

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

ADVANCE RULING NO. UP ADRG 31 /2023 Dated. 01/09/2023

PRESENT:

- Shri Amit Kumar**
Joint Commissioner, Central Goods and Service Tax
Audit Commissionerate, LucknowMember (Central Tax)
- Shri Harilal Prajapati**
Joint Commissioner, State Goods and Service TaxMember (State Tax)

1.	Name of the Applicant	M/s Spring Infrastructures, CP-138, Viraj Khand, Gomti Nagar Lucknow Uttar Pradesh, 226010
2.	GSTIN or User ID	09ACJFS1880M1ZG
3.	Date of filing of Form GST ARA-01	15.06.2023
4.	Represented by	Shri Bijay Bahadur Prasad, Advocate
5.	Jurisdictional Authority-Centre	Range-Range IV, Division- Lucknow I, Commissionerate- Lucknow
6.	Jurisdictional Authority-State	Sector- Lucknow Sector-20, Range- Lucknow (C), Zone- Lucknow II
7.	Whether the payment of fees discharged and if yes, the CIN	Yes UBIN23060900137649

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

1. M/s Spring Infrastructures, CP-138, Viraj Khand, Gomti Nagar Lucknow Uttar Pradesh, 226010 (here in after referred to as the applicant) is a registered assessee under GST having GSTN: 09ACJFS1880M1ZG. The applicant is primarily engaged in Land Developer business i.e Sale of Developed Land, having projects in different parts of Lucknow and duly registered under GST Law i.e. under the Jurisdiction of Assistant Commissioner, Sector-20, SGST Department, Lucknow.

2. The applicant has submitted an application for Advance Ruling dated 15.06.2023 enclosing dully filled Form ARA-01 (the application form for Advance Ruling) along with annexure and attachments. The applicant in his application has sought advance ruling on following question-

1. Whether the work done by the applicant in Transmission Line under the supervision of MVVNL comes under the definition of supply as per section 15(2)(b) of UP GST Act, 2017 ?

2. Whether GST is to be paid to MVVNL on the full amount of work done for load sanction of 11 KV lines by applicant?

3. Without prejudice to the submissions made hereinabove and hereinafter, if the applicant pays GST on the entire value of work done to its contractors and also to

MVVNL, then how will this payment of same amount of GST on the same transaction to two separate entities, not constitute double taxation?

3. 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.

The applicant has submitted that-

1. That the M/s Spring Infrastructures) hereinafter referred as the Firm' is a Partnership Firm, having registered office at CP-138, Viraj Khand, Gomti Nagar, Lucknow -226010.
2. That the applicant is primarily engage in Land Developer business i.e Sale of Developed Land, having projects in different parts of Lucknow and duly registered under GST Law i.e under the Jurisdiction of Assistant Commissioner, Sector-20, SGT Department, Lucknow.
3. That Madhyanchal Vidyut Vitran Nigam Limited (hereinafter referred to as MVVNL) is a company incorporated under Companies Act 1956, having its registered office at 4-a, Gokhle Marg, Lucknow, and its concerning at executive Engineer, Division-Raj Bhawan MVVNL, Lucknow.
4. That the applicant is currently doing the Land development work at Khasra No. 430 & 431, Sector-7, Gomti Nagar Extension, Ahmamau Lucknow which is duly declared in the GST Registration Certificate.
5. That the applicant had moved application for Transmission line of load sanction of 11KV at Khasra No.430 & 431 Village Ahmamau, before the executive Engineer, Division-Raj Bhawan MVVNL, Lucknow on dt 24.05.2022
6. That the MVVNL has provided estimated cost is for the purpose of calculating the supervision charges which is to be paid by applicant le applicant to MVVNL, copy of estimated value is enclosed herewith.
7. That the whole work is done by the applicant under the supervision of MVVNL for which MVVNL gets supervision charges, which are approximately 15% of the estimated cost of the work.
8. That the MVVNL had issued a demand letter on dt 18.10.2022 to the applicant asking for deposit estimated cost along with 18% of GST, copy of demand letter is enclosed herewith.
9. That the applicant had moved application before the executive Engineer, Division-Raj Bhawan MVVNL, Lucknow on dt 19.10.2022 for allowing 15% supervision charges on estimated cost, copy of application is enclosed herewith. 10. That the MVVNL had issued revised demand letter on dt 19.10.2022 to the applicant asking for 18% of GST on the estimated cost which was solely done by the contractor appointed by the applicant under the supervision of MVVNL, copy of revised demand etter is enclosed herewith.
11. That it is here to clarify that the entire shifting/modification of Transmission line works are done by the contractor appointed by the applicant, who purchases the material for required for shifting/modification of the Transmission Line as per technical specification of MVVNL

12. That the contractor who has made purchases of the material for shifting of Transmission Line, has claimed ITC on the same, has done the work of shifting/modification which includes cost of dismantling the existing section, civil work for erection and cost of new work according to the specification of MVVNL, Therefore the aforesaid transaction is done between applicant and its contractor, who has made the required purchases and has completed the work according to the specification of MVVNL.

13. That the MVVNL is demanding 18% GST on the estimated cost because work done as per MVVNL. It is an asset transferred from applicant to MVVNL and in this regard it is submitted that prior to and even after the shifting/modification the Transmission line belongs to MVVNL. That it is hereby clarify that the ownership and operational control of the Transmission line remains with MVVNL and are not at all transferred in any form to applicant. The applicant is only concerned with the shifting of these Transmission line from one place to another for obtaining safe clearance and that too is done under the expert supervision of MVVNL. The entire shifting/modification of transmission line work is done by the contractor of the applicant. The MVVNL only supervises the Transmission line work and for this supervision charges to be paid to MVVNL along with GST. The only service for which MVVNL is liable to get payment along with GST is supervision charges which have been paid to MVVNL

14. That the MVVNL is relying on section 15(2)(b) of UP GST act, 2017 is as under-

"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 include in the price actually paid or payable for the goods or service or both".

15. That the MVVNL has raised demand notice for the payment of GST on the entire work which is not justified as per GST law.

16. That on the basis of the above facts this application is being preferred before the Hon'ble Advance Ruling Authority to determine whether there is any "Asset Transfer" by applicant to MVVNL in load sanction work of MVVNL, which is supply leviable to GST.

4. The applicant has submitted their interpretation of law as under-

1. That the terms, "supply" has been inclusively defined in the Act. The meaning and scope of supply under GST can be understood in terms of following six parameters, which can be adopted to characterize a transaction as supply:

(a) Supply of goods or service. Supply of anything other than goods or services does not attract GST.

(b) Supply should be made for a consideration.

(c) Supply should be made in the course or furtherance of business.

(d) Supply should be made by a taxable person.

(e) Supply should be a taxable supply.

(f) Supply should be made within the taxable territory.

2. That the main parameter of supply is that there must be some consideration and transfer of ownership involved for a transaction to be treated as supply. In the instant case there is no consideration involved regarding shifting/modification of transmission line work. No

amount has been by applicant to MVVNL for shifting/modification of transmission line work. The applicant makes payment for shifting/modification of transmission line work to its contractor and since the MVVNL only supervises the work of shifting/modification of transmission work, only supervision charges to be paid to MVVNL along with GST. As stated earlier, the ownership and control operation of the transmission lines remains with MVVNL and are not at all transferred in any form to applicant. The applicant is only concerned with the shifting/modification of these transmission lines from one place to another for obtaining safe clearances and that too is done under the expert supervision of MVVNL

3. That the MVVNL does not transferred any asses to the applicant. The transmission lines were the assets of MVVNL prior to and even after the shifting or modification. That even during the process of shifting, the entire revenue generation from the operation of these transmission lines belongs to MVVNL and not the applicant.

4. That the MVVNL has not supplies any material to the applicant which can be used in the shifting/modification of the transmission lines. Each and every material used in the shifting/modification was purchased by the contractor of the applicant on which ITC has been claimed by the contractor.

5. That the transmission lines are the assets of MVNNL prior to and even after the shift.

The applicant does not claim any assets. Therefore the transmission lines were and will remain the assets of MVVNL and not the applicant.

6. That if there is no transfer of assets, it means that there is no supply in the furtherance of business. The applicant is just facilitating in shifting of transmission line and there is no "buyer and seller" between the applicant and MVVNL in the case. The only relation is that MVVNL is supervising the shifting/modification of transmission lines as it is their assets and needs expert supervision while shifting/modification for which MVVNL is being paid the supervision charges along with GST.

7. That it is also pertinent to mention here that GST is payable on the taxable amount of supply of service or goods. If the supply of goods and services in Transmission line provided at applicant business place is being made by the contractor to applicant, then why GST on that taxable amount is to be paid to MVVNL? 8. That if the amount of GST on the work done is paid to MVVNL then how will the contractor justify his supply of service and goods involved in Transmission line? If the GST on the work done is paid to MVVNL and contractor both, then there will be double taxation on the same amount which is against the provision of law and natural justice.

9. That the MVVNL is relying on section 15(2)(b) of UP GST act, 2017 is as under:-

"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 include in the price actually paid or payable for the goods or service or both".

10. That it appears that MVVNL is misinterpreting the section 15(2)(b) and is mixing two separate transactions namely (1) between applicant and MVVNL and (2) between applicant and its contractor. The pain and simple interpretation of this section is as under:-
The above provision states that the expenses which ought to be incurred by the supplier but

has been incurred by the recipient and provided to the supplier shall be added by the supplier in the invoice to be raised on his customer/recipient. It is merely seen in the construction project where the receiver of the service le contractes procures some crucial material as per his choice of quality and price and provides it to supplier Le contractor for using it in the construction work. The contractor will have to add value of the goods received from contractee in his in his running bill and charges GST on total value

11. That in view of the above submissions, the MVVNL is not the contractor or supplier because shifting/modification of Transmission line work is not done by MVVNL and the transmission lines are the assets of MVVNL and not applicant. There is no contractor contractee relation between the applicant and MVVNL The only relation is that the assets belonging to MVVNL were occupying the space, which was intended to be used by the applicant. And therefore, the applicant is only shifting those assets after prior notice and seeking technical assistance from MVVNL to some other place.

12. That hypothetically, if the applicant complies with the demand notice issued by MVVNL, then the natural and obvious consequence will be that the applicant will end up paying the value of the work of shifting/modification of the transmission lines to its contractor along with GST and also the same amount of GST to MVVNL as well. This will be a clear cut case of double taxation as the same amount GST is being paid to the contractor as well as MVVNL in respect of the same transaction. This kind of transaction is not envisaged by any applicable law.

13. That as a general principal, indirect tax is always lived on the basic value of any goods sold/transferred or service provided. The MVVNL has not sold/transferred anything to the applicant and as such no consideration is being paid by the applicant to MVVNL. The applicant is already paying the value of the work of shifting of the transmission line to its contractor along with GST. The only service which MVVNL is providing to the applicant is supervision over the work of shifting of the transmission lines, for which the applicant is already paying supervision charges along with GST. The demand of only GST by MVVNL, without any basic value of goods, is totally false and misconceived and against the provision of UP GST act.

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 Deputy Commissioner, Central Tax & Central Excise, Division-Lucknow-I vide letter dated 23.06.2023 to offer their comments/views/verification report on the matter. No views/comments has been offered till date.

7. The applicant was granted a personal hearing on 19.07.2023 which was attended by Shri Bijay Bahadur Prasad, Advocate, the authorized representative of the applicant during which he reiterated the submissions made in the application of advance ruling.

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-

(1) Determination of the liability to pay tax on any goods or services or both;

10. We would like to examine whether the issue raised in the application is squarely covered under Section 97(2) of the CGST Act 2017 or not. For this we would like to examine this matter in light of definitions of Advance Ruling under section 95 of the CGST Act 2017 and the same is reproduced as under:

Section 95. Definitions of Advance Ruling.— In this Chapter, unless the context otherwise requires,—

(a) —advance ruling 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;

(b) —Appellate Authority means the Appellate Authority for Advance Ruling referred to in section 99;

(c) —applicant means any person registered or desirous of obtaining registration under this Act;

The above clause (a) of section 95 clearly provides that the applicant of Advance Ruling should be related to a taxpayer who supplies the goods or services or both or who proposes to make supplies in future. As the wording says the "supply of goods or series or both" and not the "receipt of goods or services, or both", it is implied that the applicants seeking Advance Rulings should be the suppliers and not the recipients.

The meaning of the applicant defined at Point No. (c) should be derived only in consonance with Point No. (a) of Section 95 of the CGST Act 2017.

11. Further, we find that the scope of supply as provided in section 7 of the CGST Act, the expression "supply" includes the following

(a) all forms of supply of goods or services or both such a sale, transfer barter, exchange, licence, rental, lease or disposal made or agreed to be made for consideration by a person in the course of furtherance of business.

(aa) the activities or transaction, by a person, other than individual, to its members or constituents or vice versa, for cash, deferred payment or other valuable consideration

(b) import of services for a consideration whether or not in the course or furtherance of business; and

(c) the activities specified in Schedule I, made or agreed to be made without a consideration,

The conjoint reading of both the above paras 10 and 11, it clarifies that activities of the taxpayer being a recipient, are not related to the supply being undertaken or proposed to be undertaken by him.

12. Further, reference needs to be made to section 103 of CGST Act, 2017 which provides for applicability of the advance ruling. Clause (a) of sub-section (1) of the said section clearly provides that the advance ruling is binding only upon the applicant.

13. We find after examining the AAR application dated 15.06.2023 of Applicant M/s Spring Infrastructures that it is receiver of the Goods/Services provided by the M/s Madhyanchal Vidyut Vitran Nigam Limited. Therefore, it falls under category of Service recipient. In light of point provided under Section 95 of CGST Act 2017, only supplier of the services can file Application for Advance Ruling. Accordingly, we do not admit the application for consideration/ruling on merits as applicant does not fall under the definition of supplier under Advance Ruling and cannot get the Advance Ruling under the Act.

14. Accordingly, we pass the ruling as under:

RULING

No ruling can be given in the matter as discussed above.

15. 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.



(Harilal Prajapati)
Member of Authority for Advance
Ruling



(Amit Kumar)
Member of Authority for Advance
Ruling

To,

M/s Spring Infrastructures, CP-138,
Viraj Khand, Gomti Nagar
Lucknow Uttar Pradesh, 226010

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 Principal Commissioner, CGST & C. Ex, Lucknow, GST Bhawan, 7-A, Ashok Marg, Lucknow-226001.
4. The Deputy Commissioner, CGST & C. Ex Division- II Lucknow, Kendriya Bhawan, Sector-H, Aliganj, Lucknow-226024.
5. Through the Additional Commissioner.....लुक्कनू-२२६०२४....., 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, Vibhuti Khand, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.