

GST : Where applicant has been entrusted work of construction of Indo-Nepal Border Road and it sub-contracted said work to sub-contractors and it sought advance ruling on applicability of GST on sub-letting of work entrusted to sub-contractors, since there were different views between members on applicability of GST on sub-contractors, application was referred to Appellate Authority for Advance Ruling for decision

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**[2019] 104 taxmann.com 365 (AAR- UTTARAKHAND)
AUTHORITY FOR ADVANCE RULINGS, UTTARAKHAND**

NHPC Ltd. *In re**

VIPIN CHANDRA AND AMIT GUPTA, MEMBER
RULING NO. 17/2018-19
JANUARY 30, 2019

Classification of services - Uttarakhand Goods and Services Tax Act, 2017 - Constructions of Indo-Nepal Border Road - Heading No. 9954 [Construction services] - Applicant has been entrusted work of construction of Indo-Nepal Border Road - It sub-contracted said work to sub-contractors - It sought advance ruling on applicability of GST on sub-letting of work entrusted to sub-contractors - One member of Authority for Advance Ruling held that supply in question, i.e., construction of road by sub-contractors is not exempted vide [Notification No. 12/2017 - Central Tax \(Rate\), dated 28-6-2017](#), therefore, sub-contractors are liable to pay GST at rate of 12 per cent [CGST 6 per cent + SGST 6 per cent] - However, other member of Authority for Advance Ruling held that supply in question, i.e., construction of road by sub-contractors is exempted from payment of GST inasmuch as main contractor (applicant) is exempted from GST in terms of [Notification No. 12/2017 - Central Tax \(Rate\), dated 28-6-2017](#) - Whether in view of different views on applicability of GST on sub-contractors, application required to be referred to Appellate Authority for Advance Ruling for hearing and decision - Held, yes [Para 8.4] [Application referred to Appellate Authority Advance Ruling]

Circulars and Notifications : [Notification No. 12/2017 - Central Tax \(Rate\), dated 28-6-2017](#), [Notification No. 13/2017 - Central Tax \(Rate\), dated 28-6-2017](#), [Notification No. 11/2017 - Central Tax \(Rate\), dated 28-6-2017](#), [Notification No. 1/2018 - Central Tax \(Rate\), dated 25-1-2018](#), [Notification No. 32/2017 - Central Tax \(Rate\), dated 13-10-2017](#), [Notification No. 20/2017 - Central Tax \(Rate\), dated 22-8-2017](#), [Notification No. 24/2017 - Central Tax \(Rate\), dated 21-9-2017](#), [Notification No. 31/2017 - Central Tax \(Rate\), dated 13-10-2017](#)

(NR)

FACTS

- The applicant has been entrusted the work of construction of Indo-Nepal Border Road by the Ministry of External Affairs, Government of India.
- It sub-contracted the said work to the sub-contractors.

- The Authority for Advance Ruling, *vide* Ruling No. 10/2018-19, dated 22-10-2018, has already held that the activity of the applicant was exempted from GST in terms of Notification No. 12/2017 - Central Tax (Rate), dated 28-6-2017.
- The applicant in the instant application sought advance ruling on the applicability of GST on sub-letting of work entrusted to sub-contractors.

HELD

As per Vipin Chandra, Member

- The supply in question, *i.e.*, construction of road by sub-contractors is not exempted *vide* Notification No. 12/2017 - Central Tax (Rate), dated 28-6-2017. Therefore, the sub-contractors are liable to pay GST at the rate of 12 per cent [CGST 6 per cent + SGST 6 per cent].

As per Amit Gupta, Member

- The supply in question, *i.e.*, construction of road by the sub-contractors is exempted from payment of GST inasmuch as the main contractor (applicant) is exempted from GST in terms of Notification No. 12/2017 - Central Tax (Rate), dated 28-6-2017.

Ruling

- In view of different views on the applicability of GST on the sub-contractors, the authority is making a reference to the Appellate Authority for hearing and decision on said issue. [Para 8.4]

CASES REFERRED TO

SP Gupta v. President of India AIR 1982 SC 149 (para 8.4), *Director of Enforcement v. Deepak Mahajan* [1994] 3 SCC 430 (para 8.4) and *Sirajul Haq Khan v. Sunni Central Board of Waqf* AIR 1959 SC 198 (para 8.4).

N.K. Gupta, DGM (Finance) and **J.C. Pant**, Sr. Manager (Law) *for the Applicant*.

RULING

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.

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 NHPC, Admin Building, Tanakpur Power Station, Banbasa, Uttarakhand seeking an advance ruling on the issue:

- (a) Whether the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (as amended from time to time) is applicable to the contractors/sub-contractors involved in the construction of Indo-Nepal Border Road or otherwise.

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 sub-section (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

4. In the present case applicant has sought advance ruling on applicability of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 on their activity of construction of road and whether the said notification is also applicable to the other contractors involved in the said activity of construction of road. Therefore, in terms of said Section 97(2)(b) of Act, the present application is hereby admitted.

5. Accordingly opportunity of personal hearing was granted to the applicant on 11.01.2019. Shri N K Gupta (DGM-Finance) and Shri JC Pant (Senior Manager- Law) of the applicant appeared for personal hearing on said date and submitted documents during the proceedings. No body appeared from the side of Revenue for the hearing.

6. From the documents submitted by the applicant we find that applicant is registered in Uttarakhand with GSTIN bearing no. 05AAACN0149C4Z2. On going through the 'Office Memorandum' dated 02.05.2018, We find that 1.2 Km long link canal is to be constructed by India from Tanakpur Barrage to the Indo-Nepal border under Mahakali Treaty signed between India & Nepal in 1996. Besides construction of canal, 1.3 Km road is also to be constructed which is the issue in hand to be discussed later on. DPR of the project has been prepared by NHPC. The construction of 1.2 Km long link canal from Tanakpur Barrage to the Indo-Nepal border including the construction of 1.3 Km link road will be financed out of the budgetary outlays of MEA under the budget head "Aid to Nepal". Initially NHPC can spend the money, if required, subsequently the same can be recouped from the budget of MEA to NHPC directly. Budget releases will be made by MEA to NHPC which is executing the project as a turnkey agency of MEA based on the recommendation of the Ministry of Power.

7. The applicant further submitted the MOU dated 03.10.2018 signed between General Manager, NHPC Ltd, Tanakpur Power Station, Champawat, Uttarakhand (herein after referred as client/department) and Superintendent Engineer, PWD, Champawat, Uttarakhand (herein after referred as construction agency). The relevant portions of the same are summarized as under:

- i.* On the proposal of client, construction agency has agreed to do construction and related works of construction of 1.3 km motor road from Tanakpur Barrage to Brahmddev in District Champawat
- ii.* Total cost of the project is Rs. 6.72 cr including GST & contingencies as indicated in the administrative and financial sanction issued as informed by General Manager, NHPC, Tanakpur Power Station vide letter dated 02.07.2018.
- iii.* The construction agency shall commence & complete the work as per the schedule. In case the construction agency fails to complete the work within

schedule, liquidated damages @ 0.035% per day of delay subject to the maximum of 10% of total cost of the project shall be deducted from the bill of the construction agency.

- iv. Security deposit/Retention money shall be deducted by the construction agency from the interim bills of the contractor of the construction agency engaged for the execution of work @ 5% of the total value of each bill of the work done. The security deposit less any amount due shall, on demand, be released to the contractor by the construction agency after obtaining 'no defect certificate from the client/department' after 30 days of expiry of defects liability period.
- v. At the time of making payment to construction agency by the client/department, GST as applicable shall be deposited by the client/department under RCM in terms of section 9(3) of the Act read with Notification no. 13/2017. The contractor shall be paid on work invoice/running/final bill by adding GST as applicable at the time of payment by the construction agency. Further the outcome of advance ruling to have clarification for avoidance double GST shall be treated as integral part of MOU.
- vi. The construction agency shall refund all the balance money to the client/department after completion of project excluding contingency charges.
- vii. The construction agency shall be responsible for ensuring the quality standards of all the material & works of the project
- viii. The project shall be handed over to the authorized representative at client/department.

8. In the present case we are restricting our conclusion to the facts and circumstances which was filed for our consideration in the application. Now we proceed to decide the issue in hand:

8.1 Whether the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (as amended from time to time) is applicable to the contractors/sub-contractors involved in the construction of Indo-Nepal Border Road or otherwise.

8.2 In the instant case we find that the work is allotted to the applicant by MEA is related to "construction of road". The applicant sub-contracted the said work to PWD, Govt. of Uttarakhand who further sub-contracted to a contractor.

8.3 From the record we find that NHPC Ltd has been entrusted the work of construction of road by Ministry of External Affairs, Govt. of India (in short "MEA") wherein the funds will be provided by MEA from its head "Aid to Nepal" to M/s NHPC Ltd. It means that the funds provided by MEA to M/s NHPC Ltd are in the form of grants. The function of M/s NHPC Ltd in the said work has been defined as "turnkey agency". The issue of GST liability on the applicant on this matter has already been decided by us vide Ruling No.10/2018-19 dated 22-10-2018 wherein the activity of the applicant was held exempted from GST in terms of Notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 (as amended from time to time).

8.4 The applicant in their present application has sought advance ruling on the applicability of GST on sub-letting of work entrusted to PWD, Uttarakhand and contractor hire by PWD, Uttarakhand for completion of said work. On this issue we have different views and are discuss as under;

(a) [Ruling per: Vipin Chandra, Member]- In the background of the issue in hand, the applicant has earlier sought the advance ruling on the applicability of GST on the activity being carried out by them

and vide Advance Ruling No.10/2018-19 dated 22-10-2018, it was held by the authority that their activity is exempted from GST in terms of Notification No. 12/2017-CT (Rate) dated 28.06.2017. Now the applicant has sought the advance ruling whether the same work allotted to sub-contractor is also exempted or otherwise.

In this context, I find that there is no entry in the exemption Notification No 12/2017-CT (Rate) dated 28.06.2017 which exempts the supply in question being carried out by the sub-contractors rather entry (iv) of serial no 3 of 12/o [CGST 6% + SGST 6%] for supply in question i.e. 'construction of road' The relevant portion of Notification No. 11/2017-CT (Rate) dated 28.06 2017 is reproduced as under:

<i>Sl. No.</i>	<i>Chapter, Section or Heading</i>	<i>Description of Service</i>	<i>Rate (per cent.)</i>	<i>Condition</i>
1	2	3	4	5
2	Section 5	Construction services		
3	Heading 9954 (construction service)	(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	
		"(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, - (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); (b) canal, dam or other irrigation works; (c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal	6	
		(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017,	6	

supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public; (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana; (c) a civil structure or any other original works pertaining to the "In-situ 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; (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; (e) a pollution control or effluent treatment plant, except located as a part of a factory; or (f) a structure meant for funeral, burial or cremation of deceased.

(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 of original works pertaining to, - (a) railways, excluding monorail and metro; (b) a single residential unit otherwise than as a part of a residential complex; (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; (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- (1) the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana; (2) any housing

scheme of a State Government; (e) post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes; or (f) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.

(vi) Construction services other than (i), (ii), (iii), (iv) and (v) above.

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(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 75 per cent, of the value of the works contract) provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity.

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 authority, as the case may be

(viii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 and associated services, in respect of offshore works contract relating to oil and gas exploration and production (E&P) in the offshore area beyond 12 nautical miles from the nearest point of the appropriate base line.

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I further find that Notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017 was further amended vide Notification No. 1/2018-Central Tax (Rate) dated 25th January, 2018 and the relevant portion of the same reproduce as under:

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"(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.

4

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

5

(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) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.

2.5

Provided that where the services 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.

Thus I observe that there is no conflict between the two entries made in the aforesaid notifications in as much as the activity of the applicant i.e. 'construction of road' is exempted vide serial no. 9C of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 whereas the entry no. (iv) of serial no, 3

of Notification No. 11/2017-CT (Rate) dated 28.06.2017 prescribed GST rate of 12% on the same work i.e. 'construction of road'. I observe that the entries in Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 prescribing GST rates on service have to be read together with entries in exemption Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. A supply which is specifically covered by any entry of Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017 is exempt from GST notwithstanding the fact that GST rate has been prescribed for the same under Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017.

In view of the above I observe that since the supply in question i.e. 'construction of road' by sub-contractor is not exempted vide Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017, therefore the sub-contractors are liable to pay GST @ 12% [CGST 6% + SGST 6%].

(b) [Ruling per: Amit Gupta, Member]—Respectfully I have gone through the views expressed by Hon'ble member Shri Vipin Chandra. I am having certain reservations on the opinion expressed. In the present case I find that Ministry of External Affairs (herein after referred to as MEA) has allotted the work i.e. 'construction of road' to the NHPC (applicant). The applicant sub-let the said work to PWD, Uttarakhand who further sub-let the work to a contractor. The applicability of GST on the applicant for 'construction of road' has already been decided by the authority vide Advance Ruling No 10/2018-19 dated 22-10-2018 wherein it was held that the services provided by the applicant to MEA is exempted in terms of Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017 [amended vide Notification No. 32/2017-Central Tax (Rate)] and the relevant portion of the same is reproduced as under:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
1	2	3	4	5
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, Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants.	Nil	Nil

I find that the Notification No. 11/2017- Central Tax (Rate) dated 28th June, 2017 *supra* (amended vide Notification No. 20/2017-Central Tax (Rate) dated 22.08.2017, Notification No. 24/2017- Central Tax (Rate) dated 21.09.2017 & Notification No. 31/2017- Central Tax (Rate) dated 13.10.2017) 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.

Initially, the GST rate on works contract service was notified at 18%. Subsequently, various notifications were issued notifying the various GST rates for different situations in which works contract service is being provided. To remove the ambiguity on the applicability of GST rate on the sub-contractors, the GST council in its 25th meeting held on 18 January 2018, made following recommendation in this regard:

"to reduce GST rate (from 18% to 12%) on works contract services (WCS) provided by sub-contractor to the main contractor providing Works Contract Services to Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity from which attracts the GST rate of 12%. Likewise, WCS attracting 5% GST, their sub-contractor would also liable @ 5%."

I find that in the case of *S P Gupta v. President of India* [AIR 1982 SC 149], the Hon'ble Apex Court held that words used in the constitutional or statutory provision are shrouded in mystery, clouded with ambiguity and are unclear and unintelligible so that the dominant object of the legislature cannot be spelt out from the language, external and like parliamentary debates, the report of the select committees or its chairman, the statement made by the sponsor of the statute can be pressed into service so as to know the real purpose or intent of the legislature.

In this context I find that the legal facts given under "Fiscal Interpretation of Statutes has to be read in conjunction with the recommendation of 25th GST Council (*supra*) and I observe that where literal interpretation may not serve the purpose or may lead to absurdity, the "doctrine of purposive interpretation" can be adopted which is based on the understanding that the authority supposed to attach that meaning to the provisions which serve the purpose behind such a provision and the same was upheld by the Hon'ble Supreme Court in its judgment (*supra*).

Therefore I observe that the purpose or object of the GST Council is to extend benefit to the last chain of said supply and reason for the same is to provide equal opportunities and equal level playing fields to business entities and avoid discrimination. Thus I am of the view that the recommendations made by the GST Council in this regard makes it clear that if GST rate on the work contract is 12% or 5% then sub-contractor is also liable to discharge his GST liability @ 12% or 5% as the case may be. Similarly if GST rate on the said work contract is exempted or 0%, then supply of service in the form of work contract by the sub-contractors will also come in the purview of exempted or 0%. Thus I observe that if the principal contractor is providing an exempt works contract service to Government in terms of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (as amended from time to time) and in such case it works contract is partially or wholly sub-contracted then the sub-contractors would also be exempted from payment of GST.

In support of my view, I rely on following case laws :

- "(i) The Hon'ble Supreme Court in the case of *Director of Enforcement v. Deepak Mahajan* [1994] 3 SCC 430 has observed that "mechanical interpretation of the words and application of legislative intent devoid of concept of purpose and object will render the legislation insane".
- (ii) In the case of *Siraj-ul-Haq Khan v. Sunni Central Board of Waqf* [AIR 1959 SC 198], the Hon'ble Apex Court held that "an attempt must always be made to reconcile the relevant provisions so as to advance the remedy intended by statute. Where the liberal meaning of the words used in a statutory provision would manifestly defeat its object by making a part of it meaningless and ineffective, it is legitimate and even necessary to adopt the rule of liberal construction in such a way so as to give meaning to all parts of the Act and to make the whole of it effective and operative."

I further observe that if the GST is made applicable to the sub-contractors in the instant case, the whole purpose of exemption extended to the applicant i.e. NHPC vide Notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 will be lost as NHPC & PWD do not do the work on their own and they get their work completed through the sub-contractors. In such circumstances and facts of the case in hand the objective and purpose of the GST Council to give benefit to the work being undertaken will be defeated.

On harmonious reading of both notifications viz. 11/2017-Central Tax (Rate) dated 28th June, 2017 and 12/2017-Central Tax (Rate) dated 28th June 2017 together in light of object behind the GST Council to pass the benefit of tax to the downstream of the chain, I observe that sub-contractors of supply in question are exempted from payment of GST in as much as the main contractor namely NHPC is

exempted from GST in terms of Notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 (as amended from time to time) vide Advance Ruling bearing No.10/2018-19 dated 22-10-2018.

RULING

In view of the above, we have different views on the applicability of GST on the sub-contractors as discussed *supra*. Since we have different views on that particular issue, we are making a reference to the Appellate Authority for hearing and decision on said issue in terms of Section 98(5) of the *ibid* which provide that where the members of the Authority, differ on any question which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

S.K. Jain

*Application referred to Appellate Authority Advance Ruling.