



## Dhruva Alert for GST ADVANCE RULINGS – 8<sup>th</sup> Edition

### 1. IT Development Agency (ITDA), Govt. of Uttarakhand – Uttarakhand

#### Issues for Consideration

- Whether the services or material procured by ITDA from government / governmental authority viz. Indian Institute of Technology, Mumbai (IIT, Mumbai) are exempt from GST?

#### Discussion & Ruling

##### **Discussion:**

- ITDA has entered into a MOU with IIT, Mumbai for design, development and field testing of "Aerostat Based Last Mile Communication System".
- In respect of ITDA, the Authority observed as under:
  - ITDA is registered under Society Registration Act, 1860 and is under the administrative control of Information Technology Department of Uttarakhand Government.
  - The Governor had nominated ITDA as State Nodal Organization and its executive committee consists of government officers.
  - Thus, ITDA is a local authority under Uttarakhand Government in terms of Section 2(69)(c) of Uttarakhand GST Act.
- With respect to IIT, Mumbai, the Authority observed that:
  - IIT's are autonomous public Institutes of higher education governed by Institutes of Technology Act, 1961. There is a common IIT council which oversees their operations.
  - IIT council is directly under the President of India and comprises of several other members from the Parliament, Union Government ministries and departments.
  - The amendments in the Institutes of Technology Act, 1961 is to be made by the Parliament.



	<p>- Thus, it falls under the definition of Government in terms of Section 2(53) of CGST Act i.e. Central Government.</p> <p><b>Ruling:</b></p> <ul style="list-style-type: none"><li>• In terms of Section 2(69)(c) of the Uttarakhand SGST Act, ITDA is a local authority and as per Section 2(53) of CGST Act, IIT, Mumbai is a Central Government.</li><li>• Accordingly, in terms of the specific exemption (viz. services by a Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority), the services supplied by IIT Mumbai to ITDA would be exempted from GST.</li><li>• As regards, supply of goods, there is no exemption available for supplies made by Government/Authority to another Government/Authority.</li></ul>
<b>Dhruva Comments / Observations</b>	<ul style="list-style-type: none"><li>• The Authority has regarded IIT as an autonomous institute which is governed by Institutes of Technology Act. The President of India is the most powerful person in the organisation structure of IIT's and the IIT council is under the direct control of the President. The changes in the Institutes of Technology Act can be made by the Parliament. Accordingly, Authority concluded that IIT is a Government.</li><li>• The CGST Act states that the 'Government' means the Central Government. However, Central Government has not been further defined under the GST law.</li><li>• In this regard it is relevant to refer to the Sectoral FAQ issued by CBIC on 'Government Services', which refers to General Clauses Act, 1897 for the definition of Central Government which includes the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of the President.</li><li>• It is interesting to note that the aforesaid FAQ has categorically stated that regulatory bodies and other autonomous entities would not be regarded as Government / local authority for the purpose of GST. There is however no discussion of the said FAQ in the AAR.</li></ul>

<b>2. National Dairy Development Board – Gujarat</b>	
<b>Issues for Consideration</b>	<ul style="list-style-type: none"><li>• Whether the arrangement between the Applicant and Unions would be considered as supply between 'related persons' in accordance with Schedule I of CGST Act, 2017?</li><li>• If yes, whether the valuation of activities will have to be undertaken per section 15(5) of CGST Act, 2017 read with Rule 28 of the CGST Rules, 2017?</li></ul>
<b>Discussion &amp; Ruling</b>	<p><b>Discussion:</b></p> <ul style="list-style-type: none"><li>• The Applicant (i.e. M/s. National Dairy Development Board) entered into a tripartite agreement with the State Government of Jharkhand and Assam with an objective to revive and support the Jharkhand State Cooperative Milk Producers' Federation Limited</li></ul>



(JMU) and West Assam Milk Producers' Co-operative Union Limited (WAMUL) (hereinafter referred as "Unions").

- Per the agreement, the Applicant was entrusted with the responsibility to run the management, appoint key managerial persons and provide end to end services in order to develop the Unions. Thus, the Applicant is in a position to control the Unions basis the aforesaid agreement.
- The Applicant has been providing the aforesaid services without charging any consideration. Under service tax regime there was no question of taxability as the services rendered were without any consideration. However, under GST in case of related party, the transaction is treated as taxable supply and needs to be valued at open market value as per Section 15 read with Schedule I of CGST Act, 2017 and Rule 28 of the CGST Rules, 2017.
- Thus, the Applicant sought clarity on whether the Applicant and Unions can be considered as related party because of control exercised over Unions by the Applicant basis the agreement, by virtue of clause (v) to the Explanation provided under Section 15 of the CGST Act, 2017, which states as below:

*Explanation – For the purpose of this Act –*

*(a) Persons shall be deemed to be “related persons” if –*

*(v) one of them directly or indirectly controls the other.*

- It was argued that the benefit from the aforesaid agreement would directly accrue to the concerned State Governments. Given this, the actual recipient of the services are the State Governments and the Unions are only beneficiaries of the services provided to the State Governments. The Unions are required only to provide adequate support to the Applicant. The Applicant referred to the judicial rulings in the case of **Paul Merchants Limited Vs. Commissioner of C.Excise, Chandigarh**<sup>1</sup> and **GAP International Sourcing (India) Pvt.Limited Vs. Commissioner of S.Tax , Delhi**<sup>2</sup> on the aspect of who can be considered as the ‘service recipient’.
- The relationship (i.e. related persons or not) is to be identified between the service provider and the service recipient, it cannot be identified between the service provider and the beneficiaries.

#### **Ruling:**

- It was held that there is no relationship between the Applicant and the Unions. Thus, the transactions undertaken under the aforesaid tripartite agreements are not to be considered as related party transactions for the purposes of clause (v) to the Explanation provided under Section 15 of the CGST Act, 2017 and thus it will not be considered as supply in accordance with Schedule I of CSGT Act, 2017.

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<sup>1</sup> 2013 (29) STR 257 (Tri-Del.)

<sup>2</sup> 2015 (37) STR. 757 (Tri-Del)



**Dhruva  
Comments /  
Observations**

- Being one of the first rulings on examining the 'related party' relationship, the ruling has rightly made a specific observation that the relationship, in context of a supply under GST, has to be established between the service provider and the actual service recipient [and not the beneficiary] for the purpose of determining taxability and valuation under GST. The identification of the service recipient in the current ruling is in line with the judicial rulings pronounced under the erstwhile Service Tax regime.



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