

**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. 09/AAAR/16-08/2023

Dated: .../6...08-2023

Before the Bench of:-

ShriUma Shanker

Member, Central Tax

Smt. Ministhy S,

Member, State Tax

Legal Name of the Appellant	M/s PurvanchalVidyutVitran Nigam Limited
Trade Name of the Appellant	M/s PurvanchalVidyutVitran Nigam Limited
GSTIN Number of the Appellant	O9AADCP4092M5ZT
Registered address/Address provided while obtaining user ID (of the Appellant)	M.D. Office, P.VVNL, Bhikharipur Varanasi, Uttar Pradesh
Order of Advance Ruling Against which the appeal is filed	UP ADRG – 23/2023 dated 21.04.2023

[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 Purvanchal VidyutVitran Nigam Limited

Bhikharipur Varanasi, Uttar Pradesh (here-in-after referred to as the "Appellant") against the Advance Ruling Order No. UP ADRG – 23/2023 dated 21.04.2023 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

1. M/s PurvanchalVidyutVitran Nigam Limited ('Appellant'), situated at Vidyut Nagar, Ground Floor, DLW Road, Bhikharipur, Varanasi Uttar Pradesh-22 1004 (the Appellant) is a registered assessee under GST having GSTN: O9AADCP4092M5ZT.
2. The Appellant is an Electricity Distribution Company having expertise in the field of electricity distribution and transmission. Being expertise in the field, the electricity lines are installed in the supervision of the appellant where electricity lines needs to be installed to supply the electricity at the designated location as per requirement of the customers.
3. As per appellant's submission the installation of lines is done at the cost of the customers and thus the entire cost is borne by the service recipients. But for safe and proper installation of line it is done in the supervision of the appellant.
4. The appellant submits that there are two methods of installation of electric lines for transmission to designated locations. One is where entire material and installation work is arranged by the appellant on behalf of the customers in the supervision of the appellant. The appellant claims for reimbursement of material cost and installation expenses incurred on behalf of the customer which is later reimbursed to the them by the customer on cost to cost basis and the net income charged by the appellant is supervision fee only. In the

second mode the entire work with material are arranged by customers and installation work is done by the contractors hired by the customers. In this case the role of the appellant is limited to supervision only for which the appellant charges supervision fee.

5. In the aforesaid backdrop the appellant filed an application before the Authority for Advance Ruling seeking clarification on following questions-
 - (a) Whether in the given facts and circumstances the value of material and cost of execution of work for installation of lines will be included in the value of supply for determination of taxable value under GST where all such cost are taken as reimbursement while our supply is supervision only?
 - (b) Whether in the given facts and circumstances the value of material and cost of execution of work for installation of lines will be included in the value of supply for determination of taxable value under GST where all such cost are borne by the recipient of service and we charge supervision fee only?
6. The Authority for Advance Ruling vide impugned ruling ruled that value of material and cost of execution of work for installation of lines will be included in the value of supply for determination of taxable value under GST where all such cost are taken as reimbursement and answered the first question in affirmative. Whereas, on the second question the Authority for advance ruling held that the appellant shall be liable to pay GST on supervision charge only where the entire cost is borne by the service recipient subject to the condition that the customer/recipient of service should have GST invoice of material and same is to be submitted to the appellant after completion of project. The Authority further held that to avoid double taxation, appellant should not charge GST on the cost of materials, as there is no provision in CGST Act, 2017 and Rules made there under for double taxation.
7. The Appellant is agreed with the ruling given by the Authority for Advance Ruling on point no.(a) but aggrieved by the ruling

given on point no.(b) with the specified condition of submission of GST invoice by the customer/service recipient.

8. Grounds of Appeal

- 8.1 The appellant being aggrieved by the impugned ruling have preferred an appeal on the following grounds-
- 8.2 The Authority for Advance Ruling has failed to appreciate the fact that as per Electricity Act, it is the duty of the distribution licensee to provide the electric plant or electric line for electric supply and the ownership of the infrastructural facility developed for the customer remains with the appellant.
- 8.3 The Authority for Advance ruling has held that the value of material etc. directly borne by the customer is not liable to be included in the value of taxable supply made by the appellant but in fact, in both methods, there is no difference as the ownership of the infrastructural facility, developed for the customer, is always with the appellant.
- 8.4 The Authority for Advance Ruling has held that the to avoid double taxation, the appellant should not charge GST on the cost of material with the observation that the consumer/recipient/contractor should have GST invoice of material and the same should be submitted to the appellant after completion of project. Thus the Authority for Advance Ruling has made the order conditional which is completely unwarranted and not supported by any legal provision of law.
- 8.5 The Authority for Advance Ruling has failed to appreciate the fact that the liability for payment of GST by the Appellant cannot be dependent upon the nature of invoice obtained by the customer from the vendor.
- 8.6 In appellant's understanding in the 2nd mode of execution of deposit work, price is not the sole consideration, as the handover of infrastructural facility so created under deposit work by the consumer/customer, to the appellant is the

non-monetary consideration to the appellant since its benefit will accrue to the appellant.

8.7 The appellant submits that in the present case the value of supply of goods or service cannot be determined under Section 15(1) of CGST Act, 2017 as the price is not the sole consideration.

8.8 The appellant submits that in the present case the non-monetary consideration received by the appellant in the form of infrastructural work/facility carried out by the contractor is relevant. The amount paid to the contractor by the customer shall be deemed to be the value of non-monetary consideration provided by the customer to the appellant. The Appellant has requested that in case the Authority takes the view that the value of taxable supply in second mode would be supervision charge only, the 2nd Para of point no. 19 of the order specifying the provision of GST invoice by the customer may be struck down.

8.9. The appellant was granted the opportunity of Personal Hearing on 26.07.2023. ShriKapilVaish Chartered Accountant along with ShriChetanGarg, Accounts Officer, Uttar Pradesh Power Corporation Ltd. and Ms. Vidhi Jain, Account Officer M/s PurvanchalVidyyutVitran Nigam Limited appeared before the Authority. They reiterated the submissions already made by them vide their AAAR application and requested to modify the Ruling given by the Authority for Advance Ruling on the basis of grounds submitted by them.

9. Discussion and Findings

9.1 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 an Electricity Distribution Company and being expertise in the field of electricity distribution and transmission work, the electric lines are installed in

the supervision of the appellant to the designated locations as per requirement of the customers.

- 9.2 We find that the Appellant has adopted two types of modes for installation of electric lines (also called deposit work) to the designated locations as per requirement of the customers. One is where the entire material and installation work is arranged by the appellant on behalf of the customers and work is done in the supervision of the appellant. The appellant claims for reimbursement of material cost and installation expenses incurred on behalf of the customer on actual basis which is later reimbursed to the appellant by the customer and the net income charged by the appellant is supervision fee only. In the second mode the entire work with materials are arranged by customers and installation work is done by the contractors hired by the customers. In this case the role of the appellant is limited to supervision only and the appellant charge supervision fee from the customers.
- 9.3 The Authority for Advance Ruling vide impugned ruling held that in second mode where entire work with materials are arranged by customers and installation work is done by the contractors hired by the customers, the value of taxable supply shall not include the material cost and the appellant shall be liable to pay GST on supervision charge only to avoid double taxation subject to the condition that the contractor/recipient of service should have GST invoice which should be submitted after completion of project.
- 9.4 We find that the appellant is aggrieved with the ruling given by the Authority for Advance Ruling on point (b) regarding insertion of specified condition of GST invoice by the service recipient. We find that there is no such provision in GST Act, which in the view of the appellant, is unwarranted and without provision of law.

9.5 We have examined the submission made by the appellant and arguments given by them to support their claim. We find that term supply has been defined under Section 7 of CGST Act, 2017 which includes “ all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental ,lease, or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business”. Further as per definition provided under Section 2(31) of GST Act, 2017, Consideration, means 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 the Central Government or a State Government.

9.6 We find that value of taxable supply has been provided under Section 15 of CGST Act, 2017 which reads as under-

Section-15 Value of Taxable Supply-(1) *The value of supply will be the transaction value for supply of goods or services or both where the supplier and the recipient of the supply are not related and the price the sole consideration of the supply.*

Further Section 15(2)(b) provides that ‘ 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; shall form the part of taxable value of supply.

9.7 Accordingly we find that the Authority for Advance Ruling is correct in holding that value of material and cost of execution of work for installation of lines will be included in the value of supply for determination of taxable value under GST where all such cost are taken as reimbursement.

9.8 In shifting and dislocation services there may be following two types of supply-

Case 1: Where dislocation/shifting services and supervision services both are supplied by DISCOM -

In cases where both types of services i.e. dislocation/shifting and supervision services are supplied by DISCOM though there are two distinct supplies but the supplier is one so it is justifiable to charge GST on Total sum paid to the single supplier by the recipient.

Case 2: Where dislocation/shifting services are supplied by third party contractor and supervision services are supplied by DISCOM-

In this case there are following important points-

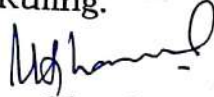
- a) In this case the works contract services supplied in course of dislocation /shifting are neither supplied by nor the consideration for the same has been received by DISCOM hence there is no supply of works contract services by DISCOM,
- b) In this case the ownership of the property being dislocated /shifted is vested with DISCOM, the DISCOM receives money in form of dislocation/shutting charges. The services supplied in such cases is related to an act of tolerance with respect to immovable property and hence covered under "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" and are classified under SAC 999794,
- c) The works contract services in this case is being supplied by an independent contractor and is covered under SAC 9954, it is distinct service which is being supplied by a registered person other than DISCOM,
- d) Though the property subjected to works contract services belongs to DISCOM but the supply of works contract services are not made on behest of DISCOM. The contract for works contract services is executed between the concerned party and a third party works contractor hence the DISCOM is a stranger to this contract,

- e) In a case where the third party works contractor remains unpaid for the services supplied by him he can sue only the concerned party and not the DISCOM, so there is no liability to pay on the part of DISCOM,
 - f) As the dislocation works are not made on behest of DISCOM and there is only a consent or tolerance for such shifting hence the DISCOM is not liable to pay for the expenses incurred in such shifting,
 - g) Since there is no obligation to pay on part of DISCOM hence the case does not lie under section 15(2)(b) of CGST Act,
 - h) In this case the consideration for works contract services is fully paid by concerned party and there is no shared /part payment by the same. In such cases it is not feasible for having two considerations for a single supply.
- 9.9 We also find that the Authority for Advance Ruling has held that in case (2) where the entire cost is borne by the recipient of service, the value of taxable supply shall not include the material cost and the appellant shall be liable to pay GST on supervision charge only to avoid double taxation subject to the condition that the contractor/recipient of service should have GST invoice which should be submitted after completion of project. We find that there is no such provision stipulated under GST Act and this condition is unwarranted and having no legal backing as argued by the appellant.
10. Accordingly, we rule that in the facts and circumstances, where the value of materials and cost of execution of work for installation of electric lines are borne by the recipient of service and the appellant charges supervision fee only, the value of materials and cost of installation shall not be included in the value of supply for determination of taxable value under GST and the appellant shall be liable to pay GST only on the supervision charges.

Ruling:

We confirm the impugned Ruling UP ADRG - 23/2023 dated 21.04.2023 passed by the Authority for Advance Ruling against the

Appellant except the provision of GST invoice as held in Para 19 of the Ruling.


(Uma Shanker)
Member, AAAR
CGST


(Ministhy S)
Member, AAAR
SGST

To,

M/s Purvanchal Vidyut Vitran Nigam Limited.
M.D. Office, P.VVNL, Bhikharipur Varanasi,
Uttar Pradesh

The Appellate Authority For Advance Ruling
Goods & Service Tax Uttar Pradesh

Copy to-

1. The Pr. 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, 9, Maqbool Alam Road, Near Zila Kutchery, Varanasi-221002.
4. The Deputy/Asst. Commissioner, CGST & Central Excise, Division-Varanasi, 9, Maqbool Alam Road, Near Zila Kutchery, Varanasi-221002.
5. Through the Additional Commissioner. Gr-I, Varanasi Zone-I, Uttar Pradesh to jurisdictional tax assessing officers.