

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 27th day of March'2023

अग्रिम विनिर्णय संख्या. **15/2022-23**

Ruling No: 15/2022-23

in

आवेदन संख्या . **11/2022-23**

Application No: 11/2022-23

1	आवेदक Applicant	M/s Uttarakhand Public Financial Strengthening Project, Director Centre For Training and Research in Fin. Admin., Chakrata Road, Sudhowala. Mohanpur. Premnagar, Dehradun, Uttarakhand-248007.
2	अधिकारिता अधिकारी Jurisdictional Officer	-----
3	आवेदक की ओर से उपस्थित Present for the Applicant	Ms. Gurbhagat Kaur and Sh. Rahul Kumar Jha, Authorised Representative,
4	अधिकारिता अधिकारी की ओर से उपस्थित Present for the Jurisdictional Officer	None
5	Concerned Officer	Sh. Deepak Brijwal, Deputy Commissioner
6	आवेदन प्राप्ति की तिथि Date of receipt of application	15.03.2023
7	सुनवाई की तिथि Date of Personal Hearing	20.03.2023 (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

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 Uttarakhand Public Financial Strengthening Project, Director, Centre For Training and Research in Fin. Admin., Chakrata Road, Sudhowala, Mohanpur, Premnagar, Dehradun, Uttarakhand-248007 (herein after referred to as the "applicant") and registered with GSTIN 05MRTU02821A1DB under the CGST Act, 2017 read with the provisions of the UKGST Act, 2017.

2. In the application dated 15.03.2023, the applicant submitted that:

- a. M/s Uttarakhand Public Financial Management Project, is in receipt of motor vehicle hire service including fuel charges from service providers M/s Baba Tour & Travel having GSTIN 05AHJPR7888K1ZE and M/s Rajeshwari Travel having GSTIN 05AHLPR6966L1ZH.
- b. That in the "Terms of agreement", following conditions has been prescribed:
Point no 3 says – *"The rate list enclosed in Annexure I will be applicable during the period of agreement. GST and cost of diesel will be reimbursed separately."*
Point no 8 says – *"The second party shall arrange for fuel and maintenance of vehicles deployed in service of First Party for smooth operation of the service".*
- c. However, while submitting claim bill for a particular month, both the service providers are using two different methodologies to calculate the leviable tax, which is as under:
 - (a) M/s Baba Tour & Travel Services is charging GST @ 5% (2.5 % SGST and 2.5% CGST) on whole amount of bill (monthly rental + night charges + fuel on mileage basis), whereas;
 - (b) M/s Rajeshwari Travel is charging GST @ 5% (2.5 % SGST and 2.5% CGST) only on monthly rent component of bill and no GST is charged on fuel charges.

In view of the above facts, 'the applicant' is seeking advance ruling as to whether the *"The service provider can charge GST on whole amount of bill (monthly rental + night charges + fuel on mileage basis) or only on monthly rental (excluding night charges + fuel on mileage basis)?"*

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 the determination of the liability to pay tax on 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 20.03.2023 and Ms. Gurbhagat Kaur and Sh. Rahul Kumar Jha, Authorised Representative, on behalf of the applicant appeared for personal hearing on the said date and re-iterated the submission already made in their application. Sh. Deepak Brijwal, Deputy Commissioner, Concerned Officer from the State Authority was also present during the hearing proceedings. He 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. 05MRTU02821A1DB. Before proceeding in the present case, we have to first go through the submissions made by the applicant which are as under:

- A. M/s Uttarakhand Public Financial Management Project, receives services of motor vehicle hire service including fuel charges from service providers namely M/s Baba Tour & Travel, having GSTIN 05AHJPR7888K1ZE and M/s Rajeshwari Travel, having GSTIN 05AHLPR6966L1ZH.

B. Although while submitting Bills/Invoices for their services, the service providers are using two different methodologies to calculate the tax payable.

C. M/s Baba Tour & Travel Services, charges GST @ 5% (@ 2.5 % SGST and @ 2.5% CGST) on the whole amount of bill which includes monthly rental, night charges and fuel on mileage basis whereas M/s Rajeshwari Travel, charges GST @ 5% (@ 2.5 % SGST and @ 2.5% CGST) only on monthly rent component of the bill and no other charges are included for charging GST.

D. As per the "Terms of agreement", entered between the service receiver and the service providers, following conditions has been mandated.

Point no 3 says – *"The rate list enclosed in Annexure I will be applicable during the period of agreement. GST and cost of diesel will be reimbursed separately."*

Point no 8 says – *"The second party shall arrange for fuel and maintenance of vehicles deployed in service of First Party for smooth operation of the service"*

8. In the present case we are not deciding any wider question but restricting our conclusion to the facts and circumstances which were filed by the applicant for our consideration. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by applicant and his authorized representatives during the hearing. We have also considered the issue involved on which advance ruling is sought by the applicant, relevant facts and the applicant's interpretation of law. Now we proceed by taking up the issue:

8.2 We find that the issue involved is of the valuation of the supply, hence for better perspective Section 15 of the CGST Act, 2017 is reproduced below:

"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.

(3) The value of the supply shall not include any discount which is given—

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if—

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Explanation.—For the purposes of this Act,—

(a) persons shall be deemed to be “related persons” if—

(i) such persons are officers or directors of one another's businesses;

(ii) such persons are legally recognised partners in business;

(iii) such persons are employer and employee;

(iv) any person directly or indirectly owns, controls or holds twenty-five percent or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family;

(b) the term —person|| also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related”.

We observe that the section provides that 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.

8.3 We further observe that it has been specifically mandated that 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; and (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.

From the above, it is very clear that the Section 15 of the CGST Act, 2017 mandates that the value of supply shall include among other things, any other 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.

We find that the provisions of the Section 15 above are very clear and in unambiguous terms it has been mandated 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. The use of words "*supplier is liable to pay in relation to such supply*" brings out the intent of the legislature and leaves no room for any doubt.

8.4 Further, the term supply is defined in Section 7 of the CGST Act, 2017 and as per the provisions all forms of supply of goods or agreed to be made for a consideration is a part of supply. And the term "*consideration*" has been defined in Section 2(31) of the CGST Act, 2017 which mandated that consideration includes any payment whether in money or otherwise made or to be made or monetary value of any act or forbearance for the inducement of the supply of goods. The usage of the terms "*or otherwise*" and "*or forbearance for the inducement of the supply of goods or services or both, whether by the recipient*", in the statute leaves no doubt about the spirit and essence of the Act.

8.5 We observe that without the fuel the motor vehicle does not operate (run) and without running i.e. moving from one place to another, the act of motor vehicle hire services does not happen. The motor vehicle hire services have the integral component of running/ operating the vehicle to one place to another for transportation. We are of the opinion that to claim to provide the said services, actual transportation has to take place and without fuel this cannot happen.

8.6 The contract entered between the applicant and the provider of services presented before us is for motor vehicle hire services, wherein the liability to arrange fuel and the maintenance of the vehicle, so deployed lies with the service provider and is a comprehensive contract with the consideration which varies depending upon the kilometer travelled. Hence, the reimbursement of expenses for providing said services, under any head is nothing but the additional consideration for the provision of said

services and attracts GST on the total value.

9. We further observe that Karnataka Authority for Advance Ruling vide Advance Ruling No. KAR ADRG 44 /2021 dated 30.07.2021 in the case of M/s. Goodwill Auto's, Hubballi; Dharwad has held that the cost of the diesel incurred for running DG Set in the course of providing DG Rental Service is nothing but additional consideration for the supply of DG Set on rent as per section 15 of the GST Act.

10. Therefore, we observe that all the consideration including reimbursement of any kind shall form part of value of supply in view of Section 15 of the CGST Act, 2017. We find that this authority has taken the similar view in the Ruling dated 31.05.2021 in case of M/s Vinayak Air Products Pvt. Ltd., BHEL CFFP, Ranipur Haridwar, Uttarakhand, Ruling dated 26.09.2022 in the case of M/s Gurjinder Singh Sandhu, (Proprietor M/s New Jai Hind Transport Service), Haridwar and Ruling dated 31.10.2022 in case of M/s Tara Genset Engineers (Regd.), Lane No. 1, Dhoran Khas, Phase No. 1, Street No. 2, Dehradun, Uttarakhand-248001.

11. In view of the above facts and discussion held above we hold that the service provider has to charge GST on the whole amount of bill which in the instant case is monthly rental plus night charges and fuel on mileage basis.

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

RULING

Service provider has to charge GST on the whole amount of bill i.e. monthly rental + night charges + fuel on mileage basis.


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.: 11/S.Tax-UKD/GST/Sec-97/2022-23/DDN/ 8300 Date: 27.03.2023

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-9, 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.