

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 26th day of February, 2024

अग्रिम विनिर्णय संख्या. 06/2023-24

Ruling No: 06/2023-24

in

आवेदन संख्या . 06/2023-24

Application No: 06/2023-24

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. 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	27.12.2023
7	सुनवाई की तिथि Date of Personal Hearing	25.01.2024

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.

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**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 27.12.2023, the applicant submitted that:

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- a. That the Applicant i.e. THDCIL (service receiver in the instant case) 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 on 11.09.2023 the THDCIL inked a Memorandum of Understanding (MOU) with Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam (service provider in the instant case), having GSTIN 05AAALU0118MHZL (UKPSVEN's PAN is AAALU0118M wherein the 4th Character is "L" denoting it as a Local Authority.
- c. That as per the MOU stated above at Point 1) the Scope of the Work (Point No. 1 of the MOU) is that the UKPSVEN shall be responsible for design, engineering and construction of 500 KL RCC Over Head Tank at THDCIL Campus, Rishikesh on "Deposit / Cost plus basis" and that the scope excludes GST and Labour Cess.
- d. That as per the MOU stated at Point 1) above the GST (Point No. 15 of the MOU) the THDCIL shall reimburse to the UKPSVEN the applicable GST as per provision of the relevant law.
- e. Whereas, the UKPSVEN took the stand that the status of their Department is of Local Authority but for the instant Work, they did not fall under the Local Authority and henceforth they raised the E Invoice having Document No. UKPJN/23-24/001, Dt. 07/12/2023, wherein they charged GST under Forward charge.

QUESTION

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

- 1. Whether the Applicant i.e. the THDCIL needs to pay GST under Forward charge or under RCM?**
- 2. Whether UKPSVEN can have Dual Status i.e. for some purposes it may be deemed to be Local Authority while for others it may not?**

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:

- i. That as per the Circular No. 69/43/2018-GST, Dt. 26/10/2018, if there is the change in constitution of business leading to change in PAN then taxpayer can apply for cancellation of registration. Meaning thereby, without changing the PAN it may not be possible to change the Constitution of Business and as UKPSVEN being the Local

Authority, as it possess the PAN No. as AAALU0118M, wherein "L" denotes the Local Authority, it may remain the Local Authority and work as such in the course of its Business and may not change its constitution of Business at its own discretion.

That as per Query at Point No. 3.4 of the GST System Project:

"FAQs: Registration issued by GSTN which say that "Can I file an Amendment Application for change in constitution of business?"

The Ans. is No, Amendment application form can't be filled for change in constitution of business as it results in change of PAN. You may, however, file an amendment application in case your PAN will not change as a result of the change in constitution of business. This can happen only when you belong to the following categories and if the new entity also belongs to one of the following categories:

Constitution Code as per PAN	Constitution as per GST Application
C	Private Limited Company;
C	Public Limited Company;
A or B or K or T	Society/ Club/ Trust/ AOP;
C	Public Sector Undertaking;
C	Unlimited Company;
F	Limited Liability Partnership;
C	Foreign Company
F	Foreign Limited Liability Partnership

This means, for example, if you wish to change an entity's constitution from a Society to Club or Association of Persons or Trust, it is possible to do so using the Amendment form since PAN does not need to change."

- ii. Further with respect to the applicability of GST under Forward Charge or under RCM following Section/ Provision/ Notification of the CGST Act, 2017 need to be looked into.
- iii. Works Contract as per Section 2(119) of CGST Act, 2017 states that a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;
- iv. Further, as per Point No. 6 of Schedule II of the CGST Act, 2017, the composite supplies shall be treated as a supply of services, namely:-
 - (a) works contract as defined in clause (119) of section 2; and
 - (b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other

than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

- v. On combined reading of the above stated Section and Schedule of the CGST Act, 2017 Works Contract may be treated as supply of Services and the Scope of the work as mentioned at Point 2) of the Facts of the case will fall under Works Contract.
- vi. Now, as per Point No. 5 of the Notification No. 13/2017(CTR) DT. 28/07/2017, Business entity(Recipient) need to pay Tax under RCM, when Services are being supplied by the Central Government, State Government, Union territory or Local authority excluding, -
- (1) *renting of immovable property, and*
 - (2) *services specified below-*
 - (i) *services by the Department of Posts and the Ministry of Railways (Indian Railways)*
 - (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.*

vii. Herein, THDCIL is receiving the Works contract service from UKPSVEN and as per PAN & GST Registration of UKPSVEN, it is a Local Authority and hence THDCIL may need to pay GST under RCM but UKPSVEN claimed that though they are Local Authority, but for this particular work (Design, engineering and construction of 500 KL RCC Over Head Tank at THDCIL Campus, Rishikesh on "Deposit / Cost plus basis"), UKPSVEN is not to be treated as Local Authority and GST will be charged on Forward basis instead of RCM. So, THDCIL may need to pay GST under Forward charge basis instead of RCM by treating UKPSVEN is not as Local Authority.

Accordingly opportunity of personal hearing was granted to the applicant on 25.01.2024. Sh. Rajat Varshney, Advocate, 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.

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8. We have carefully considered all the submissions made by the Applicant. In the instant case the applicant i.e. M/s THDC India Limited, [a Public incorporated company with CIN - U45203UR1988GOI009822] as a receiver of services, entered into an Memorandum of Undertaking (MOU) with UKPSVEN (provider of services), wherein design, engineering and construction of 500 KL RCC Over Head Tank at THDCIL Campus, Rishikesh on "Deposit / Cost plus basis", had to be undertaken.

We note that the Applicant in their application has mentioned that the provider of services i.e. UKPSVEN 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(the Applicant), being a PSU does not fall under the definition of Centre/ State Government, and hence only in this particular and specific case, the provider of services i.e. UKPSVEN 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 applicant i.e. the service receiver (M/s THDC India Limited).

It has also been submitted in the application that the applicant i.e. the service receiver has different view than interpreted by the UKPSVEN (provider of services) in as much as that on combined reading of Section 2(119) of CGST Act, 2017 and Point No. 6 of Schedule II of the CGST Act, 2017 the instant MOU 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 (Works Contract) and that as per Point No. 5 of the Notification No. 13/2017(CTR) DT. 28/07/2017, the Business entity (Recipient) need to pay Tax under RCM when Services are being supplied by the Central Government, State Government, Union territory or Local authority and the supplier of services being a "LOCAL AUTHORITY", 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 the Applicant i.e. the THDCIL needs to pay GST under Forward charge or under RCM and whether UKPSVEN can have Dual Status i.e. for some purposes it may be deemed to be Local Authority while for others it may not?

We note that the service provider in the instant case i.e. UKPSVEN 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 [the Applicant].

In view of the above submissions and different view taken by the applicant the service receiver and the service provider i.e. UKPSVEN, firstly and foremost we have to decide variant whether the service provider i.e. UKPSVEN (M/s 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 UKPSVEN). We find that originally the UKPSVEN 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 work 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 Awam Nirman Nigam’.

This chronology of events and the facts as above, establishes that the origin and constitution of the UKPSVEN 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.

Now to examine whether UKPSVEN i.e. 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) 2 SCC 308 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 addition 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 UKPSVEN, 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 UKPSVEN 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 UKPSVEN, 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 UKPSVEN, there is no local fund entrusted by the Government with UKPSVEN, but the Act (supra) would reveal that no municipal or local fund has been entrusted by the Government. The fund of UKPSVEN 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 (UKPSVEN 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 UKPSVEN, the service provider in the instant case, 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 that the UKPSVEN 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, the UKPSVEN applied and got registered with the GST Department. We are of the opinion the PAN card issued to UKPSVEN 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 them and it appears that in the application for registration UKPSVEN 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 UKPSVEN 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 UKPSVEN 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 service provider in the instant case i.e. "UKPSVEN" is not a 'local authority', let us now examine as to whether the "UKPSVEN" 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 or established by any Government and

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should have 90% or more stake of the 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 "UKPSVEN" 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 "UKPSVEN" 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 "UKPSVEN" 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 "UKPSVEN", 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 service provider in the instant case i.e. UKPSVEN (M/s Uttarakhand Peyjal Sansadhan Vikas Evam Nirman 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:-

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Table

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
1			
5	<p>Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, -</p> <p>(1) renting of immovable property, and</p> <p>(2) services specified below-</p> <p>(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;</p> <p>(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) transport of goods or passengers.</p>	<p>Central Government, State Government, Union territory or local authority</p>	<p>Any business entity located in the taxable territory.</p>

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".

We also find that this Authority in an application filed by M/s Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam, Mohini Road, Dehradun-248001 vide **Ruling No: 05/2023-24 dated 21.02.2024 ruled that** M/s Uttarakhand Peyjal Sansadhan Vikas Evam Nirman 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" and held 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. It has also been held by this Authority that by virtue of provisions of Sl. No. 4 & 5 of the Notification No. 12/2017- Central Tax (Rate), dated 28.6.2017, as amended, services by governmental authority under service code of Chapter 99 will be taxed as 'NIL' rate under the category of "*Services by governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution and 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.*" And since 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 the said service is exempted from payment of tax.

In view of the above, we hold that the provider of services in the instant case i.e. UKPSVEN (M/s Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam) **is not a 'local authority'** within the meaning and ambit of the provisions of the CGST/SGST Act, 2017, 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 instant work as per the refereed MOU i.e. Design, engineering and construction of 500 KL RCC Over Head Tank at THDCIL Campus, Rishikesh on "Deposit / Cost plus basis", 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.

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

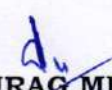
RULING

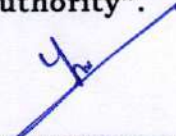
1. **Whether the Applicant i.e. the THDCIL needs to pay GST under Forward charge or under RCM?**

Answer- Answer is in negative. There is no applicability of the RCM as per the provisions of the Notification No. 13/2017- Central Tax (Rate) dated 28.06.2017, as the supplier of services is not a "Local Authority". Also the services provided under the referred MOU are exempt in view of the provisions of the Notification No. 12/2017-Central Tax (Rate), dated 28.6.2017, as amended, as the supplier of services falls under the category of a "Governmental Authority". In the instant case, the applicant being a receiver of services, there is no applicability of GST under Forward Charge.

2. **Whether UKPSVEN can have Dual Status i.e. for some purposes it may be deemed to be Local Authority while for others it may not?**

Answer- Answer is in negative. M/s Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam, does not qualify to be a "Local Authority".


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.: 06/S.Tax-UKD/GST/Sec-97/2023-24/DDN/ 8650 Date: 26.02.2024

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.
3. The Commissioner, CGST, Commissionerate, Dehradun for information and necessary action please.
4. The Assistant Commissioner, Commissionerate – Dehradun, Division – Rishikesh, Range – II, Rishikesh, for information and necessary action.
5. The Assistant Commissioner, Zone – Dehradun, Sector - Rishikesh - 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.