

समक्ष अग्रिम विनिर्णय प्राधिकारी उत्तराखण्ड(माल और सेवा कर)
**BEFORE THE AUTHORITY FOR ADVANCE RULINGS FOR THE
STATE OF UTTARAKHAND
(Goods and Services Tax)**

Present:

श्री अनुराग मिश्रा (सदस्य)

Shri Anurag Mishra (Member)

श्री रामेश्वर मीणा (सदस्य)

Shri Rameshvar Meena (Member)

The 13th day of July, 2022

अग्रिम विनिर्णय संख्या. 06/2022-23

Ruling No: 06/2022-23

in

आवेदन संख्या . 02/2022-23

Application No: 02/2022-23

1	आवेदक Applicant	M/s State Industrial Development Corporation of Uttaranchal Ltd., (SIDCUL), 29IIE, IT Park, Sahastradhara Road, Dehradun, Uttarakhand, 248001.
2	अधिकारिता अधिकारी Jurisdictional Officer	-----
3	आवेदक की ओर से उपस्थित Present for the Applicant	Sh. Saurabh Gupta, Chartered Accountant Sh. Hari Singh Negi, AGM (Accounts)
4	अधिकारिता अधिकारी की ओर से उपस्थित Present for the Jurisdictional Officer	None
5	Concerned Officer	Mrs. Preeti Manral, Deputy Commissioner
6	आवेदन प्राप्ति की तिथि Date of receipt of application	02.05.2022
7	सुनवाई की तिथि Date of Personal Hearing	17.06.2022 (Through video Conferencing)

नोट: इस अग्रिम विनिर्णय की प्राप्ति के 30 दिन के अन्दर उत्तराखण्ड माल और सेवाकर अधिनियम 2017 की धारा-99 के अन्तर्गत गठित अग्रिम विनिर्णय अपीलप्राधिकारी के समक्ष धारा- 100(1) के अन्तर्गत अपील दायर की जा सकती है।

Note: An appeal against this ruling lies before the appellate authority for advance ruling under Section 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, 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.

**AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX
UTTARAKHAND**

PROCEEDINGS

1. This is an application under Sub-Section (1) of Section 97 of the Central Goods & Service Tax Act, 2017 and Uttarakhand State Goods & Service Tax Act, 2017 (hereinafter referred to as CGST/SGST Act) and the rules made there under filed by M/s State Industrial Development Corporation of Uttaranchal Ltd., (SIDCUL), 29IIE, IT Park, Sahastradhara Road, Dehradun, Uttarakhand, 248001 (herein after referred to as the "applicant") and registered with GSTIN - 05AAHCS7324R2ZQ under the CGST Act, 2017 read with the provisions of the UKGST Act, 2017. In the application dated 02.05.2022, the applicant submitted that the work of Electrification and or Construction (Erection, installation and commissioning) of Electric Substations/ Increase in the capacity of Electric Substations etc. are being undertaken through M/s Uttarakhand Power Corporation Ltd. (UPCL) (a Government of Uttarakhand undertaking) and M/s Power Transmission Corporation of Uttarakhand Limited (PITCUL) (a Government of Uttarakhand undertaking) and both of these entities are not eligible to avail the Input Tax Credit (ITC) of the GST paid by them, on the Goods and Services supplied by different vendors. Thereafter, while issuing draft estimates to the applicant for the Works Contract, M/s UPCL / M/s PITCUL, charges GST twice, firstly on the value charged by the different vendors and then again on the value arrived at after adding other components namely Contingency Charges, O/H & Supervision Charges, Labor Cess on Centralized Mat. etc., consequently paying GST on the transaction value which also includes GST, hence against the spirit of the statute.

2. In view of the above facts, 'the applicant' is seeking an advance ruling on the issue as to "Whether double charging of GST as mentioned in the draft estimate (s) submitted by PITCUL/UPCL in respect of contract involving supply of equipment/ machinery & erection, installation & commissioning services with civil work is correct as per the present GST regime"?

3. At the outset, we would like to state that the provisions of both the CGST Act and the SGST 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 provisions under the SGST Act.

4. The 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.

5. 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.

5.2 In the present case applicant has sought advance ruling on determination of value of supply of services, therefore, in terms of said Section 97(2) (c) of CGST/SGST Act, 2017, the present application is hereby admitted.

6. Accordingly opportunity of personal hearing was granted to the applicant on 17.06.2022. Sh. Hari Singh Negi, AGM (Accounts), M/s State Industrial Development Corporation of Uttaranchal Ltd., and Sh. Saurabh Gupta, Chartered Accountant, on behalf of the applicant appeared for personal hearing on the said date and re-iterated the submission already made in their application. Ms. Preeti Manral, Deputy Commissioner, Concerned Officer from the State Authority was also present during the hearing proceedings. She presented the facts and requested the authority to decide the case on merits.

7. From the record submitted by the applicant we find that applicant is registered in Uttarakhand with GSTIN bearing No. 05AAHCS7324R2ZQ. Before proceeding in the present case, we would first go through the submissions filed by the applicant and the same is summarized as under:

- (i) They undertake the services of M/s Uttarakhand Power Corporation Ltd. (UPCL) and M/s Power Transmission Corporation of Uttarakhand Limited (PITCUL) (both Government of Uttarakhand Undertakings) for the work of Electrification and or Construction (Erection, installation and commissioning) of Electric Substations/ Increase in the capacity of Electric Substations etc.
- (ii) M/s UPCL & M/s PITCUL are not eligible to avail the Input Tax Credit (ITC) of the GST paid by them, on the Goods and Services supplied by different vendors.
- (iii) For the Works Contract given by them to M/s UPCL and M/s PITCUL, these two entities issue draft estimates wherein while arriving at the final price i.e. the transaction value for the purpose of payment of applicable GST, firstly they

charge applicable GST on the value charged by different vendors and then on the said price other components namely Contingency Charges, O/H & Supervision Charges, Labour Cese on Centralized Mat. etc., are added by them. Thereafter, these two entities i.e. M/s UPCL and M/s PITCUL again charge applicable GST on the said transaction value; hence they have to pay GST twice, which is against the spirit of the statute.

8. In the present case we are not deciding any wider question but restricting our conclusion to the facts and circumstances which were filed for our consideration in the application. Now we proceed by taking up the issue:

8.2 In the instant case the issue before us is what constitutes **transaction value** or **What is transaction value for the purpose of payment of applicable GST?** In this regard we find that Section 15 of the Central Goods and Services Tax Act, 2017, deals with "Value of taxable supply". Section 15 of the Central Goods and Services Tax Act, 2017 provides common provisions for determining the value of goods and services. It provides the mechanism for determining the value of a supply which is made between unrelated persons and when price and only the price is the sole consideration of the supply.

Hence, to have a clear understanding of the matter, the same is reproduced hereunder:

"SECTION 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”.

8.3 We also find that in the C.B.E. & C. Flyer No. 29, dated 1-1-2018 it has been clarified that “*Compulsory Inclusions- Any taxes, fees, charges levied under any law other than GST law, expenses incurred by the recipient on behalf of the supplier, incidental expenses like commission & packing incurred by the supplier, interest or late fees or penalty for delayed payment and direct subsidies (except government subsidies) are required to be added to the price (if not already added) to arrive at the taxable value*”.

8.4 We further find that in the “*FREQUENTLY ASKED QUESTIONS (FAQS) ON GOODS AND SERVICES TAX (GST) (3rd Edition — 15th December, 2018)*”, it has been clarified as to what is transaction value? To have a clear understanding, the same is reproduced hereunder:

“Q2. What is transaction value?

Ans. Transaction value refers to the price actually paid or payable for the supply of goods and or services where the supplier and the recipient are not related and price is the sole consideration for the supply. It includes any amount which the supplier is liable to pay but which has been incurred by the recipient of the supply”.

8.5 From the above wording of the statute it is clear 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 and in the instant case as admitted by the applicant**, supply by M/s UPCL & M/s PITCUL includes the component of GST paid by them on the Goods and Services received by them from different vendors, while arriving at the transaction value of the Services supplied by them to the applicant.

8.6 We observe that M/s UPCL & M/s PITCUL are correctly including all the components of the cost incurred by them for arriving at the pricing of goods. Furthermore, inclusion of other components namely Contingency Charges, O/H & Supervision Charges, Labor Cess on Centralized Mat., etc. by M/s UPCL & M/s PITCUL, appears to be in terms of the agreement entered between the applicant and the said two entities. And in view of the provisions of Section 15 of the CGST Act, 2017, M/s UPCL & M/s PITCUL are correctly adding up all the other agreed upon components, to arrive at the transaction value for the purpose of payment of GST.

8.7 We are of the opinion that this situation arose due to the fact that while issuing draft estimates, both M/s UPCL & M/s PITCUL, had shown the component of GST borne by them, which is an integral part of the cost to them, as a different entry and not a combined entry. Had it been shown as a single entry (without any bifurcation/reflection of the GST charged by their vendors to them), it appears that there would have been no doubt in this regard.

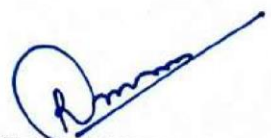
9 Hence, we hold that the component of the GST paid by M/s UPCL & M/s PITCUL on the supplies received by them from their vendors, is the cost for them and is one of the many components which constitutes the transaction value for the supply in question and is the price actually payable (transaction value) for the said supply of work contract to the applicant. Therefore, the transaction value arrived by M/s UPCL & M/s PITCUL is in consonance with the provisions of the GST Act, 2017 and the GST is payable on transaction value so arrived.

10. In view of the discussions held above, we rule as under:

RULING

The component of GST as mentioned in the draft estimate (s) submitted by M/s PITCUL and M/s UPCL in respect of contract involving supply of equipment/ machinery & erection, installation & commissioning services with civil work, is the cost for them and is one of the many components which constitutes the transaction value for the supply in question and is the price actually payable (transaction value) for the said supply of goods & services (Under the draft estimates / contract referred to in the application) to the applicant and hence is in consonance to the provisions of the GST Act, 2017.


ANURAG MISHRA
(MEMBER)


RAMESHVAR MEENA
(MEMBER)

**AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX: UTTARAKHAND
OFFICE OF THE COMMISSIONER, SGST, UTTARAKHAND
LADPUR RING ROAD, UPPER NATHANWALA, DEHRADUN**

F. No.: 2/S.Tax-UKD/GST/Sec-97/2022-23/DDN/2169 **Date: 13.07.2022**

Copy to:

1. The Chief Commissioner, CGST, Meerut Zone, Meerut for information please.
2. The Commissioner, SGST, Commissionerate, Uttarakhand for review please.
3. The Commissioner, CGST, Commissionerate, Dehradun for review please.
4. The Assistant Commissioner, Range-V, CGST, Dehradun for information and necessary action.
5. The Assistant Commissioner, Sec-V, SGST, Dehradun for information and necessary action.
6. The Concerned officer, CGST, Dehradun.
7. The Concerned officer, SGST, Dehradun.
8. The Appellate Authority of Advance Ruling, Uttarakhand for information please.
9. Guard File.