

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

ADVANCE RULING NO. UP ADRG 04/2024 Dated. 12.6.2024

PRESENT:

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

1.	Name of the Applicant	M/s Uttar Pradesh Power Transmission Corporation Limited, Shakti Bhawan, 14-A, Ashok Marg, Lucknow, Uttar Pradesh-226020.
2.	GSTIN or User ID	09AAACU8823E1Z9
3.	Date of filing of Form GST ARA-01	12.10.2023(received on 22.03.2024)
4.	Represented by	Shri Prakhar Gupta , FCA
5.	Jurisdictional Authority-Centre	Range-V, Div.-Lucknow-I, Commissionerate – Lucknow.
6.	Jurisdictional Authority-State	Sector – Lucknow Sector-12, Range- Lucknow (B) , Zone- Lucknow I, State –Uttar Pradesh
7.	Whether the payment of fees discharged and if yes, the CIN	Paid through debit in Cash Ledger

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

- 1. M/s Uttar Pradesh Power Transmission Corporation Limited (UPPTCL)**, having registered office at Shakti Bhawan, 14-A, Ashok Marg, Lucknow, Uttar Pradesh-226020 (hereinafter referred as "the applicant") having GSTIN- 09AAACU8823E1Z9, have filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 read with Rule 104 of the CGST Rules, 2017 and Section 97 of UPGST Act, 2017 read with Rule 104 of the UPGST Rules, 2017 in Form GST ARA-01 (the application form for Advance Ruling), discharging the fee of Rs. 5,000/-each under the CGST Act and the UPGST Act.
- 2. The applicant has submitted an application for Advance Ruling dated 12.10.2023** enclosing dully filled Form ARA-01 (the application form for Advance Ruling) along with written statement in the form of attachment.

3. The applicant submitted the issue in brief as under:

A. The Uttar Pradesh Power Transmission Corporation Limited (hereinafter referred to as “**Applicant**”) was incorporated under the Companies Act, 1956 in the year 2006. UPPTCL has been entrusted with the business of transmission of electrical energy to various licensees within the State of Uttar Pradesh. Further, Government of Uttar Pradesh, in exercise of powers vested under Section 30 of The Electricity Act, 2003 *vide* notification No. 122/U.N.N.P/24-07 dated July, 18, 2007 notified UPPTCL as the state transmission utility of Uttar Pradesh.

B. Further, UP Power Transmission Corporation Limited, has been incorporated with the main objective to acquire, establish, construct, take over, erect, lay, operate, run, manage, hire, lease, buy, sell, maintain, enlarge, alter, renovate, modernize, work and use electrical transmission lines and/or network through extra high voltage, high voltage and associated sub-stations, cables, wires, connected with transmission ancillary services, telecommunication and telemetering equipment in the State of Uttar Pradesh.

4. The applicant has sought advance ruling in respect of the following questions:

(a) Whether in the given fact and circumstances, value of material and cost of execution 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 born by the recipient of service and the applicant charge only supervision charges.

5. The question is about applicable GST rate under the provisions of CGST Act and liability to pay GST, hence is admissible under Section 97(2)(a) of the CGST Act 2017. Further, 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 applicant has submitted statement of relevant facts as under:-

A. In addition to the primary activity of providing services of transmission of electricity, the UPPTCL is also undertaking development of electricity infrastructure as requested by consumers / intending agencies ('consumer') for distribution of electricity, as 'deposit works'. Such deposit work is either in the form of making additions to the existing distribution system or augmenting / modifying / shifting the existing system to a new location.

B. In terms of Section 40 of the Electricity Act, 2003 ('Electricity Act') and Clause 4 of the Electricity Supply Code, 2005 ('ES Code'), the exclusive right to carry out deposit works remains with the UPPTCL, as per the technical standards of operation and maintenance of distribution/transmission lines specified by the Central Electricity Authority / Central Electricity Regulatory Commission. The deposit works is carried out at the behest of the consumer via two modes:

- a. First, where entire works with material are arranged by customer and the installation work is done by contractor hired by the customers. The applicant's role is to supervise the work, for which they charge 15% towards their fee. Entire cost is incurred by the UPPTCL and such cost including applicable GST is recovered from the consumer. As per the current practice, the UPPTCL is computing GST on the total estimate of expenditure.
 - b. In the second method, entire material and installation work is arranged by the applicant and work is carried out by the vendors under the supervision of the applicant and such cost including GST is recovered from the consumer.
- C. That the applicant being an electricity transmission company has an expertise in the area of installation/supervision of electricity lines.
- D. That whenever new electricity lines are to be installed or these lines are to be modified at the requirement of the customer, it is done at the cost of customer. In other words, the entire cost is ultimately born by the customers. It is known as 'Deposit work'
- E. That the applicant is required to build, maintain and operate the electricity distribution/transmission system. The system so developed is accounted for as fixed assets in the books of account of the applicant. That the UPPTCL is exclusive liable and responsible for modification/alteration/extension of the transmission infrastructure. It is for this reason that deposit work is to be executed under the supervision of the UPPTCL only.
- F. That in light of above facts, applicant's filed an application for advance ruling on following issue: -
- a. Whether in the given fact and circumstances, value of material and cost of execution 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 born by the recipient of service and the applicant charge only supervision charges.
7. Applicant submits the following question for Advance Ruling and its interpretation on the question as under:
- (a) Whether in the given fact and circumstances, value of material and cost of execution 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 born by the recipient of service and the applicant charge only supervision charges.
- A. Under this method, the responsibility to undertake the work is on the consumer through the contractors, under supervision of UPPTCL. The consumer is required to pay supervision charges to the UPPTCL computed at a fixed percentage on total cost estimate. Since supervision charges are recovered by applicant from the consumer under this mode, the same shall, inter-alia, constitute value of supplies as per the GST Act. The further question, however,

is whether the cost of works is also includible in value of such supplies. To answer this question, reference needs to be made to certain provisions of the electricity law.

- B. As per Section 40 of the Electricity Act, it shall be the duty of the transmission licensee to build, maintain and operate an efficient, coordinated and economical inter-state transmission system or intra-state transmission system, as the case may be. Further, the applicant has exclusive right and responsibility to undertake deposit works of the transmission system.

In terms of the Electricity Act, the responsibility to develop, maintain and operate the transmission system solely lies on the UPPTCL. Further, it is clearly mandated in the ES Code that where the infrastructure is developed by the applicant or development authority, it shall handover the said infrastructure to the applicant i.e., the UPPTCL. It is further submitted that the infrastructure developed by the consumer is under exclusive possession of the applicant. It can be used later by it for distribution of electricity, not only to the concerned consumer, but also other consumers as well.

- C. In the present case, cost of works is directly borne by the consumer. Regardless, the applicant is exclusively liable and responsible for modification alteration of the transmission infrastructure as per the Electricity Act, so as to comply with the ES Code and it is for this reason that the deposit work is to be mandatorily executed under the supervision of the UPPTCL. Now, provisions regarding valuation under the CGST Act and Central Goods and Services Tax Rules, 2017 (CGST Rules) are relevant in order to determine the consideration for the instant supply.
- D. As per Section 15(1) of the CGST Act, value of supply shall be the transaction value, i.e., price actually paid or payable for the said supply, where the supplier and the recipient are not related. and price is the sole consideration. In the said mode of execution of deposit works, price is not the sole consideration, as the handover of infrastructure so created under deposit work by the consumer to the UPPTCL is the non-monetary consideration to the applicant. Since benefit thereof accrues to applicant. Thus, Section 15(1) shall not apply.
- E. Section 15(4) provides that where the value of supply of goods or services or both cannot be determined under Section 15(1), the same shall be determined, as may be prescribed. Rule 27 to 31 of the CGST Rules prescribe for determination of value of a supply.
- F. Rule 27 provides for valuation mechanism in cases where consideration is not wholly in money. It inter alia, states that where the supply of goods or services is for a consideration not wholly in money, the value of supply shall be:

a) Open Market Value of such supply:

b) If open market value is not available under (a) above, the sum total of consideration in money and any such further amount in money, as is equivalent to the consideration not in money, if such amount is not known at the time of supply.

As defined in Rule 35 of the CGST Rules, Open Market Value means the full value of money excluding taxes under GST laws, payable by a person to obtain such supply at the time when such supply being valued is made, provided such supply is between unrelated persons and price is the sole consideration for such supply.

In order to determine the Open Market Value in the present case, the value of the same supply when made by another person, at the same time as this, is to be considered.

Thus, though under the said mode of deposit works, cost is borne by the consumer and not paid to UPPTCL, the ultimate responsibility to build, operate, control and maintain the transmission system always vests with the applicant in terms of the provisions of the Electricity Act and the ES Code

- G. It may be noted that the supply undertaken by the UPPTCL is peculiar to the consumer's case, where deposit work is carried out as per its specifications. The deposit works is as per the requirement as specified by the consumer. There is no such similarly placed, standardized supply, which can be taken as a parameter for determining the value of supply in the present case. Thus, clause (a) of Rule 27 shall not apply.

Clause (b) provides that the value of supply shall be the sum total of consideration in money and any such further amount in money, as is equivalent to the consideration not in money. In the present case, clause (b) shall be applicable as there are three components to the consideration. Two components i.e., supervision charges and shutdown charges are received in cash and the third component of undertaking deposit work is received in kind.

So far as the first two components are concerned, they shall form part of the value of supply. For the third component which is not in money, the amount equivalent to such consideration, shall be included in the value of such supply. The amount equivalent to such consideration would be the total cost incurred by the consumer, in executing the deposit works.

Thus, total consideration in this mode of carrying out the deposit work would be total cost of executing the deposit work + supervision charges + shutdown charges,

- H. Currently the applicant is computing GST on the sum of (a) total expenditure incurred by consumer on the intended work, (b) supervision charges and (c) shutdown charges. In our view, this is in accordance with provisions of Section 15 of the CGST Act and the Rules made there under.
- I. However, the applicant would like to mention the AAAR in case of M/s Purvanchal Vidyut Vitran Nigam Limited vide Order No 09/AAAR/16/08/2023 dated 16.08.2023 wherein the appellate authority confirmed 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.(i.e 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.)

8. The application for advance ruling was forwarded to Assistant Commissioner, Central Tax & Central Excise, Division- Lucknow I vide letter dated 08.04.2024 to offer their comments/views/verification report on the matter. But no comments in the matter was offered.

9. The applicant was granted a personal hearing on 04.06.2024 which was attended by Shri Prakhar Gupta, CA, the authorized representative of the applicant during which he reiterated the submissions made in the application of advance ruling.

DISCUSSION AND FINDING

10. 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'.

11. 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

At the outset, we find that the issue raised in the application is squarely covered under Section 97(2) of the CGST Act 2017. We therefore, admit the application for consideration on merits.

12. The applicant being an electricity transmission company has an expertise in the area of installation/supervision of electricity lines.

13. That whenever new electricity lines are to be installed or these lines are to be modified at the requirement of the customer, it is done at the cost of customer. In other words, the entire cost is ultimately born by the customers. It is known as 'Deposit work'

14. That the applicant is required to build, maintain and operate the electricity distribution/transmission system. The system so developed is accounted for as fixed assets in the books of account of the applicant. That the UPPTCL is exclusive liable and responsible for modification/alteration/extension of the transmission infrastructure. It is for this reason that deposit work is to be executed under the supervision of the UPPTCL only.

15. The deposit works is carried out at the behest of the consumer via two modes:

- I. First, where entire works with material are arranged by customer and the installation work is done by contractor hired by the customers. The applicant's role is to supervise the work, for which they charge 15% towards their fee. Entire cost is incurred by the UPPTCL and such cost including applicable GST is recovered from the consumer. As per the current practice, the UPPTCL is computing GST on the total estimate of expenditure.
- II. In the second method, entire material and installation work is arranged by the applicant and work is carried out by the vendors under the supervision of the applicant and such cost including GST is recovered from the consumer.

16. Here the applicant has sought Advance ruling only for first method where entire works with material are arranged by customer and the installation work is done by contractor hired by the customers. The applicant's role is to supervise the work, for which they charge 15% towards their fee.

17. We have gone through the submissions made by the applicant and have examined the same. We observe that the applicant has sought advance ruling on the following questions-

- a. Whether in the given fact and circumstances, value of material and cost of execution 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 born by the recipient of service and the applicant charge only supervision charges.

18. Under this method, the responsibility to undertake the work is on the consumer through the contractors, under supervision of UPPTCL. The consumer is required to pay supervision charges to the UPPTCL computed at a fixed percentage on total cost estimate. Since supervision charges are recovered by applicant from the consumer under this mode, the same shall, inter-alia, constitute value of supplies as per the GST Act. The further question, however, is whether the cost of works is also includible in value of such supplies. To answer this question, reference needs to be made to certain provisions of the electricity law.

- i. In this method, the works contract service supplied in course of electric line installation are neither supplied by nor the consideration for same has been received by applicant. The contract for works contract services is executed between the concerned party and a third-party work contractor. Therefore, the applicant is a stranger to this contract. In a case where the third-party work contractor remains unpaid for the services supplied by him, he can sue only the concerned party not the applicant. There is no obligation to pay on the part of applicant. Hence, the case shall not be covered under section 15(2)(b) of the CGST Act 2017.
- ii. Here, UPPTCL is not a supplier of goods and services as per provisions of section 2(105) of CGST Act, 2017 as the work is being undertaken by the customer itself. There is no relationship between the customer and UPPTCL.

which can be categorized as that of supplier and recipient except for the services of the supervising the whole work.

- iii. It is also pertinent to note that in the present transaction there is no consideration which comes under the purview of section 2(31) of CGST Act, 2017. All the payments are being made by the customer directly to the vendor and contractors and no payment is being made to UPPTCL except supervision charge for the work.
- iv. The work contract services supplied in the course of construction/ dislocation/shifting are neither supplied by nor the consideration for the same has been received by UPPTCL hence there is no supply of works contract services by the UPPTCL.
- v. In this case the ownership of the property being dislocated / shifted is vested with UPPTCL, the UPPTCL receives money in the form of dislocation / shutting charges. The services supplied in such cases is related to an act of tolerance with respect to such immovable property and hence covered under "agreeing the obligation to refrain from an act, or to tolerate an act or a situation , or to do an act" and are classified under SAC999794.
- vi. The work contract services in the present 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 UPPTCL.
- vii. Though the property subjected to works contract services belongs to the UPPTCL but the supply of works contract services is not made on behest of UPPTCL. The contract for works contract services is executed between the concerned party and a third party works contractor and hence UPPTCL is a stranger to this contract.
- viii. In a case where the third party works contractor remains unpaid for the services supplied by him, he can sue only the customer and not the UPPTCL. So, there is no liability to pay on the part of UPPTCL.
- ix. As the construction or dislocation work is not made on the behest of UPPTCL and there is only a consent or tolerance for such shifting hence the UPPTCL is not liable to pay for the expenses incurred in such shifting. Since there is no obligation to pay on part of UPPTCL hence the provisions of section 15(2)(b) of CGST Act, 2017 are not applicable in this case.
- x. 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.
- xi. Accordingly, we are of the view 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 applicant charges supervision fees 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 applicant shall be liable to pay GST only on the supervision charges.

19. In view of the above discussions, we pass the ruling as follows:

RULING

Question: Whether in the given fact and circumstances, value of material and cost of execution 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 born by the recipient of service and the applicant charge only supervision charges.

Answer: Reply in Negative. GST will be applicable on only supervision charges.

20. 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 Uttar Pradesh Power Transmission Corporation Limited.
Shakti Bhawan, 14-A, Ashok Marg,
Lucknow, Uttar Pradesh-226020

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, Apratyaksh Kar Bhawan, Vibhuti Khand, Gomti Nagar Lucknow -226010.
4. The Deputy/Assistant Commissioner, CGST & Central Excise Division –I, Apratyaksh Kar Bhawan, Vibhuti Khand, Gomti Nagar Lucknow -226010.
5. Through the Additional Commissioner..ZONE-1, L.U.C.K.N.O.W., 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.