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 No4.6-/AAAR/ 4#-/08 /2023 Dated: 47-.08-2023  
Before the Bench of:-  
  
Shri Uma Shanker  
  
Member, Central Tax  
  
Smt. Ministhy S,  
  
Member, State Tax  
  
Legal Name of the | M/s Uttar Pradesh Metro Rail Corporation  
Appellant Ltd.  
Trade Name of the | M/s Uttar Pradesh Metro Rail Corporation  
Appellant Ltd.  
GSTIN Number of | O9QAACCL5936H2Z9  
the Appellant  
Registered Administrative Building, Near Dr. B.R.  
address/Address | Ambedkar, Samajik Parivartan Sthal,  
provided while Vipin Khand, Gomti Nagar Lucknow  
obtaining user ID (  
  
of the Appellant)  
  
Order of Advance | UP ADRG - 22/2023 dated 21.04.2023  
Ruling Against /  
which the appeal /  
  
is filed |  
  
\  
  
[ 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  
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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:  
O9AACCL5936H2Z9.  
  
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 i  
  
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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  
  
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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 (ie. 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.  
  
. 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.  
  
\_ Grounds of appeal: The Appellant has submitted following  
  
grounds of appeal-  
  
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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.  
  
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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 principtes 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  
  
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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  
  
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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 paced before GST  
Council for approval.  
  
“Vy. 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-  
  
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“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  
  
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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 “ah Ruling against the appellant.  
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nker ) (Ministhy S)  
Member, AAAR Member, AAAR  
CGST 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.  
  
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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  
  
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