M/s Hitachi Power Europe GmbH, PO Kodhar, Meja Thermal Power Project, Tehsil Meja, Allahabad, Uttar Pradesh 212301 (GSTN 09AACCH4870N1Z2)

Authority for Advance Ruling — Uttar Pradesh

Order No. 43(ii), dated 11.11.2019 (order number is handwritten on the s… Dated **11.11.2019**

Q Questions Before the Authority

- Whether the Goods and Services Tax is applicable on the accounting entry made for the purpose of Indian accounting requirements in the books of accounts of the Project Office for the salary cost of Expat employees.

F Facts

M/s Hitachi Power Europe GmbH, a German company registered as a foreign company in India, was awarded supply and supervisory contracts by BGR Boilers Private Limited for NTPC, Meja Urja Nigam and Damodar Valley Corporation power projects, and set up Project Offices in India. Expat employees who are employees of the Head Office work from the Indian Project Office, which the Applicant says is not a separate legal entity. The Project Office deducts TDS under the Income Tax Act, issues Form-16 and deducts professional tax, while salaries are paid from the Head Office's accounts to the employees' overseas bank accounts, and the Head Office records the salary cost in the Project Office's books through an accounting debit note solely for Indian Companies Act compliance.

H Ruling

Whether GST is applicable on the accounting entry in the Project Office's books for the salary cost of Expat employees	**No. Answered in the negative**	Ruling is valid subject to s.103(2) CGST Act until declared void under s.104(1) CGST Act. It binds the applicant and the department for this transaction and facts as set out in the order.

The Authority answered the question in the negative, holding that GST is not payable on the accounting entry for the salary cost of Expat employees in the Project Office's books. It held that the Head Office and the Project Office are the same legal entity and that the Project Office is merely an extension of the Head Office. It further held that the services of the Expat employees fall within the Schedule III entry for services by an employee to the employer in the course of or in relation to employment, so no GST is leviable.

R Reasoning

The Authority first admitted the application under s.97(2)(g) CGST Act, as it concerned whether an act of the applicant amounts to a supply. It relied on the FEMA project office framework (Notification FEMA 22(R)/2016-RB dated 31 March 2016, para 4(f) and para i(II)), the PAN and TAN issued in the foreign company's name, and the Head Office balance shown in the Project Office's balance sheet to conclude that the Project Office is only an extension of the foreign company. Because the two are one legal entity, the intra-company salary accounting

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entry is not a supply between distinct persons. It then relied on s.7(2)(a) CGST Act and Schedule III, under which services by an employee to the employer in the course of or in relation to employment are neither a supply of goods nor a supply of services. The Authority also recorded the Project Office's TDS, Form-16 and professional tax compliance as evidence of an employer-employee relationship.

P Provisions Relied On

- s.97(2)(g) CGST Act, 2017 (admission of application)
- s.7(2)(a) CGST Act, 2017 (activities or transactions in Schedule III are neither supply of goods nor supply of services)
- Schedule III, CGST Act, 2017 (services by an employee to the employer in the course of or in relation to his employment)
- s.103(2) and s.104(1) CGST Act, 2017 (validity and voiding of the ruling)
- FEMA 22(R)/2016-RB dated 31 March 2016 (Foreign Exchange Management (Establishment in India of a branch office or a li…
- Income Tax Act, 1961 (TDS on salaries and Form-16), referred to as facts and not as a ruling basis
- s.8 IGST Act, 2017, Explanation 2 (cited by the applicant; the order does not rely on it in its findings)

! For the Practitioner

The ruling is useful for foreign companies that deploy expat staff through an Indian project office and record the salary cost in the project office's books for Companies Act purposes, because it treats the head office and project office as one entity and excludes the employment services under Schedule III. It is a 2019 order binding only on the applicant, and it does not decide whether a cross-border recharge or onward supply of the same services between separate persons would be taxable. It also does not address the IGST Explanation 2 point beyond noting it was cited, and the appellate position has not been checked.

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 -> up_aar_43_11.11.2019_hpe.pdf

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