

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 19th day of June, 2024

अग्रिम विनिर्णय संख्या. **01/2024-25**

Ruling No: 01/2024-25

in

आवेदन संख्या . **07/2023-24**

Application No: 07/2023-24

1	आवेदक Applicant	Indian Institute of Technology Roorkee, Finance And Accounts Office, Main Building, IIT Roorkee, Roorkee, Haridwar, Uttarakhand-247667. GSTIN: 05AAALI0033R4Z2
2	अधिकारिता अधिकारी Jurisdictional Officer	-----
3	आवेदक की ओर से उपस्थित Present for the Applicant	Sh. Pavitra H Arora, Advocate Sh. Gopal Kumar Rastogi, Advocate Sh. Jain Singh, Assistant Registrar
4	अधिकारिता अधिकारी की ओर से उपस्थित Present for the Jurisdictional Officer	None
5	Concerned Officer	Smt. Maneesha Saini, Deputy Commissioner, SGST Dehradun
6	आवेदन प्राप्ति की तिथि Date of receipt of application	30.03.2024
7	सुनवाई की तिथि Date of Personal Hearing	07.06.2024

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

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 Indian Institute of Technology Roorkee, Finance And Accounts Office, Main Building, IIT Roorkee, Roorkee, Haridwar, Uttarakhand-247667 (herein after referred to as the "applicant") and registered with GSTIN- 05AAALI0033R4Z2 under the CGST Act, 2017 read with the provisions of the UK GST Act, 2017 (hereinafter referred to as 'the applicant').

2. In the application dated 30.03.2024, the applicant submitted that:

2.2 Apart from providing educational service to its students, to facilitate the students, staff and its faculty members within the campus itself the necessary goods and services, Institute i.e. the applicant has also allotted some of its premises in the campus owned by the applicant i.e. IIT Roorkee to certain commercial occupants against the monthly consideration that represent license fees to use such space.

2.3 The Uttarakhand Power Corporation limited (UPCL) charges IIT Roorkee for electricity consumption (as per main meter in the name of the applicant i.e. IIT Roorkee). Further the applicant i.e. IIT Roorkee recovers electricity charges from commercial occupants their respective share of unit's consumption (as per sub meter/separate meter that has been installed at the premises allotted to them).

2.4 That as per circular No. 206/18/2023-GST dated 31st October'2023: where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.

2.5 And that as per their interpretation, the applicant i.e. IIT Roorkee is the pure agent for the electricity charges that it recovers from its commercial occupants, as it recovers the same amount of units consumption as charged by Uttarakhand power corporation limited (UPCL) to the applicant i.e. IIT Roorkee.

2.6 Therefore, the applicant i.e. IIT Roorkee is not liable to charge GST from its commercial occupants on recovery of such electricity charges.

2.7 In view of the above facts, the applicant has sought advance ruling on the following questions:

1. Whether IIT Roorkee is to be considered as "Pure agent" or not, for electricity charges that it recovers from its commercial occupants against the consideration that represents only- reimbursement of actual cost of Electricity charges (on the basis of sub-meter / separate meter) that is being charged by Uttarakhand power corporation limited (UPCL) to the IIT Roorkee (as main electric meter is in the name of IIT Roorkee).
2. Whether IIT Roorkee falls under the definition of Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc. as referred in circular No. 206/18/2023-GST dated 31st October'2023.
3. Whether IIT Roorkee is required to charge GST on amount that it recovers from its commercial occupants of campus space on actual basis (on the basis of sub-meter / separate meter).
4. Whether recovery of electricity charges from its tenant is exempted in case of an educational institute as per GST Act.
5. Recommendation of SAC code and application rate of tax on electricity charges recoverable from tenet (if taxable in the referred case).

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.

6. Accordingly opportunity of personal hearing was granted to the applicant on 07.06.2024. Sh. Pavitra H Arora, Advocate, Sh. Gopal Kumar Rastogi, Advocate and Sh. Jain Singh, Assistant Registrar, IIT Roorkee 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, SGST-Dehradun, Concerned Officer from State Authority was also present during the hearing proceedings and during the proceedings of personal hearing Smt. Maneesha Saini, Deputy Commissioner and Concerned Officer-Advance Ruling, SGST, Dehradun (State Tax Dept. Uttarakhand), brought to the notice of the Authority, that the issue raised by the applicant in the application dated 30.03.2024 has already been raised by the Department vide letter No. V(I)Audit/GST/RR/3C/Finance/315/2022 dated 16.05.2023, issued by the Deputy Director (Cost), CGST Audit Commissionerate, Dehradun and the applicant already got a clarification from the CGST Audit Commissionerate, Dehradun in this regard and hence applicant was already seized upon with the issue raised in the present application. She further submitted that the Deputy Director (Cost), CGST Audit Commissionerate, Dehradun has clearly informed the applicant i.e. the IIT Roorkee, that they do not fall under the scope of "Pure Agent" for reimbursement of electricity charges as claimed by them and also the infrastructure service in respect of restaurant is not exempted. Hence she submitted that under the proviso to section 98(2) of the CGST Act, 2017 / UK GST Act, 2017, the instant application of the applicant should not be accepted and is liable to be rejected.

7. We find that while filing the application "Form for Advance Ruling" dated 30.03.2024, the applicant at Sl. No. 17 of the FORM GST ARA- 01 has declared that the question raised in the application is not 1) already pending in any proceedings in the applicant's case under any of the provisions of the Act, and 2) already decided in any proceedings in the applicant's case under any of the provisions of the Act.

8. We find that in the present application the applicant has sought advance ruling on "5. Determination of the liability to pay tax on any goods or services or both" and has tick marked the said category at Sl. No. 13 of the GST ARA -01 "Application Form for Advance Ruling".

9. We have examined the issue raised in the present application and the submissions of the applicant in their application dated 30.03.2024 and 11.06.2024 as well. In the context of the submission by the Concerned Officer, we have examined the admissibility of the application without going into the merits of the case and find that vide application dated 30.03.2024, the applicant has approached the authority for advance ruling on an issue which has already been decided in the case of applicant's own case; therefore we proceed to examine the admissibility and maintainability of the instant application before going into the merits of the application, in terms of section

97 of the Act, firstly we have to examine the legality and admissibility of the application filed by the applicant, for seeking advance ruling.

10. We find that the applicant i.e. **M/s Indian Institute of Technology Roorkee**, Finance And Accounts Office, Main Building, IIT Roorkee, Roorkee, Haridwar, Uttarakhand- 247667 **vide letter dated 20.04.2023** on the subject matter of **"Request to look into the applicability of GST on Electricity reimbursement in IIT Roorkee having Core Educational Services and consider setting aside the observations"** addressed a letter to the Commissioner of Central Goods & Services Tax (Audit), Head of the Department, 3D Plaza, Near Ambiwala Gurudwara, Dharampur Danda, Dehradun-248001 giving reference to the **"observation received from Superintendent (Audit Gr. 3C), CGST- Circle Roorkee- Rishikesh vide note C.No. V(1)Audit/GST/RR/3C/Finance/ 315/2022/329 dated 03.03.2023"**, requesting to consider the facts as brought out in the said letter and re-look at the matter in totality so the charges which are not otherwise due or payable should not be levied on the institute.

10.2 We find that in response to the above said letter dated 20.04.2023, the Deputy Director (Cost), CGST Audit Commissionerate, Dehradun O/o the Commissioner of Central Goods & Services Tax (Audit), Head of the Department, 3D Plaza, Near Ambiwala Gurudwara, Dharampur Danda, Dehradun-248001 after detailed explanation of the matter clarified that **"IIT Roorkee does not fall in the scope of pure agent for reimbursement of electricity charges, as claimed by them and also the infrastructure service in respect of restaurant is not exempted"**.

10.3 We further find that at Para 3.3 of the above referred letter, it has been brought out that the applicant i.e. the IIT Roorkee vide their letter dated 17.03.2023 **accepted the observation dated 03.03.2023 and voluntarily deposited the entire GST along with interest through DRC-03 dated 14.03.2023.**

11. In the backdrop of the factual position discussed above, we find that the M/s Indian Institute of Technology Roorkee, Finance And Accounts Office, Main Building, IIT Roorkee, Roorkee, Haridwar, Uttarakhand- 247667 i.e. the applicant in their present application dated 30.03.2024 has sought the advance ruling on the issue concerning applicability of GST on electricity charges recovered from their commercial occupants viz.-a-viz. applicability of pure agent, is identical and similar in nature, raised by the Department in their proceedings namely audit observations of the Superintendent (Audit Gr. 3C), CGST- Circle Roorkee- Rishikesh vide note C.No. V(1)Audit/GST/RR /3C/Finance/ 315/2022/329 dated 03.03.2023 and letter No. V(I)Audit/GST/RR/3C/ Finance/315/2022/519 dated 16.05.2023 issued by the Deputy Director (Cost), CGST Audit Commissionerate, Dehradun. Even more so, we also find that the applicant, during earlier proceedings accepted the audit observations

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dated 03.03.2023 and voluntarily deposited the entire GST along with interest through DRC-03 dated 14.03.2023.

12. In view of the above, we find that the applicant has approached the Authority, for the identical and similar issue, which has been raised by the Department during the proceedings of the Audit and also accepted by the applicant, as is apparent from the fact that the applicant voluntarily deposited the entire GST along with interest through DRC-03 dated 14.03.2023.

13. We opine that the Advance Ruling is a benevolent piece of legislation in the Act with an objective to obviate litigation at initial stage of the issues arising in tax matters to tax payers including any unregistered persons intending to commence any business activity. It provides an opportunity to all entities both commercial and non-commercial, Government and quasi-Government, statutory bodies, etc., hitherto not registered under any of the indirect tax laws to seek clarification on the taxability or otherwise of their activities after introduction of the CGST Act, 2017, where the applicant is also not an exception. Vide first proviso to Section 98 (2) which restricts admitting application seeking advance ruling on questions, which are already pending in any proceedings, an important check mechanism has been inserted so that the Advance Ruling mechanism does not hinder in or become prejudicial to the proceedings which are already pending or concluded.

13.2 The relevant portion of the Section 98 (2) is reproduced below;

SECTION 98. Procedure on receipt of application. — (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records : **Provided** that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.

(2) **The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application :**

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act :

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

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Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

(3)".

13.3 We observe that 'Proceedings' is not defined under CGST Act, 2017 and in absence of any statutory definition, the term 'proceedings' shall be accorded a literal interpretation. The term 'proceedings' has been used in various Sections of the Act under different context and one such mention is made in the Form DRC-01A. The subject of Form DRC-01-A mentions '**Case proceedings reference no**' and the body of the form starts with '**Please refer to case proceedings. In this regard the amount of tax, interest, penalty payable....**'. Hence, it is clear that 'proceedings' of Audit under section 65 of the CGST Act, 2017 as defined under Section 2(13) of the CGST Act, 2017 is said to have been culminated and the issue involved has already been decided in the Audit under section 65 of the CGST Act, 2017 and has been duly accepted by the applicant as discussed above, evidently establishes that the issue raised by the applicant in the present application has reached finality and decided much before the filing of the advance ruling application by the applicant.

13.4 On considering the first proviso to section 98(2) of the Act comprehensively, it is apparent that the first proviso covers any "proceedings" in the case of an applicant under any of the provisions of the Act including Section 65 of the Act, under which Audit under section 65 of the CGST Act, 2017 was conducted by the CGST Audit Commissionerate, Dehradun. We find such situation have been covered under sub section (2) of the Section 98 of the Central Goods And Services Tax Act, 2017.

13.5 We find that as per sub section (2) of the Section 98 of the Central Goods and Services Tax Act, 2017, it is clearly specified that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act,

13.6 We observe that proviso to sub section 2 of the Section 98 of the Central Goods And Services Tax Act, 2017, could be best interpreted that the legislative intent in its wisdom is to empower the advance ruling authority to reject the application in the cases where there is repeated filing of the application before the advance ruling authority on the same issue which is either pending for decision or already decided.

14. We further find that while filing the application "Form for Advance Ruling" dated 30.03.2024, the applicant has not given true and correct picture at Sl. No. 17 of the FORM GST ARA- 01 and tried to pass off the present application as a new question by declaring that the question raised in the application is not already decided in any proceedings under any of the provisions of the Act, which we observe is far from true and is a false declaration.

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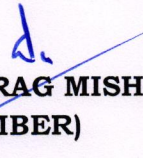
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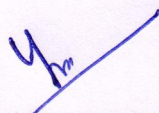
15. We further observe that during the personal hearing, the applicant's representatives were specifically asked about the issue raised in the instant application and the issue raised by the CGST Audit Commissionerate, Dehradun, wherein it was admitted by them that the issue concerning applicability of GST on electricity charges recovered from their commercial occupants viz.-a-viz. pure agent is identical and similar in nature as raised by the Department in their audit proceedings. It was also accepted by them that they had voluntarily deposited the entire GST liability along with interest through DRC-03 dated 14.03.2023 as pointed out in the audit observation referred to above.

16. In view of the above facts, it is very clear that applicant has approached the authority again, for the identical and similar issues and hence we observe that the applicant has approached this authority, on the issue which has already been decided in applicant's own case under the provisions of the Central Goods And Services Tax Act, 2017 and hence we hold that in terms of section 98(2) of the Central Goods And Services Tax Act, 2017, the present application is not admitted and rejected without going into the merits of the case.

RULING

The subject application for advance ruling made by the applicant is not maintainable and hereby rejected under the provisions of Section 98(2) of the CGST Act, 2017 and UK GST Act, 2017.


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.: 07/S.Tax-UKD/GST/Sec-97/2023-24/DDN/ 982 Date: 19.06.2024

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, Division - Roorkee, Range - 1, Roorkee, for Information and necessary action.
3. The Assistant Commissioner, Commissionerate - Uttarakhand, Zone - Haridwar, Sector - Roorkee - Sector 1, 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.