

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH
4, Vibhuti Khand, Gomti Nagar, Lucknow

PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING U/S.
98 OF THE GOODS AND SERVICES TAX ACT, 2017

Sub:- GST ACT, 2017 – Advance Ruling U/s 98 – liability to tax under GST Act in respect to application dated 02.05.2019 from M/s Uttar Pradesh Power Transmission Corporation Limited, Lucknow, Uttar Pradesh – Order- Reg.

1) M/s Uttar Pradesh Power Transmission Corporation Limited, Shakti Bhawan, 14-A, Ashok Marg, Lucknow, Uttar Pradesh - 226020 (here in after called the applicant) is a registered assessee under GST having GSTN: 09AAACU8823E1Z9.

2) The applicant is notified as the state transmission utility of Uttar Pradesh and entrusted with the business of transmission of electrical energy to various licensees within the State of Uttar Pradesh.

3) The Applicant has submitted application for Advance Ruling dated 02.05.2019 enclosing duly filled Form ARA-01(the application form for Advance Ruling) along with annexure and attachment.

4) The Applicant in his application sought clarification and Advance Ruling as follows : –

- i. Whether the Deposit Work undertaken by Applicant is an integral part of supply of services of transmission or distribution of electricity?
- ii. Whether the Deposit Work undertaken by Applicant is ancillary to the principal supply of transmission or distribution of electricity?
- iii. Whether the exemption given under Entry No. 25 of the exemption notification for services by way of transmission or distribution of



electricity by an electricity transmission or distribution utility will be applicable on Applicant?

iv. Whether ITC is available to the applicant in undertaking "Deposit Works" i.e. creating infrastructure for electricity transmission?

5) The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter, which were received in the office vide letter C. No. 01/CGST & C.Ex./Div Lko-1/Misc Corr/2018-19/2869 dated 03.07.2019.

SUBMISSION OF THE APPLICANT

6) The applicant made the following submissions:

6.1) The applicant has been notified as State Transmission Utility of Uttar Pradesh entrusted with the business of transmission of electrical energy to various licensees within the State of Uttar Pradesh. The applicant has been incorporated with the main objective to acquire, establish, construct, take over, erect, lay, operate, run, manage, hire, lease, buy, sell, maintain, enlarge, alter, renovate, modernize, work and use electrical transmission lines and/or network through extra high voltage, high voltage and associated sub-stations, cables, wires, connected with transmission ancillary services, telecommunication and telemetering equipment in the State of Uttar Pradesh.

6.2) In terms of Electricity Act 2003, if any infrastructure is required to be enhanced then, the distribution licensee is entitled to recover the cost from consumer for the same. The Applicant, on request of the distribution company, would lay down the required infrastructure and would recover the cost from the consumer directly. This activity of the Applicant has been referred as Deposit Work. The above cost is not made part of tariff charges or transmission charges for the sole reason that this relates to individual person or class of persons which can be easily identified and hence, this recovery is made directly from such persons or class of persons. In case such cost is considered while determining the tariff charges then, this will spread over to all the recipients which may not be appropriate for other consumers who have not used the infrastructure developed in the instant case.

6.3) The applicant collects the actual cost for undertaking the said work from the customer. Apart from this, the applicant also recovers supervision charges for executing and monitoring the entire transmission work.



6.4) Entry No. 25 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 exempts the services of transmission or distribution of electricity by an electricity transmission or distribution utility. The deposit work undertaken by the applicant falls within the ambit of "Transmission or distribution of electricity".

6.5) Providing electric line and electric plant are elements of service which are naturally bundled in the ordinary course of business, with the principal service of transmission of electricity which gives the bundle its essential character. Consequently, the supplies are composite in nature and transmission of electricity is the principal supply. Accordingly, the exemption given to transmission or distribution of electricity will also be extended to Deposit Work undertaken by the Applicant.

6.6) If it is held that the Deposit Work undertaken by the Applicant is a taxable supply under GST regime still, whether the Applicant shall be entitled to claim input tax credit ("ITC") related to goods and services used in the course of undertaking this work.

7) The applicant was granted a personal hearing on 24.07.2019. Shri Kapil Kumar Sharma, Advocate Authorized representatives on behalf of applicant appeared for hearing.

During the personal hearing they submitted a detailed written submission and stated that as per their understanding Non tariff charges are integral part of transmission service provided by them. It was also submitted that the issue of Credit or Exemption may also be considered while taking the decision.

DISCUSSION AND FINDING

8) We have gone through the submission made by the applicant and examined the detailed explanation submitted by them. We observe that the question sought by the applicant is-

- a. Whether the Deposit Work undertaken by Applicant is an integral part of supply of services of transmission or distribution of electricity?
- b. Whether the Deposit Work undertaken by Applicant is ancillary to the principal supply of transmission or distribution of electricity?



- c. Whether the exemption given under Entry No. 25 of the exemption notification for services by way of transmission or distribution of electricity by an electricity transmission or distribution utility will be applicable on Applicant?
- d. Whether ITC is available to the applicant in undertaking "Deposit Works" i.e. creating infrastructure for electricity transmission?

9) As regard to the term composite supply, we observe that, for a supply to be consider as a composite supply, its constituent supplies should be so integrated with each other that one is not supplied in the ordinary course of business without or independent of the other. In other words they are naturally bundled. The concept of the "Naturally Bundled", used in Section 2(30) of the CGST Act 2017, lays emphasis on the fact that the different element in a composite supply are integral to the overall supply and if one of the element is removed the nature of supply will be affected. However here it is seen that the deposit work under taken by the appellant are not directly related with the transmission of electricity and transmission of electricity may take place with or without depositary work. Further the appellant, in its submission, have also submitted that the amount for the depositary work is collected only from those customers who have availed the said service and the said amount is recovered as non tariff charge. This itself shows that the transmission of electricity is independent of depositary work under taken by the appellant.

10) The applicant has placed reliance on the decision of Hon'ble Gujarat High Court in the case of Torrent Power Ltd. Versus Union of India reported at 2018 (17) G.S.T.L. 183 (Guj). In this regard we observe that the department is contemplating to file SLP before the Hon'ble Supreme Court of India against the said order.

11) Further, vide the Circular No. 34/8/2018-GST dated 01.03.2018, issued vide F. No. 354/17/2018, as regard to the activities carried by the DISCOMS against recovery of charges from consumers under State Electricity Act,, it has been clarified that:

"Service by way of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST under Notification No. 12/2017-C.T. (R), Sl. No. 25. The other services such as,:-

- i. Application fee for releasing connection of electricity;



ii. Rental Charges against metering equipment;

iii. Testing fee for meters/transformers, capacitors etc;

iv. Labour charges from customers for shifting of meters or shifting of service lines;

v. Charges for duplicate bill;

Provided by DISCOMS to consumer are taxable."

12) Therefore, in view of the clarification issued under the Circular No. 34/8/2018-GST dated 01.03.2018, issued vide F. No. 354/17/2018, and as discussed in the above para, it is observed that the deposit work under taken by the applicant are not an integral part of the supply of services of transmission or distribution of electricity and the applicant is not eligible to avail the exemption from levy of GST under Entry No. 25 of Notification 12/2017-Centra Tax (Rate) dated 28.06.2017 bearing description "Transmission or distribution of electricity by an electricity transmission or distribution utility" with respect to the non tariff charges recovered from their customers.

13) As regard to the question "whether ITC is available to the applicant in undertaking "Deposit Works" i.e. creating infrastructure for electricity transmission", we noticed that:

a. the Applicant, on request of the distribution company, would lay down the required infrastructure and would recover the cost from the consumer directly.

b. In the Annexure-II i.e. "Statement containing applicant's interpretation of Law and/or facts, as the case may be, in respect of the question(s) on which advance ruling is required" the applicant has itself admitted that they does not qualify to be eligible to claim ITC, however in the submission made by the applicant at the time of personal hearing, they have submitted that the deposit work under taken by them may qualify to be construction of immovable property, and the said constructed property will qualify to be plant and machinery hence they are eligible to claim input tax credit.

14) Here we notice that Section 17 of the CGST Act 2017, talks about the "Apportionment of credit and blocked credit" and as per Section 17(5):



“(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely :—

...

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.”

15) Further The expression “plant and machinery” is defined in Explanation to Section 17(6) of CGST Act, which is as under;

“Explanation- For the purposes of this Chapter and Chapter VI, the expression, “plant and machinery” means apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes-

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises”

16) From the above discussion we found that the immovable property created by the applicant does not falls under the category of “plants and machinery” therefore they are not eligible to claim Input Tax Credit.

In view of the above, both the members unanimously rule as under;

RULING

- i. Whether the Deposit Work undertaken by Applicant is an integral part of supply of services of transmission or distribution of electricity?



Ans: No.

- ii. Whether the Deposit Work undertaken by Applicant is ancillary to the principal supply of transmission or distribution of electricity?

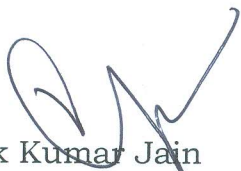
Ans: No

- iii. Whether the exemption given under Entry No. 25 of the exemption notification for services by way of transmission or distribution of electricity by an electricity transmission or distribution utility will be applicable on Applicant?

Ans: No

- iv. Whether ITC is available to the applicant in undertaking "Deposit Works" i.e. creating infrastructure for electricity transmission?

Ans: Not eligible to claim Input Tax Credit



Vivek Kumar Jain
Member of Authority for Advance
Ruling



Sanjay Kumar Pathak
Member of Authority for Advance
Ruling

To,

M/s Uttar Pradesh Power Transmission Corporation Limited,
Shakti Bhawan, 14-A,
Ashok Marg, Lucknow,
Uttar Pradesh - 226020



AUTHORITY FOR ADVANCE RULING -UTTAR PRADESH

Order No. 37

Date: 08.08.2019

Copy to -

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & CX, Lucknow, Uttar Pradesh.
4. The Assistant Commissioner, CGST & Central Excise, Division-I, Lucknow, Uttar Pradesh;
5. Through the Additional Commissioner, Commercial Tax, Lucknow, Uttar Pradesh to jurisdictional tax assessing officers.

