

**BEFORE THE HON'BLE APPELLATE AUTHORITY FOR
ADVANCE RULING,
GOODS AND SERVICE TAX, UTTAR PRADESH
4, VIBHUTI KHAND GOMTI NAGAR LUCKNOW-006010
(Constituted under Section 99 of the Uttar Pradesh Goods and
Service Tax Act, 2017)**

Appeal Order No. 10-/AAAR/17-/08/2023 Dated: 17.08-2023

Before the Bench of:-

Shri Uma Shanker

Member, Central Tax

Smt. Ministhy S,

Member, State Tax

Legal Name of the Appellant	M/s Uttar Pradesh Metro Rail Corporation Ltd.
Trade Name of the Appellant	M/s Uttar Pradesh Metro Rail Corporation Ltd.
GSTIN Number of the Appellant	09AACCL5936H2Z9
Registered address/Address provided while obtaining user ID (of the Appellant)	Administrative Building, Near Dr. B.R. Ambedkar, Samajik Parivartan Sthal, Vipin Khand, Gomti Nagar Lucknow
Order of Advance Ruling Against which the appeal is filed	UP ADRG – 22/2023 dated 21.04.2023

[Proceedings under Section 101 of the Central Goods and Service Tax Act, 2017 and Uttar Pradesh State Goods and Service Tax Act, 2017]

The present appeal has been filed under Section 100 of the Central Goods and Service Tax Act, 2017 and Uttar Pradesh Goods and Service Tax Act, 2017 (here-in-after referred to as “ the CGST Act and UPSGST Act”) by M/s Uttar Pradesh Metro Rail Corporation

Ltd. (here-in-after referred to as the “ Appellant”) against the Advance Ruling Order No. UP ADRG – 22/2023 dated 21.04.2023 issued by the Authority for Advance Ruling, Uttar Pradesh.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPSGST 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, 2017 would also mean a reference to the same provisions under UPSGST Act, 2017 and the vice versa.

BRIEF FACTS OF THE CASE

1. M/s Uttar Pradesh Metro Rail Corporation Ltd. situated at Administrative Building, Near Dr. B.R. Ambedkar, Samajik Parivartan Sthal, Vipin Khand, Gomti Nagar Lucknow, is a registered assessee under GST having GSTN: 09AACCL5936H2Z9.
2. The Appellant is engaged in construction, erection and commissioning of metro rail facility all over the state of Uttar Pradesh.
3. The Appellant is currently doing the work of construction, erection and commissioning of metro rail facility in Kanpur for which the existing electric poles, power lines and transformers are to be shifted from one place to another to keep the electrical clearances safe as per the Indian Electricity Rules, 1956.
4. The entire work of shifting of power lines is done by UPMRC under the supervision of Kanpur Electricity Supply Company Limited (KESCO) and the appellant pays supervision charge @ 15% to KESCO which is approx 5% of estimated cost of shifting

of transmission/power lines/transformers (also termed as deposit work).

5. Appellant was issued a notice by KESCO asking for payment of 18% GST on the deposit work which was solely done by the contractor appointed by the appellant under the supervision of KESCO according to the cost estimate provided by the KESCO.
6. The Appellant submits that entire shifting work is done by the contractors of intending agency/appellant who purchases material required for shifting/modification of the transmission lines as per the technical specification of KESCO. Due to the tax dispute between UPMRC and KESCO, the Appellant sought clarification on following questions before the Authority for Advance Ruling.
 - (1) Whether services supplied by KESCO by the way of utility shifting are integral part of services supplied by KESCO by way of distribution of electricity?
 - (2) Whether services supplied by KESCO by the way of utility shifting are ancillary to the principal supply of services by way of distribution of electricity?
 - (3) Whether the exemption given under entry no. 25 of the exemption notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 with respect to the services by way of transmission and distribution of electricity is available to KESCO?
 - (4) If answer to issue at 3 is Yes, whether the appellant is liable to pay GST on the activity of utility shifting performed by KESCO or by itself as such utility shifting is an integral part of

services supplied by KESCO by way of distribution of electricity which is exempt from levy of GST?

- (5) If answer to issue at 3 is No, whether the situation faced by the appellant wherein KESCO has provided only supervision services and not borne cost towards labour and material, shall be governed by provision of section 15(1) or by section 15(2)(b) of the Central Goods and Service Tax Act 2017 read with Section 15 of the U.P. GST Act, 2017 for the purpose of determining transaction value of supply?
- (6) Whether Appellant is liable to pay GST on services supplied by KESCO by way of supervision only on the supervision charges (i.e. 5% of the estimated cost of shifting of transmission lines/deposit work) or on the estimated cost of deposit work as depicted in the letter dated 03.09.2022.
7. The Authority for Advance Ruling passed the impugned ruling dated 21.04.2023 under Section 98(4) of the Act stating that the application filed by the appellant cannot be admitted because the appellant is the receiver of service in the above mentioned transaction between M/s UPMRC and KESCO and in terms of section 95(a) of CGST and UPGST Act, 2017, only supplier of service can file application before the Authority for Advance Ruling. Being aggrieved by the Impugned Ruling the appellant has preferred an appeal before the Appellate Authority for Advance Ruling.
8. **Grounds of appeal:** The Appellant has submitted following grounds of appeal-

8.1. The impugned order dated 21.04.2023 passed by the Authority for Advance Ruling is bad, illegal, arbitrary and against the settled propositions of law in as much as it has been passed by mis-interpreting the provisions of Section 95 of the CGST Act, 2017 and holds that the appellant has no locus standi to move an application for seeking advance ruling being a receiver of goods/services provided by KESCO.

8.2. The Appellant submits that under Section 97 of CGST and UPGST Act, 2017 provides as under-

“An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such a form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.” Further Section 95(a) and 95(c) of the act define the term “Advance Ruling” and “applicant” respectively which is stated as under-

Section 95(a) “Advance Ruling” means a decision provided by the Authority or the Appellate Authority or the National 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.

Section -95(c) “Applicant” means any person registered or desirous of obtaining registration under the act. And accordingly, the appellant is covered under the definition of ‘Applicant’ as provided under Section 95(c) of the Act.

8.3. The Appellant submits that in case of M/s Gayatri Projects Limited & Anr. Vs. the Assistant Commissioner of State Tax, Durgapur and Anr. M.A.T. No. 2027 of 2022 it was held by Hon'ble High Court Calcutta that the appellant being a registered dealer under provisions of the act could be an applicant under Section 95(c) of the Act, and the appellant being the aggrieved person against the said advance ruling be heard by AAR on merit.

8.4. The Appellant has relied upon another judgment of a division bench of the Hon'ble Calcutta High Court in case of M/s Anmol Industries Ltd. & Anr. Vs West Bengal Authority for Advance Ruling, G.S.T. & Ors wherein it was held that the application filed by the appellant before the AAR is well within the jurisdiction to consider the application on merits rather than rejecting the same on the ground of having no *locus standi*.

8.5. The Appellant submits that they clearly fall under the definition of 'applicant' as defined under section 95 (c) of the Act and application filed by the appellant before AAR is required to be decided on merit.

8.6. The question on which the appellant has sought advance ruling involves heavy and unjust tax burden which is not justified in the eyes of law and is against the principles of natural justice.

8.7. The amount involved in the transactions being heavy and shall impact all the projects of U.P.M.R.C all over the state. Further dispute arising between the appellant and KESCO results in

delaying of projects attracting heavy loss of public money and delay in delivering projects.

9. The Appellant was granted the opportunity of personal hearing on 03.08.2023. Shri Kartikey Singh Advocate and the Authorized, Representative appeared before the Authority on behalf of the Appellant. He reiterated the submissions already made by them vide their AAAR application and requested to set aside the impugned ruling being arbitrary, unjust and bad in eye of law.

10. Discussion and findings: We have gone through the records of the case and submission made by the appellant at the time of personal hearing. We find that the appellant is receiving services from M/s KESCO and opts to seek advance Ruling under Section 95 of the CGST Act 2017 as a receiver of service. We also find that the Authority for Advance Ruling has ruled that the "Applicant M/S Uttar Pradesh Metro Rail Corporation Limited is receiver of the Goods/Services provided by M/s KESCO and under the provision of clause (a) of Section 95 of CGST Act 2017, only supplier of the services can file Application for Advance Ruling and accordingly no ruling can be given in the matter."

11. We have examined the grounds of appeal and the arguments given by the appellant in their support. We find that clause (a) of Section 95 of CGST Act, 2017 provides as under-

Section 95(a) "Advance Ruling" means a decision provided by the Authority or the Appellate Authority or the National 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. Further, — as per Section 95(c) of the act ‘applicant’ **means any person registered or desirous of obtaining registration under this Act;**

12. Needless to say that meaning of the term “applicant” as defined under clause (c) of Section 95 of the act, should be derived only in consonance with clause (a) of Section 95 of the CGST Act 2017 which clearly provides that the applicant of Advance Ruling Should be related to a taxpayer who supplies the goods or services or both or who proposes to make supplies in future. As the wordings says the “**supply of goods or services or both and not the “receipt of goods or services or both”**”. This implies that the applicants seeking advance ruling should be suppliers of goods/services and not the recipient of goods/services.

13. It would be pertinent to mention here that this issue was raised in the meeting of Law Committee on 12.10.2022 which is an empowered Sub-Committee of GST Council to suggest about legal changes in GST system and it’s reports are placed before GST Council for approval.

“V. Whether or not a recipient of goods or services or both may get Advance Ruling ?” The GST Policy wing in their comment held as under-

“Clause (a) of section 95 of the CGST Act, 2017 clearly mentions that advance ruling is a decision provided by the authority in relation to supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. Further, applicant is defined in clause (c) of said section as any person who is registered or desirous of obtaining registration. Therefore, the law is explicitly clear that advance ruling can only be sought by the supplier and not by the recipient of the supply.” Again in Law Committee meeting held on 14 & 15.06.2023 it was decided that as per the existing legal provisions, advance ruling is applicable only on supplier and not on the recipient. The Law Committee recommended that appeal may be filed against the order of High Court in case of Anmol Industries Limited & Anr. Vs. The West Bengal Authority for Advance Ruling.

14. We find that the appellant has relied upon the decision of M/s Gayatri Projects Limited & Anr. Vs. the Assistant Commissioner of State Tax, Durgapur and Anr. M.A.T. No. 2027 of 2022 wherein Hon'ble Calcutta High Court held that “appellant being a registered dealer under provisions of the act could be an applicant under Section 95(c) of the Act” . We have gone through the order passed by the Hon'ble High Court. We find that in the refereed case the facts and contents are different and not relevant to the case presented before us. The appellant has also relied upon the judgment of a division bench of the Hon'ble Calcutta High Court in case of M/s Anmol Industries Ltd. & Anr.Vs West Bengal Authority for Advance Ruling, G.S.T. & Ors wherein it was held that the

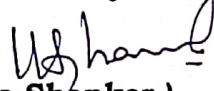
application filed by the appellant before the AAR is well within the jurisdiction to consider the application on merits rather than rejecting the same on the ground of lack of locus standi.

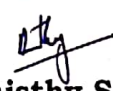
16. We have gone through the aforementioned order passed by Hon'ble Calcutta High Court however, we also find that the Department has not accepted the referred order and is in the process of filing an appeal before the Hon'ble Supreme Court. .

17. In view of the foregoing discussions we are of the considered view that the appellant being a service recipient is not eligible to seek advance ruling under the provisions of Section 95 (a) of the CGST Act, 2017. Accordingly, we rule as under-

Ruling:

We affirm the Ruling UP ADRG – 22/2023 dated 21.04.2023 passed by the Authority for Advance Ruling against the appellant.


(Uma Shanker)
Member, AAAR
CGST


(Ministhy S)
Member, AAAR
SGST

To,

M/s Uttar Pradesh Metro Rail Corporation Ltd.
Administrative Building, Near Dr. B.R. Ambedkar,
Samajik Parivartan Sthal, Vipin Khand
Gomti Nagar Lucknow

The Appellate Authority For Advance Ruling
Goods & Service Tax Uttar Pradesh

Copy to-

1. The Pr. Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.

3. The Commissioner, CGST & C. Ex, GST Bhavan, 7-A, Ashok Marg, Lucknow-226001
4. The Deputy Commissioner, Lucknow Division-II, CGST & Central Excise, Kendriya, Bhawan, Aliganj, Lucknow -226024
5. Through the Additional Commissioner. Gr-I, Lucknow Zone-II, Uttar Pradesh to jurisdictional tax assessing officers