



**GST-TDS**

पत्रांक -3005/लेखा/उपनल/2020

04 नवम्बर 2020

सेवा में,

समस्त विभागाध्यक्ष/विना नियन्त्रक

**विषय- उपनल को किये जा रहे बीजकों के भुगतान से GST-TDS की कटौती नहीं किये जाने के सम्बन्ध में।**

महोदय,

1. उपरोक्त विषयक आपके संज्ञान में लाना है कि आपके विभाग द्वारा "उपनल" के बीजकों के विरुद्ध किये जाने वाले भुगतान से GST-TDS की कटौती की जा रही है, जो कि केन्द्र सरकार द्वारा जारी नोटिफिकेशन नं: 50/2018-Central tax dated 13.09.2018 एवं 73/2018-Central tax dated 31.12.2018 के विरुद्ध है।
2. उपरोक्त नोटिफिकेशनों के सरलीकरण एवं किसी भी प्रकार के संदेह के निराकरण हेतु "उपनल" द्वारा "अग्रिम विनिर्णय प्राधिकारी उत्तराखण्ड (माल और सेवा कर), ( BEFORE THE AUTHORITY FOR ADVANCE RULING FOR THE STATE OF UTTARAKHAND ( Goods and Service Tax) के समक्ष दिनांक 07.07.2020 को उपनल द्वारा आवेदन किया गया था कि उपनल द्वारा राज्य सरकार/केन्द्र सरकार के विभिन्न विभागों /संस्थानों, शैक्षणिक संस्थानों, नगर निगमों एवं राज्य अथवा केन्द्र सरकार के सार्वजनिक क्षेत्र के उपक्रमों को प्रदान की जा रही सेवाओं के एवज में प्राप्त भुगतान से की जाने वाली GST-TDS की कटौती नहीं होनी चाहिए जिसकी सुनवाई दिनांक 07 अगस्त 2020 को हुई है।
3. उपरोक्त आवेदन पर सम्मानित प्राधिकारियों द्वारा दिनांक 28.09.2020 को आदेश संख्या: 08/2020-21 जारी किया गया जिसमें यह निर्णय दिया गया कि "यदि उपनल (आवेदक) द्वारा राज्य सरकार/केन्द्र सरकार के विभिन्न विभागों /संस्थानों, शैक्षणिक संस्थानों, नगर निगमों एवं राज्य अथवा केन्द्र सरकार के सार्वजनिक क्षेत्र के उपक्रमों को सामान या सेवाओं अथवा दोनों की आपूर्ति करता है तो इस पर GST-TDS की कटौती नहीं होगी"।
4. अतः आप से विनम्र निवेदन है कि उपनल को किये जाने वाले भुगतान से GST-TDS की कटौती नहीं की जाय।

धन्यवाद,

भवदीय

कैप्टेन (भा0नौ0से0) एस0के0शर्मा (अ0प्रा0)  
उप-महाप्रबन्धक (वित्त)

**संलग्नक:-** आदेश संख्या 08/2020-21 की छायाप्रति

**BEFOR THE AUTHORITY FOR ADVANCE RULING  
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 28<sup>th</sup> day of September 2020**

**Ruling No: 08/2020-21**

अग्रिम विनिर्णय संख्या: 08 / 2020-21

**In**

**Application No:- 02/2020-21**

आवेदन संख्या 02 / 2020-21

1	Applicant आवेदक	M/s Uttarakhand Purv Sainik Kalyan Nigam Ltd. Garhi Cantt, Station Sub-Area Canteen complex, Dehradun Uttarakhand
2	Jurisdictional Officer अधिकारिता अधिकारी	.....
3	Present for the Applicant अधिकारिता अधिकारी	Mr. Daksh Dawar, CA
4	Present for the Jurisdictional Officer अधिकारिता अधिकारी की ओर से उपस्थित	None
5	Concerned Officer	Ms. Preeti Manral. DC (SGST)
6	Date of receipt of application आवेदन प्राप्ति की तिथि	07.07.2020
7	Date of Personal Hearing सुनवाई की तिथि	07.08.2020

**Note:** Under section. 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, an appeal against this ruling lies before the appellate authority 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 अंतर्गत गठित अग्रिम विनिर्णय अपील प्राधिकारी के सक्षम धारा-100(1) के अंतर्गत 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. Uttarakhand Pury Sainik Kalyan Nigam Ltd, Garhi Cantt, Station Sub-Area Canteen Complex Dehradun, Uttarakhand (here in after referred to as '**the applicant**') is registered with the GSTN having Registration No. 05AAACU7129D1ZM and seeking advance ruling on the following question:

*"Whether State/Central govt organizations, Nagar Nigams, any other govt corporations, State/Central PSUs & Educational Institutions registered under Societies Registration Act can deduct TDS from the amount due to applicant in terms of section 51 of the Act read with Notification Nos. 50/2018 dated 13.09.2018 & 73/2018 dated 31.12.2018".*

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 applicability of notifications & determination of tax liability, therefore, in terms of said Section 97(2)(b) & (e) of the Act, the application filed by the applicant was admitted. Accordingly hearing was fixed on 07.08.2020 which was attended by the Shri Daksh Dawar, Chartered Accountant on behalf of the applicant and he reiterated the submissions given with the application. During the course of hearing Ms Preeti Manral (DC), concerned officer of SGST-Uttarakhand was also present and requested the authority to decide the application on merits.
5. On perusal of record, we find that the applicant is an undertaking of Uttarakhand Government and registered under Companies Act, 1956 and 100% shareholding is with Uttarakhand Government. They are engaged in providing services of unskilled, semi-skilled, skilled & highly skilled personnel to Uttarakhand Govt. departments & Central & State PSUs. The applicant has sought advance ruling Whether State/Central govt organizations, Nagar Nigams, any other govt corporations, State/Central PSUs & Educational Institutions registered under Societies Registration Act can deduct TDS from the amount due to applicant in terms of section 51 of the Act read with Notification Nos. 50/2018 dated 13.09.2018 & 73/2018 dated 31.12.2018
6. In the present case we are not deciding any wider question but restricting our conclusion to the facts and circumstances which was filed for our consideration in the application. In this context relevant legal provisions are reproduced below:

**Section 51 of the Act.** (1) *Notwithstanding anything to the contrary contained in this Act, the Government may mandate,—*

- (a) *a department or establishment of the Central Government or State Government; or*
- (b) *local authority; or*
- (c) *Governmental agencies; or*
- (d) *such persons or category of persons as may be notified by the Government on the recommendations of the Council, (hereafter in this section referred to as "the deductor"), to deduct tax at the rate of one per cent. from the payment made or credited to the supplier (hereafter in this section referred to as "the deductee") of taxable goods or services or*

both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:

Provided that no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Explanation.—For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice.

(2) -----.

(3) -----.

(4) -----.

(5) The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under sub-section (3) of section 39, in such manner as may be prescribed.

(6) -----.

(7) -----.

(8) The refund to the deductor or the deductee arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 54:

Provided that no refund to the deductor shall be granted, if the amount deducted has been credited to the electronic cash ledger of the deductee.

#### **Notification No. 50/2018 – Central Tax dated 13.09.2018**

G.S.R. ....(E).— In exercise of the powers conferred by sub-section (3) of section 1 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 33/2017-Central Tax, dated the 15th September, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1163 (E), dated the 15<sup>th</sup> September, 2017, except as respects things done or omitted to be done before such supersession, the Central Government hereby appoints the 1st day of October, 2018, as the date on which the provisions of section 51 of the said Act shall come into force with respect to persons specified under clauses (a), (b) and (c) of sub-section (1) of section 51 of the said Act and the persons specified below under clause (d) of sub-section (1) of section 51 of the said Act, namely:-

(a) an authority or a board or any other body, -

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government, with fifty-one per cent. or more participation by way of equity or control, to carry out any function;

(b) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);

(c) public sector undertakings.

**Notification No.73/2018 - Central Tax dated 31.12.2018**

G.S.R. ....(E).— In exercise of the powers conferred by sub-section (3) of section 1 read with section 51 of the Central Goods and Services Tax Act, 2017 (12 of 2017), hereafter in this notification referred to as the said Act, the Central Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 50/2018-Central Tax dated the 13th September, 2018 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R 868 (E) dated the 13th September, 2018, namely:-

In the said notification, after the second proviso, the following proviso shall be inserted, namely:-

“Provided also that nothing in this notification shall apply to the supply of goods or services or both which takes place between one person to another person specified under clauses (a), (b), (c) and (d) of sub-section (1) of section 51 of the said Act.”.

7. On perusal of legal provisions (supra), we find that the Government has authorized following persons, to deduct tax at the rate of two per cent (1% CGST + 1% SGST) from the value of supply excluding the central tax, State tax, Union territory tax, integrated tax and cess, made to the supplier of taxable goods or services or both w.e.f 01.10.2018, provided that the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:

- (a) a department or establishment of the Central Government or State Government; or
- (b) local authority; or
- (c) Governmental agencies; or
- (d) an authority or a board or any other body, -
- (i) set up by an Act of Parliament or a State Legislature; or
- (ii) established by any Government,
- with fifty-one per cent. or more participation by way of equity or control, to carry out any function;
- (e) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);
- (f) public sector undertakings.

We also find that there will be no TDS deduction if location and place of supply of supplier is different from the place of registration of recipient. Further vide amendment dated 31.12.2018 (supra), the provisions of Section 51 of the Act will not be applicable in respect of such supply of goods or services or both which takes place between persons as mentioned above.

8. Now the question arises whether the applicant falls under any of the aforesaid categories notified by the Government. The applicant claims that they are an undertaking of Uttarakhand Government and registered under Companies Act, 1956 and 100% shareholding is with Uttarakhand Government. To verify the claim of the applicant we visited the official website viz [rpo@upnl.co.in](mailto:rpo@upnl.co.in) of the applicant and we find as under:

उत्तराखण्ड पूर्व सैनिक कल्याण निगम लि० (उपनल), उत्तराखण्ड राज्य का एक सार्वजनिक उपक्रम है। जिसकी स्थापना 01 मार्च 2004 को उत्तरांचल पूर्व सैनिक कल्याण लि० (उपसुल) के रूप में हुई थी। तत्पश्चात् दिनांक 31 जनवरी 2007 से उपसुल को निगम बनाते हुए इसका नाम "उपनल" किया गया। उपनल, भारतीय कम्पनी अधिनियम, 1956 के अंतर्गत रजिस्टर्ड है।

Further on perusal of Memorandum of Association of the applicant, we find that the applicant is a Company of Government of Uttarakhand within the meaning of Section 617 of the Companies Act 1956 which define "Government company" as any company in which not less than fifty-one per

cent of the paid up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more state Governments and includes a company which is a subsidiary of a Government company.

9. Thus we observe that the Applicant is a State Government PSU in as much as 100 % Shareholding is with Uttarakhand Government and falls under one of the categories notified by the Government under Section 51 of the Act read with Notification Nos. 50/2018-Central Tax dated 13.09.2018 and 73/2018-Central Tax dated 31.12.2008.

**ORDER**

In view of the above discussion and findings we hold as under:

There shall be no deduction of TDS, if the applicants supplies goods or services or both to the aforesaid categories of persons notified by the Government.

  
VIPIN CHANDRA (MEMBER)

  
AMIT GUPTA (MEMBER)

To,

M/s Uttarakhand Purv Sainik Kalyan Nigam Ltd.  
Garhi Cantt, Station Sub-Area Canteen complex,  
Dehradun Uttarakhand

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

F.No.: 02/S.Tax/UKD/GST/Sec-97/2020-21/DDN/2442 Dated: 03/10/2020

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, Dehradun for review.
- ✓ 5. The Assistant Commissioner, SGST, Sector-09, Dehradun for review.
6. The Concerned Officer, CGST, Dehradun.
7. The Concerned Officer, SGST, Uttarakhand.
8. The Registrar, AAAR-Uttarakhand.
9. Guard File.