M/s NHPC Ltd., Admin Building, Tanakpur Power Station, Banbasa, Uttarakhand (appellant before the AAAR, represented by Sh. J.C. Pant, Sr. Manager (Law)). The original advance ruling applicant was M/s NHPC Limited (Application No. 17).

Appellate Authority for Advance Ruling — Uttarakhand

Order No. 06/2018-19 dated 08.03.2019 (Appeal No. UK09/02-02-2019/18-… Dated **08.03.2019**

Q Questions Before the Authority

- Whether Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (as amended) applies to the contractors and sub-contractors involved in the construction of the Indo-Nepal Border Road, or otherwise.
- Whether the exemption available to PWD Uttarakhand and M/s NHPC Ltd. can be extended to the sub-contractor also.

F Facts

The Ministry of External Affairs allotted the construction of a road (the Indo-Nepal Border Road) to NHPC, which is exempt under Notification No. 12/2017-CT (Rate) at serial 9C. NHPC sub-let the work to PWD Uttarakhand, which in turn sub-let it to a contractor. The question is whether the sub-contractor's supply of road-construction works contract services to PWD is exempt because the chain above it is exempt, or is taxable at the rate in Notification No. 11/2017-CT (Rate).

H Ruling

Sub-contractor's road-construction works contract supplied to PWD Uttarakhand, which supplies NHPC (Indo-Nepal Border Road chain)	**Not exempt from GST**	The ruling does not state a rate. The discussion refers to 12% (CGST 6% + SGST 6%) under entry (iv) of serial 3 of Notification No. 11/2017-CT (Rate), as amended by Notification No. 1/2018-CT (Rate). Rate is taken from the discussion, not the ruling.

The Appellate Authority held that the works contract services for road construction provided by the sub-contractor to PWD Uttarakhand, which itself provides works contract services to NHPC, are **not exempted from GST** . The exemption under serial 9C of Notification No. 12/2017 covers only supply by a Government Entity to a specified recipient, and it does not extend to a sub-contractor's supply. The taxability of the sub-contractor must therefore be determined under the CGST/SGST notifications, which tax it.

R Reasoning

The majority reasoned that the exemption at serial 9C of Notification No. 12/2017-CT (Rate) covers only the Government-entity-to-government-entity supply made by NHPC or PWD, and that no entry exempts a

sub-contractor's supply. Under the GST Council recommendation of the 25th meeting, the sub-contractor is taxed at the same rate as the main contractor (12%) for ease of calculating ITC. The Authority applied the rule that exemption notifications are construed strictly, and that the burden lies on the assessee to bring a supply within the exemption, relying on the Supreme Court decision in Dilip Kumar and Company. Pre-GST Service Tax circulars and the Mega exemption notification were held inapplicable because Service Tax has been repealed. The dissenting view of the AAR member (Amit Gupta), which had favoured extending the exemption on purposive grounds, was not accepted.

P Provisions Relied On

- Section 98(5) of the CGST Act and UKGST Act, 2017 (reference to the Appellate Authority)
- Section 101 of the CGST Act and UKGST Act, 2017 (appellate powers)
- Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, serial 9C (as amended by Notification No. 32/2017-CT (Rate))
- Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, serial 3, entries (ix), (x) and (iv) (works contract rates)
- Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018 (sub-contractor works contract at 12%)
- Notification No. 20/2017, 24/2017 and 31/2017-CT (Rate) (amendments to Notification No. 11/2017, as referred to in the order)
- Recommendation of the 25th GST Council meeting held on 18.01.2018
- Pre-GST Circular No. 147/16/2011-ST dated 21.10.2011 and Para 29(h) of Mega Exemption Notification No. 25/2012-ST dat…
- Supreme Court decisions in Dilip Kumar and Company (2018) and S.P. Gupta v. Union of India, AIR 1982 SC 149 (as cited)

! For the Practitioner

A practitioner can cite this order to resist claims that a sub-contractor's road-construction supply to a government contractor is exempt by reason of the main contractor's exemption, since the Appellate Authority held that exemption must be found in the notifications, not extended by analogy. It settles that the NHPC and PWD exemption does not pass down to sub-contractors. It does not state the rate in its operative ruling, so the 12% figure must be verified against Notification No. 11/2017 and 1/2018. The order is a 2-1 split at the AAR level, and the ruling is the Appellate Authority's view, so the outcome may still be contested in higher forums.

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_06_2018-19_08.03.2019_nhpc.pdf

Prepared 31-10-2026.

About Patron Accounting LLP

Patron Accounting LLP is a CA and CS-led accounting and compliance firm working with businesses across India since 2019 — bookkeeping, GST, income tax, payroll, company and LLP compliance, audit and the certificates banks and regulators ask for.

Pune (HQ)
RTC Silver, B4-708, Sai Satyam Park, Wagholi, Pune, Maharashtra 412207

Mumbai
104, Rajshila Building, 597 J.S.S. Road, Marine Lines, Mumbai 400002

Delhi
3rd Floor, B-6/154-155, Sector 5, Rohini, Delhi 110085

Gurugram
Pioneer Urban Square, B109, Golf Course Ext Road, Sector 62, Gurugram…

Ahmedabad
Phoenix Tower, 1107, near Commerce Six Road, Drive In Road, Navrangp…

Talk to us: **+91 94594 56700** | sales@patronaccounting.com | patronaccounting.com

Patron Accounting LLP