution.

15.1 We would also like to refer to Section 15 of the CGST Act, 2017, which pertains to Valuation of taxable supply and reads, as under:

Relevant portion of Section 15 of the CGST Act:

“15. 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 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.”

15.2 On going through the above, it can be seen that Section 15(1) clearly stipulates that the value of 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. Further, sub-section (2) of Section 15 elaborates in detail, the items that are required to be included in the value of supply, whereas sub-section (3) of Section 15 specifically elaborates the items that are not to be included in the value of supply.

15.3 As per Section 15 of the CGST Act, 2017, there is intent to include even all taxes, duties, cesses, fees and all charges in the value of supply and there can be no exception for ESI and EPF amount. Therefore, taking into the view the definition of ‘consideration’ and the aspect of ‘valuation of supply’ as discussed above, it is apparent that the GST is chargeable on the entire amount received by the applicant against supply of manpower.

16. In view of the above discussions, we, both the members unanimously rule as under;

RULING

17. Question 1. Whether we should charge GST @18% for taking reimbursement of expenses i.e., Basic Salary, ESIC, EPF, Bonus with service charge or only on service charge for providing pure service by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution?


Answer 1. GST is liable to be paid @18% (IGST) on the reimbursement of expenses i.e. Basic salary, ESIC, EPF, Bonus with service charge.

Question 2. Whether this services i.e., taking reimbursement of expenses for deployed Manpower is NIL rated supply in GST.

Answer 2. Replied in negative.

18. This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.


(Vivek Arya)
Member of Authority for Advance Ruling


(Abhishek Chauhan)
Member of Authority for Advance Ruling

To,

M/s Broadcast Engineering Consultants India Limited
2C-56, A/17, C-Block, Phase-2, Industrial Area, Sector-62,
Noida-201301

AUTHORITY FOR ADVANCE RULING –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, C-56/42, Renu Tower, Sector-62, Noida-201301.
4. The Deputy/Assistant Commissioner, CGST & Central Excise, Division- Noida II, C-56/42, Renu Tower, Sector-62, Noida-201301.
5. Through the Additional Commissioner, Gr-I, Commercial Tax, *Noida* Uttar Pradesh to jurisdictional tax assessing officers.

Note: An Appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Service Tax, 4, VibhutiKhnad, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.