



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

**NCR BUILDING, STATUE CIRCLE, C-SCHEME
JAIPUR – 302005 (RAJASTHAN)
KAR BHAWAN, AMBEDKAR CIRCLE, JAIPUR
(RAJASTHAN)**



ADVANCE RULING NO. RAJ/AAR/2018-19/02

(IN APPLICATION NO. Advance Ruling/CGST & SGST/2017-18/AR/02)

Name and address of the applicant	: ✓	M/S TP AJMER DISTRIBUTION LIMITED FLORENCE APARTMENT, F. NO.-915, PENT HOUSE, NEAR HARIPRABHU UPADHYAY NAGAR, AJMER (RAJASTHAN) - 305004
GSTIN of the applicant	: ✓	08AAGCT2158P1ZR
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; (e) determination of the liability to pay tax on any goods or services or both; (g) whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term.
Date of Personal Hearing	:	05.05.2018
Present for the applicant	:	Shri Varun Sharma, FCA, Authorised Representative
Date of Ruling	:	11.05.2018

(A) SUBMISSION OF APPLICANT

1. M/s TP Ajmer Distribution Limited ('TPADL' or 'Applicant' or 'the Company'); having Goods and Services Tax ('GST') Registration No. 08AAGCT2158P1ZR and is engaged in the business of distribution of electricity; has submitted that,

1.1 The Tata Power Company Limited ('TPCL') has signed a Distribution Franchisee Agreement ('DFA') with Ajmer Vidyut Vitran Nigam Limited ('AVVNL') to cater to the power requirements of customers in Ajmer, Rajasthan for a period of 20 years. To serve the aforesaid purpose, TPCL has formed a Special Purpose Vehicle ('SPV') called TPADL, which will be responsible for operating and maintaining the distribution network



in Ajmer City. It will also be responsible for managing the billing and collections in the said areas.

1.2

They are engaged in the activity of distribution of electricity. For the aforesaid service, distribution charges are recovered from the customers. In order to distribute electricity, TPADL carries out various activities and makes separate recoveries from its customers. The list of various recoveries made are provided below:

Type of Charges	Description of Charges
Application fees	New consumer who applies for a new connection is required to pay an application fee.
Re-connection charges	For any reason if the line is dis-connected and the consumer wishes to re-connect, then re-connection charges are recovered
Connection Transfer Fee	In case of transfer of connection, a fee is charged from the consumer. Transfer means transfer to a new location or transfer of name
Charges to be recovered for releasing temporary Connections	Charges are recovered for releasing of temporary connections. The charges include advance against electricity consumption, security and application fees and service line charges.
Charges for duplicate bill	In case of duplicate bill required by consumer, charges are recovered
Additional amount to be deposited on demand for extension of distribution mains/Supply line	This amount is collected for extension of the distribution mains/ supply lines. There is certain amount of material which is used in the present case.
Security Deposits for Electricity Consumption	This is a refundable security deposit which is collected from the consumers
Security Deposits against Meters	This is a refundable security deposit for the meter installed at the customer's premises
Rent for metering equipment	Rent is collected for metering equipment for industrial consumers.
Meter Testing Fees	In case a consumer complains about a defect on the meter, a fee is collected for testing the meter
ABT compliant meter	ABT means Availability Based Tariff Meters. This is fee for ensuring compliance as per the regulatory norms
Change of meter	In case of a change in the meter, charges are recovered from the consumer
Labour charges for shifting of meter in the same premises	In case there is a shifting of the meter for any reasons, labour charges are recovered from the consumer
Cost of Meter Box / Panel	In case of change in the meter box or panel, charges are recovered



Re-sealing Charges (if found broken)	At the time of meter installation, a seal is put on the meter. In case the seal is broken then the same needs to be replaced. Charges are recovered for the same.
Replacement of broken glass (Per Glass)	Charges are recovered for replacement of the glass of the meter
Transformer Rent	In certain cases (specially industrial consumers), the transformer is provided on rent
Transformers Testing Fees	In certain cases a fee is charged for testing of transformers
Capacitor Units Testing Fees	Capacitor unit is equipment used to maintain the power factor of electrical installation. This fee is taken to ensure that the capacitor units are maintaining the power factor as per norms given by the regulator "Power Factor" shall mean the monthly average power factor determined as the ratio of total Watt Hours to corresponding Volt Ampere Hours.
Fee charged for testing of consumer's installation	These charges are recovered for any addition/ alternation on consumer installation. Installation shall mean the whole of the electric wires, fittings, motors and apparatus erected and wired by or on behalf of the consumer, on his premises.
Charges for alteration/shifting of service line	In case of shifting of the service line from the pole to the home, charges for alteration/ shifting are recovered. Such charges may also be recovered in case of shifting of lines within the premises. Moreover, if there is pole near the consumer's home, the consumer may want the same to be shifted on account of safety issues or any alteration or extension of his house.
Cheque dishonour fee	In case the cheque given by the consumer is dishonoured, charges are recovered
Delayed payment Charges	In case of delay in payment by the consumers of the electricity bill, delay payment charges is collected from the consumers

1.3 They submitted that, the aforesaid non-tariff charges are fixed and recovered from the customers in accordance with the provisions of Electricity Act, 2003 and the regulations made in this behalf by the Rajasthan Electricity Regulatory Commission (State Commission) ('RERC'). RERC has prescribed various regulations in terms of powers granted to it under the Electricity Act, 2003 for determination of the tariff and non-tariff charges, specify the obligations of a licensee etc.

1.4 The applicant has also submitted that under the GST regime, as per Entry No. 25 of Notification 12/2017 - Central Tax (Rate) dated 28.06.2017, exemption from levy of GST has been granted to the activity of **Transmission or distribution of electricity by an electricity transmission or distribution utility**. Corresponding notifications have also been issued under the IGST Act and SGST Act - Notification No. 9/2017 – Integrated Tax (Rate) dated 28.06.2017 and SGST - No. F 17(131) ACCT/GST/2017/6822 dated 29.06.2017.



(B) ISSUE FOR DETERMINATION

2. The question/ issue before the authority of advance Ruling (AAR) for determination are:
- Whether TPADL is eligible to avail the exemption from levy of GST under Entry No. 25 of Notification 12/2017 - Central 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 by TPADL from its customers?
 - Whether TPADL is liable to pay tax on the aforesaid recovery made from its customer?

(C) SUBMISSION BY THE APPLICANT

3. The applicant has submitted the following provisions of GST in their support,
- In accordance with Section 9 of the Central Goods and Services Tax Act, 2017 ('CGST Act') and Section 5 of the IGST Act, which provides for charging of GST, GST is levied at the rate prescribed on all intra-state and inter-state supplies of goods/ services.
 - As per Section 7 (1) of the CGST Act, 'Supply' includes all forms of supply of goods/ services such as sale, barter, transfer, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business, including activities specified under Schedule I which are made with or without consideration. Further, Schedule II to the CGST Act specifies activities which are to be treated as supply of goods or supply of services, respectively. However, activities or transactions specified in Schedule III as outside the ambit of 'Supply'.
 - It is further pertinent to note that intra-state and inter-state supplies of electrical energy which is classifiable under Chapter Heading 2716 00 00 of the Customs Tariff Act, 1975 is exempt (NIL rate of tax) vide Notification No. 2/2017 – Central Tax (Rate) dated 28.06.2017 and Notification No. 2/2017 – Integrated Tax (Rate) dated 28.06.2017, respectively.
 - Further, services by way of transmission or distribution of electricity by an electricity transmission or distribution utility have been exempted vide the Exemption Notification. The relevant extract of the Exemption Notification is reproduced hereunder:

"Transmission or distribution of electricity by an electricity transmission or distribution utility"
 - Serial No. 2(z) of the Exemption Notification defines electricity transmission or distribution utility as under:



“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”.

3.6 Further, some of the relevant terms as defined under the Exemption Notification are provided below:

- Serial No. 2(q) - “Central Transmission Utility” shall have the same meaning as assigned to it in clause (10) of section 2 of the Electricity Act, 2003 (36 of 2003);
- Serial No 2(p) - “Central Electricity Authority” means the authority constituted under section 3 of the Electricity (Supply) Act, 1948 (54 of 1948);
- Serial No. 2(zzi) - “State Electricity Board” means the Board constituted under section 5 of the Electricity (Supply) Act, 1948 (54 of 1948);
- Serial no. 2(zzj) - “State Transmission Utility” shall have the same meaning as assigned to it in clause (67) of section 2 of the Electricity Act, 2003 (36 of 2003);

4. The applicant has also submitted that,

4.1 From the provisions of the CGST Act mentioned above in Para 2, the service of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt under Exemption Notification. As per the said Exemption Notification, the benefit of the exemption can be availed only when the below mentioned conditions are satisfied:

- a) The service shall be the service of transmission or distribution of electricity, and
- b) The said service shall be provided by an electricity transmission or distribution utility.

4.2 In the present case, TPADL is regarded as a franchisee since it has entered into a DFA with AVVNL being distribution licensee under the Electricity Act, 2003 (‘Electricity Act’). Therefore, TPADL would clearly fall within the ambit of definition of the term ‘electricity transmission or distribution utility’. Accordingly, the condition (b) is satisfied in the present case.

4.3 With respect condition (a), it is submitted that the said Exemption Notification does not define the terms ‘transmission or distribution of electricity’. Accordingly, it is pertinent to analyse whether the non-tariff charges collected by TPADL would be treated as consideration for the activity of ‘transmission and distribution of electricity’ and thereby covered under the said Entry of the Exemption Notification.



4.5 That it is the duty of the distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of distribution in order to enable supply of electricity. The provisions also provide that the distribution licensee should take all necessary actions required for providing electricity to his area of distribution. In order to develop the said distribution system and to provide continuous transmission of electricity, TPADL has to also undertake certain activities like installation, repair and maintenance of meter, electric lines/plant and other related activities. The detailed list of activities undertaken by TPADL are enumerated under para 3 above. The expenses incurred by TPADL for providing the aforesaid services are as a part and parcel of the activity of distribution of electricity as TPADL has to incur these expenses in order to provide the service of distribution of electricity.

(D) Personal Hearing (PH)

5. In the matter personal hearing was given to applicant. Shri Varun Sharma, FCA , appeared as Authorised Representative of applicant for personal hearing on 05.05.2018. During the PH he reiterated the submission already made in application submitted on 12.02.2018 .

Further during personal hearing the clarification issued under Circular no. 34/8/2018-GST dated 01.03.2018 issued vide F.No. 354/17/ 2018 was brought to the applicant's notice and issues raised in application for Advance Ruling were discussed in light of the provisions of clarification in detail . He argued that issues relating to Security deposits against electricity consumption and meters, cheque dishonour fees and delayed payment charges are not part of the considerations for the supplies hence non taxable.

He further requested that the case may be decided at earliest on the basis of submission already made.

(E) Issues to be decided:

6. The issue involved in this case is,

- (a) Whether TPADL is eligible to avail the exemption from levy of GST under Entry No. 25 of Notification 12/2017 - Central 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 by TPADL from its customers?
- (b) Whether TPADL is liable to pay tax on the aforesaid recovery made from its customer?

(F) Findings:

7.1. As per Sr. No. 25 of table under notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 GST .(Notification No.9/2017 Integrated Tax(Rate) dated 28.06.2017 and SGST No. F12 (56)FD/Tax/2017-Pt-I-50 dated 29.06.2017)

“ Transmission or distribution of electricity by an electricity transmission or distribution utility” is EXEMPTED



Further as per the definitions given under notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 in respective paras,

(z) "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;

Therefore, in terms of above definition, M/s TPADL is covered under electricity transmission or distribution utility and Transmission or distribution of electricity by an electricity transmission or distribution utility is EXEMPTED.

7.2 Further as regard the other services (mentioned in para 1.2 above) provided by M/s TPADL, it is clarified by the Department under Circular no. 34/8/2018-GST dated 01.03.2018 issued vide F.No. 354/17/ 2018,

In the said circular Clarifications regarding GST in respect of certain services has been given and at Sr. No. 4 clarification on the issue;

Whether the activities carried by DISCOMS against recovery of charges from consumers under State Electricity Act are exempt from GST?

is given as,

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, -

- 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.

7.3 REFUNDABLE SECURITY DEPOSITS –

As per Section 2 (31) of the CGST Act, 2017

"consideration" in relation to the supply of goods or services or both includes—

(a) 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 or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:



Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

Therefore, the **refundable** security deposit against Electric Consumption and Electric Meter, which are collected from customers, will not be treated as consideration for the supply. Only when the security deposits are applied as consideration (such as forfeiture, offsetting against future progress payment, etc.) does it becomes taxable.

7.4 CHEQUE DISHONOUR FEE -

As per clause 5 (e) schedule II of CGST Act, 2017

(5) The following shall be treated as supply of services, namely: —

(e) Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;

Thus if any person tolerates an act or a situation and recovers a certain amount for such tolerance, it will be considered as a supply of services hence taxable.

7.5 DELAYED PAYMENT CHARGES -

As per section 15 (2) (d) of the CGST Act, 2017

15(2) The value of supply shall include –

(d) Interest or late fee or penalty for delayed payment of any consideration for any supply;

Hence taxable.

7.7 The Jurisdictional officer in his comments has also stated that GST is liveable on all non-tariff charges for services not directly related to transmission or distribution of electricity and has opined that there no such exemption under the GST Act, hence are taxable . He has further given reference of the clarification issued under Circular no. 34/8/2018-GST dated 01.03.2018 issued vide F.No. 354/17/ 2018 which states that other services provided by DISCOM to consumer are taxable.

7.8 Therefore, in view of the clarification issued under Circular no. 34/8/2018-GST dated 01.03.2018 issued vide F.No. 354/17/ 2018, and as discussed in above paras, it is found that, M/s TPADL is not eligible to avail the exemption from levy of GST under Entry No. 25 of Notification 12/2017 - Central 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 and is liable to pay tax on the aforesaid recovery made from its customer.

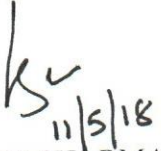


8. In view of the forgoing, we rule as under,

RULING

In light of clarification issued under Circular no. 34/8/2018-GST dated 01.03.2018 issued vide F.No. 354/17/ 2018-TRU and provisions of GST Act , The Services (as mentioned in para 1.2 above) provided by M/s TPADL with respect to the non-tariff charges recovered from their customers are not eligible for exemption and M/s TPADL is liable to pay tax on the aforesaid recovery made from their customers.

(NITIN WAPA)
(Member)


(SUDHIR SHARMA)
(Member)

To,

M/S TP AJMER DISTRIBUTION LIMITED,
FLORENCE APARTMENT, F. NO.-915,
PENT HOUSE, NEAR HARIPRABHU UPADHYAY NAGAR,
AJMER (RAJASTHAN) - 305004

F.No.-AAR/RAJ/2018-19/01/6-10
Copy to:-

Dated:-11/05/2018

1. The Chief Commissioner of CGST & Central Excise, (Jaipur Zone) & Member, Appellate Authority for Advance Ruling.
2. The Commissioner of SGST & Commercial Taxes Rajasthan & Member, Appellate Authority for Advance Ruling.
3. The Assistant Commissioner of CGST & Central Excise Division-J, C.R. Building, Jaipur Road, Ajmer-305001.
4. The State Tax Officer, Kar Bhawan, Commercial Taxes Department, Ajmer-305001.

o/c