M/s NHPC Limited, Admin Building, Tanakpur Power Station, Banbasa, Uttarakhand

Authority for Advance Ruling — Uttarakhand

Ruling No. 17/2018-19 dated 30 January 2019 (Application No. 17/2018-1… Dated **30.01.2019**

Q Questions Before the Authority

- Whether Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (as amended from time to time) is applicable to the contractors and sub-contractors involved in the construction of the Indo-Nepal Border Road, or otherwise.

F Facts

The Ministry of External Affairs funds the construction of a 1.2 km link canal and a 1.3 km road from Tanakpur Barrage to the Indo-Nepal border, and NHPC executes it as a turnkey agency. Under an MOU dated 03.10.2018, NHPC sub-contracted the road work to PWD Uttarakhand, which further sub-contracted it to a contractor. The applicant sought a ruling on whether the exemption available to NHPC extends to these downstream sub-contractors.

H Ruling

Whether Notification 12/2017-CT (Rate) dated 28.06.2017 applies to the contractors and sub-contractors on the Indo-Nepal Border Road work	**No single answer. Member Vipin Chandra: taxable at 12% (CGST 6% + SGST 6%). Member Amit Gupta: exempt. Panel split, so referred to Appellate Authority under Section 98(5).**	The order records a difference of opinion. It does not give a majority ruling, and the question remains open pending the Appellate Authority.

The Authority could not reach a unanimous decision. The two members differed on whether the sub-contractors' supply of road construction is exempt, so the question has been referred to the Appellate Authority under Section 98(5). Member Vipin Chandra held that the sub-contractors are **liable to GST at 12% (CGST 6% plus SGST 6%)** because Notification 12/2017 has no entry exempting their supply. Member Amit Gupta held that the sub-contractors' supply is **exempt** , following the exemption of NHPC's supply and the purposive reading of the GST Council's recommendation.

R Reasoning

Member Vipin Chandra read Notification 12/2017 literally. Its entry 9C exempts the principal supply by NHPC to the Government, but no entry covers the sub-contractor's supply. The sub-contractor's supply therefore falls under entry (iv) of serial no. 3 of Notification 11/2017 (as amended by Notification 1/2018) at 12%. Member Amit

Gupta relied on the GST Council's 25th meeting recommendation and on purposive interpretation, citing S P Gupta, Deepak Mahajan and Siraj-ul-Haq Khan. He reasoned that if sub-contractors were taxed, the exemption granted to the Government work would be defeated, since NHPC and PWD do not perform the work themselves. He also relied on the earlier Ruling 10/2018-19 dated 22.10.2018, which held NHPC's own supply exempt.

P Provisions Relied On

- Section 97(1) and 97(2)(b) of the CGST/SGST Act, 2017 (admissibility of the application)
- Section 98(5) of the CGST/SGST Act, 2017 (reference to Appellate Authority where members differ)
- Section 100(1) of the Uttarakhand GST Act, 2017 (appeal)
- Section 9(3) of the CGST Act, 2017 (reverse charge), read with Notification 13/2017
- Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, entry 9C (exemption for Government services)
- Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, serial no. 3 entries (iv), (vii) and (ix)/(x), with Notification 1/201…
- Notification No. 32/2017-Central Tax (Rate) (amending entry 9C)
- Advance Ruling No. 10/2018-19 dated 22.10.2018 (earlier ruling for the same applicant)
- Recommendation of the 25th GST Council meeting held on 18.01.2018
- Case law: S P Gupta v. UOI (AIR 1982 SC 149); Director of Enforcement v. Deepak Mahajan (1994) 3 SCC 430; Siraj-ul-Haq…

! For the Practitioner

This is a split ruling and gives no binding answer, so it cannot be cited as authority either way. It is useful for seeing the two competing arguments on sub-contractors under Government works contracts, and the 12% rate reasoning under the works contract entries. A practitioner should read the full order and track the Appellate Authority's decision before advising a sub-contractor on exemption. The order does not decide whether entries 9C of Notification 12/2017 extend to sub-contractors of any other Government works.

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 -> uttrakhand_17-2018-19_nhpc_ltd.pdf

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