

**BEFORE THE AUTHORITY FOR ADVANCE
RULINGS FOR THE STATE OF UTTARAKHAND
(Goods and Services Tax)**

समक्ष अग्रिम विनिर्णय प्राधिकारी उत्तराखण्ड (माल और सेवा कर)

Present:

Shri Vipin Chandra (Member)

श्री विपिन चन्द्र (सदस्य)

Shri Amit Gupta (Member)

श्री अमित गुप्ता (सदस्य)

The 08th day of January, 2020

Ruling No: 09/2019-20

अग्रिम विनिर्णय संख्या.

In

Application No: 05/2019-20

आवेदन संख्या. 05/2019-20

1	Applicant आवेदक	M/s. Bharat Heavy Electricals Ltd, Hardwar, Uttarakhand
2	Jurisdictional Officer अधिकारिता अधिकारी	Range-III, CGST-Haridwar
3	Present for the Applicant आवेदक की ओर से उपस्थित	Mr. Deepak Agarwal, Deputy Manager
4	Present for the Jurisdictional Officer अधिकारिता अधिकारी की ओर से उपस्थित	None
5	Concerned Officer	None
6	Date of receipt of application आवेदन प्राप्ति की तिथि	11.10.2019
7	Date of Personal Hearing सुनवाई की तिथि	05.11.2019

Note : Under Section. 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, an appeal against this ruling lies before the appellate authority for advance ruling constituted under section- 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order.

नोट : इस अग्रिम विनिर्णय की प्राप्ति के 30 दिन के अन्दर उत्तराखण्ड माल और सेवा कर अधिनियम 2017 की धारा- 99 के अन्तर्गत गठित अग्रिम विनिर्णय अपील प्राधिकारी के समक्ष धारा- 100(1) के अन्तर्गत अपील दायर की जा सकती है।

**AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX
UTTARAKHAND**

RULING

1. This is an application under Sub-Section (1) of Section 97 of the CGST/SGST Act, 2017 (herein after referred to as Act) and the rules made thereunder filed by M/s. Bharat Heavy Electricals Ltd, Ranipur Hardwar, Uttarakhand (here in after referred to as **'the applicant'**) is registered with the GSTN having Registration No. 05AAACB4146P1ZL and seeking advance ruling on the following questions:
 - a. In case where goods are supplied within India and billing is to be done in foreign currency, which exchange rate to be applied rate prescribed for export of goods or for import of goods;
 - b. Any other clarification regarding application of rate to convert foreign currency into Indian rupees to pay GST.
2. Advance Ruling under GST means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in sub section (2) of section 97 or sub section (1) of section 100 in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.
3. As per the said subsection (2) of Section 97 of the Act advance ruling can be sought by an applicant in respect of :
 - (a) Classification of any goods or services or both
 - (b) Applicability of a notification issued under the provisions of this Act,
 - (c) Determination of time and value of supply of goods or services or both,
 - (d) Admissibility of input tax credit of tax paid or deemed to have been paid
 - (e) Determination of the liability to pay tax on any goods or services or both
 - (f) Whether the applicant is required to be registered
 - (g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both within the meaning of that term
4. Since applicant has sought advance ruling on the valuation issue, therefore, in terms of said Section 97(2)(c) of the Act, the application

filed by the applicant was admitted. Accordingly hearing was fixed on 05.11.2019 which was attended by the Shri Deepak Agarwal, Deputy Manager, of the applicant. However a letter dated 06.12.2019 was written to the applicant wherein they were requested to intimate the authority under which provisions of Foreign Exchange Regulation Act, billing in respect off domestic clearances is being done in foreign currency. Consequently the applicant vide their letter dated 23.12.2019 submitted their defence reply in this regard.

5. On perusal of record, we find that an agreement dated 09.02.2019 was signed between Chief Engineer/Projects-II, Tangedco, Chennai and M/s Bharat Heavy Electricals Ltd, Power Sector-Marketing, New Delhi for engineering, procurement & construction of “ 2 x 660 MW Coal based Udangudi Supercritical Thermal Power Project-I”. In the said contract, price is in three currencies viz Rupees, USD and Euro. The certain supply to the said contract is being made by the applicant wherein billing on customer is to be done in foreign currency and since the customs declare exchange rate under two categories, one is for import and second is for export, the applicant sought which exchange rate is applicable in their case to arrive at the value of taxable supply. Further the applicant vide their letter dated 23.12.2019 has submitted their defence submissions in this regard and the relevant portion of the same is reproduced as under:

“Normally the foreign currency price in the contract is to cover imported content of the material used in setting up of Power Station in India wherein Indian company usually imported goods, make foreign currency payment to their supplier, in turn foreign currency from the customer.”

6. In this context relevant legal provisions are reproduced as under:

Section 15(1) of the Act: *The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*

(2) The value of supply shall include—

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(3) The value of the supply shall not include any discount which is given—

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if—

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Rule 27 of the Rules. Value of supply of goods or services where the consideration is not wholly in money.-----

Rule 28 of the Rules. Value of supply of goods or services or both between distinct or related persons, other than through an agent.-The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

- (a) be the open market value of such supply;
- (b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;
- (c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

Rule 29 of the Rules. Value of supply of goods made or received through an agent.-----

Rule 30 of the Rules. Value of supply of goods or services or both based on cost.- Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

Rule 31 of the Rules. Residual method for determination of value of supply of goods or services or both.- Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter:

Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30

Rule 34 of the Rules: Rate of exchange of currency, other than Indian rupees, for determination of value.-

(1) The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of section 12 of the Act.

(2) The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act.

7. On perusal of legal provisions (supra), we observe that "Transaction Value" is the basis for valuation for supply of goods and/or services under the GST Regime. For the levy of tax, first we have to determine the transaction value. 'Transaction Value' is the price actually paid or payable for supply of goods and/or services. We also observe that Section 15 of the Act provides the provisions for determining the value of goods and services. It provides the mechanism to know how to calculate the value of goods or services when supply of goods and services is made between unrelated persons and when the price is the sole consideration of the supply. We further observe that the provisions of the value of supply under CGST Act have also been made applicable to IGST Act vide Section 20 of the IGST Act, 2017. We also observe that when it is not possible to calculate value of supply as per section 15 of the Act, the value of taxable supply is to be calculated as per the relevant Rules of Chapter IV of CGST Rules, 2017 which deals with the determination of value of supply. Since the issue in hand is related to valuation of goods supplied within India and billing is being done in foreign currency, thus Rule 34 of the Rules is to be applied here. Now the question arises which rate of exchange (import or export) shall be applicable as notified by the Board under section 14 of the Customs Act, 1962, to determine the value of goods.
8. We find that in exercise of the powers conferred by Section 14 of the Customs Act, 1962, the Government of India issued notification time to time to determine the rate of exchange of conversion of the foreign currencies relating to imported and export goods. In this context, we have peruse the letter dated 23.12.2019 of the applicant wherein they intimated the authority that normally the foreign currency price in the contract is to cover imported content of the material used in setting up of Power Station in India wherein Indian company usually imported goods, make foreign currency payment to their supplier, in turn foreign currency from the customer. Thus we observe that in the

present case rate of exchange of imported goods shall be applicable in as much as the foreign currency price in the contract is to cover imported content of the material used for intended purpose.

9. In view of the above, we pass the following order:

ORDER

The value of goods, supplied within India and billing done in foreign currency, shall be determine under Rule 34 of CGST Rules, 2017 and rate of exchange for imported goods as notified by the Board under section 14 of the Customs Act, 1962 shall be applicable to the present case.

 VIPIN CHANDRA (MEMBER)

 AMIT GUPTA (MEMBER)

To,

M/s. Bharat Heavy Electricals Ltd, Ranipur-Hardwar, Uttarakhand

**AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX: UTTARAKHAND
OFFICE OF THE COMMISSIONER, SGST, UTTARAKHAND
LADPUR RING ROAD, UPPER NATHANWALA, DEHRADUN**

F. No. : 05/ State Tax - UKD/ GST/ sec-97/DDH/2019-20/6725 Dated: 08/01/2020

Copy to :

1. The Chief Commissioner, CGST, Meerut Zone, Meerut for review.
2. The Commissioner, CGST, Commissionerate, Dehradun for review.
3. The Commissioner, SGST, Commissionerate, Uttarakhand for review.
4. The Assistant Commissioner, CGST Division, Hardwar for review.
5. The Deputy Commissioner, SGST, Hardwar for review.
6. The Concerned officer, SGST, Dehradun
7. AAAR of Uttarakhand.

