



सत्यमेव जयते

**RAJASTHAN AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX**

**KAR BHAWAN, AMBEDKAR CIRCLE, NEAR
RAJASTHAN HIGH COURT
JAIPUR – 302005 (RAJASTHAN)**



ADVANCE RULING NO. RAJ/AAR/2019-20/09



J.P. Meena Additional Commissioner	:	Member (Central Tax)
Hemant Jain Joint Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s National Highway Authority of India (Regional Office), F-120, Janpath, Shyam Nagar, Sodala, Jaipur, Rajasthan, 302019
GSTIN of the applicant	:	08JPRR05704G1D4
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	(e) determination of the liability to pay tax on any goods or services or both. (g) whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term.
Date of Personal Hearing	:	21.05.2019
Present for the applicant	:	Ms Ritika Rajvanshi, CA (Authorised Representative)
Date of Ruling	:	28.05.2019

Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.



At the outset, we would like to make it clear that the provisions of both the CGST Act and the RGST 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 would also mean a reference to the same provision under the RGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / RGST Act would be mentioned as being under the "GST Act".

- The issue raised by *M/s National Highway Authority of India (Regional Office), F-120, Janpath, Shyam Nagar, Sodala, Jaipur, Rajasthan, 302019* (hereinafter the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2) (e)(g) given as under :
 - (e) determination of the liability to pay tax on any goods or services or both.
 - (g) whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term.
- Further, the applicant being a registered person (GSTIN is *08JPRR05704G1D4* as per the declaration given by him in Form ARA-01) the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. Based on the above observations, the applicant is admitted to pronounce advance ruling.

1. SUBMISSION AND INTERPRETATION OF THE APPLICANT:

- a. National Highways Authority of India is set up by an act of Parliament as an Authority for the development, maintenance and management of national highways and for matter connected therewith or incidental thereto, having its corporate office at G 5 &

6, Sector-10, Dwarka, New Delhi - 110 075. The applicant is the Regional Office of Rajasthan State, having its office at F-120, Janpath, Shyam Nagar, Sodala, Jaipur 302019



Rajasthan Rajya Vidyut Prasaran Nigam Limited (*hereinafter referred to as RVPNL*) is a company registered under the Companies Act, 1956 and registered with Registrar of Companies as "Rajasthan Rajya Vidyut Prasaran Limited" vide CIN: L40109RJ2000SGC016485 with its Registered Office at Vidyut Bhawan, Jyoti Nagar, Jaipur-302005.

- c. The Applicant is currently undertaking modification/ diversification of various Highways in the region of Kishangarh to Udaipur, Jodhpur Ring Road, Dausa bye pass and other similar locations. The existing power transmission lines of RVPNL are crossing the National Highways Roads /passing along these roads in nearby proximity of the existing roads and are presently having safe electrical clearance from the ground to the lowest/nearest conductor wire of these power lines.
- d. For the purpose of widening of these roads from two lanes to four lanes, four lanes to six lanes, partly construction of new roads (to make ring roads around Jodhpur City), a part of construction of flyovers vehicle under pass etc., these power lines are required to be modified either by raising or by shifting to keep safe electrical clearances, as per Indian Electricity Rule 77. For the purpose of Highway modification, the deposit work for transmission lines existing across and along the roads are required to be raised/ shifted, to obtain safe clearances and safety purpose.
- e. RVPNL has the policy wherein the work relating to raising or shifting of EHV Power transmission lines during the diversification of highways can be done in either of the following ways:



- (i) Work to be executed by NHAI, under supervision of RVPNL, or
- (ii) Work to be executed by RVPNL itself by charging the cost of work, and overhead charges, above the cost estimate.

At present, the Applicant is working under (i) option and undertook the charge for raising/ shifting of transmission lines in the course of Highway modification.

- f. Since these power lines are the property of RVPNL and requires the modification on the need of NHAI, all expenses are to be borne by NHAI. It is a settled understanding between the Applicant and RVPNL that whosoever is undertaking the primary project for modification, all the cost relating to that modification shall be borne by it. In the current situation, NHAI is undertaking project for modification of Highways, as a result, all the in between cost including cost in relation to Deposit work of shifting of transmission towers shall also be borne by NHAI.
- g. Hence, NHAI applied an application to RVPNL with a nominal application fee for shifting/raising of transmission lines owned by RVPNL. The RVPNL approved the application and provided its specification and cost estimates in *Circular no. F&R 1235 dated 07.08.2018* based on which NHAI has to work on shifting of its transmission lines. (The copy of the circular dated 07.08.2018 provided by RVPNL has been attached in Annexure-1).
- h. RVPNL shall be charging *5% of the total cost estimate* as Supervision charges for supervising the Deposit work carried out by NHAI and a fixed amount of Shut Down charges and GST on both the components. NHAI is willing to pay these aforementioned amount plus GST on the same.

- i. The total cost estimate for Deposit work provided by RVPNL is solely for the purpose of work to be done as per specifications and technical guidelines and for calculating the Supervision charges amount as supervision charges are based on the total cost estimate.



- j. RVPN has issued demand imposing 18% GST on the total cost estimate, stating it as an “asset transfer” based on clause 3.6 of the Cost Estimate attached in Annexure-1 as stated hereunder:

“It shall be ensured that asset/ infrastructure built by intending agency/ consumer shall have to be transferred to RVPNL. Any expenditure or taxes incurred or to be incurred on such transfer shall be borne by intending agency/ consumer.”

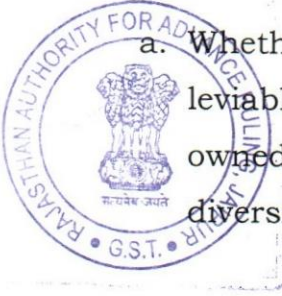
- k. The ‘demand’ issued by RVPN (as attached in Annexure-2 for one of the locations for your reference) through the circle Superintendent Engineers of the area concerned, includes the major component of GST on ‘asset transfer’, which is the main question for seeking this advance ruling.
- l. It is pertinent to note in Letter dated 18.09.2018 that the question of valuation arises when a given transaction is a supply and where it has a transaction value. The given transaction neither is a supply, nor it has transaction value. Thus, Section 15 of GST Act is not applicable at the initial stage.
- m. The method illustrated in the circular dated 07.08.18 for working out the estimate, at table 1.1 and so on, has the demand of GST @ 18% on the three components namely
- (i) cost of dismantling the section of power line
 - (ii) cost of new work
 - (iii) civil work involved (foundation, execution of skimming of wires)
- As total at claim (iv).



RVPNL in its circular dated 07.08.18 describes this (iv) as an “Asset Transfer” from NHAI to RVPNL for the sake of levy 18 % GST. This is to mention here specifically that this modification work is only for a small portion of line, constituting a few numbers of existing tower at a point of crossing the road(s). And the total power line which belongs to RVPNL continues to be the property of RVPNL after this modification (executed by NHAI) and in no way NHAI is creating any asset for RVPNL which need to be transferred in the books.

- o. The only supply which RVPNL is providing to NHAI is supervision service for shifting work of transmission lines and shut down service for which NHAI is willing to pay the demanded consideration plus GST on the same. The remaining GST on the total cost estimate which is not even a consideration for RVPNL is being objected by NHAI.
- p. The modification work which involves
- (i) Dismantling the portion of EHV line.
 - (ii) Construction of new portion of EHV line to substitute this dismantled portion.
 - (iii) Civil Work (Foundation, Erection of super structures towers/poles and stringing of conductor arises),
- is being executed through contractors, who is paying GST applicable to the vendors, supplying the materials required and labour contractors in their invoices/bills; which are paid by NHAI directly or by reimbursement to the road constructing Contractor.
- q. Given the above background, the present application is being preferred before the Hon’ble Authority of Advance Ruling to determine whether there is any ‘Asset transfer’ by NHAI to RVPN in shifting of transmission lines of RVPN, which is a supply leviable to GST.

2. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT



- a. Whether there is any 'Asset Transfer' involved which is a supply leviable to GST in the work of shifting & raising of transmission lines owned by RVPNL by NHAI in the course of widening, modification & diversification of its highways after completion of this work?
- b. Without prejudice to the submissions made above, if there is an 'Asset transfer' which is a Supply under GST, then who is liable to pay GST?
- c. If above GST is to be paid by the Applicant, then the same will be exempt vide Entry 4 of Notification no. 12/2017- Central Tax (rate) dated 28.06.2017?

3. PERSONAL HEARING

In the matter personal hearing was granted to the applicant on 21.05.2019 at Room no. 2.29 NCRB, Statue Circle, Jaipur. Ms Ritika Rajvanshi, CA (Authorised Representative) of applicant appeared for PH. During the PH, she reiterated the submissions already made in the application and also submitted some additional documents. She further requested that the case may be decided at the earliest.

4. COMMENTS OF THE JURISDICTIONAL OFFICER

The jurisdiction officer (Assistant Commissioner, SGST and Commercial Taxes, Circle-I, Jaipur) has submitted vide letter dated 25.04.2019 which can be summarized as under:

From the submission made by the applicant it appears that view taken by NHAI that in the course of widening of its highways and in the course of it shifting or raising power transmission lines owned by RVPNL no new asset is created with respect to such transmission lines and nothing is to be transferred by NHAI to RVPNL hence there is no



asset transfer and the question of applicability of GST on asset transfer does not seem to arise, is more appropriate and it appears that there is no asset transfer.

5. FINDINGS, ANALYSIS & CONCLUSION:

- a. The Applicant is undertaking shifting of transmission lines of RVPNL in the course of diversification of its Highways. The Applicant will bear the overall cost of Highway diversification along with cost of shifting, dismantling and raising of transmission lines owned by RVPNL. There is no consideration or reimbursement flowing from RVPNL to the applicant in this regard. We further observe that services regarding supervision charges and shut down charges by RVPNL to the applicant for shifting/raising of power transmission lines is liable for GST.
- b. While going through the submission (cost estimate and correspondence letters between the applicant and RVPNL), we find that applicant is/will:-
 - Purchase the material with GST charged on them;
 - The dismantled component of previous transmission lines will be handed over to RVPNL;
 - RVPNL is stating that GST is applicable on not only supervision charges but also on cost estimate which includes supervision charges, a proper case of double taxation.
- c. We observe that the applicant is a Central Government entity whose primary work is building roads and bridges. Shifting, dismantling and raising of transmission lines is done by the applicant as and when required for safe electrical clearances during the widening of the National Highways, which is an ancillary to its main work. In the process of the activity, nowhere



any assets are transferred to the applicant and therefore ownership lies with the RVPNL. It is merely an activity where just shifting of power transmission towers/lines is done to widening of the National highways.

d. To determine whether the said transaction is a supply, the relevant portion of Section 7 of GST Act, 2017 is reproduced below:-

1 (a) "supply" includes all forms of supply of **goods** or services or both such as **sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration** by a person **in the course or furtherance of business**;

We find that, the above referred section emphasize on three dimensions to declare an activity a supply under GST Act:-

- The activity should be sale/transfer of goods or services or both etc.
- There should be consideration involved.
- The activity should be in course or furtherance of business.

e. We can now examine the constructed power transmission lines in relation to definition of goods as mentioned in the GST Act, 2017:-

(52) "goods" means **every kind of movable property** other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;



In view of above definition we find that the assets created by the applicant being an immovable property does not fall under the definition of goods as mentioned in the GST Act, 2017.

- f. The definition of consideration in Section 2 (31) of the GST Act, 2017 is reproduced below:-

“Consideration” means any payment made or to be made, whether in money or otherwise in respect of, in response to or for the inducement of the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.

In view of above facts, we observe that the element of consideration is not involved in the activity and therefore the said activity is not a supply under the Section 7 of GST Act, 2017.

- g. Further, the Schedule II of GST Act, 2017 has provision on transfer of business assets made with or without consideration. As the asset is a kind of business asset, we can look in to relevant entry for examination:-

4. Transfer of business assets

(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;

While going through the above provision of Schedule II, we find that it provides a transfer of business assets where goods form part of the assets. As the constructed power transmission


lines are not goods as explained above, the said schedule is not applicable.


- h. In view of the facts discussed above in relation to definition of goods, supply and consideration under GST act, 2017 we find that assets constructed by the applicant do not fall under category of goods, thus no supply is involved. Therefore, the applicability of GST does not arise.

6. In view of the foregoing, we rule as follows:-

RULING

The asset constructed by the applicant does not fall under the category of "goods" (as defined under GST Act, 2017), therefore no supply is involved and accordingly GST is not leviable.


J.P. MEENA
Member
(Central Tax) 28/5/19


HEMANT JAIN
Member
(State Tax) 28/5/19

O/c



SPEED POST

M/s National Highway Authority of India,
(Regional Office),
F-120, Janpath, Shyam Nagar,
Sodala, Jaipur, Rajasthan, 302019
F.No. AAR/NHAI/2018-19/ 51-54

Dated: 29-05-2019

Copies:-

1. Commissioner, SGST & Commercial Taxes, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
2. Commissioner, CGST and Central Excise Jaipur Commissionerate, NCRB, Statue Circle, Jaipur, Rajasthan 302005.
3. Assistant Commissioner, SGST and Commercial Taxes, Circle-I, Kar Bhawan, Jhalana Doongri, Jaipur, Rajasthan 302004.