

BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULINGS FOR  
THE STATE OF UTTARAKHAND GOODS & SERVICE TAX, E-BLOCK,  
NEHRU COLONY, DEHRADUN-248001

PRESENT:

Shri S.H Hasan (CGST Member)

Shri DILIP JAWALKAR (SGST Member)

The 29<sup>th</sup> day of March, 2019

Appeal No. UK/06/03-01-2019/18-19

|    |                               |  |
|----|-------------------------------|--|
| 1. | Name and Address of Applicant | M/S Uttrakhand Power Corporation Ltd.<br>Dehradun.                             |
| 2. | Appeal No/Date                | UK/06/03-01-2019/18-19   |
| 3. | Order No.                     | 07/18-19/29.03.19  |
| 4. | Jurisdictional Officer        | CGST Range-5, Dehradun Div. Dehradun<br>D C-5, State tax Department Dehra Dun. |
| 5. | Date of Personal hearing      | 28-03-2019   |
| 6. | Concerned Officer             | Smt Preeti Manral(Dc Tax Review State tax)                                     |
| 7. | Applicant Represented by      | Rajesh Gupta (F.C.A/L.L.B)   |
| 8. | Date of Reg.of Appeal         | 03-01-2019   |



## ORDER

### (Proceedings under Section 101 of the Central Goods and Service Tax Act, 2017 and Uttarakhand Goods and Service Tax Act, 2017)

The present proceedings are in consequence to a reference to the Appellate Authority for hearing and decision, by the Authority on Advance Rulings for the State of Uttarakhand, in terms of Section 98(5) of the Central Goods and Service Tax Act and Uttarakhand Goods and Service Tax Act, 2017 (hereinafter referred to as "the CGST Act and UKGST Act"), vide Ruling No-/2018-19 dated 20.11.2018 passed against application made by M/s Uttarakhand Power Corporation Ltd.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the UKGST 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 UKGST Act.

### BRIEF FACTS OF THE CASE

1. In the instant case the Party, M/s Uttarakhand Power Corporation Ltd., vide their application under sub-section (1) of Section 97 of the CGST/SGST Act, 2017 sought an Advance Ruling on the question of classification and rate of GST on various receipts received by the applicant on the count of distribution of electricity (as per Annexure-B of their application dated 23.08.2018 (received in the office of the Advance Ruling Authority for the State of Uttarakhand on 27.08.2018), the details of which are as under:

**TABLE-I**

| S.No | Nature of Sums Collected/ Receipt  | Basis for Collection/ Receipt  |
|------|--|--|
| 1.   | Charges for distribution and supply of electricity such as fixed charge, demand charge, energy charge, fuel charge adjustment, excess load demand charge, low power factor surcharge, low voltage surcharge/ high voltage rebate, wheeling charge, cross subsidy surcharge and additional surcharge etc. | Rate Schedule annexed with tariff order dated 21-03-2018.                              |
| 2.   | Delayed Payment Surcharge  | Rate Schedule: General Conditions of Supply annexed with tariff order dated 21-03-2018 |
| 3.   | Checking and testing of meters   | Schedule of Miscellaneous charges as annexed with tariff order dated 21-03-2018        |
| 4.   | Subsequent testing and installation other than initial testing   |  |
| 5.   | Disconnection and Reconnection of supply on consumers request or non-payment of bill   |  |
| 6.   | Replacement of Meters – Changing of position of meter board at the consumer's request  |  |



| S.No | Nature of Sums Collected/ Receipt   | Basis for Collection/ Receipt   |
|------|---|---|
| 7.   | Checking of Capacitors (other than initial checking) on consumer's request  |   |
| 8.   | Charge for providing copy of MRI summary report   | Rate Schedule RTS: 2 (Non-Domestic) and RTS: 5 (LT & HT Industry) annexed with tariff order dated 21-03-2018                |
| 9.   | Maintenance charge for public lamps   | Rate Schedule RTS: 3 (Government Public Utilities) annexed with tariff order dated 21-03-2018                               |
| 10.  | Advance deposit by consumer with application for temporary LT / HT connection.  | Regulation 2.2 (1) of the UERC (The Electricity Supply Code) Regulations, 2007  |
| 11.  | Charge for special meter reading on the request of the Consumer   | Regulation 3.1.2 (7) of the UERC (The Electricity Supply Code) Regulations, 2007  |
| 12.  | Assessment against theft and unauthorized use of electricity  | Chapter – 5 of the UERC (The Electricity Supply Code) Regulations, 2007.  |
| 13.  | Service line charges and overhead line charges for release of new LT connection and for enhancement / reduction in sanctioned load. | UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2013.                                 |
| 14.  | Security deposits at the time of release of new LT connection and for enhancement in sanctioned load.                               | UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2013.                                 |
| 15.  | Recovery of cost of burnt meter from the Consumer.  | Regulation 3.1.5 of UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2013.             |
| 16.  | Registration cum processing fee.  | Regulation – 4 (2) of the UERC (Release of new HT & EHT Connections, Enhancement and Reduction of Loads) Regulations, 2008. |
| 17.  | Works charges for release of new HT/EHT connection and for enhancement / reduction in sanctioned load.                              | UERC (Release of new HT & EHT Connections, Enhancement and Reduction of Loads) Regulations, 2008.                           |
| 18.  | Security deposits at the time of release of new HT/ EHT connection and for enhancement in sanctioned load.                          | UERC (Release of new HT & EHTConnections, Enhancement and Reduction of Loads) Regulations, 2008.                            |
| 19.  | Charges for shifting of service lines and meters etc.   | Sometimes consumers request for these services.   |

*cm*



*[Signature]*



| S.No | Nature of Sums Collected/ Receipt   | Basis for Collection/ Receipt   |
|------|---|---|
| 20.  | Recovery of damage to material and dismantling charges on expiry of temporary connection.                 | Regulation 2.2 (8) of the UERC (The Electricity Supply Code) Regulations, 2007.                             |
| 21.  | Replacement of Meters – Installation of meter and its subsequent removal in case of Temporary Connections | Schedule of Miscellaneous charges as annexed with tariff order dated 21-03-2018                             |
| 22.  | Supervision charges   | Regulation 7 of UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2013. |

Therefore, in terms of said Section 97(2)(a) & (e) of CGST/SGST Act, 2017, the said application was admitted.

2. Following the personal hearing given to the applicant on 30.10.2018, On perusal of Notification No.12/2017-Central Tax (Rate) dated 28th June, the Authority observed that intra state transmission or distribution of electricity by an electric transmission or distribution utility is covered under service code 9969 and attracts GST @ "nil".

However, on the issue of the other services rendered during the course of transmission or distribution of electricity by the applicant, both the authorities held divergent views.

(A) **Per Shri Vipin Chandra:-** It is an admitted fact that the service by way of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST vide notification No. 12/2017-CT (R) dated 28.06.2017. As regard to the issue of other services as mentioned in Annexure A & B of the application, I find that the Government has issued a Circular 34/8/2018-GST dated 01.03.2018 on this matter and the relevant portion of the same is reproduce below:

**Circular 34/8/2018-GST dated 01.03.2018**

| S.No. | Issue   | Clarification   |
|-------|---|---|
| 4     | (1) Whether the activities carried by DISCOMS against recovery of charges from consumers under State Electricity Act are exempt from GST? | <p>1) 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-CT (R), Sl. No.25. The other services such as, -</p> <p>i. Application fee for releasing connection of electricity;</p> <p>ii. Rental Charges against metering equipment;</p> <p>iii. Testing fee for meters/transformers, capacitors etc.;</p> <p>iv. Labour charges from customers for shifting of meters or shifting of service lines;</p> <p>v. charges for duplicate bill;</p> <p>provided by DISCOMS to consumer are taxable.</p> |



On perusal of the said circular I observe that the other support 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 distribution companies to consumer are taxable and for rendering the said services the applicant is required to pay GST @ 18%. Further the services mentioned in Annexure-B of the application filed by the applicant, I observe that all the services are taxable & attract GST @ 18% except for services mentioned at serial no. 1, 2, 12, 14 and 18 of the said Annexure-B. Hence, in my view, the issue is no more res-integra.

(B) Per **Shri Amit Gupta** —as regard to services mentioned in Annexure-B of the application filed by the applicant, all the services were taxable. He further observed that the said services were support services to transmission or distribution of electricity and should be treated as incidental to transmission and distribution of electricity and the same shall be covered under composite supply. To bolster his point further he took reference from the following judgments:

(a) **NOIDA POWER CO. LTD. vs COMMISSIONER OF C. EX., NOIDA [2014 (033) STR 0383 (Tri. ~ Del.)]**

“for the purpose of billing the consumer for electricity consumed it is essential to install the electricity meter having capacity to withstand the load provided to the customer; any activity or service like erection, commissioning and installation of transmission towers and meters as also technical testing and analysis would constitute the activity of transmission and distribution by the service provider to the service receiver; and such service would be squarely covered under exemption provided under this notification.”

(b) **Paschimanchal Vidyut Vitran Nigam Ltd. Versus Commissioner of Central Excise, Meerut [2012 (028) ST 0412 (Tri. - Del.)]**

On careful reading of the aforesaid notification we find that this notification exempts the services relating to transmission and distribution of electricity provided by the service provider to the service receiver from the incidence of levy of service tax. Admittedly, the assessee is engaged in transmission and distribution of electricity after purchasing the same from U.P. Power Corporation Limited. Since the assessee is selling electricity to the consumer, in our view for bill the consumer for electricity consumed it is essential to install the electricity meter having capacity to withstand the load provided to the consumer. Thus, any activity or service like erection, commissioning and installation of meters as also technical testing and analysis can easily be termed as the service relating to the transmission and distribution of electricity provided by the service provider to the service receiver. Thus, in our considered view such service, which is subject matter of this appeal, would be

~~squarely covered under the exemption provided under Notification referred to above.~~  
We may note that similar view was taken by the coordinate Bench of this Tribunal in the matter of M.P. Power Transmission Company Limited v. CCE, Bhopal [2011 (024) STR 0067 (Tri. - Del.)] in relation to interpretation of similar exemption Notification No. 11/2010-S.T., dated 27-2-2010 which is pari materia to the Notification No. 45/2010-S.T., dated 20-7-2010. In view of the discussion above, we do not find any merit in the appeal of the Department which is accordingly dismissed. The appeals filed by the assessee are allowed and the demand confirmed by the impugned order is set aside.

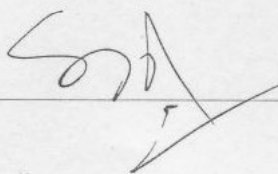
**RULING:-** In light of the aforementioned facts, the Advance Ruling Authority has ruled that the following services provided by UPCL, Dehradun are exempted from GST:

1. Charges for distribution and supply of electricity such as fixed charge, demand charge, energy charge, fuel charge adjustment, excess load demand charge, low power factor surcharge, low voltage surcharge/ high voltage rebate, wheeling charge, cross subsidy surcharge and additional surcharge etc.;
2. Delayed payment surcharge;
3. Assessment against theft and unauthorized use of electricity;
4. Security deposits at the time of release of new LT connection and for enhancement in sanctioned load;
5. Security deposits at the time of release of new HT/ EHT connection and for enhancement in sanctioned load;

But as regard to other services rendered by the applicant as detailed in Annexure-B, with both the members holding divergent views on the issues other than Sl. No. 1, 2, 12, 14 & 18 of Annexure-B, a ruling has been made, whereby, in terms of Section 98(5) of the Act *ibid*, a reference to the Appellate Authority for hearing and decision on said issue has been made.

#### PERSONAL HEARING

An opportunity for personal hearing was granted to the applicant on 28-03-2019 which was attended by Shri Rajesh Gupta (FCA/LLB) on behalf of Uttarakhand Power Corporation Ltd. In addition to reiteration of the points covered in the grounds of appeal, he filed written submissions. He further stated that all activities undertaken by them are ancillary to the distribution of electricity and hence exempted from payment of GST. In the pre GST era also, they were not paying any taxes. He also stated that the Board's circular dated 01-03-2018, has been struck down by the High Court of Gujarat. He therefore prayed that all the activities undertaken by them should be held non taxable.



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## DISCUSSION AND FINDINGS

We have gone through the ruling dated 20.11.2018, all the relevant records and submissions made by the applicant during personal hearing.

We find that both Ld AAR members are in agreement on some of the issues and have given unanimous ruling on those particular issues. We are in agreement with the reasoning and the rulings given on those issues and hence point nos. 1, 2, 12, 14 & 18 of Table-I above need no interference. We will confine ourselves to the issues on which the Ld. Members hold divergent views.

At the very outset we are in agreement with the reasoning and inference of Sri Vipin Chandra, Learned AAR and find that the issue is squarely covered by Board's Circular 34/8/2018-GST dated 01.03.2018, para 4 of which fully exempts Service by way of transmission or distribution of electricity by an electricity transmission or distribution utility. However, it has also specifically excluded from this exemption, certain other ancillary services which are not directly or closely related to the said service. Thus to determine the taxability of the issues enumerated in the Table-I above, we will be guided by the referred Board's circular. In short, all services which are directly or closely related to generation and distribution of electricity will be completely exempted and any other ancillary service (akin to the ones included in the exclusion clause of the said para 4 of the Board's referred circular, will be taxed at the appropriate prevailing rate. It was pointed out that the said clause of the circular has been struck down by Hon'ble Gujarat High Court, in an identical issue in the matter of Torrent Power Ltd. Vs UOI [Order dated 19.12.2018 in R/Special Civil Application No.5343 of 2018]. However, it has been ascertained that the order has not been accepted by the concerned Commissionerate and a proposal for filing an appeal has already been forwarded to the Board. Accordingly, the said decision of the Hon'ble High Court cannot be cited as a precedent in the present case since the issue has not reached finality.

## RULING

The Ruling of AAR is modified to the following extent-

- (i) In addition to services listed in serial nos. 1, 2, 12, 14 & 18, six other services listed at serial nos. 3, 10, 13, 17 and 21 (being directly or closely related to the main service of distribution of electricity) and serial no. 16 (mandatory requirement for obtaining electricity), are also fully exempt from GST.

- (ii) All other services as enumerated at serial nos. 4 to 9, 11, 15, 19, 20 and 22 of the Table-I above are ancillary in nature which are provided at specific request of the consumer and are not a compulsory service closely or directly related to generation or distribution of electricity. Hence, these services are leviable to GST at the prevailing rate of 18% (9% CGST + 9% SGST).

(S.H. HASAN)  
CGST MEMBER

(DILIP JAWALKAR)  
SGST MEMBER

I am directed to transmit herewith a certified copy of the order passed by the Appellate Authority for Advance Ruling for the State of Uttarakhand, Goods & Service Tax under Section 101 of the CGST/SGST Act 2017.

Copy To:-

927701 / 29-3-19

Handwritten: 29/03/19  
Registrar  
AAAR Uttarakhand  
अपीलीय प्राधिकारी

1. The Chief Commissioner, CGST, Meerut Zone, Meerut.
2. The Commissioner, CGST, Commissionerate Dehradun.
3. The Commissioner, SGST, Uttarakhand.
4. Members of Advance Ruling Authority.
5. Concerned Officer, State Tax, Dehradun.
6. Jurisdictional Officers.
7. Applicant M/s Uttarakhand Power Corporation Ltd. Dehradun.
8. Guard File.

