

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. **02/2024-25**

Ruling No: 02/2024-25

in

आवेदन संख्या . **01/2024-25**

Application No: 01/2024-25

1	आवेदक Applicant	M/s THDC India Limited, Ground Floor, 01, Ganga Bhawan, Haridwar Bypass Road, Pragatipuram, Rishikesh-249201. GSTIN: 05AAACT7905Q1ZW
2	अधिकारिता अधिकारी Jurisdictional Officer	-----
3	आवेदक की ओर से उपस्थित Present for the Applicant	Sh. Rakesh Varshney, Advocate Sh. Rajat Varshney, Advocate
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	01.05.2024
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

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 THDC India Limited, Ground Floor, 01, Ganga Bhawan, Haridwar Bypass Road, Pragatipuram, Rishikesh-249201 (herein after referred to as the "applicant") and registered with GSTIN 05AAACT7905Q1ZW 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) (e) of CGST/SGST Act, 2017, the present application is hereby admitted.

BRIEF FACTS OF THE CASE

5. In the application dated 01.05.2024, the applicant submitted that:

- a. That the Applicant i.e. THDCIL is a Public Sector Enterprise and registered as a Public Limited Company under the Companies Act, 1956 and has been conferred 'Mini Ratana-Category-I Status' and up-graded to Schedule 'A' PSU by the Government of India.
- b. That as per the URL <https://thdc.co.in/en/content/company-thdcil>, the Equity of Company was earlier shared between Govt. of India and Govt. of Uttar Pradesh in the ratio of 75:25. However, pursuant to the strategic sale, the Share Purchase Agreement was executed between NTPC Limited and President of India on 25th March, 2020, for acquisition of legal and beneficial ownership of equity held by the President of India in THDC India Limited and after strategic sale, Equity in THDC India Limited is shared between NTPC Limited and Government of UP in a ratio of 74.496% and 25.504%.
- c. That as per the contents cited in above URL and the contents laid in there the equity of the Company was earlier shared between Govt. of India and Govt. of Uttar Pradesh in the ratio of 75:25 and hence THDCIL shall also be treated as Government entity because at the time of inception of the Corporation Government participation in the equity or by way of control was more than 90%.

QUESTION

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

1. Whether the Applicant i.e. the THDCIL is a Government Entity or not?
2. If yes, can Legal Services provided by the advocates including Senior Advocate or firm of Advocate is exempt from GST for THDCIL i.e. THDCIL does not need to pay tax under RCM?

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. 05AAACT7905Q1ZW. Before proceeding in the present case, we have to first go through the submissions made by the applicant which are as under:

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6.2 That as per as per the URL <https://thdc.co.in/en/content/company-thdcil> "The Equity of Company was earlier shared between Govt. of India and Go UP in the ratio of 75:25. Pursuant to Strategic Sale, the Share Purchase Agreement was executed between NTPC Limited and President of India on 25th March, 2020, for acquisition of legal and beneficial ownership of equity held by the President of India in THDC India Limited. After Strategic Sale, Equity in THDC India Limited is shared between NTPC Limited and Government of UP in a ratio of 74.496% and 25.504%."

6.3 That in the AAR of Uttarakhand State vide Application No. 11/2018-19 the authority had treated NHPC Limited as Government Entity and had interpreted the definition of Government Entity i.e.

"Government Entity means an authority or a board or any other body including a society, trust, corporation,

(i) setup by an Act of Parliament or State Legislature; or

(ii) established by any Government,

with 90 per cent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.",

as under-

"From the aforesaid definition we observe that condition of 90% or more participation by way of equity or control to carry out a function entrusted by the Government, State Government, Union Territory or a local authority is relatable to only sub-clause (ii) of the definition of Government Entity. This fact confirm from the Civil Writ Jurisdiction Case No. 16965 of 2015 of Hon'ble High Court of Patna in the case of Shapoorji Pallonji and Company Pvt. Vs CCE."

Further, authority had also held that-

"We find that in India, there are various entities 'established' by the Government by way of 90% or more participation in equity or control; however, after the 'establishment' of such entities, the Government participation by way of equity or control is usually diluted to less than 90%. The definition of 'governmental entity' merely contemplates that an entity is required to be 'established' by the Government by way of 90% or more equity or control. The definition does not contemplate continuous fulfilment of such requirement post 'establishment' of the entity. Therefore, the intention of the above amended notification is to enlarge the scope of the definition to cover Government Companies incorporated under the Companies Act also within the ambit of the definition of "Government entity". Thus, if the criterion is fulfilled, at the time of 'establishment' by way of 90% or more Government participation in the equity or by way of control, the entity would be considered as 'governmental entity', within the meaning assigned under the said amended notification.

Accordingly we observe the M/s NHPC Ltd falls under the definition of "Government entity" in as much as at the time of establishment of the company the Hon'ble President of India and its nominees hold 100% equity shares of the company."

6.4 Further, as per the contents cited in above URL and the contents laid in there the equity of the Company was earlier shared between Govt. of India and Govt. of UP in the ratio of 75:25 and hence taking cognizance of the above cited AAR, the applicant i.e. THDCIL shall also be treated as Government entity, because at the time of inception of the Corporation Government participation in the equity or by way of control was more than 90%.

6.5 And that in view of the facts mentioned in the above AAR, if the applicant i.e. THDCIL is treated as Government Entity then the provisions of Entry No. 45 of the Notification No. 12/2017-CT(R) Dt. 28/06/2017 shall be attracted and therefore, THDCIL shall be exempted from paying GST under RCM on the Legal Services provided by the advocates including Senior Advocate or firm of Advocate.

6.6 Accordingly opportunity of personal hearing was granted to the applicant on 07.06.2024. Sh. Rakesh Varshney and Sh. Rajat Varshney both Advocates, 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. We note that the Applicant in their application has mentioned that the AAR Uttarakhand vide Application No. 11/2018-19 had treated NHPC Limited as a Government Entity, by holding as under:

“From the aforesaid definition we observe that condition of 90% or more participation by way of equity or control to carry out a function entrusted by the Government, State Government, Union Territory or a local authority is relatable to only sub-clause (ii) of the definition of Government Entity. This fact confirm from the Civil Writ Jurisdiction Case No. 16965 of 2015 of Hon’ble High Court of Patna in the case of Shapoorji Pallonji and Company Pvt. Vs CCE.”

The applicant further stated that the Authority also held that *“We find that in India, there are various entities ‘established’ by the Government by way of 90% or more participation in equity or control; however, after the ‘establishment’ of such entities, the Government participation by way of equity or control is usually diluted to less than 90%. The definition of ‘governmental entity’ merely contemplates that an entity is required to be ‘established’ by the Government by way of 90% or more equity or control. The definition does not contemplate continuous fulfilment of such requirement post ‘establishment’ of the entity. Therefore, the intention of the above amended notification is to enlarge the scope of the definition to cover Government Companies incorporated under the Companies Act also within the ambit of the definition of “Government entity”. Thus, if the criterion is fulfilled, at the time of ‘establishment’ by way of 90% or more Government participation in the equity or by way of control, the entity would be considered as ‘governmental entity’, within the meaning assigned under the said amended notification. Accordingly we observe the M/s NHPC Ltd falls under the definition of “Government entity” in as much as at the time of establishment of the company the Hon’ble President of India and its nominees hold 100% equity shares of the company”.*

In the aforesaid back drop, the it has been submitted by the applicant that the equity of the Company was earlier shared between Govt. of India and Govt. of Uttar Pradesh in the ratio of 75:25 and hence taking cognizance of the above cited AAR, the applicant i.e. THDCIL shall also be treated as Government entity, because at the time of inception of the Corporation, the Government participation in the equity or by way of control was more than 90% and therefore, the provisions of Entry No. 45 of the Notification No. 12/2017-CT(R) Dt. 28/06/2017 shall be attracted and hence THDCIL shall be exempted from paying GST under RCM on the Legal Services provided by the advocates including Senior Advocate or firm of Advocate.

We note that moot point to decide in the present proceedings is whether the applicant i.e. THDCIL can be treated as a “Government Entity” in terms of definition as provided in the Notification No. 11/2017-Central Tax (Rate), dated the 28th as amended by Notification No. 31/2017-Central Tax(Rate) dated 13.10.2017. Hence we have to examine as to whether the “THDCIL” is a ‘Governmental Entity’ or not? It is relevant to note that the term “Governmental Entity” is not defined in the CGST Act, 2017.

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We find that the 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 the "Governmental Entity". For better perspective the relevant portion of the said notification is reproduced as under:

"x. "Government Entity" means an authority or a board or any other body including a society, trust, corporation,
i) set up by an Act of Parliament or State Legislature; or
ii) established by any Government,
with 90per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority."

We are of the opinion that from the above definition is clear that in order to qualify as a **"Government Entity"**, such ENTITY must be either **"set up by an Act of Parliament or State Legislature;"** or **"established by any Government, with 90per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority"**.

We find that as per the website <https://thdc.co.in/en/content/company-thdcil>, the company THDCIL, registered as a Public Limited Company in July-1988 under the Companies Act, 1956 and hence we opine that there is no dispute regarding the applicant not falling under the category i) of the above referred notification which provides **"set up by an Act of Parliament or State Legislature;"** and also the applicant has not claimed and pleaded about this aspect.

We further find that the applicant in their application dated 01.05.2024 and also during the course of personal hearing on 07.06.2024, claimed that they fall under the category ii) of the above referred notification which provides **"established by any Government, with 90per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority"**, in as much as the equity of the Company was earlier shared between Govt. of India and Govt. of Uttar Pradesh in the ratio of 75:25 and hence be treated as a "Government Entity", because at the time of inception of the Corporation, the Government participation in the equity or by way of control was more than 90 %.

And hence we are of the opinion that the applicant is claiming to be a "Government Entity", by interpreting the definition as Government Entity means an authority or a board or any other body including a society, trust, corporation, established by any Government, with 90 per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority. From the perusal of the definition as provided in the above referred

notification, it is apparent that in the first part of the definition, a comma/ the mark (,) has been placed after the word, "corporation", and likewise in the third part of the definition, a comma/ the mark (,) has been placed after the phrase/group of words, "established by any Government", and also a comma/ the mark (,) has been placed after the phrase/group of words, "*with 90per cent. or more participation by way of equity or control*".

We find that as per <https://www.collinsdictionary.com/dictionary/english/comma>, "comma" has been defined as "*the punctuation mark (,) indicating a slight pause in the spoken sentence and used where there is a listing of items or to separate a nonrestrictive clause or phrase from a main clause*" and that as per the <https://www.oxfordlearnersdictionaries.com/definition/english/comma>, "comma" has been defined as "*the mark (,) used to separate the items in a list or to show where there is a slight break in a sentence.*"

In view of the above definitions of a comma/the mark(,), it is clear that the punctuation mark (,) is used where there is a listing of items or to separate a non-restrictive clause or phrase from a main clause and hence the usage and placement of a comma/ the mark (,) in the definition of "Government Entity" indicates that such words/ phrase/group of words, are independent of each other and have to be read and construed in that way only. This shows that to be categorized as a "Government Entity", following conditions has had to be met and fulfilled independently:

- must be **an authority or a board or any other body including a society, trust, corporation,**
- **established by any Government,**
- **with 90 per cent. or more participation by way of equity or control,**
- **to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.**

We observe that there is no doubt about the applicant fulfilling the first two conditions i.e. must be **an authority or a board or any other body including a society, trust, corporation,** and **established by any Government,** but falls short of fulfilling the third condition, which prescribes, "*with 90 per cent. or more participation by way of equity or control,*". We find that as on the date of filing of the application dated 01.05.2024 for the present proceedings, the Equity in the applicant company i.e. THDC India Limited is shared between NTPC Limited and Government of UP in a ratio of 74.496 % and 25.504 %, which is less than the stipulated 90% of equity and hence does not fulfill the condition of "*with 90 per cent. or more participation by way of equity or control,*".

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There is no doubt that at the time of registering the Company, as a Public Limited Company, under the Companies Act, 1956, in July'1988, the Government had 100 % equity or control (Govt. of India and Govt. of Uttar Pradesh in the ratio of 75:25), but as admittedly accepted by the applicant in their application and during the course of personal hearing on 07.06.2024, the equity or control of the Government became less than 90 %, as Government of UP held only 25.504 % of the total equity i.e. paid up capital. We find that this reduction in equity or control, happened pursuant to strategic sale by the Government of India through President of India and a Share Purchase Agreement was executed between NTPC Limited and President of India on 25th March, 2020, for acquisition of legal and beneficial ownership of equity held by the President of India in THDC India Limited and hence after the Strategic Sale, the Equity in THDC India Limited is shared between NTPC Limited and Government of UP in a ratio of 74.496 % and 25.504 %.

This shows that the status of the applicant i.e. the Company with respect to equity or control of the Government did not remained same and got reduced to 25.504 %, which is less than the stipulated 90 % or more.

We opine that in the present economic scenario, the Government of India and or State Governments are exploring and considering Strategic Sale of the their holdings/ equity in the Companies (owned by them) for disinvestment purpose, the reduction in equity or control would led to comical situation viz.-a-viz. the conditions enumerated in the definition of "Government Entity", if the equity holding of the Government is reduced to 0% (ZERO). In such a situation whether the said company, having zero percent equity holding of the Government, would still be claiming them as a "Government Entity"? We are of the opinion that the usage of the word "Government" by any organization/ firm/entity/company, signify and indicate that the Government has a controlling stake (legal power) in the day to day affairs of such organization/ firm/entity/company. In case where the equity holding of the Government is zero, there would not and cannot be any controlling stake (legal power) in the day to day affairs of such organization/ firm/entity/company. In this regard, it would not be out of place to mention that as per Section 2(53) of the Central Goods and Services Tax Act, 2017 the "Government" means the Central Government; and that as per Section 2(53) of the Uttarakhand Goods and Services Tax Act, 2017, the "Government" means the Government of Uttarakhand, hence, the usage of word "Government", with or in relation to any organization/ firm/entity/company has had its own sanctity and has had to be under its control by way of equity or control as stipulated in the statute. **And in the instant case the Government of Uttar Pradesh holds equity to the tune of 25.504 % only, which is less than the stipulated 90% in the notification.**

Further, the reliance on the Civil Writ Jurisdiction Case No. 16965 of 2015 dated 03.03.2016 in the case of Shapoorji Pallonji and Company Pvt. Ltd., Vs Commissioner, Customs, Central Excise & Service Tax, Patna does not hold ground and is distinguishable, in as much as, the case referred to/relies pertains to the Finance Act,

1944, wherein the Honorable High Court had to look into the aspect of "Governmental Authority", as in the Finance Act, 1994, only the "Governmental Authority" had been defined, whereas in the CGST Act, 2017/UK GST Act, 2017, "Governmental Authority" and "Government Entity", has been defined, as distinct bodies. Further, the referred Hon'ble Court judgment was in relation to the "Governmental Authority" in the Service Tax regime and dealt with the issue of "Governmental Authority" viz.-a-viz. condition no. i) of the definition. However, in the case before us in the present proceedings, the issue is with regard to the "Government Entity" as per the provisions of CGST Act, 2017 / UK GST Act, 2017 and hence the case relied upon by the applicant does not hold good.

In view of the above, we hold that the at present the equity or control of the Government is less than the stipulated 90% and hence cannot be categorized and considered as "Governmental Entity" in terms of Notification No 11/2017 - Central Tax (Rate), dated 28 June'2017, as amended by the Notification No. 31/2017-Central Tax (Rate), dated 13 October'2017. And hence the provisions of Entry No. 45 of the Notification No. 12/2017- Central Tax (Rate), dated 28 June'2017, shall not be applicable in the case of the applicant.

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

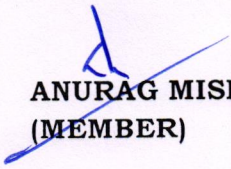
RULING

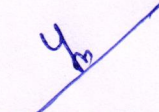
1. Whether the Applicant i.e. the THDCIL is a Government Entity or not?

Answer - Answer is in negative. The equity or control of the Government is less than the stipulated 90% and hence cannot be categorized and considered as "Governmental Entity" in terms of Notification No 11/2017 - Central Tax (Rate), dated 28 June'2017, as amended by the Notification No. 31/2017-Central Tax (Rate), dated 13 October'2017.

2. If yes, can Legal Services provided by the advocates including Senior Advocate or firm of Advocate is exempt from GST for THDCIL i.e. THDCIL does not need to pay tax under RCM?

Answer- Answer is in negative. Since the applicant is not a "Governmental Entity" in terms of Notification No 11/2017 - Central Tax (Rate), dated 28 June'2017, the provisions of Entry No. 45 of the Notification No. 12/2017-Central Tax (Rate), dated 28 June'2017, shall not be applicable in case of the applicant.


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.: 01/S. Tax-UKD/GST/Sec-97/2024-25/DDN/ 984 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, 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.