

**JHARKHAND AUTHORITY OF ADVANCE RULING**

**GOODS AND SERVICES TAX**

**DIVISIONAL OFFICE OF STATE TAX, CIVIL COURT COMPOUND,**

**NEAR JAIPAL SINGH STADIUM, RANCHI, 834001 JHARKHAND**

**Advance Ruling Order No. JHR/AAR/2022-23/01, Dated 28th March, 2022**

Sri M V Badari Prasad, Additional Commissioner, Office of the Pr. Commissioner, CGST and CX Commissionerate, Ranchi - Jharkhand.	Member (Centrals Tax)
Sri Pradeep Kumar, Joint Commissioner (Administration), Ranchi Division, Ranchi-Jharkhand.	Member (State Tax)
Name and address of the applicant	M/s Damodar Valley Corporation,  Registered Address: 106-A, Administrative Building, Ground Floor, Area-No. 6, Maithon, Dhanbad - 828207, Jharkhand, India.  Correspondence Address: 106-A, Administrative Building, Ground Floor, Area No. 6, Maithon, Dhanbad - 828207, Jharkhand, India.
GSTIN of the applicant	20AABCD0541M1Z5
Application No. and Date	Advance Ruling/ SGST & CGST/2021-22/ AR/ AD200821001674M dated 20/08/2021.
Clause(s) of Section 97(2) of ((CGST/SGST/UGST)) Act, 2017 under which the question(s) raised	(B) applicability of a notification issued under the provisions of This Act;
Date of Personal hearing/V.C.	04-02-2022.

Present for the applicant	1. Sri Harsh Gadodia, Chartered Accountant; 2. Sri. Bihari Choudhary, Manager- Finance, DVC, Maithon.
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Note: Under Section 100 of the JGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of JGST Act 2017, within a period of 30 days from the date of service of this order.

## PROCEEDINGS

### (Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Jharkhand Goods & Service Tax Act, 2017)

The present application has been filed under Section 97(1) of the Central Goods and Services Tax Act, 2017 and the Jharkhand Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and JGST Act"] by Damodar Valley Corporation, 106-A, Administrative Building, Ground Floor, Area No. 6, Maithon, Dhanbad - 828207, Jharkhand, the applicant, seeking an advance ruling in respect of the following questions:-

(a) Whether "Damodar Valley Corporation" is covered under the definition of the term 'Government' Entity as per Notification No. 32/2017 - Central Tax (Rate) dated 13/10/2017 and Notification No. 31/2017 - Central Tax (Rate) dated 13/10/2017?

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

## HEARING

3. The case was taken up for preliminary hearing on 04.03.2022 with respect to admission or rejection of present application wherein Shri Harsh Gadodia, Chartered Accountant attended the proceeding physically and Shri Bihari Choudhary, Manager- Finance, DVC attended the proceeding through Video Conferencing and made submissions as per contentions made in Application for Advance ruling. The application was admitted being questions related to 'applicability of a notification' and final hearing was concluded accordingly on the same date Shri Harsh Gadodia, Chartered Accountant, made oral contentions as per details contained in their application.

## OBSERVATIONS

4. We have gone through the facts of the case, documentary evidences like copies of Notifications, Memorandum of Agreement, Damodar Valley Corporation Act, 1948, Damodar Valley

Corporation (Amendment) Act, 2011 submitted by the applicant. We find that the applicant is registered under Goods and Services Tax ('GST') Act, 2017. As per their submission they are engaged in 3 major activities namely generation, transmission and distribution of electricity/ flood control and irrigation, and some connected activities like soil conservation, afforestation etc. They have submitted, among others, that,-

(i) DVC Act, 1948 passed by the Central Legislature, requiring the three Governments namely the Central Government and the State Government of West Bengal and Bihar (now Jharkhand) to participate jointly for the purpose of budding a Damodar Valley Corporation with the aim of development of Damodar valley falling within the state of West Bengal and Jharkhand. 'Participating Governments', according to clause (4) of section 2 of the DVC Act means the Central Government, the Provincial Government, of Bihar, and the Provincial Government of West Bengal.

(ii) The term 'Government entity' has been defined in paragraph - 4 of the Notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017 [as amended by Notification No.31/2017- Central Tax (Rate) dated 13.10.2017] and paragraph - 2 of the Notification No. 12/2017- Central Tax (Rate), dated the 28th June, 2017 [as amended by Notification No. 32/2017-Central Tax (Rate) dated 13.10.2017] 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 equip/ or control, to carry out a function entrusted by the Central Government; State Government, Union Territory or a local authority.

(iii) Notification No. 12/2017- Central Tax (Rate), dated the 28th June, 2017 has been amended from time to time and entry serial number 9C has been inserted vide Notification No.32/2017- Central Tax (Rate) dated 13.10.2017 which, for the sake of conveniences, is reproduced below:

<b>SI No.</b>	<b>Chapter, Section, Heading, Group or Service Code (Tariff)</b>	<b>Description of services</b>	<b>Rate (per cent)</b>	<b>Condition</b>
9C	Chapter 99	Supply of service by a Government Entity to Central Government, State Government; Union territory, local authority or any person specified by Central Government, State Government,	NIL	NIL

		Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants.		
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(iv) Damodar valley Corporation has been incorporated under the special Act of Parliament name after "Damodar valley Act, 1948", which has been passed by the Central Legislatures and has come into force by notification in the official gazette on 27th March 1948. Further, the Damodar Valley Corporation Act, 1948 has been amended and received the assent of the President on 8th Jan, 2012 and published in the office gazette on the 9th Jan, 2012.

(v) The DVC Act was passed by the Central Legislature, requiring the three Governments namely the Central Government and the State Government of West Bengal and Bihar (now Jharkhand) to participate jointly for the purpose of building a Damodar Valley Corporation with the aim of development of Damodar valley falling within the state of West Bengal and Jharkhand Participating Governments, according to clause (4) of section 2 of the DVC Act means the Central Government, the Provincial Government of Bihar and the Provincial Government of West Bengal

(vi) According to section 30 of the DVC Act, liability to provide entire capital required by the corporation for completion of any project is vested on the participating Government. The said section reads as follows:

Liabilities of participating Governments to provide capital to the Corporation: The participating Governments shall, as hereinafter specified, provide the entire capital required by the Corporation for the completion of any project undertaken by it.

(vii) Section 31 of the DVC Act speaks of payment by participating Governments which reads as follows:

Payment by participating Government on specified date: Each participating Government shall provide its share of the capital on the dates specified by the Corporation and if any Government fails to provide such share on such dales the Corporation may raise loan to make up the deficit at the cost of the Government concerned.

(viii) With regard to finance, the applicant has referred to section 27 of the DVC Act which reads as follows:

Expenditure till the Corporation is established: All expenditure incurred by the Central Government for and in connection with the establishment of the Corporation up to the date of its establishment shall be treated as the capital provided by the Central Government to the Corporation and such capital shall be adjusted between the participating Governments in accordance with the provisions of sections 30 to 36.

(ix) It has been also found that subsection (3) of section 11 of the DVC Act envisages that "the Central Government may, after consultation with the Provincial Governments by notification in

the official Gazette, direct that the Corporation shall carry out such function and exercise such power in such other area as may be specified therein and the area so specified shall be called the "area of operation" of the Corporation".

(x) Section 12 of the DVC Act elucidates the functions entrusted by the Central Government after consultation with the State Government of Bihar and West Bengal. The said functions are as follows:-

- (a) The Promotion and operation of schemes for irrigation, water supply and drainage;
- (b) The Promotion and operation of schemes for generation, transmission and distribution of electrical energy, both hydro-electric and thermal
- (c) The Promotion and operation of schemes for flood control in the Damodar River and its tributaries and the channels, if any excavated by the Corporation in connection with the scheme and for the improvement of flow condition in the Hoogly River;
- (d) The Promotion and control of navigation in the Damodar River and its Tributaries and channels, if any;
- (e) The Promotion of afforestation and control of soil erosion in the Damodar Valley; and
- (a) The Promotion of public health and the agricultural, industrial, economic and general well-being in the Damodar Valley and its area of operation.

(xi) Section 48 and sub-section (6) of section 57 of the DVC Act, which reads as follows, reveal that the applicant discharges its functions on the direction of the Central Government and such functions are under control of the Central Government.

**Section 48:** Directions by the Central Government:

- (1) In discharge of its functions the Corporation shall be guided by such instructions on questions of policy as may be given to it by the Central Government.
- (2) If any dispute arises between the Central Government and the Corporation as to whether a question is or is not a question of policy, the decision of the Central Government shall be final.

**Section 51:** Control of Central Government. -

- (1) The Central Government may remove from the Corporation any member who in its opinion -
- (2) .....
- (3) .....
- (4) .....

(5) .....

(6) If the Corporation fails to carry out its functions, or follow the directions issued by the Central Government under this Act; the Central Government shall have the power to remove the Chairman and the members of the Corporation and appoint a Chairman and members in their places.

(xii) It has been submitted by the applicant that a Memorandum of Agreement (MoA, for short) has been made on 04/11.2016 between the Ministry of Water Resources, River Development & Ganga Rejuvenation, Government of India and the Damodar Valley Corporation, an autonomous organisation of the Government of India under Ministry of power for the implementation of National Hydrology Project (NHP) from 2016-17 to 2023-24 as a Central sector scheme.

(xiii) According to the said MoA, the Ministry of Water Resources, River Development & Ganga Rejuvenation, Government of India agrees to provide central assistance (Grants) under different activities for the completion of project targets subject to certain conditions.

(xiv) The applicant has stated further that he has established the Soil Conservation Training Centre at Hazaribag under the assistance of Natural Resource Management Division, Department of Agriculture & Co-operation, Ministry of Agriculture, Government of India with the objective of imparting training in the field of Soil & Water Conservation to the Government personnel and allied organizations against which a grant is being sanctioned every year.

(xv) With reference to above, the applicant has concluded his submission with the contention that Damodar Valley Corporation being incorporated under the special act of Parliament, the DVC Act, 1948 with three participating Governments, i.e., the Central Government, State Government of West Bengal and State Government of Bihar (now Jharkhand) for carrying out the function entrusted by Central Government with consultation of State Governments satisfies all the limbs of the term 'Government Entity'.

## **ANALYSIS AND FINDINGS**

We have gone through the records of the issue as well as submissions made by the authorised representative of the applicant during the course of personal hearing/ video conferencing. The issue involved in this case pertains to applicability of Notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017 [as amended by Notification No. 31/2017-Central Tax (Rate) dated 13.10.2017] and Notification No. 12/2017-Central Tax (Rate), dated the 28th June, 2017 [as amended by Notification No. 32/2017-Central Tax (Rate) dated 13.10.2017] to determine whether the applicant shall be covered under the definition of 'Government Entity' or not.

6. The term 'Government entity' as it has been defined in the aforesaid notifications evidently denotes that in order to qualify for a Government Entity, the applicant must have been set up by an Act of Parliament or by an Act of State Legislature or it must have been established by any of the Governments i.e. either by the Union Government or by the State Government with 90 percent or more participation by way of equity or control. Further, the applicant is to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.

7. From the documents and evidences placed before us, we observe the issue raised by the applicant as follows:-

(a) Damodar Valley Corporation has been set up under the Damodar Valley Corporation Act 71948 which was passed by the Central Legislature.

(b) Sub-section (1) and (1A) of section 4 of the DVC Act, as amended, states as under:-

(i) The Corporation shall consist of,-

(a) a Chairman;

(b) a member (technical) and a member (finance);

(c) one representative from the Central Government;

(d) two representatives one each from the State Government of Jharkhand and West Bengal;

(e) three independent experts one each from the field of irrigation, water supply and generation or transmission or distribution of electricity; and

(f) a Member-Secretary.

(ii) The Chairman and members under clauses (a), (b), (d) and (f) of sub-section (1) shall be appointed by the Central Government in consultation with the State Governments concerned while the members under clauses (c) and (e) shall be appointed by the Central Government, by notification in the Official Gazette.

(iii) It has already been stated above that section 51 of the DVC Act empowers the Central Government to remove any member from the corporation.

(iv) It has also been observed above that the participating Governments hold 100% of equity control of the applicant.

(v) Section 11 of the DVC Act envisages that the Corporation shall carry out such function and exercise such power which the Central Government may, after consultation with the Provincial Governments by notification in the official Gazette, directs the Corporation.

8. It, therefore, appears that Damodar Valley Corporation fulfils the criterion laid down for "Government entity" as per Notification No. 31/2017 -Central Tax (Rate)/32/2017- Central Tax (Rate) both dated 13.10.2017 since it has been set up by an Act of Parliament with 100% control to carry out the function entrusted by the Government.

### **ORDER**

9. For reasons as discussed in the body of the order, the question is answered thus, -

**Question :** Whether "Damodar Valley Corporation" is covered under the definition of the term 'Government' Entity as per Notification No. 32/2017 - Central Tax (Rate) dated 13/10/2017 and Notification No. 31/2017 - Central Tax (Rate) dated 13/10/2017?

**Answer -** Damodar Valley Corporation shall be covered under the definition of - Government Entity in terms of Notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017 [as amended by Notification No. 31 /2017-Central Tax (Rate) dated 13.10.2017] / Notification No. 12/2017- Central Tax (Rate), dated the 28th June, 2017 [as amended by Notification No. 32/2017- Central Tax (Rate) dated 13.10.2017].

This ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104(1) of the GST Act.

M V Badari Prasad	Pradeep Kumar
Member	Member
(Central Tax)	(State Tax)

**(Please Note -** Above is not an official Copy of AAR Order. Kindly download Official copy from official website of relevant Authority.)