

समक्ष अग्रिम विनिर्णय प्राधिकारी उत्तराखण्ड(माल और सेवा कर)
**BEFORE THE AUTHORITY FOR ADVANCE RULINGS FOR THE STATE
OF UTTARAKHAND
(Goods and Services Tax)**

Present:

श्री अनुराग मिश्रा (सदस्य)

Shri Anurag Mishra (Member)

श्री रामेश्वर मीणा (सदस्य)

Shri Rameshvar Meena (Member)

The 31st day of October, 2022

अग्रिम विनिर्णय संख्या. 11/2022-23

Ruling No: 11/2022-23

in

आवेदन संख्या . 08/2022-23

Application No: 08/2022-23

| | | |
|---|--|--|
| 1 | आवेदक Applicant | M/s Tara Genset Engineers (Regd.), Lane No. 1, Dhoran Khas, Phase No. 1, Street No. 2, Dehradun, Uttarakhand-248001. |
| 2 | अधिकारिता अधिकारी Jurisdictional Officer | ----- |
| 3 | आवेदक की ओर से उपस्थित Present for the Applicant | Sh. Pankaj Rayal, Advocate, |
| 4 | अधिकारिता अधिकारी की ओर से उपस्थित Present for the Jurisdictional Officer | None |
| 5 | Concerned Officer | Sh. Deepak Brijwal, Deputy Commissioner |
| 6 | आवेदन प्राप्ति की तिथि Date of receipt of application | 29.09.2022 |
| 7 | सुनवाई की तिथि Date of Personal Hearing | 13.10.2022 (Through video Conferencing) |

नोट: इस अग्रिम विनिर्णय की प्राप्ति के 30 दिन के अन्दर उत्तराखण्ड माल और सेवाकर अधिनियम 2017 की धारा-99 के अन्तर्गत गठित अग्रिम विनिर्णय अपीलप्राधिकारी के समक्ष धारा- 100(1) के अन्तर्गत अपील दायर की जा सकती है।

Note: An appeal against this ruling lies before the appellate authority for advance ruling under Section 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, constituted under Section 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order.

**AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX
UTTARAKHAND**

PROCEEDINGS

This is an application under Sub-Section (1) of Section 97 of the Central Goods & Service Tax Act, 2017 and Uttarakhand State Goods & Service Tax Act, 2017 (hereinafter referred to as CGST/SGST Act) and the rules made there under filed by M/s Tara Genset Engineers (Regd.), Lane No. 1, Dhoran Khas, Phase No. 1, Street No. 2, Dehradun, Uttarakhand-248001 (herein after referred to as the "applicant") and registered with GSTIN 05AAJFT8968K1ZC under the CGST Act, 2017 read with the provisions of the UKGST Act, 2017.

2. In the application dated 29.09.2022, the applicant submitted that:

- (a) That they are a partnership firm in the business of Renting of DG Set to various customers in different Districts of Uttarakhand and has entered into agreement with them to Install diesel Generator on hire basis for rent with reimbursement of diesel cost on usages of the DG Set and have been discharging the Tax @ 18 % (CGST @ 9% + SGST @9%) on DG Set hiring charges plus on reimbursement of diesel cost incurred for running DG Set.
- (b) However, now one of the recipients of service is of the opinion that the taxes charged and collected by them on the component of the reimbursement of diesel charges for running the Diesel Generator was erroneous, as the said commodity i.e. the diesel does not come under the purview of GST. Since diesel is a non-GST Goods as per Section 9 of CGST/SGST Act, 2007 the service recipient has requested the applicant to reimburse the wrongly collected taxes.

In view of the above facts, *'the applicant'* is seeking advance ruling as to whether the *"GST applicability of cost of the diesel incurred for running DG Set in the Course of Providing DG Rental Service?"*

3. At the outset, we would like to state that the provisions of both the CGST Act and the SGST Act are the same except for certain provisions; therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the SGST Act.
4. The Advance Ruling under GST means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub section (1) of section 100 in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

5. As per the said sub-section (2) of Section 97 of the Act advance ruling can be sought by an applicant in respect of:

- (a) Classification of any goods or services or both
- (b) Applicability of a notification issued under the provisions of this Act,
- (c) Determination of time and value of supply of goods or services or both,
- (d) Admissibility of input tax credit of tax paid or deemed to have been paid
- (e) Determination of the liability to pay tax on any goods or services or both
- (f) Whether the applicant is required to be registered
- (g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both within the meaning of that term.

5.2 In the present case applicant has sought advance ruling on the determination of the liability to pay tax on services, therefore, in terms of said Section 97(2) (e) of CGST/SGST Act, 2017, the present application is hereby admitted.

6. Accordingly opportunity of personal hearing was granted to the applicant on 13.10.2022. Sh. Pankaj Rayal, Advocate, on behalf of the applicant appeared for personal hearing on the said date and re-iterated the submission already made in their application. Sh. Deepak Brijwal, Deputy Commissioner, Concerned Officer from the State Authority was also present during the hearing proceedings. He presented the facts and requested the authority to decide the case on merits.

7. From the record submitted by the applicant we find that applicant is registered in Uttarakhand with GSTIN bearing No. 05AAJFT8968K1ZC. Before proceeding in the present case, we have to first go through the submissions made by the applicant which are as under:

(a) That they are engaged in the business of Renting of DG Set to various customers in various District of Uttarakhand and under an agreement with the PNB/OBC, Shivalik Nagar they had installed diesel Generator on hire basis for rent of 4,500/- per month with reimbursement of diesel cost of Rs. 90.29 per Ltr. on usages of the DG Set and are discharging the Tax @ 18 % (CGST @9% + SGST @9%) on DG Set hiring charges and are also discharging tax @18% (CGST @9% + SGST @9%) on reimbursement of diesel cost incurred for running DG Set.

(b) Now, one of the recipient of service i.e. PNB/OBC, Shivalik Nagar, Haridwar, Uttarakhand is of the opinion that the taxes collected by the applicant pertaining to the reimbursement of diesel charges for running the Diesel Generator was erroneous as the said commodity diesel does not come under the purview of GST. Since diesel is a non-GST Goods as per Section 9 of CGST/SGST Act, 2007 the service recipient has requested the applicant to reimburse the wrongly collected taxes.

(c) That as per CGST ACT 2017 Section 15, the value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or

payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply and that as per Section 2(31) the consideration in relation to the supply of goods or services or both includes (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government; (b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.

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

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

"15. Value of Taxable Supply.— (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include—

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

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

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

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

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

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

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

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

Explanation.—For the purposes of this Act,—

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

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

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

(iii) such persons are employer and employee;

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

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

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

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

(viii) they are members of the same family;

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

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

We observe that the section provides that the value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

8.3 We further observe that it has been specifically mandated that the value of supply shall include (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to

States) Act, if charged separately by the supplier; and (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both.

From the above, it very clear that the Section 15 of the CGST Act, 2017 mandates that the value of supply shall include among other things, any other amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both. We find that the provisions of the Section 15 above are very clear and in unambiguous terms it has been mandated that any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both. The use of words "supplier is liable to pay in relation to such supply" brings out the intent of the legislature and leaves no room for any doubt.

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

8.5 We observe that without the fuel, the Diesel Generator (DG) Set cannot be operated to generate/ produce "Electricity", i.e. intended purpose of installing DG set on hire is not achieved. The rental service of Diesel Generator (DG) Set has the integral component of running the Diesel Generator and for this to undertake, "Diesel" is required. The running condition of Diesel Generator (DG) Set cannot be achieved without the fuel i.e. the "Diesel".

8.6 The contract entered between the applicant and the recipient is for the hiring of DG Set and is a comprehensive contract with the consideration having a fixed component and a variable component. The fixed component is the monthly fixed rent charged in the invoice for the DG Set and the variable charge (Running Charges) is the charge for the diesel used. Both are part of the same consideration and are for the contract of supplying DG Set on hire. Though it appears that the applicant is receiving the reimbursement of diesel cost, but we opine that the recipient is not paying for the diesel only but for the services of DG Set which have been hire on rent and the diesel is an integral part of the supply of DG Set rental service. There is no separate contract for supply of diesel and even single invoice is issued for the supply of rental service of DG Set although both the components are shown separately. Hence, the reimbursement of expenses as cost of the diesel, for running of the DG Set is nothing but the additional consideration for the renting of DG Set and attracts GST @18%.

9 We also find that Karnataka Authority for Advance Ruling vide Advance Ruling No. KAR ADRG 44 /2021 dated 30.07.2021 in the similar case of M/s. Goodwill Auto's, Hubballi, Dharwad has held that the cost of the diesel incurred for running DG Set in the course of providing DG Rental Service is nothing but additional consideration for the supply of DG Set on rent as per section 15 of the GST Act and hence attracts GST @ 18%.

10 Therefore, we observe that the price of the Diesel i.e. the fuel, to run the DG Set, shall form part of value of supply in view of Section 15 of the CGST Act, 2017, as for the purpose of levy of GST, cost of all the inputs, has to be included in the value of supply. We find that this authority has taken the similar view in the Ruling dated 26.09.2022 in the case of M/s Gurjinder Singh Sandhu, (Proprietor M/s New Jai Hind Transport Service), Haridwar and Ruling dated 31.05.2021 in case of M/s Vinayak Air Products Pvt. Ltd., BHEL CFFP, Ranipur Haridwar, Uttarakhand.

11 In view of the above facts and discussion held above we hold that consideration for reimbursement of expenses, as cost of the diesel for running of the DG Set, is nothing but the additional consideration for the renting of DG Set and attracts GST @ 18% under the provisions of Central Goods and Services Tax Act, 2017 & Uttarakhand Goods and Service Tax Act, 2017.

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

RULING

GST @ 18 % is applicable on the cost of the diesel incurred for running DG Set in the Course of Providing DG Rental Service as per Section 15 of the Central Goods and Services Tax Act, 2017 / Uttarakhand Goods and Service Tax Act, 2017.


ANURAG MISHRA
(MEMBER)


RAMESHVAR MEENA
(MEMBER)

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

F. No.: 8/S.Tax-UKD/GST/Sec-97/2022-23/DDN/ 4532 Date: 31.10.2022

Copy to:

1. The Chief Commissioner, CGST, Meerut Zone, Meerut for information please.
2. The Commissioner, SGST, Commissionerate, Uttarakhand for review please.
3. The Commissioner, CGST, Commissionerate, Dehradun for review please.
4. The Assistant Commissioner, Range-V, CGST, Dehradun for information and necessary action.
5. The Assistant Commissioner, Sec-5, SGST, Dehradun for information and necessary action.
6. The Concerned officer, CGST, Dehradun.
7. The Concerned officer, SGST, Dehradun.
8. The Appellate Authority of Advance Ruling, Uttarakhand for information please.
9. Guard File.