

Advance Ruling 08/2022-23, Dated 26th September, 2022

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

Present:

Shri Anurag Mishra (Member)

Shri Rameshvar Meena (Member)

In

Application No: 04/2022-23

1	Applicant	M/s M D Power Transmission Corporation of Uttaranchal Limited, Vidyut Bhawan, Near ISBT Crossing, Saharanpur Road, Majra, Dehradun, Uttarakhand, 248001.
2	Jurisdictional Officer	-----
3	Present for the Applicant	Sh. Harshit Gupta, Chartered Accountant
4	Present for the Jurisdictional Officer	None
5	Concerned Officer	Mrs. Neelam, Deputy Commissioner
6	Date of receipt of application	02.07.2022
7	Date of Personal Hearing	04.08.2022 (Through video Conferencing)

Note: An appeal against this ruling lies before the appellate authority for advance ruling under Section 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, 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.

**AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX UTTRAKHAND
PROCEEDINGS**

1. This is an application under Sub-Section (1) of Section 97 of the Central Goods & Service Tax Act, 2017 and Uttarakhand State Goods & Service Tax Act, 2017 (hereinafter referred to as CGST/SGST Act) and the rules made there under filed by M/s M D Power Transmission Corporation of Uttaranchal Limited, Vidyut Bhawan, Near ISBT Crossing, Saharanpur Road, Majra, Dehradun, Uttarakhand, 248001 (herein after referred to as the "applicant") and registered with GSTIN - 05AAECM1785FCZ9 under the CGST Act, 2017 read with the provisions of the UKGST Act, 2017. The applicant submitted that they are an undertaking (wherein 100% shares are owned by the Government of Uttarakhand) of the State of Uttarakhand entrusted with the task of transmitting electric power in the state of Uttarakhand which mainly involves creating and maintaining the Electric Transmission Network within the state of Uttarakhand.

In the application dated 29.06.2022, the applicant submitted that:-

> Uttarakhand CAMPA (hereinafter referred to as 'UK CAMPA') is a statutory body established by an act of Parliament namely Compensatory Afforestation Fund Act with primary objective of promoting afforestation and development activities in order to compensate for the felling of trees and re plantation thereof on the forest land that is intended to be diverted to non- forest use. UK CAMPA is a Fund/ entity registered under section 12AA of the Income Tax Act, 1961 (ITA) and is not for profit organisation.

> The Divisional Forest Officer (DFO) is an officer belonging to the Indian Forest Services and is an authority created directly under the State Government and is responsible for all work related to forest land, wildlife and its conservation, preservation, etc.

> PTCUL for the purpose of setting up the transmission network requires setting up of equipment, towers etc. in forest area for which it requires permission from the Ministry of Environment, Forest & Climate Change, Gov of

India. The Ministry of Environment, Forest and Climate Change grants such permission in accordance with the Forest (Conservation) Act 1980. The said Act provides for payment of three types of levies namely:-

- i. Compensatory Afforestation (CA) Value - It is the amount paid to the CAMPA fund to compensate for loss of 'land by land' and 'trees by trees'. This is not a discretionary but a constitutional levy as per norms laid out by the Government agencies. The chargeability of the same is provided for in the Forest (conservation) Act 1980.
- ii. Net Present (NP) Value - It is the amount paid to CAMPA fund for future work towards protection of forest, other conservation and related activities for afforestation. This is an extension of the above-mentioned levy in accordance with the Supreme Court order dated 29th October 2002 in Writ Petition (Civil) No. 202/95.
- iii. Recovery towards dwarf species cost - Forest (Conservation) Act 1980 provides for recovery of cost towards plantation and conservation of dwarf species planted in the corridor of the transmission line by forest department.

In addition to the above, PTCUL also pays a compensation for a period of 30 years, for diversion of forest land for non-forest purposes as per calculation given by the concerned Divisional Forest Officer (DFO).

> Hence, the Applicant is seeking advance ruling with respect to applicability of GST on the payments made by PTCUL to UK CAMPA as Compensatory Afforestation Value, Net Present Value and recovery made towards dwarf species cost and on payments made by PTCUL to Divisional Forest Officer (DFO) towards lease rent.

2. In view of the above facts, 'the applicant' is seeking advance ruling on the following issues:-

1. Whether UK CAMPA, falls under the ambit of the definition of "Government" as laid under section 2(53) of the Central Goods & Service Tax (CGST) Act, 2017?
2. Whether services rendered by UK CAMPA for which compensation is paid by PTCUL, qualifies as a 'supply of services' as per section 7 of CGST Act, 2017?
3. Whether services supplied by UK CAMPA, which is a section 12AA registered entity of The Income Tax Act 1961, be covered under Serial No 1 (Chapter 99) of Notification No 12/2017-Central Tax (Rate) dated 28th June 2017 read with section 11 of the CGST Act 2017?
4. If the answer to Question No 3 above is in the negative, under which heading of the GST tariff shall the said supply of service be covered?
5. If the answer to Question No 3 above is in the negative, identify the person liable to deposit such GST with the Government authorities i.e. is such payment covered under the Reverse Charge mechanism or normal forward charge rules?
6. Whether compensation paid by PTCUL to DFO, the Government of Uttarakhand, is subject to levy of GST?
7. If the answer to Question No 6 above is in the positive, under which heading of the GST tariff shall the said supply of service be covered?

3. At the outset, we would like to state that the provisions of both the CGST Act and the SGST 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 provisions under the SGST Act.

4. The 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.

> As per the said sub-section (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.

5.2 In the present case applicant has sought advance ruling on classification of goods or services, applicability of a notification issued under the provisions of this Act, determination of value of supply of services and determination of the liability to pay tax on any goods or services, therefore, in terms of said Section 97(2) (a), (b), (c) & (e) of CGST/SGST Act, 2017, the present application is hereby admitted.

6. Accordingly opportunity of personal hearing was granted to the applicant on 04.08.2022. Sh. Harshit Gupta, Chartered Accountant, on behalf of the applicant appeared for personal hearing on the said date and re-iterated the submission already made in their application. Ms. Neelam, Deputy Commissioner, Concerned Officer from the State Authority was also present during the hearing proceedings. She presented the facts and requested the authority to decide the case on merits.

7. From the record submitted by the applicant we find that applicant is registered in Uttarakhand with GSTIN bearing No. 05AAECM1785FCZ9. Before proceeding in the present case, we would first go through the submissions made by the applicant which are as under:

1. (a) UK CAMPA is a statutory body created by an Act of Parliament with primary objective of promoting afforestation and development activities in order to compensate for the felling of trees and re-plantation thereof, on the forest land that is intended to be diverted to non-forest use. UK CAMPA, a not for profit organization, is registered under section 12AA of the Income Tax Act, 1961 (ITA).

(b) Section 2(53) of the CGST Act, 2017, defines 'Government' as the Central Government and the official FAQ's on GST Sectoral Series- Government Services issued by Central Board of Indirect Taxes and Customs (CBIC) clarifies that "A statutory body, corporation or an authority created by the Parliament or a State Legislature is neither 'Government' nor a 'local authority'. Such statutory bodies, corporations or authorities are normally created by the Parliament or a State Legislature in exercise of the powers conferred under article 53(3)(b) and article 154(2)(b) of the Constitution respectively. It is a settled position of law (Agarwal Vs. Hindustan Steel AIR 1970 Supreme Court 1150) that the manpower of such statutory authorities or bodies do not become officers subordinate to the President under article 53(1) of the Constitution and similarly to the Governor under article 154(1). Such a statutory body, corporation or an authority as a juridical entity is separate from the State and cannot be regarded as the Central or a State Government and also do not fall in the definition of 'local authority'. Thus, regulatory bodies and other autonomous entities would not be regarded as the government or local authorities for the purposes of the GST Acts".

(c) In view of the above UK CAMPA is neither covered under the definition of Central Government, State Government, Union Territory or local authority nor created by the Constitution of India as a legislative, executive or judicial authority of the country.

2. (a) Goods and Service Tax Act, 2017 provides for the levy of GST on transactions that fall within the scope of "supply" as defined in section 7 of the Act. Supply to be covered under the ambit of GST law requires two major elements namely Supply is done for a consideration and Supply is done in course of furtherance of business.

(b) The PTCUL makes monetary payments to a statutory body i.e. UK CAMPA as a compensation/ levy prescribed under a law as part of the country's statute namely Forest Conservation Act, 1980. The three payments - Compensatory Afforestation value, Net Present Value and Recovery cost towards plantation and conservation of dwarf species, are preconditions enforced by the statutory body for approving use of forest land by PTCUL to setup the transmission network and such payments to UK CAMPA by PTCUL are not a contract of supply of service between the two parties at the discretion of either as neither parties have discretion with respect to applicability and valuation of such compensation. Thus, the amount paid is not a consideration for any supply received by PTCUL but a statutory levy which is similar to the charges for Stamp duty, fee, etc. and being a not for profit organization and is not doing any business, the income from services is NIL and all amount received is shown as Grant/ Donation.

3. UK CAMPA is a Fund/ entity registered under section 12AA of the Income Tax Act, 1961 (ITA) and is not for profit organization and the services of "(iv) Preservation of environment including watershed, forests and wildlife" supplied by UK CAMPA are covered under the Notification No 12/2017, being charitable activity is exempted from whole of GST vide entry No. 1 of the notification, which specifies that "services by an entity registered under Section 12AA of Income-tax Act, 1961 by way of charitable activities".

4 Under the CGST Act, 2017, goods and services supplied are classified using Harmonised Commodity Description and Coding System or HSN. The HSN is further divided into Chapters, Sections, Headings and Sub headings, representing a broader class or types of goods and services. In the present case, services supplied by UK CAMPA, are charitable activities duly covered under Notification No 12/2017 and therefore, consideration paid by PTCUL in the form of payments made to a section 12AA registered entity i.e. UK CAMPA are exempt from GST, nevertheless, even if it is concluded that GST is to be levied on such compensation, then the same can only be covered in Notification No 12/ 2017 under Serial No 6, Chapter 99 with NIL rate of taxation.

5. The CGST Act 2017 defines "reverse charge" under section 2(98) as "the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or subsection (4) of section 5 of the Integrated Goods and Services Tax Act." It can be concluded that UK CAMPA is not a "Government" and further, the nature of services supplied by UK CAMPA do not fall in any of the above mentioned category.

Hence, any GST if at all applicable on such payment is to be collected and deposited by UK CAMPA itself and PTCUL is not liable to deposit any GST under the RCM mechanism.

6. (a) Goods and Service Tax Act, 2017 provides for the levy of GST on transactions that fall within the scope of "supply" as defined in section 7 of the Act. Supply to be covered under the ambit of GST law requires two major elements:-

- a. Supply is done for a consideration
- b. Supply is done in course of furtherance of business

(b) In the instant case, monetary payments are made to the DFO, the Government of Uttarakhand, as compensation/levy for diversion of forestland for non-forest purposes. Such amount of compensation/levy is calculated by the DFO on yearly basis and then paid by PTCUL. The said payments are not a contract of supply of service between the two parties at the discretion of either. In fact, neither the parties have discretion with respect to applicability and valuation of such compensation. Thus, the amount paid is not a consideration for any supply received by PTCUL but a levy of the Government of India, which is similar to the charges for Land Use Change, Map Sanctions, Stamp duty etc. in the form of compensation paid by PTCUL to DFO, the Government of Uttarakhand, for diversion of forestland for non-forest purposes, are not subject to the levy of GST.

7. Under the CGST Act, 2017, goods and services supplied are classified using Harmonised Commodity Description and Coding System or HSN. The HSN is further divided into Chapters, Sections, Headings and Sub headings, representing a broader class or types of goods and services. The monetary payments made by PTCUL to DFO, Government of Uttarakhand, are in the nature of compensation / levy for diversion of forestland for non-forest purposes which are calculated by the DFO on yearly basis. Basis the above, such compensation being in the nature of a statutory levy paid to DFO, cannot be considered as payment towards supply of service on which GST is levied thereby, making it a non-taxable service. Nevertheless, even if it is concluded that GST is to be levied on such compensation, then the same can only be covered in Notification No 12/ 2017 under Serial No 6, Chapter 99 with NIL rate of taxation.

8. In the present case we are not deciding any wider question but restricting our conclusion to the facts and circumstances which were filed by the applicant for our consideration. Now we proceed by taking up the issue:

8.2 In the instant case there are various issues before us for decision. We take the same one by one.

8.3 We find that under the provisions of the Compensatory Afforestation Fund Act, 2016, Compensatory Afforestation Fund Management and Planning Authority (CAMPA) was established as a National Advisory Council under the chairmanship of the Union Minister of Environment & Forests for monitoring, technical assistance and evaluation of compensatory afforestation activities, with the objectives of promoting afforestation and regeneration activities as a way of compensating for forest land diverted to non-forest uses and has been constituted under an Act passed by the Parliament. To regulate the above act, Compensatory Afforestation Fund Rules, 2018 have been introduced. We observe that Compensatory Afforestation Fund Act, 2016 mandated that the Compensatory Afforestation Fund Management and Planning Authority (CAMPA)/ State CAMPA would receive funds collected from user agencies towards compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, Net Present Value (NPV) and all other amounts recovered from such agencies under the Forest (Conservation) Act, 1980.

8.3.2 The State CAMPA would administer the amount received from the CAMPA and utilize the funds collected for undertaking compensatory afforestation, assisted natural regeneration, conservation and protection of forests, infrastructure development, wildlife conservation and protection and other related activities and for matters connected therewith or incidental thereto and would provide an integrated framework for utilizing multiple sources of funding and activities relating to protection and management of forests and wildlife. Its prime task would be regenerating natural forests and building up the institution engaged in this work in the State Forest Department including training of the forest officials of various levels with an emphasis on training of the staff at cutting edge level (forest range level). We find that in totality the prime task of State CAMPA would be regenerating natural forests and building up the institution engaged in this task in the State Forest Department.

8.3.3 We observe that the Forest Department of State Government of Uttarakhand, through the Principal Chief Conservator of Forests, an officer belonging to the Indian Forest Services, is responsible for all work related to forest land, wildlife and its conservation, preservation and they have been entrusted to manage the fund for which Compensatory Afforestation Fund Act, 2016 has been passed and enacted by the Parliament. We also find that as per the web-site of the Uttarakhand CAMPA "CAMPA Act or Compensatory Afforestation Fund Act is an Indian legislation that seeks to provide an appropriate institutional mechanism, both at the Centre and in each State and Union Territory, to ensure expeditious utilization in efficient and transparent manner of amounts released in lieu of forest land diverted for non-forest purpose which would mitigate impact of diversion of such forest land. We also find that the general superintendence, direction and control of the affairs of the CAMPA and its funds and property, movable and immovable shall be vested in the Governing Body" and that "the Hon'ble Chief Minister, Government of Uttarakhand is the Chairperson of the Governing Body and Hon'ble Minister of Forests and Environment, Government of Uttarakhand, Chief Secretary, Government of Uttarakhand, Principal Secretaries of the Departments dealing with Environment, Finance, Planning, Rural Development, Revenue, Agriculture, Tribal Development, Panchayati Raj, Science and Technology, Principal Chief Conservator of Forests (HOFF), Principal Secretary, Forest and Environment,

Government of Uttarakhand, Chief Wildlife Warden etc". (Exhaustive but not limited to) are the members of the said Governing Body.

8.3.4 From the above facts, we observe that there is no doubt that Forest (Conservation) Act, 1980 in the state of Uttarakhand is also implement and regulated by the Forest Department of State Government of Uttarakhand and the UK CAMPA is under the aegis of Forest Department of State Government of Uttarakhand, as they administer, manage and regulate the said act.

8.3.5 We also find that vide letter dated 08.08.2022, the applicant submitted sample demand letters raised on the applicant and perusal of the same reveals that all such demand letters have been raised by "..... and observe that all these are Government officials working in the Forest Department of State Government of Uttarakhand and are governed by the rules and regulations of the Government of Uttarakhand. Admittedly, in the said demand letters value assigned for the consideration with the components of NPV, CA and Dwarf Species etc. has been calculated as mandated by the law. This establishes the fact that the Government of Uttarakhand, through Forest Department is administrating, managing and regulating the UK CAMPA as per the provisions enlisted therein. We also find that in the calculation sheet and on the body of the said letters, 18% GST has been calculated, this clearly and evidently shows that GST is leviable on such demands raised for UK CAMPA by the Forest Department of State Government of Uttarakhand and that the applicant has been sanctioning the requisite funds.

8.3.6 In view of the above facts we hold that UK CAMPA falls under the category of State Government as defined in Section 2(103) of the CGST Act, 2017 which specifies that "State" includes a Union Territory with Legislature!

8. 4 Now we take up the second issue. Before dwelling into the matter, for better perspective Section 7 of the Central Goods & Service Tax (CGST) Act, 2017 is reproduced as under:

"7. scope of supply.- (1) For the purposes of this Act, the expression -supply

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

[(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation.- For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;] 12

(b) import of services for a consideration whether or not in the course or furtherance of business; [and] 13

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; [****] 14

(d) [****] 15.

[(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II] 16

(2) Notwithstanding anything contained in sub-section (1),-

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of [sub-sections (1), (1A) and (2)] 17, the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as-

[a] a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods".

8.4.2 We find that sub-section 2 of the section ibid, clearly specify what shall be treated neither as a supply of goods nor a supply of services, which are as under:-

"(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council",

8.4.3 We observe that services rendered does not fall either under (a) or (b) above and also the amount charged and collected as a obligation is a consideration although mandated by a law, which is administered, managed and regulated by the Forest Department, Government of Uttarakhand and the amount received is utilised for undertaking compensatory afforestation, assisted natural regeneration, conservation and protection of forests, infrastructure development, wildlife conservation and protection and other related activities and for matters connected therewith or incidental thereto and would provide an integrated framework for utilizing multiple sources of funding and activities relating to protection and management of forests and wildlife. We further observe that they had been tasked with regenerating natural forests and building up the institution engaged in this work in the State Forest Department including training of the forest officials of various levels with an emphasis on training of the staff at cutting edge level (forest range level). We also observe that the charging and collecting agency is the Forest Department, Government of Uttarakhand.

8.4.4 We find that the funds received is not limited for undertaking compensatory afforestation only but also for many other activities viz. assisted natural regeneration, conservation and protection of forests, infrastructure development, wildlife conservation and protection and other related activities and for matters connected therewith or incidental thereto. The amount changing hands between two entities/ organisations /individuals is a consideration irrespective of whatever nomenclature it may be given for transaction and accounting purpose.

8.4.5 Further as brought out above the works / activities mandated to the CAMPA are not of a philanthropic nature but they have been assigned various activities (although mandated by a particular LAW), which have been done in the course of furtherance of business, as the CAMPA is not only assigning a value for damages on the forest land but also charging for afforestation, regeneration etc. and also for other activities. The said assigned value is also charged and collected, from other such parties including Power Transmission Corporation of Uttaranchal Limited (PITCUL) in the instant case. The method applied for calculation i.e. for the assignment of the value and the components to be considered for the assigned value, being obligatory as per the provisions of a law, does not take away its character of being a consideration. For better perspective definition of "consideration" in relation to the supply of goods and services or both as provided in Section 2(31) of the Central Goods & Service Tax (CGST) Act, 2017 is reproduced as under:-

"(31) - consideration! in relation to the supply of goods or services or both includes-

(a) 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;

(b) the monetary value of any act or forbearance, 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:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;"

8.4.6 We observe that the amount of money charged and collected by the Forest Department of State Government of Uttarakhand is neither a subsidy given by the Central Government or a State Government nor a grant, but it is an consideration in the course of an obligation; and there is no doubt that the said obligation has been mandated under a law.

8.4.7 We are of the opinion that if grants are given freely in which the grantor does not receive any benefit in return, then they are not consideration for any supply and are therefore outside the scope of GST but if the grantor receives a benefit in return, then the grant is treated as a consideration for the supply and in the instant case the applicant has admitted that the amount paid is to compensate for loss of land by land' and 'trees by trees', which imply that although the assignment of the value has to be calculated for loss of land by land' and 'trees by trees', but the said "assignment of the value" also includes consideration for various other activities viz. assisted natural regeneration, conservation and protection of forests, infrastructure development, wildlife conservation and protection and other related activities and for matters connected therewith or incidental thereto. We are also of the opinion that there is nothing in the CGST Act, 2017 that excludes, any amount, which has to be paid under any obligation, as not to be considered as "consideration or monetary value" and merely being of obligatory in nature mandated by law or otherwise, does not exclude it from the essence of the consideration.

8.4.8 In view of the above we observe that both of the two major elements i.e. Supply is done for a consideration and Supply is done in course of furtherance of business are fulfilled as the services rendered are through the Forest Department of State Government of Uttarakhand, for which compensation is paid by PTCUL, qualifies as a 'supply of services' as per section 7 of CGST Act, 2017.

8.5 Now we take up the third issue with respect to entity registered under section 12AA of the Income-tax Act, 1961.

8.5.2 We find that in the Notification No. 12/2017-CT (Rate) dated 28.06.2017, the entry thereto states as under;-

"Services by an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) by way of charitable activities.

8.5.3 We are of the opinion that charity means generosity and helpfulness especially toward the needy or suffering that is to say aid given to those in need. The list of activities given in the above said notification are the activities which are eligible for exemption but for the exemption to come into picture the act of charity has to be fulfilled and in the instant case, the money is being charged and collected for specific purposes, which evidently does not constitute 'charity' and hence services rendered through the Forest Department of State Government of Uttarakhand, is not covered under Entry No 1 (Chapter 99) of Notification No 12/2017 - Central Tax (Rate) dated 28th June 2017 read with section 11 of the CGST Act 2017.

8.6 Now we take up the fourth issue for decision.

8.6.2 we find that at Heading 9997 under the head of "Description of Service", "Other services (washing, cleaning and dyeing services; beauty and physical well-being services; and other miscellaneous services including services nowhere else classified)" have been kept, and we opine that the services provided through the Forest Department of state Government of Uttarakhand falls under the Heading 999799 - "Other services nowhere else classified" in the "Group 99979- other miscellaneous services" and hence not covered under Serial No 6 of the Notification No 12/ 2017 and observe that the above services under Heading 999799 does not figure in the Notification No. 12/ 2017 and hence is liable to tax.

8.7 Now we take up the fifth issue for decision. In this regard we find that as per the provisions of Notification No. 13/2017- Central Tax (Rate) dated 28th June, 2017 at Sl. No. 5 under the head "Category of Supply of Services", "Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, - (1) renting of immovable property, and (2) services specified below- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers", has been given for which under the head "Recipient of Service?", "Any business entity located in the taxable territory", has been provided.

8.7 .2 We find that the demand letters submitted by the applicant shows value assigned for the consideration with the components of NPV, CA and Dwarf Species etc. has been calculated as mandated by the law and that in the calculation sheet and on the body of the said letters, 18% GST has been calculated with the remark "R. Charge basis", this clearly and evidently shows that GST is leviable on such demands raised by the Forest Department of State Government of Uttarakhand and that the applicant has been sanctioning the requisite funds.

8.7.3 In view of the above notification we hold that the applicant being a business entity is liable and mandated to follow the provisions of the Notification No. 13/2017-Central Tax (Rate) dated 28th June, 2017 and is liable to pay due tax under reverse charge mechanism on the total assigned value for which demand is raised by the Forest Department of State Government of Uttarakhand, as per the provisions of the CAMPA Act.

8.8 Now we take up the sixth issue for decision.

8.8.2 We find that at Para 8.3 above the issue has already been discussed and concluded that the Forest Department of State Government of Uttarakhand, through the Principal Chief Conservator of Forests, an officer belonging to the Indian Forest Services, is responsible for all work related to forest land, wildlife and its conservation, preservation and there is no doubt that Forest (Conservation) Act, 1980 in the state of Uttarakhand is also administered, implement and regulated by the Forest Department of State Government of Uttarakhand and that as per the provisions of the law the DFO, Government of Uttarakhand, is raising demands for "Premium and Annual Lease Rent" and the said lease rent is in lieu for the right to use of the said land area falling under the jurisprudence of the Forest Department, Government of Uttarakhand.

8.8.3 We also find that at Para 8.4 above, it has been discussed and concluded that the amount of money paid to the Forest Department is neither a subsidy given by the Central Government or a State Government nor a grant but it is an consideration in the course of an obligation; and have intrinsic component of a benefit in return and hence is a consideration for the supply. In the instant case, the applicant has admitted that the amount paid to the Forest Department is the compensation/ levy for diversion of forest land for non-forest purpose, which amount is paid for the lease of the said forest land. And we are of the opinion that there is nothing in the CGST Act, 2017 that excludes, any amount, which has to be paid under any obligation, as not to be considered as "consideration or monetary value" and merely being of obligatory in nature mandated by law or otherwise, does not exclude it, from being the essence of the consideration. We also find that although the applicant has termed the same as compensation but actually it is the money paid for "Leasing" of forest land, as is evident from the demand letters.

8.8.4 Even more so we find that in the Section 7 of the CGST Act, 2017 it has been mandated that "the expression - supply includes - all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business", and the consideration (although termed as "compensation" by the applicant) is actually "Premium or Annual Lease" as evident from the demand letters of the DFO, submitted by the applicant on 08.08.2022.

8.8.5 In view of the above we observe that both of the two major elements i.e. Supply is done for a consideration and Supply is done in course of furtherance of business are fulfilled by the DFO of the Forest Department of State Government of Uttarakhand and hence services rendered for which "Premium or Annual Lease" is paid by PTCUL, qualifies as a 'supply of services' as per section 7 of CGST Act, 2017.

8.9 Now we take up last issue for decision.

8.9.2 We find that at Heading 997212 under the head of "Description of Service", "Rental or leasing services involving own land or leased non-residential property", have been kept, and we opine that the services provided by the DFO of the Forest Department of State Government of Uttarakhand falls under the above Heading and hence not covered under Serial No 6 of the Notification No 12/ 2017 and observe that the above services under Heading 997212, does not figure in the Notification No. 12/ 2017 and hence is liable to tax.

9. In view of the discussions held above, we rule as under:

RULING

1. UK CAMPA falls under the category of State Government as per the provisions of the CGST Act, 2017.
2. Services rendered through the Forest Department of State Government of Uttarakhand, for which compensation is paid by PTCUL, qualifies as a 'supply of services' as per section 7 of CGST Act, 2017.
3. Services rendered through the Forest Department of State Government of Uttarakhand, is not covered under Entry No 1 (Chapter 99) of Notification No 12/2017 - Central Tax (Rate) dated 28th June 2017 read with section 11 of the CGST Act 2017.
4. Services fall under the Heading 999799 - "Other services nowhere else classified" in the "Group 99979- Other miscellaneous services.
5. The applicant being a business entity is liable to follow the provisions of the Notification No. 13/2017- Central Tax (Rate) dated 28th June, 2017 and is liable to pay due tax under reverse charge mechanism on the total assigned value for which demand is raised by the Forest Department of State Government of Uttarakhand, as per the provisions of the CAMPA Act.
6. As the Supply of services of "Premium or Annual Lease" is done for a consideration by the DFO of the Forest Department of State Government of Uttarakhand hence services rendered, qualifies as a 'supply of services' as per section 7 of CGST Act, 2017.
7. Services fall under the Heading 997212 - "Rental or leasing services involving own land or leased non-residential property".

ANURAG MISHRA

(MEMBER)

RAMESHVAR MEENA

(MEMBER)