

Appellate Authority for Advance Ruling for Goods and Service Tax,

Uttar Pradesh

(Constituted under Section 99 of the Uttar Pradesh Goods and Service Tax Act, 2017)

Order No. 10/AAAR/____/ /20...

Date: 23rd.2020

Before the Bench of:-

Shri Karnail Singh, Member

Smt. Amrita Soni, Member

GSTIN Number	09AAACU8823E1Z9
Legal name of the Appellant	M/s Uttar Pradesh Power Transmission Corporation Ltd
Trade Name of the Appellant	M/s Uttar Pradesh Power Transmission Corporation Ltd
Registered address/Address provided while obtaining user ID	Shakti Bhawan, 14-A, Ashok Marg, Lucknow, Uttar Pradesh
Order of Advance Ruling Against which the appeal is filed	Order No. 37 dated 05.08.2019 issued by the Authority for Advance Ruling, Uttar Pradesh

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

The present appeal has been filed under Section 100 of the Central Goods and Service Tax Act and Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as “the CGST Act and UPGST Act”) by M/s. Uttar Pradesh Power Transmission Corporation Ltd, Shakti Bhawan, 14-A, Ashok Marg, Lucknow, Uttar Pradesh (hereinafter referred to as the “appellant”) against the Advance Ruling Order No. 37 dated 05.08.2019 issued by the Authority for Advance Ruling, Uttar Pradesh.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST 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, 2017 would also mean a reference to the same provisions under the UPGST Act, 2017.

Brief Facts of the Case

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

2) The appellant was incorporated in 2006 and notified as the state transmission utility of Uttar Pradesh, vide Notification No. 122/U.N.N.P./24-07 dated 18th July 2007 and entrusted with the business of transmission of electrical energy to various licensees within the State of Uttar Pradesh.

3) The Appellant has submitted application for Advance Ruling dated 02.05.2019 and sought Advance Ruling on the following issues : -

- i. Whether the Deposit Work undertaken by Appellant is an integral part of supply of services of transmission or distribution of electricity?
- ii. Whether the Deposit Work undertaken by Appellant 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 Appellant?
- iv. Whether ITC is available to the appellant in undertaking “Deposit Works” i.e. creating infrastructure for electricity transmission?

4) The Authority for Advance Ruling, vide Order No. 37 dated 05.08.2019 ruled that:

- i. The Deposit Work undertaken by applicant is not an integral part of supply of services of transmission or distribution of electricity.
- ii. The Deposit Work undertaken by applicant is not ancillary to the principal supply of transmission or distribution of electricity.
- iii. 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 not be applicable on applicant.

- iv. The applicant is not eligible to claim input tax credit with regard to undertaking "Deposit Works" i.e. creating infrastructure for electricity transmission.

5) Being aggrieved with the Order no. 37 dated 05.08.2019, the appellant filed this appeal application before us.

Grounds of appeal submitted by the appellant:-

6) The appellant made the following submissions:

6.1) The only reason cited in the impugned order is that such charges for deposit work are collected as non-tariff charges only from customers, who availed the said service, and not from all customers, which shows that the transmission of electricity is independent of deposit work.

6.2) It cannot be gainsaid that charges for a particular activity will be recovered only from such customers, for whom such activity is undertaken. If an activity is not undertaken for a particular customer, the question of charging an amount for such activity from such customer does not arise.

6.3) Further, merely because such charges are not collected from all customers is no factor to conclude that the deposit work is independent of transmission of electricity. What is required to be seen is, for the customers for whom deposit work is undertaken, whether the same is an integral part of transmission of electricity.

6.4) As already noted, the deposit work by nature is so integrally connected to transmission of electricity, that one cannot exist in the absence of other. In such a case, the conclusion arrived at in the Impugned Order by the Authority below is bereft of any reasons and is liable to be set aside.

6.5) The learned authority has refused to accept the settled legal matter of Hon'ble Gujarat High Court on the proposition that the department is contemplating to file SLP before the Hon'ble Supreme Court of India. The appeal could have been filed against such order at Apex Court, but even then it remains law of land unless the Apex Court stays or reverses the order of Hon'ble Gujarat High Court.

6.6) In any case, it may be noted that merely because the department is contemplating to file an appeal to Supreme Court against an order of High Court or even if such appeal filed is pending before Supreme Court, the binding effect of the order of High Court does not lose its credence unless reversed by the Supreme Court.

6.7) The appellant understands that the Deposit Work undertaken by it is exempt from payment of GST vide the exemption given to transmission or distribution of electricity by an electricity transmission or distribution utility. To this extent, the Impugned Order passed by the Authority is not sustainable and the same is liable to be set aside.

7) The appellant was granted personal hearing on 9th January 2020 and 23rd January 2020. Mr. Narendra Singhvi, Advocate and Mr. Chetan Garg, Accounts

Officer, M/s UPPTCL, Authorized representatives on behalf of appellant appeared for hearing. During the personal hearing they reiterated their submission already made and also submitted certain citations.

DISCUSSION AND FINDING

8) We have gone through the submissions made by the appellant and examined the detailed explanation submitted by them. We observed that the appeal is mainly based upon the following points viz.

a. The Deposit Work undertaken has no existence independently and hence, it will qualify to be an ancillary or incidental to the principal supply of transmission services only. Consequently, the supplies are composite in nature and the exemption given to the principal supply will squarely apply on such ancillary activity.

b. The Deposit Work undertaken is exempt from payment of GST vide the exemption given to transmission or distribution of electricity by an electricity transmission or distribution utility.

c. If the Deposit Work undertaken by the appellant is an independent taxable supply and the exemption given to transmission or distribution of electricity vide Entry No. 25 of the Exemption Notification does not apply to the impugned Deposit Work, then, the appellant will be eligible to claim ITC attributable to such Deposit Work.

9) In this regard the views of the Member (CGST) are as under:-

9.1) The primary elements of the composite supply under Section 2(30) of the CGST, Act 2017 are:

- a. There should be two or more supplies,
- b. Supplies should be naturally bundled,
- c. Supplied in conjunction with each other in ordinary course of business.

Here the Supply of Electricity is a continuous supply while the other service required for development of transmission facilities, supervision charges etc. are not continuous supplies. Supply of electricity can also be made without provisions of these services. These services are provided by the appellant on specific request of the customers and not provided in its normal course of business to all the consumers. Therefore, I am of the opinion that these services, referred as "Deposit work" by the appellant, are not naturally bundled with the supply of electricity. These are independent supplies, supplied and paid for only if consumed by the customers.

9.2) For a supply to be consider as a composite supply, its constituent supplies should be so integrated with each other that one cannot be 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.

9.3) Moreover I also observe that the Circular No. 34/8/2018-GST dated 01.03.2018, issued vide F. No. 354/17/2018, has categorically clarified that the other services such as application fee for releasing connection of electricity, rental Charges against metering equipment, testing fee for meters/transformers, capacitors etc., labour charges from customers for shifting of meters for shifting of service lines and charges for duplicate bill provided by DISCOMS to consumers are taxable. The appellant has discussed about Judgment of Hon'ble Gujrat High Court in the case of M/s Torrent Power Limited, however I observe that the said judgment has been challenged by the department in the Hon'ble Supreme Court of India and decision in the matter is pending there.

9.4) In view of this I observe that the "Deposit Work" undertaken by appellant is not an integral part of supply of services of transmission or distribution of electricity and 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 not be applicable on applicant.

10) Further, the views of the Member (SGST) are as under:-

10.1) Sub Section 1 of Section 43 (Duty to supply on request) of the Electricity Act, 2003, defines that:-

"Licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply.

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission.

....."

10.2) Further as per Sub Sec 2 of Section 43 of the Electricity Act :-

"It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1)."

10.3) Section 45(3) of the Electricity Act, 2003, which provides that the charges for electricity may include charges for actual electricity supplied and other charges, is as under:-

“Section 46. (Power to recover expenditure): The State Commission may, by regulations, authorize a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.”

10.4) In view of the above, I observe that the works regarding extension of electric line, electric plant, commissioning of new sub- station etc. are part and parcel of the activity of “Transmission of Electricity”.

10.5) Moreover in the Circular No. 131/13/2010-ST dated 7th December 2010 issued by the Central Board of Excise & Customs, it has been categorically clarified that *“Supply of electricity meters for hire to the consumers being an essential activity having direct and close nexus with transmission and distribution of electricity, the same is covered by the exemption for transmission and distribution of electricity, extended under the relevant notification”*. Further, Hon’ble High Court of Gujrat, in its Judgment dated 19th December 2018, in the case of M/s Torrent Power Ltd. Vs. Union of India, has already clarified that *“The Meaning of “Transmission and distribution of electricity” does not change either for the negative list regime or the GST regime. Accordingly, the services which stood included within the ambit of transmission and distribution of electricity during the pre-negative list regime cannot now be sought be excluded by merely issuing a clarificatory circular, that too, with retrospective effect”*. Observing this, Hon’ble High Court has struck down paragraph 4(1) of the Circular No. 34/8/2018-GST dated 01.03.2018 as being ultra vires the provisions of Section 8 of the CGST Act, 2017 as well as Notification No. 12/2017-CT (R) dated 28.06.2017.

10.6) In view of this, I am of the opinion that the deposit work undertaken by the appellant is part and parcel of the transmission and distribution of electricity and the same cannot be completed without the said deposit work. Accordingly I observe that the service provided by the appellant are in nature of composite supply in terms of Section 8 of the CGST Act, 2017 and Transmission and distribution of electricity being the principal supply.

RULING

In view of difference of opinion between the Members of Appellate Authority for Advance Ruling for Goods and Service Tax, Uttar Pradesh, no ruling can be issued on the questions raised by the appellant, in terms of the provisions of Sub Section 3 of Section 101 of CGST Act, 2017. Thus the Advance Ruling issued vide Order No. 37 dated 05.08.2019, by the Authority for Advance Ruling, Uttar Pradesh, is deemed to be not in operation.



(Karnail Singh)

Member AAAR

CGST



(Amrita Soni)

Member AAAR

SGST

To,

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