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2022 (1) TMI 1107 - AUTHORITY FOR ADVANCE, UTTARAKHAND

IN RE: M/S. GREEN CLEANING SOLUTIONS,

Advance Ruling 03/2021-22, In Application No: 01/2021-22

Dated: - 23 August 2021

Classification of supply - Composite supply or not - supply of manpower for managing solid waste - applicability of Sl. No. 3A of Chapter 99 as mentioned in notification number 12/2017 - Central Tax (rate) dated 28th June 2017 as amended by Notification No 2/2018 - Central Tax (rate) dated 25th January 2018 - recipient of service i.e. Nagar Palika Parsihad, Muni ki Reti, Dhalwala - falls under the definition of "local authority or a Governmental authority or a Government Entity" or not - service/work is covered under the "function entrusted to a Municipality under article 243 W of the Constitution" or not?

Composite supply of goods and services or not - HELD THAT:- From the definition of, "Composite supply", it is seen that to fulfil the criteria of being a "Composite supply" there must be two or more naturally bundled goods or services or both or any combination thereof which can be supplied in conjunction with each other. But in the instant case only drivers with protective gears were supplied by the applicant. Further 'goods' are defined as every kind of movable property as relevant in the instant case.

In the instant case the applicant has arranged only drivers to the service recipient and no movable property was supplied alongwith them. In the instant case only vehicle can be the movable property to be supplied alongwith. drivers as the drivers can use only vehicle and nothing than that. Safety kits/ protective gears are not separate goods to be used in driving the vehicles. These safety kits were made mandatory as a precautionary measures for the safety of manpower due to COVID pandemic during Kumbh Mela 2021 - These safety kits are not required in normal situation and therefore cannot be termed as 'goods' supplied during the course of supply of service.

Therefore service of manpower supplied by the applicant does not fall under the definition of "Composite supply of Goods and Service" given at Sl. No. 3 A of Chapter 99 as mentioned in Notification No. 12/2017 - Central Tax (rate) dated 28th June 2017 as amended vide Notification No. 2/2018 - Central Tax (rate) dated 25th January 2018.

Whether Nagar Palika Parishad, Muni Ki Reti, Dhalwala, Tehri Garhwal is a local authority or not? - HELD THAT:- From the website of Nagar Palika Parishad, Muni Ki Reti, Dhalwala, Request For Proposal (RFP) and Letter of Award(LOA) issued by Nagar Palika Parishad, Muni Ki Reti, Dhalwala, it is found that the said Nagar Palika Parishad is engaged in the municipal work like Sanitation work of the various places of its municipal area, sewerage treatment and solid waste management etc. -

therefore supply of manpower for this particular purpose of managing solid waste is also covered in relation to the “function entrusted to a Municipality under article 243W of the Constitution of India”.

Whether the said contract is exempt from Goods and Service Tax in accordance with notification number 12/2017 - Central Tax (rate) dated 28th June 2017 as amended by Notification No. 2/2018 - Central Tax (rate) dated 25th January 2018? - HELD THAT:- In the instant case, the applicant has provided only manpower without any goods for completing the work entrusted under article 243W of the Constitution to Nagar Palika Parishad, which is a local authority, therefore it is found that the contract of supplying manpower for managing solid waste is duly covered under Entry No.3 of Chapter 99 mentioned in Notification No. 12/2017 - Central Tax (rate) dated 28th June 2017 and therefore exempted from payment of GST.

Judgment / Order

SHRI ANURAG MISHRA AND SHRI SAURABH KANT SHUKLA, MEMBER

Present for the Applicant : Mr. Harshit Gupta, Chartered Accountant

Present for the Jurisdictional Officer : Mrs. Preeti Manral

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.

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 (herein after referred to as CGST/SGST Act) and the rules made thereunder filed by M/s Green Cleaning Solutions, 187, Chakrata Road, Dehradun, Uttarakhand (hereinafter referred to as 'the applicant') is registered with the GSTN having Registration No. 05AAPFG8073Q1ZJ and seeking advance ruling on the following question:-

1) Whether the proposed service in the contract comes under the definition of Composite supply of Goods and Service” at Sl. No. 3A of Chapter 99 as mentioned in notification number 12/2017 - Central Tax (rate) dated 28th June 2017 as amended by Notification No 2/2018 - Central Tax (rate) dated 25th January 2018.

2) Whether the proposed recipient of service i.e. Nagar Palika Parsihad, Muni ki Reti, Dhalwala falls under the definition of “local authority or a Governmental authority or a Government Entity” as mentioned and / or defined in the notification mentioned in point 1) above?

3) Whether the said service/work is covered under the “function entrusted to a Municipality under article 243 W of the Constitution”?

4) Whether the said contract is exempt from Goods and Service Tax in accordance with notification number 12/2017 - Central Tax (rate) dated 28th June 2017 as amended by Notification No. 2/2018 - Central Tax (rate) dated 25th January 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 classification of service and applicability of notifications, therefore, in terms of said Section 97(2)(a) & (b) of the Act, the application filed by the applicant has been admitted.

5. On perusal of records submitted by the applicant, we find that the applicant is registered in Uttarakhand having GSTIN bearing no. 05AAPFG8073QIZJ. In their written submission submitted by the applicant alongwith their application, they have submitted that:

(1) The Applicant participated in a RFP issued by the Executive Officer, Nagar Palika Parishad, Muni Ki Reti, Dhalwala, Tehri Garhwal which was available for download by prospective bidders from 02 January 2021. The title of the tender being

“RFP for Selection of Contractor for supplying manpower for managing solid waste at Muni ki Reti, Nagar Palika Parishad, Tehri Garhwal”.

The RFP on page 12 under the heading Objective mentions:-

“The project aims at ensuring effective management of Solid Waste with a view to protect the health and hygiene of the pilgrims as well as protecting the overall environment. The Client to hire a Contractor to supply manpower to manage solid waste generated during Haridwar MahaKumbh 2021. The manpower consisting of sanitary inspectors, sweepers, helpers etc. shall manage the solid waste through provision of bins and primary and secondary transportation system set up at site during Haridwar, MahaKumbh 2021”

Entry having Sl. No 3A of Chapter 99 as mentioned in notification number 12/2017 - Central Tax (rate) dated 28th June 2017 as amended by Notification No 2/2018 Central Tax (rate) dated 25th January 2018 is reproduced below:-

“Composite supply of goods and services in which the value of supply of goods constitutes not

more than 25 per cent of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution”.

One of the components of entry no. 3A is “Composite supply of goods and service where goods constitute not more than 25% of the value of composite supply”. The quote given by the applicant and approved is attached on serial no 10 of the paperbook wherein the total cost of contract is ₹ 65,95,540/- broken down as service component as ₹ 54,20,007/ and goods of ₹ 11,75,532/- Thus, goods value is 17.82% fulfilling the first part of the entry. Thus, in view of the applicant the said service passes the first test of falling under entry no. 3A as, mentioned above.

(2) The applicant is providing service to the Nagar Palika Parishad of Muni Ki Reti area. The service receiver being a Nagar Palika Parishad is the local municipal body of the Tehri Garwhal district of Uttarakhand which comes directly under the State Government of Uttarakhand. The Palika Parishad has a total of 11 wards. The receiver hence falls within the definition on Local Government Authority as defined under section 2(69) of the CGST Act & Clause 2(zf) of the said notification.

(3) The scope of work on page 12 of the RFP as attached in serial no. 8 of the paper book is reproduced below:-

“The scope of work shall broadly include solid waste management assistance in the jot lowing major areas which shall include, but not limited to:

a. Cleaning of ghats, sector areas and road, streets in 2-3 times in a day or as per the schedule informed/ prepared by the Client

b. Waste collection from bins with the help of wheel barrow/ E rickshaw and transfer to tippers

c. Cleaning of Nala/ Nali/ drains

d. Transfer of waste from tipper to refuse compactor and ultimately to designated waste treatment site with the help of Refuse Compactor

e. Disinfection and deodorization of bins after every cleaning

f. Placing line in 10 lt and 60 lt bins after each transfer of the waste to E-rickshaw or wheel barrow

g. Encouraging and guiding the visitors to throw their garbage only in bins

h. Encouraging and guiding the visitors to throw their facing mask only in designated bins not on road or common bins.

i. Any other cleaning required to be done as per the demand of the client

j. Providing protective gears, PPES shall be in contractor's scope

k. Get the attendance of the workers verified on daily basis by the Client

From the above scope, it is apparently clear that the work is of sanitation and solid waste management.

Thus, it can be said that the work being supplied to the Nagar Palika Parishad is covered under clause (f) of Section 234W of the Constitution of India.

(4) As demonstrated above in written submission, all three relevant requirements of the entry no. 3A of the said notification are fulfilled, hence the applicable rate of GST should be NIL.

Reliance is placed on the AAR ruling of various other states in similar matter.-

a. Maharashtra Authority for Advance Ruling - Application no. 32, order dated 17-03-2020 in the case of Core Projects Engineers and Consultants Private Limited

b. Gujarat Authority for Advance Ruling-Application no 2018/AR/3, order dated 01/05/2019 in the case of Sh. Jayesh Anil Kumar Dalal.

c. Goa Authority for Advance Ruling - Application no. 2018-19/1737, order dated 30/09/2019 in the case of M/s Sewarage & Infrastructural Development Corporation of Goa Ltd.

6. Accordingly hearing was fixed on 28.04.2021 but had to be postponed as offices were closed due to spread of COVID-19 pandemic. Later on hearing was again fixed on 29.07.2021 which was attended by Mr. Harshit Gupta, Chartered Accountant on behalf of the applicant. Mrs. Preeti Manral presented view of revenue as Concerned Officer. Mr. Harshit Gupta reiterated the facts as stated by the applicant in their application. Following the discussions held during the course of hearing Mr. Saumil Haresh Parekh, partner of the applicant firm has given an affidavit stating therein that:-

1. It is being clarified that the contract for supplying of manpower for sanitation and cleaning service having value of ₹ 65,95,540/- was the sole contract awarded to the entity. It is further be clarified, that this work was not a part of any other larger contract but an independent and complete work in itself Thus, the value of tender may be considered as above for calculation of the limit of 25% of goods value in accordance with entry no. 3 A of Chapter 99 as mentioned in Notification No. 12/2017 Central Tax (Rate) dated 28h June 2017.

2. During the hearing we were enquired as to whether any vehicles were also supplied Since the tender required supplying of drivers. We hereby clarify that the current work was in relation to the Maha Kubh Mela held in the months of March and April 2021 The government had set up a specific body lead by the Mela Adhikari which was given a budget to organise the Mela. The vehicles were procured centrally by the Mela Adhikari and handed over to various Nagar Parishads and Palikas including Muni Ki Reti - Nagar Palika Parishad Since, the running and management of the vehicles was independent responsibility of each Nagar Palika/ Parishad, the manpower for the same was to be arranged by such Palikas and Parishads. Almost all such manpower requirement was for a limited period of time, hence the drivers were taken on contract basis through manpower supply agencies. Thus it may be noted that the sole responsibility of the supplier was that of manpower while the vehicles were provided by the receiver of service.

DISCUSSION & FINDINGS:

1. We have gone through the application filed by the applicant for Advance ruling and the supporting documents submitted by them as well as oral submission made by the Authorised Representative of

the applicant, Mr. Harshit Gupta, Chartered Accountant, at the time of personal hearing held on 29.07.2021 and affidavit filed by the applicant on 30.07.2021. We have also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law.

2. 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.

3. Now we proceed in the instant case. On going through the Letter of Award dated 25.07.2021 we find that the contract pertains to the execution of Supplying Manpower for Managing Solid Waste at Muni ki Reti-Dhalwala in Kumbh Mela Area during the Haridwar Kumbh 2021 for which contract amount was ₹ 65,95,540/- inclusive of ₹ 11,75,532/- payable against safety kits to be worn by the manpower supplied by the applicant for their own safety.

4. As per the affidavit dated 30.7.2021 submitted by the applicant, it is observed that the specific work of the applicant was that they had to supply drivers to run and operate vehicles provided by the service receiver. In other words the applicant has supplied only manpower in the form of drivers but goods i.e. vehicles in the instant case, were not provided by the applicant for execution of service contract.

5. The applicant in their submissions are treating the safety kits/ protective gears as 'goods' used in the provision of manpower service. But safety kits worn by their drivers are not vehicles as drivers can use only vehicles in performing their specific work.

6. As per Section 2 of the CGST Act, 2017, "Composite supply" and 'goods' are defined as follows:-

(30)- "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

(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;

From the above definition of, "Composite supply", we can see that to fulfil the criteria of being a "Composite supply" there must be two or more naturally bundled goods or services or both or any combination thereof which can be supplied in conjunction with each other. But in the instant case only drivers with protective gears were supplied by the applicant. Further 'goods' are defined as every kind of movable property as relevant in the instant case.

7. In the instant case the applicant has arranged only drivers to the service recipient and no movable property was supplied alongwith them. In the instant case only vehicle can be the movable property to be supplied alongwith. drivers as the drivers can use only vehicle and nothing than that. Safety kits/ protective gears are not separate goods to be used in driving the vehicles. These safety kits were made mandatory as a precautionary measures for the safety of manpower due to COVID pandemic during Kumbh Mela 2021. Even in the scope of work mentioned in the RFP provided by the applicant it

is clearly mentioned that “j. Providing protective gears, PPES shall be in contractor's scope i.e. these protective gears are not covered under the scope of work. These safety kits are not required in normal situation and therefore cannot be termed as 'goods' supplied during the course of supply of service.

8. Therefore service of manpower supplied by the applicant does not fall under the definition of “Composite supply of Goods and Service” given at Sl. No. 3 A of Chapter 99 as mentioned in Notification No. 12/2017 - Central Tax (rate) dated 28th June 2017 as amended vide Notification No. 2/2018 - Central Tax (rate) dated 25th January 2018.

9. Now we come to the question whether Nagar Palika Parishad, Muni Ki Reti, Dhalwala, Tehri Garhwal is a local authority or not. “Local Authority” is defined under Section 2(69) of the CGST Act, 2017 as follows:-

(69)- “local authority “ means:-

(a) a 'Panchayat ' as defined in clause (d) of article 243 of the Constitution;

(b) a 'Municipality ' as defined in clause (e) of article 243P of the Constitution;

(c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;

(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;

(e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;

(f) a Development Board constituted under article 371 [and article 371J]8 of the Constitution; or

(g) a Regional Council constituted under article 371A of the Constitution;

In view of Article 243P of the Constitution, Nagar Palika Parishad, Muni Ki Reti, Dhalwala is covered under the definition of 'Municipality'. Article 243P of the Constitution is reproduced as below:

Article 243P in The Constitution of India: Definitions:

In this Part, unless the context otherwise requires,-

(a) Committee means a Committee constituted under article 243S;

(b) “district” means a district in a State;

(c) “Metropolitan area” means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be a Metropolitan area for the purposes of this Part;

(d) “Municipal area” means the territorial area of a Municipality as is notified by the Governor;

(e) “Municipality” means an institution of self-government constituted under article 243Q;

(f) "Panchayat" means a Panchayat constituted under article 243B;

(g) "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

Constitution of Municipalities is described under Article 243 Q in The Constitution of India which is reproduced as below:-

(1) There shall be constituted in every State,-

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part: Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, "a transitional area", "a smaller urban area" or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

Composition of Municipalities is also described under Article 243R in The Constitution of India as follows:-

(1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2) The Legislature of a State may, by law, provide-

(a) for the representation in a Municipality of,-

(i) persons having special knowledge or experience in Municipal administration;

(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal

(iii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;

(iv) the Chairpersons of the Committees constituted under clause (5) of article 243S:

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) the manner of election of the Chairperson of a Municipality.

Since Nagar Palika Parishad, Muni Ki Reti, Dhalwala has 11 wards and looks after municipal work of Rishikesh city covered in its municipal area hence it satisfies all the above factors of being a municipality therefore it falls under the definition of "Local Authority".

10. The applicant also wants to know from this Authority as to whether their service is covered under the "function entrusted to a Municipality under article 243 W of the Constitution. Under Article 243W of the Constitution of India, the following functions are entrusted to a municipality:-

(a) Urban planning including town planning.

(b) Regulation of land-use and construction of buildings.

(c) Planning for economic and social development

(d) Roads and bridges.

(e) Water supply for domestic, industrial and commercial purposes.

(f) Public health, sanitation conservancy and solid waste management.

(g) Fire services,

(h) Urban forestry, protection of the environment and promotion of ecological aspects.

(i) Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.

(j) Slum improvement and upgradation.

(k) Urban poverty alleviation.

(l) Provision of urban amenities and facilities such as parks, gardens, playgrounds

(m) Promotion of cultural, educational and aesthetic aspects.

(n) Burials and burial grounds: cremations, cremation grounds; and electric crematoriums.

(o) Cattle pounds; prevention of cruelty to animals

(p) Vital statistics including registration of births and deaths.

(q) Public amenities including street lighting, parking lots, bus stops and public conveniences.

(r) Regulation of slaughter houses and tanneries.

From the website of Nagar Palika Parishad, Muni Ki Reti, Dhalwala, Request For Proposal (RFP) and Letter of Award (LOA) issued by Nagar Palika Parishad, Muni Ki Reti, Dhalwala, we find that the said Nagar Palika Parishad is engaged in the municipal work like Sanitation work of the various places of its municipal area, sewerage treatment and solid waste management etc. These works are covered at clause (f) under Article 243 W of the Constitution of India. As per LOA, the applicant has been awarded work for supplying manpower for managing solid waste at Muni ki Reti, The applicant supplied the manpower for the said work which is entrusted to Nagar Palika Parishad, Muni Ki Reti, Dhalwala under

Article 243W of the Constitution of India. Therefore supply of manpower for this particular purpose of managing solid waste is also covered in relation to the “function entrusted to a Municipality under article 243W of the Constitution of India”.

11. The last question raised by the applicant is whether the said contract is exempt from Goods and Service Tax in accordance with notification number 12/2017 - Central Tax (rate) dated 28th June 2017 as amended by Notification No. 2/2018 - Central Tax (rate) dated 25th January 2018. We have already discussed in the foregoing paras that supply of manpower is not covered under Entry No.3A of Chapter 99 as mentioned in Notification No. 12/2017 - Central Tax (rate) dated 28th June 2017 as amended vide Notification No. 2/2018 - Central Tax (rate) dated 25th January 2018. However, we further find that Entry No.3 of Notification No. 12/2017 - Central Tax (rate) dated 28th June 2017 covers the following service:-

“Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243 W of the Constitution.”

In the instant case, the applicant has provided only manpower without any goods for completing the work entrusted under article 243W of the Constitution to Nagar Palika Parishad, which is a local authority, therefore we find that the contract of supplying manpower for managing solid waste is duly covered under Entry No.3 of Chapter 99 mentioned in Notification No. 12/2017 - Central Tax (rate) dated 28th June 2017 and therefore exempted from payment of GST.

RULING

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Uttarakhand State Goods and Services Tax Act, 2017)

- 1) The contract for supply of manpower for managing solid waste does not come under the definition of “Composite supply of Goods and Service” at Entry No. 3A of Chapter 99 as mentioned in notification number 12/2017 - Central Tax (rate) dated 28th June 2017 as amended by Notification No 2/2018 - Central Tax (rate) dated 25th January 2018.
 - 2) Nagar Palika Parsihad, Muni ki Reti, Dhalwala is covered under the definition of “local authority” in view of Section 2(69) of the CGST Act, 2017.
 - 3) The service of supplying of manpower for managing solid waste is covered under the “Function entrusted to a Municipality under article 243 W of the Constitution”.
 - 4) The contract of supplying of manpower to Nagar Palika Parishad, Muni Ki Reti, Dhalwala for managing solid waste is exempt from Goods and Service Tax in accordance with Entry No.3 of Notification No. 12/2017 - Central Tax (rate) dated 28th June 2017 as amended.
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Citations: in 2022 (1) TMI 1107 - AUTHORITY FOR ADVANCE, UTTARAKHAND

1. [2020 \(7\) TMI 227 - AUTHORITY FOR ADVANCE RULING, MAHARASHTRA](#)
2. [2019 \(10\) TMI 756 - AUTHORITY FOR ADVANCE RULING, GOA](#)
3. [2019 \(8\) TMI 1220 - AUTHORITY FOR ADVANCE RULING, GUJARAT](#)