

TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Constituted under Section 99 of Tamilnadu Goods and Services Tax Act 2017)

A.R.Appeal No. 01/2021/AAAR

Date: 30.03.2021

BEFORE THE BENCH OF

1. Thiru G.V. KRISHNA RAO, MEMBER

2. Thiru M. A. SIDDIQUE, MEMBER

ORDER-in-Appeal No. AAAR/12/2021 (AR)

(Passed by Tamilnadu State Appellate Authority for Advance Ruling under Section 101(1) of the Tamilnadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamilnadu Goods & Services Tax Act 2017("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the Order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.
2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only
 - (a). On the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling;
 - (b). On the concerned officer or the jurisdictional officer in respect of the applicant.
3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.
4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void sb-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

Name and address of the appellant	M/s Tamil Nadu Generation and Distribution Corporation Limited 144, Anna Salai, NPKRR Maaligai, Chennai-600002
GSTIN or User ID	33AADCT4784E1ZC
Advance Ruling Order against which appeal is filed	Order No.14 /AAR/2020 dated 20.04.2020
Date of filing appeal	12.01.2021
Represented by	Thiru.V.Ravindran, Advocate, Ms.R.Emerald Jeeva, FC Taxation
Jurisdictional Authority-Centre	Chennai North Commissionerate
Jurisdictional Authority -State	The Assistant Commissioner (ST), Anna Salai Assessment Circle.
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Payment of Rs. 20000/- made vide challan No.IOBA21013300056523 dated 08.01.2021

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

The subject appeal has been filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 by Tvl.Tamil Nadu Generation and Distribution Corporation Limited (hereinafter referred to as 'Appellant'). The appellant is registered under GST vide GSTIN 33AADCT4784E1ZC. The appeal is filed against the Order No. 14/AAR/2020 dated 20.04.2020 passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2.1 The appellant has stated that they are engaged in the generation and distribution of electricity. The Applicant is a subsidiary of Tamil Nadu Electricity Board Limited (TNEB Ltd), which is 100% owned by Government of Tamil Nadu. TNEB Ltd is an investment Company only, no other business transactions are being

carried out. TANGEDCO is an Electricity Distribution utility under Electricity Act, 2003. As per the provisions under the Section 131 of the Electricity Act, 2003, TNEB was restructured on 1.11.2010 into TNEB Limited; Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO); and Tamil Nadu Transmission Corporation Limited (TANTRANSCO). TANGEDCO is in the service of Generating and Distributing (sale of) Electricity in the state of Tamil Nadu & TANTRANSCO Ltd is in the business of Transmission of Electricity. TANGEDCO has its own stations for the purpose of generating electricity like Thermal Stations Ennore (ETPS), Mettur I (MTPS-I), Mettur II (MTPS-II), North Chennai I (NCTPS-I), North Chennai II (NCTPS-II), Tuticorin (TTPS)), Hydro Stations (Kundah, Kadamparai, Erode and Tirunelveli), Non-Conventional Energy sources (Wind Energy, Solar Energy etc.) and Gas Turbine Stations (Basin Bridge (BBGTPS), Thirumakottai (Kovilkalappal) Power Station (TKGTPS), Kuttalam Power Stations (KGTPS), Valuthur Power Station (VGTPS)) and has been distributing the generated electricity to various consumers throughout the State of Tamil Nadu, since the time it has been established.

2.2 TANGEDCO LTD. & TANTRANSCO LTD. are two subsidiary companies of TNEB Ltd. (Holding company), and both are registered utilities for distribution and Transmission of Electricity respectively under the Electricity Act, 2003. TANGEDCO and TANTRANSCO enter into transactions between them in the course of generation, transmission, and distribution of electricity in Tamil Nadu.

2.3 The Appellant has sought Advance Ruling on the following questions

- (i) GST applicability on the transactions between TANGEDCO Ltd. & TANTRANSCO Ltd
- (ii) Applicability of GST on Deposit Contribution Works
- (iii) Whether TANGEDCO Ltd can be considered a "Government Entity"
- (iv) Applicability of GST on Transmission Charges for Natural Gas.

3.1 The AAR pronounced a ruling that

1. GST is applicable on the following as the same are 'supply of goods' to TANTRANSCO:

- a. Supply of Operation and maintenance materials used in the regular day to day functioning; and
- b. Transfer of capital Assets

2. GST is applicable on the deployment of employees to TANTRANSCO as the same is supply of Service
3. GST is not applicable on the following as the same are transaction in money:
 - a. Transactions of physical fund flow between the companies by the way of repayment of existing loan, availment of fresh loans, etc. on actual basis without any interest component on such fund flow.
 - b. Income such as transmission charges, Scheduling and Systems Operating charges, Reactive Energy Charges, etc. received from open access consumers by the applicant and adjusted through payable to TANTRANSCO.
4. The exemption under Sl.No. 25 of Notification No. 12/2017-C.T.(Rate) dated 28.06.2017 as amended is not applicable to the below stated transactions between TANGEDCO Ltd and TANTRANSCO Ltd, namely-
 - a. Supply of Operation and maintenance materials used in the regular day to day functioning as the same is 'Supply of Goods';
 - b. Transfer of capital Assets as the same is declared as 'Supply of Goods';
 - c. Deployment of Employee under their role and related fund flow- not a service involving distribution of electricity exempted in the said entry;
5. On the non-payment of long term open access transmission charges payable to TANTRANSCO, no ruling is offered as the applicant is not the person supplying the service and Advance Ruling is a decision in relation to the supply undertaken by the applicant as per Section 95(a) of CGST/TNGST Act 2017.
6. Depository Contribution Works is classifiable under SAC 99873 and the applicable rate of tax is CGST @ 9% as per Sl.No. 25 of Notification No. 11/2017-C.T. (Rate) dated 28.06.2017 and SGST @ 9% as per Sl.No. 25 of Notification No. II (2)/ CTR/ 532(d-14)/2017 vide G.O. (Ms) No. 72 dated 29.06.2017 as amended and the same is not exempted.
7. TANGEDCO is a 'Government Entity' as defined under Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 as amended and 12/2017-C.T.(Rate) dated 28.06.2017 as amended by Notification No. 31/2017-Central Tax

(Rate) dated 13.10.2017 and Notification No. 32/2017- C.T.(Rate) dated 13.10.2017 effective from 13.10.2017

8. The applicability of GST on the 'Transmission Charges' billed by GAIL is not answered as not admitted, under sub-section (2) of section 98 of the CGST Act, 2017 and the TNGST Act, 2017 read with Section 95(a) of the Act.

4.1 Aggrieved by the above decision, the Appellant has filed the present appeal. The grounds of appeal are as follows:

1. **This appeal is filed against the ruling in 1,2,4, and 6 in the impugned ruling and the observation in the nature of ruling in paragraph 8.2.5 (though not finding a place in the final paragraph 12 of the impugned ruling).**

In respect of Ruling in Paragraph 12(1) of the AAR order, the reasoning of the AAR is untenable for the following grounds:

- i. While discussing levy of GST on electricity, the government has stated that electricity duty was in Schedule 7 of the Constitution (State List) and that the present value chain was exempt from tax (page 14 in the Minutes of the 5th GST Council Meeting held on 2-3 December 2016 - <http://www.gstcouncil.gov.in/sites/default/files/gst%20rates/Signed%20Minutes%20-%205th%20GST%20Council%20Meeting.pdf>). Therefore, the above activities which are in the value chain for electricity transmission and distribution are exempt from GST *i.e.*, beyond the purview of GST.
- ii. Notwithstanding the fact that the Central Government did not have powers to levy tax/duty on electricity, the historical exemption for electricity from service tax and central excise duty too validated the above position. Notification No. 45 ST dated 20.07.2010 directed that service tax payable on all taxable services relating to transmission and distribution of electricity provided by a person to any other person - upto 26.02.2010 for transmission, and up to 21.06.2010 for distribution - shall not be required to be paid. For the period after these dates, notifications 11 ST dated 27.02.2010 (for transmission), and 32 ST dated

22.06.2010 (for distribution) continued the respective exemptions. Board also issued a circular dated 07.12.2010 that such activity essential and having direct and close nexus with transmission and distribution of electricity is covered by the exemptions. The exemption to the entire value chain of transmission and distribution of electricity from GST because of the constitutional position has been stated in the minutes of the GST Council meeting cited above. During the period from 01.07.2012 to 30.06.2017, i.e. in the “negative list” based service tax regime too, the activities of transmission and distribution of electricity was kept under the negative list under Sec.66D (k) of the Finance Act, 1994.

- iii. Impugned ruling in paragraph 6.2 noted the appellant’s submission that *“Transmission and Distribution of Electricity’ exempted from GST is to be understood as comprehensive set of activities to achieve the objective of transmission and distribution of electricity and should not be vivisected and taxed to defeat the exemption.; Electrical energy is exempted from GST as “Supply of goods” as well; Therefore, any GST levy by vivisection of the comprehensive set of activities contributing to the achievement of ‘transmission and distribution of electricity’ in terms of the provisions of the Electricity Act 2003 would defeat the exemption”*. This position has to be understood in the backdrop of the constitutional position stated by the GST Council in its minutes above quoted.
- iv. The ruling is based on erroneous construction of the provisions cited in it – Section 7, and sub-sections 2(17) & 2(37) respectively for scope of supply, and definitions of the terms ‘business’ and ‘consideration’ – particularly the definition of the term ‘consideration’ *vis-à-vis* the given facts. Operation and maintenance materials used in the regular functions of the power utility such as power transformers, conductors, insulators, meter, underground cables drawn from TANGEDCO stores by TANTRANSCO and from GCC stores by TANGEDCO are treated as payable and receivable in respective entities’ books. “Consideration”

includes 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. The facts, on the other hand, are that the appellant and Tantransco drew from each other's stores and accounted such stores drawn as receivable / payable as the case may be.

- v. Construction of sub-station, Buildings, erection of transformers is being carried out by construction circles of either of the company on behalf of other company. Since TANTRANSCO has the general construction circles throughout Tamil Nadu certain specific capital expenditure i.e., Example-Construction of 33 KV Transformers is being done by TANTRANSCO. Very few assets transfers happen from TANGEDCO to TANTRANSCO. For Example 110 KV lines cables and networks 66 KV and above substations and its ancillaries. At the time of segregation of circles, the assets relating to TANTRANSCO may be identified and transferred to the related companies i.e., TANTRANSCO and vice versa. For dealing with this activity, the impugned ruling refers to Sl. No.4(a) in Schedule II. Schedule II read with section 7(1A) enables classification of an activity as supply of goods or service. This by itself does not lead to an activity being taxable supply as the transferee agents of the TNEB are functioning in a cohesive fashion putting their respective resources to the optimum use.
- vi. In both the above situations, all the above activities are in relation to transmission or distribution of electricity forming the value chain and which are beyond the purview of GST as pointed out *supra*.
- vii. In the above backdrop, the conclusion in paragraph 8.2 of the ruling that "8.2 On a joint reading of the above provisions it is evident that the exemption is only applicable to services involving distribution of electricity, maintenance of electric meters by a distribution utility" is incorrect. It omitted to note the value chain - by way of any supply whether goods are service - being

out of the levy of GST. The issue of the interpretation of the notification is further dealt with the grounds stated herein below.

2. **In respect of Ruling in paragraph 12(2), the following grounds have been submitted:**

- i. Paragraph 12(2) rules that '*GST is applicable on the deployment of employees to TANTRANSCO as the same is supply of Service*'.
- ii. The facts stated in the ruling are that, for the employees transferred from TANGEDCO to TANTRANSCO and vice versa, their outstanding liabilities are treated as payable and receivable in respective company accounts. Since the Final Transfer Scheme for employees has not yet been notified by the Government of TN, **all the employees are under the role of TANGEDCO** but utilization is depending upon the requirement of TANGEDCO and TANTRANSCO. The pay packages of the respective employees are similar and transactions between these companies are also common. Based on utilization of manpower in the respective company, the actual expenses on salary and its related allowance are also booked. While transfer of employees from one company to another company the advances to staff i.e., House Building Advance, Computer Advance, Vehicle Advance, Festival Advance, Education Advance which are all pending to be recovered in subsequent salary, such advances would be transferred to the respective companies, where the employees will join on transfer / promotion. Similarly, the General Provident Fund and Contributory Pension Scheme Fund balances of those transferred employees would also be transferred to the respective company books of accounts. All such transfers are accounted based on only actual values.
- iii. Above facts make it clear that the staff are deployed in an inter-miscible manner as Final Transfer Scheme for employees has not yet been notified by the Government of TN. Consequent to Tamil Nadu Electricity (Reorganisation and Reforms) Transfer Scheme, 2010

published by G.O.(Ms).No.100 dated 19.10.2010 in exercise of the powers conferred by sections 131 and 133 of the Electricity Act, 2003 and in terms of clause 6 of the said Scheme all personnel of the Board (excluding Chairman and Director of the Board) stood transferred to and absorbed in TANGEDCO (the appellant herein) on a provisional basis, subject to finalisation of Employee Transfer scheme by the State Government. The Tripartite Agreement envisaged under the said Scheme has not yet happened. In view of this background, the impugned ruling erred in construing the deployment of the employees of erstwhile TNEB by the newly created Tangedco - the appellant herein - as supply of manpower.

- iv. The impugned ruling, on the other hand, concluded in paragraph 7.3.4 thereof that *'It is stated that the services of employees in the Roll of the applicant, when utilized by TANTRANSCO, the salary, related allowance and other advances payable to such staff are accounted in the books of the applicant on actual values. The applicant and TANTRANSCO are two different persons. When the applicant extends the services of their employees to TANTRANSCO, and collect the considerations payable to such employees from TANTRANSCO, the said activity is a 'Supply of Service' and GST is applicable to this supply of service'*. Appellant does not render any service but that employees are transferred to Tantransco in terms of the above said Tamil Nadu Electricity (Reorganisation and Reforms) Transfer Scheme, 2010 as the Final Transfer Scheme for employees has not yet been notified by the Government of TN.
- v. Further conclusion in the impugned ruling that *"8.2.4 Movement of employees as discussed in Para 7.3.4 supra, is a supply of 'Manpower Service' and not a service involving mere distribution of electricity. The exemption at Sl.No. 25 of Notification No. 12/2017-C.T. (Rate) dated 28.06.2017, exempts only the services involving distribution of electricity and therefore the consideration received relating to deployment of services of employees to TRANTRANSCO are not exempted under Sl.No. 25 of Notification No.*

12/2017-C.T. (Rate) dated 28.06.2017 and are hence taxable" is also erroneous for the reason detailed above. The activity did not amount to manpower supply but staff deployment under the said Scheme of reorganisation.

- vi. Even otherwise the value chain cited being out of the purview of GST would equally apply here also.

3. **In respect of Ruling in paragraph 12(4), the appellant has stated as follows:**

- a) The ruling in paragraph 12(4) is that –
"4. The exemption under Sl.No. 25 of Notification No. 12/2017-C.T.(Rate) dated 28.06.2017 as amended is not applicable to the below stated transactions between TANGEDCO Ltd and TANTRANSCO Ltd, namely-
 - a. Supply of Operation and maintenance materials used in the regular day to day functioning as the same is 'Supply of Goods';*
 - b. Transfer of capital Assets as the same is declared as 'Supply of Goods';*
 - c. Deployment of Employee under their role and related fund flow-not a service involving distribution of electricity exempted in the said entry;"*
- b) This is a ruling from the standpoint of the entry in the cited notification. The non-taxability of these items is already stated in the grounds above.
- c) Paragraph 8.1 quotes the provisions relating to exemption. It also quotes in the beginning the appellant's clarification that *"... transactions being in the course of generation, transmission and distribution of electricity by an electricity transmission or distribution utility is exempt under Sl.No. 25 of Notification No. 12/2017-C.T. (Rate) dated 28.06.2017"*. In this regard, it may be noted that in terms of G.O.(Ms).No.100 dated 19.10.2010 – clause 11(6) – being Tamil Nadu Electricity (Reorganisation and Reforms) Transfer Scheme, 2010 – it is stated that *"In terms of section 14 read with section 131 of the Act, the Transferee concerned shall be a deemed Licensee for the activities and functions of the Board transferred to them which require licenses, under the provisions of the Act"*. Under Schedule A Part III "Functions and duties of TANGEDCO", appellant is distribution

licensee and has to undertake the electricity sub-transmission distribution and retail supply in the State of Tamil Nadu or outside. As appellant's functions, among other things, encompass sub-transmission distribution, appellant is covered by service code 99691 in general and both the sub-codes 996911 and 996912. The said Sl. No.25 is for the code 9969 in general and its amplitude cannot be curtailed. It would encompass all supplies subsumed and consumed in the process of transmission and distribution of electricity. Therefore, the appellant's plea noted in paragraph 6.2 of the impugned ruling that "*...any GST levy by vivisection of the comprehensive set of activities contributing to the achievement of 'transmission and distribution of electricity' in terms of the provisions of the Electricity Act 2003 would defeat the exemption*" was well-taken and the AAR erred in not finding merit in it, in the light of the facts and law stated above.

4. **In respect of Ruling in paragraph 12(6), the following submissions have been made by the appellant:**

The ruling in paragraph 12(6) is that –

"6. Depository Contribution Works is classifiable under SAC 99873 and the applicable rate of tax is CGST (4, 9% as per Sl.No. 25 of Notification No. 11/2017-C.T. (Rate) dated 28.06.2017 and SGST C 9% as per Sl.No. 25 of Notification No. II (2)/ CTR/ 532 (d-14)/2017 vide G.O. (Ms) No. 72 dated 29.06.2017 as amended and the same is not exempted."

It is noted position of fact in paragraph 9.1 of the ruling that "*... the connection with electrical works, operation and maintenance of distribution are part of the supply of electricity which is exempted; the value of supply as per Section 15 of the GST Act shall include incidental expenses and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of or before delivery of goods or supply of services; that the charges are part and parcel of electricity supply under the Electricity Act 2003 and therefore claims as exempted. From the write-up furnished, under DCW, the consumer makes a request to TANGEDCO for*

shifting of a services, line, Structure and equipment, the cost of which is to be borne by the consumer as per clause 5 of TNERC code”.

The ruling observes in paragraph 9.2 that “DCW involve shifting service/line, Structure and equipment as per the request of the consumer, the charges for which are billed separately from the consumer. The works undertaken are Installation of transformers/lines and other accessories and are in the nature of installation of the structure and equipments classifiable under SAC 99873.”

The ruling relies on CBIC circular extracted in paragraph 9.3 of the ruling. It brushed aside the Gujarat H.C. striking down the above circular. The ruling states that SLP has been filed against the H.C. decision.

The ruling provides no answer to appellant’s reliance on Section 15 which is noted in the ruling. Per section 15, the value of the exempted supply of electricity and its distribution would automatically include the value of the incidental expenses and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of or before delivery of goods or supply of services. Thus, the ruling given is erroneous.

5. **In respect of the Ruling in paragraph 8.2.5 but not finding place in the final paragraph 12**

This ruling is that “8.2.5 Activity of payment of expenses incurred by TANTRANSCO relating to vehicle hire charges, maintenance of sub-stations, salary payments, etc and paid by TANGEDCO & accounted as receivable in the books of the applicant as discussed in Para 7.3.5 supra. The said activity is not one involving services of distribution of electricity and therefore the exemption under Sl. No. 25 of Notification No. 12/2017-C.T. (Rate) dated 28.06.2017 is not available for the stated transactions.”

It is noted position in Sl. No.6 in paragraph 5.2 that *“TANTRANSCO’s expenses like vehicle hire charges, maintenance of sub stations, salary payments are made by TANGEDCO, etc are accounted as receivable in the books of TANGEDCO.”*

Contrarily, paragraphs 7.3.5 in the impugned ruling (and quoted in 8.2.5) is not related to the above.

TANTRANSCO's expenses stated above which are met by appellant and shown as receivable is money transaction and is not a taxable service. It did not amount to appellant rendering service to TANTRANSCO.

PERSONAL HEARING:

5.1 The Appellant was granted a personal hearing as required under law before this Appellate Authority on 5th March 2021. The Authorized representatives Thiru.V.Ravindran, Advocate and Thirumathi .R.Emerald Jeeva, Chief Financial Controller /General of the appellant company appeared for hearing. They furnished a synopsis and stated that

1.On movement of employees-when an employee is transferred to TANTRANSCO, the person is transferred to rolls of TANTRANSCO and the expenses are not booked as receivables which was agreed to be established factually as it is against the ruling of lower authority.

2.Transmission & Distribution definition is not defined under GST and the definition as per the Electricity Act which encompasses the Capital assets claimed as a part of the definition 'Transmission' and sought to submit to make an additional submission.

5.2 The appellants sent their additional submissions vide their mail dated 18th march 2021 as below with references to the Rulings 1 & 2 of the Advance Ruling Authority.

1. Regarding Ruling under Para 12(1):- GST is applicable on the following as the same are 'supply of goods' to TANTRANSCO:

a. Supply of Operation and maintenance materials used in the regular day to day functioning; and

b. Transfer of capital Assets

a) The above transactions occur to effect the transmission and distribution of electricity. 5th GST Council meeting had taken note of the fact that "Taxes on the consumption or sale of electricity" is in State List and stated that, "electricity duty was in Schedule 7 of the Constitution (State List) and that the present value chain was exempt from tax". The exemption notifications treat the supply of

electricity as supply of the goods – “*electrical energy*” sl. No.104 in 2-CTR/28 June 2017 – and supply of service – “Transmission or distribution of electricity by an electricity transmission or distribution utility” sl. No.25 12-CTR/28 June 2017.

- b) Historical value chain exemption in the activities of transmission and distribution of electricity in view of the Constitutional position is the crucial backdrop to this entry of GST levy exemption.
- c) Paragraph 2(z) in the notification 2-CTR/28 June 2017 defines that “*electricity transmission or distribution utility*” means the Central Electricity Authority; a State Electricity Board; the Central Transmission Utility or a State Transmission Utility notified under the Electricity Act, 2003 (36 of 2003); or a distribution or transmission licensee under the said Act, or any other entity entrusted with such function by the Central Government or, as the case may be, the State Government”.
- d) The activities of transmission and distribution are, therefore, to be understood and comprehended as envisaged in the Electricity Act. If the Electricity Act is not referred to, then, the understanding of the defined terms ‘transmission utility’ and ‘distribution licensee’ would be lost – which is not permissible. Even otherwise, Electricity Act is the statutory authority for the meaning of the terms “transmission” or “distribution” of electricity.
- e) Section 2(17) of the Electricity Act states that “*distribution licensee*” means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply”.
- f) Section 2(19) states that “*distribution system*” means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers”.
- g) Section 2(25) states that “*electricity system*” means a system under the control of a generating company or licensee, as the case may be, having one or more–
 - (a) generating stations; or
 - (b) transmission lines; or

(c) electric lines and sub-stations,

and when used in the context of a State or the Union, the entire electricity system within the territories thereof”.

- h) *section 2(72) states that “transmission lines” means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a sub-station, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works”.*
- i) *Section 2 (74) states “transmit” means conveyance of electricity by means of transmission lines and the expression “transmission” shall be construed accordingly;*
- j) *Section 2(77) states that “works” includes electric line, and any building, plant, machinery, apparatus and any other thing of whatever description required to transmit, distribute or supply electricity to the public and to carry into effect the objects of a licence or sanction granted under this Act or any other law for the time being in force”.*
- k) *Section 42(1) states that, “It shall be the duty of a distribution licensee to develop and maintain an efficient, coordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act”.*
- l) *Part VIII of the Act deals with “works” of a licensee. In terms of section 67(1), “A licensee may, from time to time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area carry out works such as–*
 - (a) to open and break up the soil and pavement of any street, railway or tramway;*
 - (b) to open and break up any sewer, drain or tunnel in or under any street, railway or tramway;*
 - (c) to alter the position of any line or works or pipes, other than a main sewer pipe;*

(d) *to lay down and place electric lines, electrical plant and other works; (e) to repair, alter or remove the same;*

(e) *to do all other acts necessary for transmission or supply of electricity*".

m) The definition 2(z) in the notification is inter-linked to the definitions, and entrusted functions, and duties under the Electricity Act..

n) Therefore, the exemption entry "*Transmission or distribution of electricity by an electricity transmission or distribution utility*" has necessarily to be read with the provisions of the Electricity Act.

o) Only an affirmative answer arises in the facts of the case for the question *whether the activity is one amounting to transmission or distribution of electricity by an electricity transmission or distribution utility in terms of the Electricity Act*. The fact that the entities of transmission or distribution share a storage accounting for the utilization of the materials or one entity doing the construction / erection for the other to reap the situational advantage of one over the other does not oust the application of the exemption entry. The activities in question fundamentally remain to be ones amounting to transmission or distribution functions carried out by a "transmission or distribution utility" – which is exempted.

p) There is nothing in the exemption entry to suggest that one utility providing the materials or doing the "works" for the other would cease to be transmission or distribution function. Entities exchanging materials and services remain to be transmission / distribution utility and the activity amounts to transmission or distribution function assigned in terms of the Electricity Act. This situation is covered by the words of the exemption entry.

q) Transfer of operation and maintenance materials used in the regular functions of the power utility such as power transformers, conductors, insulators, meter, and underground cables is directly essential for transmission, or distribution of electricity. So also is the construction of sub-station, buildings, erection of transformers is being carried out by construction

circles of either of the entity on behalf of other entity e.g. construction of a few assets and their transfers happen from TANGEDCO to TANTRANSCO e.g. 110 KV lines cables and networks 66 KV and above substations and its ancillaries.

r) One entity transferring the goods or doing the service for the other does not negate the exemption as both the entities are entrusted with the transmission or distribution function by the State Government.

s) The powers of taxation under the Constitution with exemption for the value chain noted in the GST Council, and the historical exemption under the service tax notifications emphasize the above position.

t) Various other definitions under Electricity Act, 2003, including those specifically highlighted above, would clearly show that transmission or distribution of electricity cannot be a stand-alone service activity, but has to inevitably involve electricity lines, which are inseparable aids to the above the service.

2.Regarding Ruling in paragraph 12(2):- GST is applicable on the deployment of employees to TANTRANSCO as the same is supply of Service.

Consequent to Tamil Nadu Electricity (Reorganization and Reforms) Transfer Scheme, 2010 published by G.O.(Ms.).No.100 dated 19.10.2010 in exercise of the powers conferred by sections 131 and 133 of the Electricity Act, 2003 and in terms of clause 6 of the said Scheme all personnel (excluding Chairman and Director of the Board) of the erstwhile Tamil Nadu Electricity Board constituted under section 5 of the Electricity (Supply) Act, 1948 stood transferred to and absorbed in TANGEDCO (the appellant herein) on a provisional basis, subject to finalization of Employee Transfer scheme by the State Government.

i) Since the Final Transfer Scheme for employees have not yet been notified by the Go TN. all the employees are under the role of TANGEDCO, but utilization is depending upon the requirement of TANGEDCO and TANTRANSCO. The pay packages of the respective employees are similar and transactions between

these two entities are also common. Based on utilization of manpower in the respective entity, the actual expenses on salary and its related allowance are also booked. While transfer of employees from one entity to another entity the advances to staff i.e., House Building Advance, Computer Advance, Vehicle Advance, Festival Advance, Education Advance which are all pending to be recovered in subsequent salary, such advances would be transferred to the respective entities, where the employees will join on transfer / promotion. Similarly, the General Provident Fund and Contributory Pension Scheme Fund balances of those transferred employees would also be transferred to the respective entity's books of accounts. All such transfers are accounted based on only actual values. As far as salary payments are concerned there are two method of salary payments for TANTRANSCO employees. In respect of nodal circles of TANTRANSCO, TANTRANSCO allots funds to 9 Nodal circles of TANTRANSCO. Salary is paid by TANTRANSCO and the expenses are debited in TANTRANSCO books of accounts.

ii) With respect to other EDCs where there is no bank accounts for TANTRANSCO, the payments for salary is made from TANGEDCO and the same is accounted as receivable from TANTRANSCO at actuals without any mark up or profit elements. Salary expenses are separately booked in the accounts of TANTRANSCO. Even the pension paid to the ex-employees of TANTRANSCO are booked as receivable from TANTRANSCO without any mark up or profit. Both the entities (Tangedco and Tantransco) have different PAN Nos. and are subject to separate assessment under the Income Tax Act, 1961. Since there is no mark up or profit element, AAR erred in saying that Appellant extends the services of their employees to TANTRANSCO and collects the considerations payable to such employees from TANTRANSCO and that it is subject to GST. Therefore, AAAR may kindly clarify that these payments are fund transfers and are dealings in money which are not subject to GST.

DISCUSSION & FINDINGS:

- 6.1 We have carefully considered the various submissions made by the appellant and the applicable statutory provisions and the case laws cited. We find that the appellant has mainly detailed the circumstances under which a service should be treated as integrally connected with another service, which is exempted and becomes an essential activity having direct and close nexus with the exempted activity so as to be bestowed with the same treatment as the exempted activity under GST.
- 6.2 The appellant cites the statement of the Secretary of GSTC in the meeting held on 2-3 December 2016 that electricity duty was in Schedule 7 of the Constitution (State list) and the present value chain was exempt from tax. The appellant has interpreted it as a value chain to mean the entire value chain of electricity transmission and distribution. The appellant has contended that therefore the entire value chain of electricity and transmission distribution are much beyond the purview of GST under the constitution. He has failed to note that it is only a statement of Secretary, GSTC and not the view of the council.
- 6.3 Electricity duty is a tax on consumption or sale of electricity and is levied under entry 53 of Part-II State list of Schedule 7 of the Constitution. Therefore, clearly the constitution leaves out only tax on consumption for sale of electricity from the purview of GST. The contention of the appellant is therefore rejected.
- 6.4 In respect of the contentions of the appellant against the rule in para 12(1) of the AAR order, the appellant has argued that supply of operation and maintenance materials used in regular day to day functioning and transfer of capital assets are activities in relation to transmission and distribution of electricity forming the value chain and is beyond the purview of GST. This view has already been rejected vide paragraph supra.
- 6.5 The appellant has sought that all the items pertaining to distribution of electricity are exempt from GST under Sl.No.25 of Notification No.12/2017.

6.6 Notification 12 notifies the list of services that are exempt from GST and has been issued in pursuance of the proviso in Section 11. Therefore, all entries in this notification deal only with services and not with goods. Entry No.25 under heading 9969 exempts transmission or distribution of electricity by an electricity transmission or distribution utility. Therefore, the essential requirements are the following:

(i) Supplier must be either transmission utility or distribution utility.

(ii) The supplier must supply either transmission service or service of distribution of electricity. It also follows that there must be a recipient to receive the services. The supply transaction must be between the utility and a recipient of either of these two services. It may be possible that a transmission utility may provide a distribution service to a recipient or a distribution utility may provide a transmission service to another recipient. A transmission service essentially requires conveyance of electricity by means of transmission lines. For this, Section 2 (74) of the Electricity Act may be referred as has been proposed by the appellant in his argument. Therefore, for making a supply of service to a recipient, the supplier must convey electricity for the recipient who must either be a generating company or a distribution company. In the present instance, TANGEDCO is not conveying electricity for TANTRANSCO. Clearly, TANGEDCO is not providing a transmission service to TANTRANSCO.

6.7 Section 2(17) of the Electricity Act defines distribution licensee as a licensee authorized to operate and maintain a distribution system for supply of electricity to consumers in his area of supply. Therefore, the output supply for distribution licensee is electricity to consumers in his area of supply which means that a distribution service from a distribution licensee can be received only by consumers of electricity in the area of supply of the distribution licensing. Operation and maintenance of a distribution system is only a process for delivery of the supply of electricity.

6.8 TANGEDCO is indisputably a generation company and a distribution utility. TANTRANSCO on the other hand is a transmission utility. It is not the case of the

appellant that the appellant company is providing transmission services to TANTRANSCO. The appellant contends that the various services extended to TANTRANSCO constitute distribution services. However, as already been stated above, distribution service can be supplied only to consumers in the area of supply of the licensee. Therefore, the services extended by TANGEDCO to TANTRANSCO cannot constitute distribution service.

6.9 With respect to deployment of employees to TANSTRANSCO from the appellant, as a matter of fact it has been averred by the appellant that there are two modes, one in which the employees deputed from the appellant to TANTRANSCO are paid by TANTRANSCO and the expenses are debited in that company's books of accounts only. The second mode involves where salary payments are made by the appellant and the same is accounted as receivable from TANTRANSCO. This distinction was not made during the time of hearing before the AAR. In our view, the second mode where the salary payments etc., are paid by the appellant company to the employees deputed to TANTRANSCO (as they are still under the rolls of the appellant) and is booked as receivables from TANTRANSCO, there is no reason to interfere with the AAR's order in para 7.3.4. However, where the employees are paid by TANTRANSCO themselves, there is no service involved in our considered opinion as they are fully under the control of TANTRANSCO only and deemed to be employees of TANTRANSCO for all purposes.

6.10 To this extent, the AAR's ruling is modified depending upon the factual matrix involved with respect to the particular employee, which will have to be determined by the assessing officer concerned.


6.11 The cases cited by the appellant in GST regime have not attained finality and cannot have precedence value. Further they are all distinguishable on both facts as well as law.

6.12 With respect to Deposit Contributory Works which include activities like shifting of service line, etc., we do not find any compelling reasons to differ with the ruling pronounced by the AAR.

7. In light of the above, we rule as under:

RULING

For reasons discussed above, we do not find any reason to interfere with the order of the Advance Ruling Authority in this matter except to the extent discussed in para 6.9. The subject appeal is disposed of accordingly.


(M.A. SIDDIQUE)
Principal Secretary/
Commissioner of Commercial Tax
Tamil Nadu/Member, AAAR.


(G.V. KRISHNA RAO)
Principal Chief Commissioner of
GST & Central Excise,
Chennai Zone/Member, AAAR.



To

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