



**RAJASTHAN AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX**

**KAR BHAWAN, AMBEDKAR CIRCLE, NEAR
RAJASTHAN HIGH COURT
JAIPUR – 302005 (RAJASTHAN)**



ADVANCE RULING NO. RAJ/AAR/2019-20/16

J.P.Meena Additional Commissioner	:	Member (Central Tax)
Hemant Jain Joint Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s Rajasthan Rajya Vidyut Prasaran Nigam Limited, 1, Vidyut Bhawan, Janpath, Jaipur, Rajasthan 302005
GSTIN of the applicant	:	08AABCR8312A1ZT
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	(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; (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.
Date of Personal Hearing	:	17.07.2019
Present for the applicant	:	Shri Vikash Gupta, C.A. & Shri Virendra Pariwal, C.A. (Authorised Representatives)
Date of Ruling	:	29.07.2019

Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.



- *At the outset, we would like to make it clear that the provisions of both the CGST Act and the RGST 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 provision under the RGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / RGST Act would be mentioned as being under the "GST Act".*
- The issue raised by *M/s Rajasthan Rajya Vidyut Prasaran Nigam Limited, 1, Vidyut Bhawan, Janpath, Jaipur, Rajasthan 302005* (hereinafter the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2) (b), (c) & (g) given as under :
 - (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;
 - (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.
- Further, the applicant being a registered person (GSTIN is 08AABCR8312A1ZT as per the declaration given by him in Form ARA-01) the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. Based on the above observations, the applicant is admitted to pronounce advance ruling.

1. SUBMISSION AND INTERPRETATION OF THE APPLICANT:

- The applicant is a company registered under the companies act 1956 vide registration no 17-016485 of 2000-2001(CIN No. U40109RJ2000SGC016485) with its registered office at *Vidyut Bhawan, Janpath, Jaipur, Rajasthan 302005*. It was established



on 19 July 2000 by Government of Rajasthan under the provisions of the Rajasthan Power Sector Reforms Act, 1999 as the successor company of erstwhile Rajasthan State Electricity Board (RSEB).

- Under the provision of the Electricity Act, 2003, RVPN has been declared as State Transmission Utility (STU) by Government of Rajasthan. As per section 40 of The Electricity Act, 2003, the duty of a transmission licensee is to build, maintain and operate an efficient, coordinated and economical inter-State transmission system or intra-State transmission system. As the RVPN is a transmission licensee and being an owner of its transmission system, the exclusive right of modification/augmentation/shifting/additions to its transmission system (*hereinafter referred as Deposit Work*) remains with RVPN. Further, section 34 of Electricity Act 2003 deals with 'Grid Standards' and it stipulates that every transmission licensee shall comply with such technical standards, of operation and maintenance of transmission lines, in accordance with the Grid Standards, as may be specified by the Central Electricity Authority. Relevant extracts of aforesaid provisions of the Electricity Act 2003 are as under:-

- Section 40 - Duties of transmission licensees

It shall be the duty of a transmission licensee-

- a) to build, maintain and operate an efficient, coordinated and economical inter-State transmission system or intra-State transmission system, as the case may be;
- b) to comply with the directions of the Regional Load Dispatch Centre and the State Load Dispatch Centre as the case may be;
- c) to provide non-discriminatory open access to its transmission system for use by-



- (i) any licensee or generating company on payment of the transmission charges; or
- (ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:

- Section 34 - Grid Standards

Every transmission licensee shall comply with such technical standards, of operation and maintenance of transmission lines, in accordance with the Grid Standards, as may be specified by the Authority.”

- As a transmission licensee, RVPN is required to develop transmission system in the State of Rajasthan and provides the pathway for power within whole of Rajasthan. RVPN owns, builds, maintains and operates the high-voltage electric transmission system that helps to keep the lights on, businesses running and communities strong. RVPN also owns the shared generating projects as representative of erstwhile RSEB. The main source of revenue of RVPN is the Transmission Charges as per tariff decided by the Rajasthan Electricity Regulatory Commission (RERC), which are recovered from the State DISCOMS and other customers against services of Transmission of electricity through the Transmission system. The transmission system so developed is accounted for as Fixed Assets in the books of RVPN to be depreciated over a useful life as per RERC Tariff Regulations. Simultaneously the Transmission charges are recovered as per Tariff approved by the RERC against services of Transmission of electricity through the Transmission system. In terms of GST Notification No. 12/2017 Central Tax (Rate)

dated 28th June 2017, as amended, the services of transmission of Power by an electricity transmission utility are subject to NIL rate of GST.



- In addition to the principal activity of providing services of Transmission of electricity, the applicant is also providing services in the form of Deposit Works for various consumers/intending agencies, which comprise deposit works to the existing transmission system of the applicant. Sometimes additions are made to the existing transmission system of the applicant or the existing system is modified/ augmented/ shifted on the specific request of the consumer/intending agency, which is termed as 'Deposit Works' by the applicant. The consumer/intending agency asks for the addition to the transmission system of the applicant generally for the places where such transmission system does not exist or some time asks for modification/shifting of transmission system from one place to another as per their specific requirements. As discussed aforesaid, as per Regulatory requirement of Electricity Act 2003, since the exclusive right of deposit work to the applicant's transmission system remains with the applicant and it has also to comply with the technical Grid standards of operation and maintenance of transmission lines specified by the Central Electricity Authority, the deposit work to the applicant's transmission system is carried out on the request of consumer/intending agency under two methods/options, i.e. either whole work is executed by the applicant or the whole work is executed by the consumer/intending agency under the supervision of the applicant.
- As per Order No. RVPN/AAO/F&R/F. 2 (Pt.-X) /D.28 dated 08/05/2019 (F&R No. 1277) (copy attached), the applicant



issued instructions for deposit works of consumer/ intending agency under both options, in which the details for procedure of cost estimation, applicable supervision charges and procedure for settlement of final accounts etc. are given. As per the said order, consumer/ intending agency on the applicant's supervision basis is permitted to execute the deposit works to the transmission system of the applicant. The Order also states that the work executed under the deposit work by consumers/ intending agencies under supervision of the applicant shall become part of the applicant's transmission system.

- Under both options the ownership of the transmission system after execution of deposit works shall remain with the applicant in the capacity of a State transmission licensee as per the provisions of the Electricity Act 2003. In case of services of deposit works, the cost of services is calculated by the applicant as per the estimation methodology which includes Hard cost (material & labour), overhead charges, other charges etc. Under the deposit works, the applicant is facilitating the transmission system for the consumers/intending agencies against recovery of the amount as per approved estimation methodology/calculation mechanism. For facilitating such deposit work to the transmission system on the specific request of the consumers/ intending agencies, the applicant generally charges the following amount as a consideration:

- Charges for modification/ augmentation/ shifting/ additions to transmission system – These are the cost incurred under deposit works requiring modification/ augmentation/ shifting/ additions to the transmission system.



- Supervision Charges
- Shut down charges
- Modification/augmentation/shifting/additions to the applicant's Transmission System on the request of consumers/intending agencies is carried out by adopting two options/methods:-

1. When whole work is done by the applicant itself at the requirement/ instance of the consumer/intending agency.

In this case the whole cost is incurred by the applicant and such cost including other charges/overheads plus GST is recovered by the applicant from the consumer/ intending agency. Being a transmission licensee, the ownership of the transmission system requiring modification/ augmentation/ shifting/ additions remains with the applicant even though the cost/charges are borne by the intending agency/consumer. The applicant being the owner of such transmission system is accounting in its books by creating Asset on one hand and Income on the other hand.

2. When work is to be done at the requirement/ instance of the consumer/ intending agency on supervision basis, i.e. work is got done by the consumer/intending agency itself under the supervision of applicant.

Under this option the whole expenditure is directly incurred by the consumer/ intending agency itself, however, such consumer/intending agency is responsible for getting the design/drawings approved from the applicant for material/work and to arrange for inspection of material at manufacturer's site, if



required by the applicant. Under this option the consumer/intending agency is required to pay supervision charges to the applicant calculated at fixed % on the total cost estimate and shutdown charges with GST. A demand note is also raised for GST on total cost estimate, i.e. on the value of asset/infrastructure built/modified by the consumer/intending agency itself by treating the amount incurred by it as value of supply of service in accordance with Section 15(2) (b) of the GST Act 2017.

- The deposit works of Transmission system on supervision basis generally involves following actions:-
 - a. All work is supervised by the competent team of RVPN.
 - b. The work has to be got done as per the norms of the RVPN.
 - c. The Consumer/Indenting agency is responsible for getting the design/drawings approved from RVPN for material/work and shall arrange for inspection of material at manufacturer's site, if required by RVPN.
 - d. In case of work involving modification/shifting of the existing Transmission Asset/Infrastructure, the new transmission asset/infrastructure is built/created first at a particular trench (where modification is required) so that the electricity supply in the related areas is not affected. After completion of such work of new transmission asset/infrastructure, shutdown (of electric flow) takes place for disconnecting old line at a particular trench (where modification is required) and connecting new line. The old asset/Infrastructure (Line) is then dismantled. Therefore, practically new asset/infrastructure is created even in case of shifting/modification. The applicant also remains the owner of the dismantled material/scrap.
 - e. Being a transmission licensee under the Electricity Act



2003, the applicant will be the owner of the asset/infrastructure built/modified even though the cost/charges are borne by the intending agency/consumer.

- f. Therefore, under both the methods/options, the ownership of the asset/infrastructure built/modified remains with the applicant only is being a Transmission Licensee under the Electricity Act 2003. The only procedural difference in the two methods/options is that in the first option, the complete deposit works are executed directly by the applicant with recovery of costs as per cost estimate with taxes and in the second option the work is got executed by the consumer/intending agency under supervision of the applicant. The cost is directly incurred by the consumer/intending agency, still the applicant is exclusively liable and responsible for modification/alteration of the transmission infrastructure as per Electricity Act 2003 so as to comply with the grid standards and that's why the work is mandatorily to be executed under the supervision of the applicant. Thus according to section 15(2) (b) of GST Act, 2017, the cost of such asset/infrastructure incurred by the consumer/intending agency is to be included in the value of supply. However, certain consumers / intending agencies are of the view that GST should not be charged by the applicant on the cost incurred by customer/intending agency directly.

2. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT:

- Whether facilitating the execution of works requiring *modification/ augmentation/ shifting/ additions to the transmission system* of RVPN at the specific request of the consumer/intending agency under Deposit Work is a 'Supply' in terms of Section 7 of the CGST Act, 2017?



- If the Deposit Work as aforesaid is a 'Supply', what shall be the value of the supply in terms of Section 15 of the GST Act, 2017 in the event of :
 - a. Work executed by RVPN itself.
 - b. Work executed by the consumer/intending agency under supervision of RVPN.
- What would be the applicable GST tax rate on the above supply?

3. PERSONAL HEARING

In the matter personal hearing was granted to the applicant on 17.07.2019 at Room no. 2.29 NCRB, Statue Circle, Jaipur. On behalf of the applicant Shri Vikash Gupta, C.A. and Shri Virendra Pariwal, C.A. (Authorized Representatives) appeared for PH. During the PH, they reiterated the submissions already made in the applications and requested for early disposal of the application.

4. COMMENTS OF THE JURISDICTIONAL OFFICER

The jurisdiction officer (State Tax, Special Circle-1, Zone-III, Sambhagiya Kar Bhawan, Jhalana Institutional Area, Jaipur, Rajasthan 302004) has submitted his comments vide letter dated 03.07.2019 and stated that,

- a. *Since the taxable person is executing works requiring modification/ augmentation/ shifting/ additions to the transmission system for the consumer and cost or charges are collected from the consumer and the above activity is being carried out in the course of business i.e. the transmission of power to the consumer, it would be covered under the scope of sub-section (1) of section 7 of the RGST Act, 2017 as supply of services.*
- b. *Value of supply in case: a) works executed by RVPN itself shall as per sub-section 1 of Section 15 of RGST Act, 2017*



would be transaction value, which is the price actually paid or payable for the said supply. b) Work executed by the consumer/intending agency under supervision of RVPN shall as per sub-section 1 of Section 15 of RGST Act, 2017 would be transaction value which is the price actually paid or payable for the said supply to the intending agency whether by the consumer itself directly because it is immaterial who makes payment but actually work is executed on behalf of RVPN who is solely responsible to provide the above said service as per Electricity Act, 2003.

- c. Since the execution of works requiring modification/augmentation/shifting/additions to the transmission of RVPN falls under the category of works contract, the supply is of services and accordingly the applicable GST tax rate would be equal to the rate as applicable on the supply of services.

5. FINDINGS, ANALYSIS & CONCLUSION:

- a. We observe that, the applicant is engaged in providing services/facilitation to customers/intending agencies under Deposit Works to the RVPN's transmission system in two options. Under the first option where complete work is executed by the applicant itself for customer/intending agency, complete cost incurred by the applicant (comprising of material cost, labour charges, overhead and other charges) is recovered from the consumer/intending agency along with GST. Under the second option, the customer/intending agency executes the work itself under the supervision of the applicant.
- b. While going through the submissions, we find that as per section 40 of Electricity Act 2003, the duty of transmission licensee is to build, maintain and operate an efficient, coordinated and



economical transmission system. Further as per section 34, every transmission licensee is required to comply with the technical grid standards, of operation and maintenance of transmission lines as specified by the Central Electricity Authority. As the applicant is a State transmission licensee under the Electricity Act 2003, therefore it owns the transmission system/infrastructure with exclusive right and responsibility of its deposit work of transmission lines.

- c. When deposit work is done by the consumer/intending agency itself under the supervision of the applicant. Under this option the consumer/intending agency is required to pay supervision charges to the applicant calculated at fixed % on the total cost estimate and shutdown charges along with GST. A demand note by the applicant is raised for GST on total cost estimate, i.e. on the value of deposit work by the consumer/intending agency itself by treating the amount incurred by it as value of supply of service in accordance with Section 15(2)(b) of the GST Act 2017. Being a transmission licensee under the Electricity Act 2003, the applicant will be the owner of the asset/infrastructure built/modified even though the cost/charges are borne by the intending agency/consumer. Thereby, as per the terms of RVPN Order No. RVPN/AAO/F&R/F. 2 (Pt.-X) /D.28 dated 08/05/2019 (F&R No. 1277), the asset/infrastructure built/modified by the intending agency/consumer under supervision of the applicant is required to be transferred to applicant and any expenditure or taxes incurred or to be incurred by the applicant is to be borne by the consumer/intending agency. In this transaction, though the expenditure in actual is incurred by the consumer/intending agency but the applicant being the owner of the asset/infrastructure under Regulations, account it in its books by creating Asset on one hand and Income on the other hand as a 'Consumer Contribution'.



In other words we observe that even though the expenditure and the work in actual is done by the consumer / intending agency but the same will be treated as the work has been done by the applicant.

- d. Therefore, under both the methods/options, the ownership of the asset/infrastructure built/modified remains with the RVPN only. It is also pertinent to mention here that both these cases are transactions of supply of pure services and there is no supply of goods. The only procedural difference in the two methods/options is that in the first option, the complete deposit works are executed directly by RVPN with recovery of costs as per cost estimate plus taxes and in the second option the work is got executed by the consumer/intending agency itself (by incurring costs directly) under the supervision of RVPN with payment of supervision & other charges with taxes along with tax on the value of asset/infrastructure built/modified by the consumer/intending agency itself, by treating it as value of supply of service in accordance with Section 15(2)(b) of the CGST Act 2017.
- e. The term 'supply' has been defined in Section 7 of GST Act, 2017 and it includes all forms of supply (goods or services) and includes agreeing to supply when they are for a consideration and in the course or furtherance of business. It specifically includes *sale, transfer, barter, exchange, license, rental, lease or disposal*. For a transaction to qualify as 'supply', it is essential that the same is 'in the course or furtherance of business'. For the purpose of transaction to be covered under the "Scope of Supply" under Section 7(l)(a) of GST Act, 2017, following four components are important:



- There must be any one of the forms of supply, involved, viz. of sale, transfer, barter, exchange, license, rental, lease or disposal.
- Such supply should be for a consideration.
- It should be made by a person (supplier).
- It should be in the course of or in furtherance of business.

In the instant case, the transaction of facilitating the execution of deposit works to the applicant's transmission system at the specific request of the consumer/intending agency is included under the 'scope of supply' in terms of section 7 of GST Act, 2017 as the same fulfills all the essential ingredients of 'supply' as it is a *supply of service in the form of facilitation*, further there is a consideration as the construction activities carried out by the customer / intending agency will ultimately be the property of the applicant. Also the applicant by facilitating the access to its transmission system becomes the supplier of services and the activities are duly in the course of furtherance of business. Thus all the ingredients of section 7(1)(a) are present to be categorized the transaction as supply of services.

Considering the fact that the ownership of asset remains with the applicant, it is evident that the execution of works requiring deposit works is a facilitation for the access/use of such transmission system and thus such facilitation is a 'supply' of services.

- f. Further act of facilitating the execution of deposit work falls under the term 'to do an act' as specified in clause (e) of para 5 of Schedule II referred in Section 7 to the GST Act 2017. Same is reproduced as under:-

Section 7

(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.

Schedule II (Section 7): Activities or transactions to be treated as supply of goods or supply of services:

Para 5, clause (e) - agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; shall be treated as supply of service.

Thus in our view the act of facilitating the execution of works requiring modification/ augmentation/shifting/additions to the applicant's transmission system are a 'supply' of services.

- g. In a contract of supply of services, there are two parties, i.e. supplier of services and recipient of services. In respect of supply of goods or services, three methods of payment have been considered- by way of money, goods in kind, services in kind. Thus, consideration includes the payment in money, payment in kind through goods, and payment in kind through provision of services.

In the instant case, as per applicant's view, the applicant is the supplier and the consumer/intending agency is the recipient of service.

- h. In the instant case, the services of facilitating the deposit work to the applicant's transmission system on specific request of the consumer/intending agency for a consideration is subject to charge of GST as the following conditions are satisfied –





- (i) Services are provided by one person (RVPN) to another person (consumer/intending agency).
- (ii) Services are not in the exempted list.
- (iii) Services are provided in taxable territory.

For this service of facilitating the recipient, the applicant is receiving the consideration from intending agency/consumer in three components:-

- supervision charges (in cash);
- shutdown charges (in cash); and
- ownership of asset created due to deposit work (in kind/barter - the cost thereto is directly incurred by the consumer/intending agency and practically new asset/infrastructure is created even in case of modification/ shifting as discussed aforesaid).

In case this deposit work is to be executed directly by the applicant, the consideration to be received from the consumer/ intending agency would be total cost estimate (including overhead & other charges) with GST (i.e. in cash).

- i. Section 15 of the GST Act, 2017 deals with valuation of supply of goods and services. Valuations under the GST law refer to '*value of taxable supply*'. The value of a supply of goods or services shall be the *transaction value*, that is the price actually paid or payable for the said supply of goods and/or services where the Supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. The value of supply shall include amount that the applicant is liable to pay but which has been incurred by the recipient, by reason of, or in connection with the new infrastructure created.



In the present case where the deposit work is undertaken by the consumer/intending agency under supervision of the applicant, the cost is directly incurred by the consumer/intending agency, still the applicant is exclusively liable and responsible for modification/alteration of the transmission infrastructure as per Electricity Act, 2003 so as to comply with the grid standards and that's why the work is mandatorily to be executed under the supervision of applicant. Thus as per the above discussions, since the applicant is liable and responsible for such work, therefore, according to section 15(2)(b) of GST Act, 2017, the cost of such asset/infrastructure incurred by the consumer/intending agency is to be included in the value of supply.

Therefore, in view of the above discussion, the transaction of facilitating the execution of deposit works to the applicant's transmission system at the specific request of the consumer/intending agency amounts to 'supply' in terms of section 7 of GST Act, 2017 as the same fulfills all the essential ingredients of 'supply', more particularly when the ownership of asset remains with the applicant, the deposit work is a facilitation for the access/use of such transmission system and thus in our view such facilitation amounts to 'supply' of services.

- j. Therefore, in addition to supervision/shutdown charges, by virtue of section 15(2) (b) of GST Act, 2017 the cost incurred by the consumer/intending agency, for creating the infrastructure is also required to be included in the transaction value and to be considered as value of supply for the purpose of levy of GST.

When the applicant incurred such cost, then GST would automatically be leviable on total transaction value without any recourse to section 15(2)(b) of GST Act, 2017.



Accordingly, even when the cost of deposit work to the applicant's transmission system is incurred by the consumer/intending agency itself, such cost is also required to be included in the transaction value and to be considered as value of supply for the purpose of levy of GST in terms of section 15(2)(b).

- k. In our view, the transaction of facilitating the execution of works (Deposit Work) to the applicant's transmission system at the specific request of the consumer/intending agency is covered under the 'scope of supply' in terms of section 7 of CGST Act, 2017.

As the deposit work itself is a supply, in the event of work executed by the applicant itself, 'Value of Supply' in terms of Section 15 of the GST Act 2017 shall be the total cost estimate (including overhead & other charges) as per section 15 of the CGST Act, 2017.

In the Second Option, Work executed by the consumer/intending agency under supervision of RVPN 'Value of Supply' in terms of Section 15 of the GST Act 2017 shall comprise:-


- (i) Supervision charges;
- (ii) Shutdown charges;
- (iii) The cost directly incurred by the consumer/intending agency.

Further, we observe that Services provided by the applicant to the consumer/intending agency falls under HSN/SAC 998631 and will attract GST @ 18% (SGST 9% + CGST 9%), as per Annexure to Notification No. 11/2017 Central Tax (Rate) dated 28th June 2017 (as amended).


6. In view of the foregoing, we rule as follows:-

RULING

- Facilitating the execution of work (Deposit Work) by the applicant to the consumer/intending agency is covered under the 'scope of supply' in terms of section 7 of GST Act, 2017.
- In both the cases as mentioned by the applicant, value shall be the transaction value, that is the price actually paid or payable in terms of Section 15 of the GST Act 2017.
- The rate of GST shall be 18% (SGST 9% +CGST 9%).


J.P. MEENA 29/7/19
Member
(Central Tax)




HEMANT JAIN 29/7/19
Member
(State Tax)

SPEED POST

M/s Rajasthan Rajya Vidyut Prasaran Nigam Limited,
1, Vidyut Bhawan, Janpath,
Jaipur, Rajasthan 302005

F.No. AAR/RVPNL/2019-20/116-19 Dated: 30-07-2019

Copy to:-

1. Commissioner, State Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
2. Commissioner, Central Tax, Jaipur Commissionerate, NCRB, Statue Circle, Jaipur, Rajasthan 302005.
3. Deputy Commissioner, State Tax, Special Circle-1, Zone-III, Sambhagiya Kar Bhawan, Jhalana Institutional Area, Jaipur, Rajasthan 302004.