Smt. Preeti Manral, Concerned Officer, State Tax (Deputy Commissioner, Tax Review, State Tax, Dehradun), as appellant. The respondent party is M/s NHPC Limited, Tanakpur Power Station, Banbasa, Uttarakhand.

Appellate Authority for Advance Ruling — Uttarakhand

Order No. 05/18-19 dated 27.02.2019 (handwritten on the order; the appe… Dated **27.02.2019**

Q Questions Before the Authority

- Whether M/s NHPC is required to pay GST under reverse charge under Notification No. 13/2017 dated 28.06.2017 while making payment to PWD, Uttarakhand, for construction of a road.
- What is the time of supply when advance payment is released to PWD, Uttarakhand.
- Whether the amount deposited with the Central Fund (Uttaranchal CAMPA) and reimbursed by MEA, considered as part cost of the road, is liable to GST.

F Facts

M/s NHPC was entrusted by the Ministry of External Affairs with building a 1.3 km link road from Tanakpur Barrage to Mahendranagar, Nepal, and acted as the implementing agency. NHPC then entered into an MoU with PWD Uttarakhand, which engaged a private contractor through open tender for the works. The appellant's grievance was that the Authority for Advance Ruling (AAR) had treated MEA-NHPC as a works contract award and had extended the exemption to the whole chain of sub-contracts.

H Ruling

Reverse charge GST on NHPC's payments to PWD for road construction	**No GST payable by NHPC, on reverse charge or otherwise**	Covered by **entry serial 9c of Notification No. 32/2017-CT(R) dated 13.10.2017** (as printed) for supply between government entities. The order does not separately answer the time of supply or CAMPA reimbursement questions; the appellant had not contested them.

The appellate authority modified the AAR Ruling No. 10/2018-19 but did not disturb its finding on the reverse charge question. It held that no GST is payable by NHPC on reverse charge or otherwise on payments to PWD, since the supply from MEA through NHPC up to PWD is covered by the exempt entry. It also held that the AAR's discussion on sub-contracts and the wider exemption chain was irrelevant and is set aside.

R Reasoning

The appellate authority accepted that MEA to NHPC to PWD is a supply between government entities exempt under entry 9c of Notification 32/2017-CT(R), a point the appellant did not contest. It held that the AAR's

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

extension of the exemption to PWD's contracts with its contractors, and to the whole sub-contract chain under Notification 12/2017-CT(R), was not a question raised in the application and was not decided. Relying on the principle that an advance ruling binds only the applicant and the questions asked, it refrained from deciding taxability of PWD's works contracts. The Supreme Court decisions in Sun Export and Dilip Kumar, which require strict construction of exemption notifications, were cited by the appellant in support of this approach.

P Provisions Relied On

- Section 97(1) of the CGST/SGST Act, 2017 (advance ruling application, as cited in the order)
- Section 100 of the CGST Act and UKGST Act, 2017 (appeal to the Appellate Authority, as cited in the order)
- Section 101 of the CGST Act and UKGST Act, 2017 (appellate order, as cited)
- Notification No. 13/2017 dated 28.06.2017 (reverse charge; as cited in the question)
- Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended (exemption; as cited in the AAR order and appeal)
- Entry serial 9c of Notification No. 32/2017-CT(R) dated 13.10.2017 (as printed on the scan)
- Sun Export Corporation v. Collector of Customs (1997) 6 SCC 564 and Commissioner of Customs (Imports) Mumbai v. M/s D…
- 25th GST Council meeting recommendation on works contract rates (as cited in the appeal)

! For the Practitioner

A practitioner dealing with government-to-government project delegation, or with PWD road works funded through central agencies, can cite this order for the proposition that NHPC owes no reverse charge GST on payments to PWD under entry 9c. The order is limited to the applicant and the questions asked, and it expressly declines to decide whether GST applies to PWD's own works contracts with private contractors. It also does not decide the time of supply or CAMPA reimbursement questions, so those issues should be checked against the original AAR order and the statute.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> uk_aaar_05_2018-19_27.02.2019_dcsgst.pdf

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