

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 विवेकानंद मौर्य (सदस्य)

Shri Vivekanand Maurya (Member)

The 21st day of February, 2024

अग्रिम विनिर्णय संख्या. 05/2023-24

Ruling No: 05/2023-24

in

आवेदन संख्या . 05/2023-24

Application No: 05/2023-24

1	आवेदक Applicant	M/s Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam, Mohini Road, Dehradun-248001. GSTIN: 05AAALU0118MHZL
2	अधिकारिता अधिकारी Jurisdictional Officer	-----
3	आवेदक की ओर से उपस्थित Present for the Applicant	Sh. Nikhil Sabharwal, Chartered Accountant
4	अधिकारिता अधिकारी की ओर से उपस्थित Present for the Jurisdictional Officer	None
5	Concerned Officer	Smt. Maneesha Saini, Deputy Commissioner
6	आवेदन प्राप्ति की तिथि Date of receipt of application	26.11.2023
7	सुनवाई की तिथि Date of Personal Hearing	10.01.2024

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 Peyjal Sansadhan Vikas Evam Nirman Nigam, Mohini Road, Dehradun-248001 (herein after referred to as the "applicant") and registered with GSTIN 05AAALU0118MHZL under the CGST Act, 2017 read with the provisions of the UKGST Act, 2017.

2. 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.

3. 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.

4. 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.

4.2 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) (d) and (e) of CGST/SGST Act, 2017, the present application is hereby admitted.

BRIEF FACTS OF THE CASE

5. In the application dated 26.11.2023, the applicant submitted that:

- a. Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam is a Local Authority constituted under Notification of Uttarakhand Government and is an Implementing

Agency of Centre/State Government undertaking the construction/erection of Govt. schemes relating to water supply, sewerage etc. and providing these services to purely Government.

- b. That in the instant case the applicant i.e. Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam entered into an MOU with the THDC India Limited (a PSU - Joint Venture of Govt. of India and Govt. of Uttar Pradesh) for construction of an overhead water tank at Rishikesh in the THDC colony, meant for use by the THDC and hence the THDC is the end user.
- c. That the applicant i.e. Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam has got the status of Local Authority for all practical purposes as is evident from the PAN Card No. AAALU0118M.
- d. That the receiver of services i.e. THDC is a Public sector Undertaking (PSU), as such does not fall under the definition of Centre/State Govt. as per GST norms.
- e. That as per the MOU (under reference) entered into with the THDC it is evident that the construction of Overhead Tank by the applicant i.e. Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam, only in this particular and specific case the applicant i.e. Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam does not qualify the definition of Local Authority and shall be treated as a Composite Supply by any contractor under GST parlance. So, the supply of this service by the applicant i.e. Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam, shall not fall under RCM.
- f. Since, this construction by the applicant i.e. Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam, on behalf of THDC (End User) is for the furtherance of Business, the applicant i.e. Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam, is entitled to claim ITC as per CGST norms.

QUESTION

In view of the above facts, 'the applicant' is seeking advance ruling as to;

- 1. Whether RCM shall be applicable in this case and tax be paid by THDC on Reverse Charge Basis or this contract will fall under forward charge and tax be paid by THDC to UK Peyjal on forwards basis?***
- 2. Whether THDC or UK Peyjal is entitled to avail ITC on the GST deposited?***

APPLICANT SUBMISSION AND PERSONAL HEARING:

6. From the record submitted by the applicant we find that applicant is registered in Uttarakhand with GSTIN bearing No. 05AAALU0118MHZL. Before proceeding in the present case, we have to first go through the submissions made by the applicant which are as under:

- i. They are a Local Authority constituted under Notification of Uttarakhand Government and Implementing Agency of Centre/State Government undertaking the construction/erection of Govt. schemes relating to water supply, sewerage etc. and providing these services to purely Government.
- ii. That in the instant case they entered into an Memorandum of Undertaking (MOU) with a Public Sector Undertaking (PSU) [Joint Venture of Govt. of India and Govt. of Uttar Pradesh) namely THDC India Limited, for construction of an overhead water tank at Rishikesh in the THDC colony, meant for use by the THDC (who is the end user of said facility).
- iii. That although they are a Local Authority as evident from the PAN Card No. AAALU0118M and that the receiver of services i.e. THDC is a Public sector Undertaking (PSU), as such does not fall under the definition of Centre/State Govt. as per GST norms, but as per the MOU (under reference) entered into with the THDC, **only in this particular and specific case the applicant does not qualify the definition of Local Authority** and shall be treated as a Composite Supply by any contractor under GST parlance. So, the supply of this service in the case of instant MOU by the applicant to THDC, is out of purview of the provisions of RCM as per the provisions of Section 2(69) of CGST Act which defines the Local Authority as *"Any Authority legally entitled to, or entrusted by the Central or State Government with the control or management of Local Fund "*
- iv. Further that since this construction by the applicant on behalf of THDC (End User) is for the furtherance of Business, the applicant is entitled to claim ITC as per CGST norms.
- v. However, the receiver of services i.e. the THDC disputed the contention of the applicant on the plea that since, this MOU falls under Composite Supply and is covered under Schedule - II of Section - 7 of CGST Act 2017, hence it is a supply of service and "Supply of Services" by a Local Authority to a PSU covered under Notification No - 13/2017 of CGST Act, RCM is applicable in this case and they i.e. the THDC as a receiver of services are liable to pay applicable GST under the provisions of RCM.

Accordingly opportunity of personal hearing was granted to the applicant on 10.01.2024. Sh. Nikhil Sabharwal, 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. Smt. Maneesha Saini, Deputy Commissioner, Concerned Officer from the State was also present during the hearing proceedings. She presented the facts and requested the authority to decide the case on merits.

DISCUSSION AND FINDINGS:

7. 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. We have carefully considered all the submissions made by the Applicant. In the instant case the applicant entered into an Memorandum of Undertaking (MOU) with THDC India Limited, a Public Sector Undertaking (PSU)[Joint Venture of Govt. of India and Govt. of Uttar Pradesh], for construction of an overhead water tank at Rishikesh in the THDC colony, meant for use by the THDC only. We have gone through the submission made by the Applicant and find that the applicant is engaged in construction / erection relating to water supply, sewerages etc. We find that although the applicant in their application has claimed that they are providing services to purely Government only, but we observe that in the instant case the receiver of services is M/s THDC India Limited, which is a Public incorporated company with CIN-U45203UR1988GOI009822 and not a Government.

We note that the Applicant in their application claimed that the although they have got the status of "**LOCAL AUTHORITY**" for all practical purpose as is evident from the **PAN Card** and in the instant case the service receiver i.e. M/s THDC India Limited, **being a PSU** does not fall under the **definition of Centre/ State Government**, and hence **only in this particular and specific case** the applicant does not qualify the definition of "LOCAL AUTHORITY" and hence the supply of services in the instant case does not fall under the provisions of RCM in the hand of the service receiver i.e. M/s THDC India Limited. And further that, since the construction of "OVERHEAD TANK" by the Applicant is for Furtherance of Business they are entitled to claim ITC as per the provisions of CGST Act, 2017.

It has also been submitted in the application that the service receiver i.e. M/s THDC India Limited has a different view than taken by the applicant that the MOU in the instant case falls under Composite supply and is covered under Schedule -II of Section 7 of the CGST Act, 2017 and hence is a supply of service and hence supply of services by a LOCAL AUTHORITY to a PSU is covered under Notification No. 13/2017 of the CGST Act, 2017, therefore, the applicable tax is payable in their hand under the provisions of RCM.

In the aforesaid back drop the Applicant sought for advance ruling whether RCM shall be applicable in this case and tax be paid by THDC on Reverse Charge Basis or this contract will fall under forward charge and tax be paid by THDC to UK Peyjal on forwards basis and



that whether the THDC i.e. service receiver or UK Peyjal i.e. the service provider is entitled to avail ITC on the GST deposited?

We note that the Applicant has opined that since in the instant case only they does not qualify to be a "LOCAL AUTHORITY" and hence the supply of services in the instant case does not fall under the provisions of RCM in the hand of the service receiver i.e. M/s THDC India Limited (as they are a PSU).

In view of the above submissions and different view taken by the applicant and the service receiver, firstly and foremost we have to decide variant whether the Applicant i.e. Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam is covered under Local Authority as defined under Section 2(69) of Goods and Services Tax Act, 2017. We find that Section 2(69) of Goods and Service Tax Act, defines 'Local Authority' as under:

- (a) A "Panchayat" as defined in clause (d) of article 243 of the constitution;
- (b) a " municipality" as defined in clause (e) of article 243P of the Constitution;
- (c) a Municipal Committee, a Zila Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
- (e) A Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- (f) a Development Board constituted under Article 371 and article 371J of the Constitution; or
- (g) A Regional Council constituted under Article 371A of the Constitution.

We have gone through the constitution of Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam (hereinafter referred to as the UK Peyjal Nigam). We find that originally the applicant was constituted and came into existence as Public Health Engineering Department in 1927 to provide drinking water supply and sewerage facilities in the whole of Uttar Pradesh (which has now been divided into Uttar Pradesh and Uttarakhand (originally Uttaranchal). In the year 1946, Public Health Engineering Department was rechristened as Local Self Government Engineering Department (LSGED) and in June 1975, this department was converted into Uttar Pradesh Jal Nigam under the Uttar Pradesh Water Supply and Sewerage Act 1975 (Act No. 43 of 1975). As per this Act Jal Nigam has jurisdiction over whole Uttar Pradesh (except Cantonment Area). The basic objective of creating this corporation is development and regulation of water supply & sewerage services and for matters connected therewith.

After the formation of Uttaranchal State through order No. 2878/9-2-(12 Adhi.)/2001 dated 22.11.2002 the department was formed under Uttaranchal Govt. as Uttaranchal Peyjal Sansadhan Vikas Evam Nirman Nigam and later on Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam. Currently the department works under the Ministry of Drinking Water & Sanitation, Govt. of Uttarakhand, as an undertaking of Uttarakhand Government. The department has been mainly responsible for planning, survey, DPR preparation and execution of water supply and sewerage projects in urban & rural areas of Uttarakhand State. Besides this, the department has been also authorized by State Govt. to works as

construction agency for building and other works in Uttarakhand and in other States. It is a body corporate having perpetual succession and a common seal and capable of suing and being sued in its name. It has power to acquire, hold and dispose of the property. The relevant provisions of UPWSS Act are as under:

- (i) *The preamble of the UPWSS Act indicates that U. P. Jal Nigam was brought into existence to provide for establishment of a corporation, authorities and organization for the development and regulation of water supply and sewerage services and for matters connected therewith.*
- (ii) *The Section 3(3) of the UPWSS Act provides that the assessee corporation shall for all purposes be deemed to be a local authority and Section 4 of the UPWSS Act relates to its constitution, according to which it shall consist of a Chairman, to be appointed by the State Government. It also provides that the Members other than the Chairman shall be a Managing Director, a Finance Director, both to be appointed by the Government and secretary to the State Government in the Finance Department (Ex-officio), Secretary to the State Government in the Local Self Government Department (Ex-officio), the Director of Local Bodies, Uttar Pradesh (Ex-officio), the Director of Medical and Health Services U.P.(Ex-officio) and three elected Heads of Local Bodies in the state to be nominated by the State Government.*
- (iii) *Section 40(1) of the UPWSS Act provides that the corporation shall have its own fund to be called the Nigam Fund which shall be deemed to be a local fund and to which shall be credited all moneys received otherwise than by way of loans by or on behalf of the corporation.*

We find that in the Notification No. 2878/Nine-2(12-Adhi.)/2001 dated 22.11.2002, it has been provided as under:

“In exercise of powers conferred under the provisions of sub-section (1) of section 3 of the Uttaranchal (The Uttar Pradesh Water Supply and Sewerage Act, 1975) Adaptation and Modification Order, 2002, the Governor is pleased to constitute the “Uttaranchal Payjal Sansadhan Vikas Awam Nirman Nigam”, which shall be deemed to have been constituted with effect from the date of 7th November’2002”.

Likewise at Sl. No. 3(i) it has been mentioned as under:

“In subsection (1) of Section 3 of the Principal Act in place of “Uttar Pradesh Jal Nigam” the following words shall be substituted, namely ‘The Uttaranchal Pey Jal Sansadhan Vikas Avam Nirman Nigam’.

This chronology of events and the facts as above, establishes that the origin and constitution of the applicant i.e. Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam and the Uttar Pradesh Jal Nigam has been the same and hence the status of both organization with respect to “Local Authority” would be also the same.

4

Now to examine whether M/s Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam is a 'Local Authority', we find that the term local authority is defined in Section 2(69) of CGST Act, 2017. The definition of "local authority" in the CGST, Act includes within its ambit "any other authority" legally entrusted by the Central Government or any State Government with the Control or Management of a municipal or local fund". Thus, for the purpose of the GST Laws, any authority legally entitled to or entrusted by the Government with the control or management of a municipal or local fund qualifies as a 'Local Authority'. The definition of the 'local authority' is contained in Section 3(31) of the General Clauses Act, 1897 also which is as under-

"local authority" shall mean a municipal committee, district board, body of port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.

Thus, it is seen that the term 'local authority' has been similarly worded in CGST Act, 2017 as well as General Clauses Act, 1897. The Apex Court in the landmark decision of Union of India Vs. R.C.Jain (1981)2SCC308 while deciding whether the Delhi Development Authority is a 'local authority' or not, explained the scope of the term local authority under the General Clauses Act as follows:

Let us, therefore, concentrate and confine our attention and enquiry to the definition of 'Local Authority' in Sec.3(31) of the General Clauses Act. A proper and careful scrutiny of the language of Sec.3(31) suggests that an authority in order to be a local Authority, must be of like nature and character as a Municipal Committee, District Board or Body of Port Commissioners, possessing, therefore, many, if not all, of the distinctive attributes and characteristics of a Municipal Committee, District Board, or Body of Port Commissioners, but, possessing one essential feature, namely, that it is legally entitled to or entrusted by the Government with, the control and management of a municipal or local fund. What then are the distinctive attributes and characteristics, all or many of which a Municipal Committee, District Board or Body of Port Commissioners shares with any other local authority? First, the authorities must have separate legal existence as Corporate bodies. They must not be mere Governmental agencies but must be legally independent entities. Next, they must function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the area. Next, they must enjoy a certain degree of autonomy, with freedom to decide for themselves questions of policy affecting the area administered by them. The autonomy may not be complete and the degree of the dependence may vary considerably but, an appreciable measure of autonomy there must be. Next they must be entrusted with such Governmental functions and duties as are usually entrusted to municipal bodies, such as those connected with providing amenities to the inhabitants of the locality, like health and education services, water and sewerage, town planning and development, roads, markets, transportation, social welfare services etc.etc. Broadly we may say that they may be entrusted with the performance of civic duties and functions which would otherwise be Governmental

duties and functions. Finally, they must have the power to raise funds for the furtherance of their activities and the fulfillment of their projects by levying taxes, rates, charges, or fees. This may be in additions to moneys provided by Government or obtained by borrowing or otherwise. What is essential is that control or management of the fund must vest in the authority."

We also observe that the Apex Court in the case of Union of India and others vs. R.C. Jain and others (supra) has laid down the following ingredients, which are required to be fulfilled cumulatively before an authority can be said to be a 'local authority', in the light of the definition of 'local authority' as given under Section 3(31) of the General Clauses Act.

- i. *The authorities must have separate legal existence as corporate bodies. It must be legally independent entities.*
- ii. *The authority must function in a defined area and ordinarily, wholly or partly, directly or indirectly be elected by the inhabitants of the area.*
- iii. *The authority must enjoy a certain degree of autonomy, with freedom to decide for themselves questions of policy affecting the area administered by them.*
- iv. *The authority must be entrusted by Statute with such Governmental functions and duties as are usually entrusted to municipal bodies.*
- v. *The authority must have the power to raise funds for the furtherance of their activities and the fulfillment of their projects by levying taxes, rates, charges, or fees.*
- vi. *Essentially, control or management of the funds must vest in such authority.*

We observe that the applicant i.e. M/s Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam, is not satisfying some of the above conditions for qualifying as a "local authority" as discussed below:

The Apex court in the RC Jain case (supra) has held that the authority must enjoy a certain degree of autonomy, with freedom to decide for themselves questions of policy affecting the area administered by them. The autonomy may not be complete and the degree of the dependence may vary considerably and an appreciable measure of autonomy there must be. Perusal of the Uttaranchal (The Uttar Pradesh Water Supply And Sewerages Act, 1975) Adaptation and Modification Order, 2002 read with UPWSS Act, reveals that the UK Peyjal Nigam, is not enjoying appreciable nature of autonomy as discussed below.

- (1) As per provisions of the Act (supra), the Chairman shall be appointed by the State Government.
- (2) As per Section 6(3) of the Uttaranchal (The Uttar Pradesh Water Supply And Sewerages Act, 1975) Adaptation and Modification Order, 2002 read with UPWSS Act, the Managing Director and finance director shall hold office on such terms and conditions as the State Government may by order specify.
- (3) As per Section 14 of the Uttaranchal (The Uttar Pradesh Water Supply and Sewerages Act, 1975) Adaptation And Modification Order, 2002 read with UPWSS Act, the UK Peyjal Nigam is entrusted-

- (i) to prepare State plans for water supply, sewerage and drainage on the directions of the State Government
- (ii) to operate, run and maintain any waterworks and sewerage system, if and when directed by the State Government on such terms and conditions and for such periods as may be specified by the State Government.
- (iii) such other functions as may be entrusted to the Nigam by the State Government by Notification in the Gazette.
- (4) Further, as per the provisions of section 46(2), 46(3), 50, 89, 90 of the Act (supra), it is evident that the UK Peyjal Nigam, does not enjoy autonomy of work and has little freedom to decide for themselves, the questions of policy affecting the are administered by them.

The Apex court in the RC Jain case (supra) has held that the main requirement to qualify as a 'local authority' is that the authority must be legally entitled to or entrusted by the Government with, the control and management of a Municipal or local fund. In case of UK Peyjal Nigam, there is no local fund entrusted by the Government with UK Peyjal Nigam, but the Act (supra) would reveal that no municipal or local fund has been entrusted by the Government. The fund of UK Peyjal Nigam is its own fund and cannot be equated with a fund entrusted by the Government. Thus, the important requirement in order to qualify as a local authority viz. control and management of a municipal/local fund is absent in the present case.

We also find that the Hon'ble High Court, Allahabad (Lucknow Bench), while deciding the Income Tax Appeal No. 128/2008 has held that UP Jal Nigam (UK Peyjal Nigam originally originated and has similar constitution) is not a "LOCAL AUTHORITY", although, the aforesaid order denying UP Jal Nigam the status of local authority is in respect of dispute of Income Tax, the same is applicable to instant case as the order of the Hon'ble High Court has been passed after analyzing the definition of 'local authority' contained in General Clauses Act. Since, it has already been discussed that the term 'local authority' has been similarly worded in CGST/SGST Act, 2017 as well as General Clause Act, 1975. Further, the relevant clarification contained in Service Tax Educational Guide published in the erstwhile tax regime is reproduced as under:

"2.4.9 Are all local bodies constituted by a State or Central Law local authorities?

No. The definition of 'local authority' is very specific as explained in point no 2.4.8 and only those bodies which fall within the definition comprise 'local authorities'. It would not include other bodies which are merely described as a local body by virtue of a local law."

We find that similar view has been taken by the Appellate Authority for Advance Ruling, Uttar Pradesh in the Appeal Order No. 05/AAAR/10/03/2023 dated 10.03.2023, while deciding the appeal of M/s The Indian Hume Pipes Company Ltd., Karai Jhansi, Uttar Pradesh, against Advance Ruling No. UP ADRG-12/2022 dated 23.09.2022 and also by the Authority for Advance Ruling, Tamil Nadu in the Advance Ruling No. 13/AAR/2023, decided on 6-6-2023 [(2023) 11 Centax 219 (A.A.R. - GST - T.N.). In the

Advance Ruling No. UP ADRG. 12/2022, dated 23-9-2022 the Authority for Advance Ruling, **Uttar Pradesh in the case of Indian Hume Pipe Company Ltd. [(2023) 2 Centax 223 (A.A.R. - GST - U.P.)], held as under:**

"State water corporation - Local Authority - Whether Uttar Pradesh Jal Nigam (UPJN) qualifies as a 'local authority' - HELD : In view of decision of Supreme Court in R.C. Jain [1981] 2 SCC 308, as Chairman and Members of UPJN are elected by State Government and not inhabitants of local area, said entity does not qualify as local authority - UPJN is not enjoying appreciable nature of autonomy and same is evident from different provisions of Uttar Pradesh Water Supply and Sewerage Act (UPWSS Act) - Fund maintained by UPJN is its own fund and cannot be equated to a fund entrusted by Government - UPJN lacks control and management by way of a local fund - As no local fund is entrusted by Government with UPJN, same does not qualify as local authority - Following decision of Allahabad High Court in U.P. Jal Nigam [2011] 14 taxmann.com 178/202 Taxman 685/[2012] 348 ITR 238/249 CTR 467, UPJN does not qualify as local authority. [paras 21.3, 23 and 25]

Governmental authority - State Water Corporation - Whether Uttar Pradesh Jal Nigam (UPJN) qualifies as a 'Governmental authority' - HELD : UPJN is a body corporate formed by State Legislature under UPWSS Act - UPJN is a body corporate established by Government of UP - UPJN is carrying out function of operating, running and maintaining waterworks and sewerage system which is a function entrusted to Municipality in terms of article 243W of Constitution of India - UPJN qualifies as a Governmental authority [Section 2(54) of Central Goods and Services Tax Act, 2017/Uttar Pradesh Goods and Services Tax Act, 2017]. [Para 28]"

Thus, from the above facts we are of the view that the Applicant "UK Peyjal Nigam" is not a 'local authority', within the meaning of the provisions of the CGST/SGST Act, 2017.

We also note that the applicant has also contended that they has been registered with the Income Tax Department and the PAN card allotted by them clearly outlines that they are a "LOCAL AUTHORITY". We observe that on the basis of the said PAN card, they have applied and got registered with the GST Department. We are of the opinion the PAN card issued to them as a 'local authority' are as per the provisions of the Income Tax Act and that the GST registration are granted based on the information furnished by the applicant and it appears that in the application for registration the applicant declared their constitution of business as a 'local authority'. However, when it comes to determining the rate of tax applicable on the supplies made by them, it is necessary to examine in detail whether the applicant qualifies to be termed as a local authority in terms of the definition of 'local authority' as given in Section 2(69) of the CGST Act, 2017. In so examining, we find that applicant does not qualify as a 'local authority' as defined in Section 2(69) of the CGST Act, 2017.

We further find that similar view has been taken by the Karnataka Appellate Authority for Advance Ruling, in the Appeal Order No. KAR/AAAR/01/2023 dated

07.02.2023 while deciding the appeal against Advance Ruling No. KAR ADRG-23/2022 dated 12.08.2022.

Having held that the "UK Peyjal Nigam" is not a 'local authority', now we proceed to examine as to whether the "UK Peyjal Nigam" is a 'Governmental Authority' or not? It is relevant to note that the term "Governmental Authority" is not defined in the CGST Act. However, Notification No. 31/2017-Central Tax (Rate), dated October 13, 2017, which amended the Notification No 11/2017 - Central Tax (Rate), dated June 28, 2017, defined Governmental Authority as follows:

"ix. Governmental Authority" means an authority or a board or any other body. -

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with 90 per cent, or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution. "

Thus, in order to qualify as a governmental authority, such authority must be set up by an act of Parliament/State Legislature, should have 90% or more stake of government, and should carry out any function entrusted to a Municipality % Panchayat under article 243W & 243G respectively of the Constitution of India.

As discussed, the "UK Peyjal Nigam" is a body corporate formed by the State legislature under UPWSS Act enacted by the UP State Legislature. Further, as per section 3 of the Uttaranchal (The Uttar Pradesh Water Supply and Sewerages Act, 1975) Adaptation and Modification Order, 2002 read with UPWSS Act, "UK Peyjal Nigam" is a body corporate established by the Government of Uttarakhand, as such, the requirement of governmental authority has been fulfilled in the present case. The "UK Peyjal Nigam" is constituted for the development and regulation of water supply and sewerage services in the State of Uttarakhand. Under the section 14 of Uttaranchal (The Uttar Pradesh Water Supply and Sewerages Act, 1975) Adaptation and Modification Order, 2002 read with UPWSS Act, the "UK Peyjal Nigam" is inter alia entrusted with the function to operate, run, and maintain any waterworks and sewerage system. As per article 243W read with Twelfth Schedule of the Constitution of India, water supply for domestic, industrial and commercial purposes and public health, sanitation conservancy and solid waste management is a function of municipality. Further, as per the Uttaranchal (The Uttar Pradesh Water Supply and Sewerages Act, 1975) Adaptation and Modification Order, 2002 read with UPWSS Act, the State Government of Uttarakhand, have full control over the "UK Peyjal Nigam", hence the condition as mandated in the definition of Governmental Authority gets fulfilled in the instant case.

Thus, from the facts and circumstances of the instant case, as discussed above, we hold that the Applicant i.e. M/s Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam **"UK Peyjal Nigam" is not a 'local authority'**, within the meaning and ambit of the provisions of the CGST/SGST Act, 2017, **but is a "governmental authority"**.

Further, as per Sl. No. 5 of Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017, tax leviable, shall be paid on reverse charge basis by the recipient in case of "services supplied by the Central Government, State Government, union Territory or

local authorities to a business entity” and hence the applicant has asked for ruling in this regard whether the provisions are applicable on them. For better perspective, the relevant portion of the said notification is reproduced as under:

“GSR.....(E).- In exercise of the powers conferred by sub-section (3) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government on the recommendations of the Council hereby notifies that on categories of supply of services mentioned in column (2) of the Table below, supplied by a person as specified in column (3) of the said Table, the whole of central tax leviable under section 9 of the said Central Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services as specified in column (4) of the said Table:-

Table

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
1			
5	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, - (1) renting of immovable property, and (2) services specified below- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.

We find that at Sl. No. 5 of the Notification No. 13/2017- Central Tax (Rate) dated 28.06.2017 issued under Section 9(3) of the CGST Act, 2017, it has been mandated that if the services have been supplied by the Central Government, State Government, Union territory or local authority to a business entity, then central tax leviable under section 9 of the said Central Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services. In the instant case, as has been held above that the applicant does not qualify to be a “LOCAL AUTHORITY”.

In view of the facts and discussions held above, we hold that the applicability of the provisions of the Notification No. 13/2017- Central Tax (Rate) dated 28.06.2017, does not arise in the instant case.

Next issue raised by the applicant in the application is regarding the entitlement of ITC i.e. whether the ITC of the tax paid in the instant case, is admissible to the applicant or the service receiver. We find that as per the provisions of Sl. No. 4 & 5 of the Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017, as amended, services under service code of Chapter 99 have been bought under ‘NIL’ rate if the “Description of Services” is as under;

U

"4. Services by governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution.

5. Services by a Governmental Authority] by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution."

As held above, the applicant is not a 'local authority' but falls under the category of a "Governmental Authority" and in view of the provisions of the Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017, as amended, the construction of an overhead water tank at Rishikesh in the THDC colony is a construction service and pertains to supply of water which is an activity in relation to a function entrusted to a Municipality & Panchayat under article 243W & 243G respectively of the Constitution of India and is exempted from payment of tax and hence the question of claiming of ITC does not arise.

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

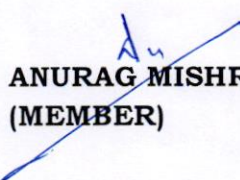
RULING

1. Whether RCM shall be applicable in this case and tax be paid by THDC on Reverse Charge Basis or this contract will fall under forward charge and tax be paid by THDC to UK Peyjal on forwards basis?

Answer- M/s Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam does not qualify to be a "Local Authority" and hence, there is no applicability of the RCM as per the provisions of the Notification No. 13/2017- Central Tax (Rate) dated 28.06.2017.

2. Whether THDC or UK Peyjal is entitled to avail ITC on the GST deposited?

Answer- Answer in negative, as the service provided is exempt from payment of GST.


ANURAG MISHRA
(MEMBER)


VIVEKANAND MAURYA
(MEMBER)

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

F. No.: 05/S.Tax-UKD/GST/Sec-97/2023-24/DDN/ 8509 Date: 21.02.2024

Copy to:

1. The Chief Commissioner, CGST, Meerut Zone, Meerut for information please.
2. The Commissioner, SGST, Commissionerate, Uttarakhand for information and necessary action please.
1. The Commissioner, CGST, Commissionerate, Dehradun for information and necessary action please.
2. The Assistant Commissioner, Range - I Mussoorie, Cgst, Division - Dehradun for information and necessary action.
3. The Assistant Commissioner, Zone - Dehradun, Sector - Dehradun - Sector- 3, 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.