



**AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
GOODS AND SERVICE TAX**

D NO 5-56, Block-B, R.K. Spring Valley Apartments,
Edupugallu, Vijayawada-521151

Present:

Sri.D. Ramesh, Additional Commissioner of State Tax.....Member
Sri.S. Narasimha Reddy, Additional Commissioner of Central Tax.....Member

AAR No.22/AP/GST/2019 Dated: 08.07.2019

1	Name and address of the Applicant	M/s. Southern Power Distribution Company of AP Ltd., 19-13-65/A, Srinivasapuram, Tirchanoor Road, Tirupati - 517503, Andhra Pradesh
2	GSTIN	37AAHCS4056Q2ZM
3	Date of filing of Form GST ARA-01	05.03.2019
4	Date of Personal Hearing	03.04.2019
5	Represented by	Shri. Y. Srinivasa Reddy, Advocate
6	Jurisdictional Authority - State	Tirupati -II Circle, Chittoor Division
7	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

ORDER

(under sub-section (4) of section 98 of Central Goods And Service Tax Act, 2017 and under sub- section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. The present application has been filed under Section 97 of the Central Goods & Services Tax Act, 2017 and Andhra Pradesh Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s. Southern Power Distribution Company of AP Ltd., (Corporate Office), Srinivasapuram, Tirchanoor Road, Tirupati - 517503, Andhra Pradesh (hereinafter referred to as applicant), registered under the Goods & Services Tax.



2. The provisions of the CGST Act and APGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act, would also mean a reference to the same provision under the APGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or AP GST Act would be mentioned as being under the GST Act.

3. BRIEF FACTS OF CASE:

3.1 M/s Southern Power Distribution Company of Andhra Pradesh Limited., (referred to as 'Discom' or 'APSPDCL', for brevity) is a state-owned company having 'Distribution Licence' as defined in Electricity Act, 2003, and are engaged in distribution of electricity to consumers and also in transmission of electricity from sub-stations.

3.2 As a distribution licensee under Section 2(17) of the Electricity Act, 2003, main activity of APSPDCL is supply of electricity and for this purpose engages in other ancillary activities in connection and in relation to supply of electricity. Some of the activities it is engaged in and are in connection with supply of electricity to the consumers are mentioned below:

- (a) Granting electricity connections including re-connection and also supply of equipment such as meters.
- (b) Creation of distribution and transmission systems.
- (c) Maintenance of the distribution and transmission networks.
- (d) Collection of charges from the consumers for the services provided as per the rates prescribed by ERC.
- (e) Supervision of execution of works by the contractors.
- (f) Allowing other generating companies to transmit electricity through its network.



3.3 On Verification of basic information of the applicant, it is observed that the applicant falls under State jurisdiction, i.e. Tirupati-II Circle, of Chittoor Division. Accordingly, the application has been forwarded to the jurisdictional officer and a copy marked to the central tax authorities to offer their remarks as per the Section 98(1) of CGST /APGST Act 2017. In response the concerned jurisdictional officer concerned stated that there are no pending proceedings relating to the applicant and no proceedings were passed on the issue, for which the advance ruling sought by the applicant.

4. QUESTIONS RAISED BEFORE THE AUTHORITY

4.1 The applicant seeks Ruling from the Hon'ble Advance Ruling Authority on the following questions:

- (a) Whether the supply of services such as connection, re-connection, supervision of the works, erection of poles, substations, transmission lines etc., and supply of meters etc., to the consumers for the purpose and during the course of supply of electricity to them are naturally bundled and thus form part of the composite supply of principal activity of supply of electrical energy?
- (b) Whether the supply of services such as connection, re-connection, supervision of the works, erection of poles, substations, transmission lines etc., and supply of meters etc., to the consumers for the purpose and during the course of supply of electricity to them can be treated as part of principal supply of transmission or distribution of electricity which is exempted?
- (c) Whether the above supplies made to the consumers through contractors and third parties for the purpose of transmission or distribution of electricity or sale of electrical energy are also exempted?



- (d) If the answer to the above questions is 'NO', whether the works executed under Deendayal Upadhyay Gram Jyoti Yojna for Rural Electrification ('DDUGJY'), Integrated Power Development Scheme ('IPDS') and Restructured Accelerated Power Development and Reforms Program supplies made through contractors are liable to 12% GST since they are executed under grants provided by central government and no commercial activity is involved with regards these works?
- (e) If the answer to the above questions at (A), (B) and (C) is 'NO', whether the execution of the Agricultural Demand Side Management Scheme (AGL) works are liable to 12% GST since they are executed for the purpose of non-commercial?
- (f) Whether the supply of services and goods made by the applicant through contractors by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network up to the tube well of the farmer or agriculturist for agricultural purpose are exempted vide Notification No.14/2018- Central Tax (Rate) dated 26.07.2018?

5. APPLICANT'S INTERPRETATION OF LAW AND FACTS:

- 5.1 The applicant submits that as mentioned in the Memorandum of Association, their objectives are supply of quality electricity to the consumers and execution of various infrastructure projects through contractors. The activities of Discom are controlled by Electricity Regulation Commission established both at central and state levels under the Electricity Regulatory Commissions Act, 1998 for the purpose of rationalization of electricity tariff, transparent policies regarding



subsidies, promotion of efficient and environmentally benign policies and matters connected therewith or incidental thereto. Discom cannot act independently in fixing tariffs etc., without approval of the State Regulatory Commission. Further, the Discom will not execute any work directly and all the works relating to creation of infrastructure are executed by the contractors.

5.2 Any consideration received for supply of any goods and services attracts GST. However, the services provided by a distribution licensee are always out of the ambit of the tax. Prior to introduction of GST, service tax was exempted on the services provided by a distribution licensee. Notification No.45/2010-ST dt.20.07.2010 issued by the Government of India under Section 11C of the Central Excise Act, 1944 made applicable to the matters of Service Tax by section 83 of Finance Act, 1994 provided exemption from payment of service tax on all taxable services relating to transmission of electricity provided till 21.02.2010 and all services relating to distribution of electricity provided till 21.06.2010 and they were exempted thereafter also under other notifications.

5.3 CBIC clarified in its Circular No.356/13/2010-TRU dt.7.12.2010 that even the rental amounts collected by way of renting of meters from the individual consumers of electricity is also not chargeable to service tax as per the said notification since renting of meters is also related to transmission of electricity.

5.4 Subsequent to introduction of negative list in the Finance Act, 1994, the services relating to transmission and distribution are placed in the negative list under Section 66D (k) of the Act which reads as follows:



"(k) Transmission or distribution of electricity by an electricity transmission or distribution utility".

5.5 From the above, it is clear that Discom was not required to pay any service tax on any service it provided to a consumer/ client. When the Revenue raised its contention that Notification No.11/2010-ST does not cover the services provided by private firms and the exemption is not applicable after June 2010, the Hon'ble Tribunal did not accept the contention and in its decision in the case of Kedar Construction vs. CCE, Kolhapur [2014-TIOL-2138-CESTAT-MUM] it was clearly held that all the services related to transmission of electricity are exempted under Notification No.11/2010-ST. In the recent case of Narasa Reddy v. UOI and Others in W.P. No.23639/2018 dt.12.12.2018, the Hon'ble High Court of Andhra Pradesh held that all services provided to a distribution licensee are outside the purview of service tax under Notification No.32/2010-ST dt.22.06.2010. **However, the applicant was registered with service tax for the purpose of payment of service tax under reverse charge mechanism for certain services received by it as required under Section 68(2) of the Act and was accordingly discharging service tax and filing returns.**

5.6 Even after introduction of GST, the supplies are continued to be exempt. Entry No.25 under heading 9969 in Notification No.12/2017-Central Tax dt.28.06.2017 stipulates that 'transmission or distribution of electricity by an electricity transmission or distribution utility' attracts nil rate of tax i.e., the exclusion from service tax provided in Finance Act, 1994 is continued even in GST regime. All supplies of services and goods made by Discom are in relation to or incidental to main supply of electricity and this supply is exempted from GST.



- 5.7** The Discom falls under the definition of 'a Government entity' as defined in Notification No.31/2017-Central Tax (Rate) dt.13.10.2017 since it is established by Government of Andhra Pradesh and more than 90 percent of the equity and control is held by the said Government.
- 5.8** All these services provided by Discom are in relation to supply of electricity which is exempted. Section 2(30) of the GST Act defines "composite supply" as "a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply". Section 2(90) of the GST Act defines "principal supply" as "the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary". There is no doubt that every supply made by the Discom is naturally bundled with the principal supply of electricity and provided in conjunction with each other.
- 5.9** In the recent decision of Hon'ble High Court of Gujarat in the case of Torrent Power Ltd vs. UOI 2019-TIOL-15-HC-AHM-GST, the Hon'ble High Court while holding the Circular dt.1.3.2018 issued by CBIC clarifying that certain services provided by Discoms are liable to GST, held that all services provided by a Discom are naturally bundled and form part of composite supply of electricity and thus are exempted. The issue of principal supply has been discussed by Hon'ble Advance Ruling Authority in various decisions. Since the rate of tax for principal supply is nil, the same rate is attracted to all the ancillary supplies made in provision of principal supply. Therefore, the applicant opines that all supplies made by him to his consumers and clients in relation to supply of electricity are not liable to GST. However, the registration continued under GST vide GSTIN No.37AAHC4056Q2ZM and the applicant is discharging GST on certain services viz., testing services, supervising services etc., to avoid litigation.



- 5.10** As submitted above, the applicant though provides supply of electricity and services relating to supply of electricity, It is also entrusted to carry out certain projects of Central and State Governments such as Deendayal Upadhyay Gram Jyoti Yojna for Rural Electrification ('DDUGJY'), Integrated Power Development Scheme ('IPDS'), Restructured Accelerated Power Development and Reforms Program etc., relating to strengthening of power distribution network and Rural Electrification for public welfare. These welfare schemes are promoted by the Central/ State Government with extension of grants to the Discom.
- 5.11** Further, Services supplied by electricity distribution utilities by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network up to the tube well of the farmer or agriculturist for agricultural use are partially exempted vide Notification No.14/2018-Central Tax (Rate) dt.26-07-2018 amending Notification No.12/2017-Central Tax (Rate) dt.28-06-2017.
- 5.12** Though all the above activities are in relation to principal supply of electricity which is exempted, the applicant opines that the execution of the above services through third-party contractors are exempted from GST and even if not exempted, they are at least eligible for concessional rate of tax as provided in Notification 24/2017-Central Tax (Rate) dt:21.09.2017, Notification No.31/2017-Central Tax (Rate) dt.13.10.2017, Notification No.32/2017-Central Tax (Rate) dt.13.10.2017 and Notification No.1/2018-Central Tax (Rate) dt.25.01.2018. However, to avoid future litigation, the applicant approached the Authority for Advance Ruling with his queries.

6. RECORD OF PERSONAL HEARING:



6.1 Shri Y. Srinivasa Reddy, Advocate appeared for personal hearing held on 03.04.2019 by representing the applicant and he reiterated the submissions already made in the application and requested to pass necessary orders.

6.2 The applicant furnished further submissions after personal hearing vide their letter dated 29.04.2019 as hereunder.

1. They filed the subject application seeking answers to certain issues with regards to the taxability under GST Act on ancillary services provided by it in relation to transmission and distribution of electricity which is exempted vide Notification No.12/2017-CT (R) dt.28.06.2017.

2. The argument of the applicant is that all the services which were provided to the consumers of the applicant are nothing but ancillary activities which are naturally bundled with the main activity of transmission and distribution of electricity and these activities together with the activity of transmission or distribution will become a composite supply and since in the composite supply, the principal activity is supply of electricity which is exempted, the ancillary activities cannot be charged to GST as an independent activity. It is also the argument of the applicant that many of these activities wherever construction or supply of goods is involved, GST is paid by the contractors and the applicant reimbursed the same. A detailed statement showing how various activities of the applicant are naturally bundled with the main activity of transmission and distribution of electricity was filed during the Hearing.

3. The applicant further submitted as follows. The term 'taxable supply' is defined under Section 2(108) of the Act as "a supply of goods or services or both which is leviable to tax under this Act". There is no doubt that the act of transmission or distribution of electricity is a service taxable under this Act but is exempted vide Notification



No.12/2017-CT (R) dt.28.06.2017. It is not a non-taxable supply as defined under Section 2(78) of the Act. Further, this issue was raised before the Hon'ble High Court of Gujarat during the course of arguments in the recent case of Torrent Power Ltd vs. UOI 2019-TIOL-15-HC-AHM-GST and the Hon'ble High Court had considered the same and then held that this contention of Revenue is not sustainable. The relevant parts of the decision are extracted below:

The Revenue's argument on this issue is mentioned in para 4.2 of the judgment which is extracted below:

It was submitted that insofar as the GST regime is concerned, these services are not exempted by the notifications issued under section 11 of the GST Act, and hence, when on one service tax is leviable and the other service is exempted, section 8 of the CGST Act would not apply. It was contended that related/ancillary services are not exempted by virtue of any notification under section 11 of the CGST Act and that the impugned circular merely clarifies that these services are not exempted.

The decision of the Hon'ble High Court on this point is in para 27 of the judgment which is extracted below:

27. *It has been contended on behalf of the respondents that clause (a) of section 8 of the CGST Act would not be applicable where the principal supply is exempt from levy of service tax. In the opinion of this court, there is nothing in section 8 of the Act to read any such construction. What the section says is that the tax liability of a composite or a mixed supply shall be determined in the manner provided thereunder. In a given case, the tax liability may be nil, but that would not take such service out of the purview of section 8 of the Act, which would be attracted if the supply is either composite or mixed in nature, notwithstanding that the end result may be nil tax liability.*



Summary:

The term "taxability" means liability to taxation. Thus, the term taxability would take within its sweep not being taxable also inasmuch as liability to taxation would also mean not being liable to any tax. Thus, the liability to tax of a bundled service has to be determined in the manner provided under sub-section (3) of section 66F of the Finance Act. If the services are naturally bundled in the ordinary course of business, the bundle of services shall be treated as provision of the single service which gives the bundle its essential character and where the services are not naturally bundled in the ordinary course of business, the same is required to be treated as provision of the single service which results in highest liability of service tax. Accordingly, where the services are naturally bundled in the ordinary course of business and the single service which gives such bundle its essential character is exempt from tax, the entire bundle will have to be treated as provision of such single service.

The applicant prayed that since the issue is clarified, the ruling may please be given at the earliest basing on the decision of Hon'ble High Court.

7. DISCUSSIONS AND FINDINGS

- 7.1** We have gone through the case records of the application, additional submissions and oral submissions at the time of personal hearing carefully. The applicant being a distribution licensee of electricity is of the view that various other activities or services rendered for which they charge separate recoveries from their customers are naturally bundled with distribution of electricity and accordingly those services are also exempted under entry



25 of Notification no.12/2017 - Central Tax (Rate) dated 28.06.2017 wherein Transmission or distribution of electricity by an electricity transmission or distribution utility. They relied on the decision of Hon'ble High Court of Gujarat in the case of M/s Torrent Power Limited. Vs. Union of India. They also sought for certain clarifications on the eligibility of exemption on the issues of services under 'Deendayal Upadhyay Gram Jyoti Yojna for Rural Electrification' (DDUGJY), 'Integrated Power Development Scheme' (IPDS) and Restructured Accelerated Power Development and Reforms Program and also Agricultural Demand Side Management Scheme (AGL). The issues are examined hereunder.

7.2 The entry no. 25 of the Notification No. 12/2017- Central Tax (Rate) New Delhi, the 28th June, 2017 reads as follows:

25	Heading 9969	Transmission or distribution of electricity by an electricity transmission or distribution utility.	Nil	Nil
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The rate of duty for Transmission or distribution of electricity by an electricity transmission or distribution utility is very clear. Whereas, the applicant's view is that the transmission and distribution of electricity is to be considered as composite supply and other activities for which they charge separate consideration from the customers i.e. supply of services such as connection, re-connection, supervision of works, erection of poles, sub-stations, transmission lines are to be treated as part of the said composite supply. The notification being an exemption notification, the decisions of the Apex Court on how to interpret such notifications is examined hereunder:

(1) **Union of India - {AIR 1956 SC 202}**- A Constitution Bench of the Supreme Court while dealing with an exemption under Section 5 of the Bengal Finance (Sales Tax) Act, 1941 held by a majority that "**exemption is a creation of statute and must be construed strictly** ;



(2) **Hansraj Gordhandas** -{AIR 1970 (SC) 755}- A Constitution Bench of the Supreme Court held that "the operation of (exemption) notifications had to be judged not by the object which the rule making authority had in mind, but by the words which it had employed to effectuate the legislative intent". The Court also held that "**in a taxing statute there is no room for any intendment**" and that "**the entire matter is governed wholly by the language of the notification**";

(3) **Novopan India Ltd**-{1994 Supp. (3) SCC 606}- A three member Bench of the Apex Court, held that "**The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee assuming that the said principle is good and sound does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State**" ;

(4) **Liberty Oil Mills (P) Ltd.**-{(1995) 1 SCC 451} - Supreme Court held that "**in case of ambiguity or doubt regarding an exemption provision in a fiscal statute, the ambiguity or doubt will be resolved in favour of the revenue and not in favour of the assessee**" ;

(5) **Madharam Agarwal**-Civil Appeal No. 1990 of 1995, dt. 28.10.1999, wherein the Five (05) Judge Bench of the Hon'ble Supreme Court held that -

"(a) **The intention of the Legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous;**

(b) **In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language;**

(c) **Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute;**



(d) **Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature";**

(6) **Sarabhai M. Chemicals-{2005 (2) SCC 168}**- A three member Bench of the Supreme Court held that **"it is well settled that an exemption notification has to be strictly construed" and that "the conditions for taking the benefit of the exemption have to be strictly interpreted" ;**

(7) **Tullow India Operations Ltd.-{(2005) 13 SCC 789}** The Apex court held **"The principles as regards construction of an exemption notification are no longer res integra: whereas the eligibility clause in relation to an exemption notification is given strict meaning wherefor the notification has to be interpreted in terms of its language, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed liberally. An eligibility criteria therefore deserves a strict construction, although construction of a condition thereof may be given a liberal meaning" ;**

(8) **Sunder Steels Ltd-2005 (181) ELT 154 (S.C)**, Hon'ble Supreme Court held that **"the notification has to be interpreted on its wording. No words, not used in the Notification can be added" ;**

(9) **Excon Bldg., Material Mfg. Co., Pvt Ltd-2005 (186) ELT 263 (S.C)** Hon'ble Supreme Court held that **"where the wording of notification are clear, then the plain language of the Notification must be given effect to. An interpretation which is not borne out by the plain wordings of the Notification cannot be given";**

(10) **Southern Petrochemical Industries Co. Ltd-{2007(5)SCC 447}**- The Supreme Court held that **"the principle of construction of a statute that the exemption provisions would be attracted only when requisite conditions therefor are satisfied, would also apply in a case of constitutional interpretation";**



(11) **RANBAXY LABORATORIES LTD - 2011 (273) E.L.T. 3 (S.C.)**-The Hon'ble Supreme Court vide Para-10 held that "10. It is a well settled proposition of law that **a fiscal legislation has to be construed strictly and one has to look merely at what is said in the relevant provision; there is nothing to be read in; nothing to be implied and there is no room for any intendment.** [See: *Cape Brandy Syndicate v. Inland Revenue Commissioners*, [1921] 1 K.B. 64 and *Ajmera Housing Corporation & Anr. v. Commissioner of Income Tax*, (2010) 8 SCC 739]

From the above decisions of the Apex Court, it is understood that an exemption notification has to be interpreted from the plain language of the said notification, the interpretation should be strict; no words used in the notification should be added; and in case of ambiguity the benefit must go to the State. In the present case, the exemption is only for "Transmission or distribution of electricity" only and not to any other services for which separate charges are fixed and collected.

7.3 The applicant relied on the decision of Hon'ble High Court of Gujarat in the case of *Torrent Power Ltd vs. UOI 2019-TIOL-15-HC-AHM-GST*. The said judgment has not attained finality in view of the fact that the Appeal against the said decision by the Government is before the Hon'ble Supreme Court of India. The said decision is examined and found that;

(a) The supply of electricity and supply of transmission and distribution of electricity service can be said to be naturally bundled as the supply of electricity is given physical effect by way of transmission or distribution of electricity. A supply which consists of two or more taxable supplies of goods or service or both or any combination thereof, which are naturally bundled and are supplied in conjunction with each other in ordinary course of business, one of which is the principal supply, is a composite supply. The primary elements of a composite supply include that,



- (i) there should be two or more supplies;
- (ii) supplies should be naturally bundled;
- (iii) supplied in conjunction with each other in ordinary course of business

In the supply of electricity (i.e. supply of good), the ancillary services such as testing charges, rental charges, labour charges are provided in order to aid the convenient supply of electricity. Supply of electricity is a continuous supply while the ancillary services other than rental charges are not continuous supplies, hence the ancillary services are not provided in conjunction with the supply of goods. These ancillary services are provided by the Discom at the specific request of the consumer and are not provided by the Discom in its normal course of business to all consumers. Even though the ancillary supplies bear a close nexus with the supply of electricity, the intent of Discom and perception by the consumers is that these ancillary supplies made are chargeable on 'use' basis, and the consideration paid has no bearing with respect to the supply of electricity made. Therefore, the supplies although made to supplement the supply of electricity are neither naturally bundled nor provided in conjunction with each other.

- (b) Determination of the question whether a supply consisting of two or more goods or services or both is a composite supply or not should be guided by the provisions of the GST law. The relevant provisions on the CGST Act are reproduced below:

Section 8. The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

- (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and



(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

Section 2(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration.— Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

Section 2(74) "mixed supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply. Illustration.— A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately;

- (c) It is clear from the above provisions particularly the illustrations given under section 2(30) [definition of composite supply] that for a supply to be considered as a composite supply, its constituent supplies should be so integrated with each other that one is not supplied in the ordinary course of business without or independent of the other. In other words they are naturally bundled. The supplies in question as discussed above may or may not be supplied with each other. They are independent supplies, supplied and paid for only if consumed by the customer.



A natural corollary of the above legal provisions and the term naturally bundled used in section 2(30) would be that the different elements in a composite supply are integral to the overall supply and if one of the elements is removed, the nature of the supply will be affected. However, in case the services in question such as testing of meters are not procured with the supply of electricity or are procured separately from the supplier of electricity or from a third party, the supply of electricity is not affected in any fashion.

(d) For a supply consisting of two or more goods or services to be considered as a composite supply it is essential that the constituent supplies are naturally bundled and supplied in conjunction with each other. As discussed above the supplies in question are neither naturally bundled nor necessarily supplied in conjunction with each other. The services such as testing of meters and goods such as the electricity meters may be supplied much before the supply of electricity takes place. Therefore they cannot be said to be supplied in conjunction with each other. Same is the case with other services such as labour charges for shifting of meters or shifting of service lines, which may or may not be asked for by the consumers or supplied by the Discoms and are thus not naturally bundled with supply of electricity. They are chargeable separately, if and when they are consumed by the recipient of service. There is clear understanding between the Discoms and consumer that services such as testing of meters, shifting of poles etc shall be supplied and charged for only if demanded by the consumers. For instance consumers of BSES Yamuna in Delhi are free to buy their own electricity meters. Such customers naturally do not pay meter rental charges to the Discoms.



(f) It is important to note here that the terms and conditions laid down by the distribution company as accepted by the consumer may mandate that the services such as shifting of meters, shifting of service lines etc shall be procured only through the distribution company, in order to safeguard the security concerns and to avoid any pilferage or illegal activity. However, such compulsion of sourcing such services from the said distribution company does not necessarily make all the services provided by the Discom to be naturally bundled. For example, the rent charged for metering equipment cannot be considered as a naturally bundled service as the customers have the option to buy their own electricity meter of specifications approved by CEA/ DERC and accuracy norms as per BIS. Similarly, releasing connection of electricity, though a precursor to the supply of electricity, is not naturally bundled with supply of electricity as electricity supply may not necessarily take place after an electricity connection is given due to various reasons such as the residential/ industrial premises remaining vacant.

(g) In regard to circular No. 131/3/2010-ST dt. 07.12.2010 it is noticed that the said clarification was issued in the context of the positive list service tax regime, where a service in order to be taxable should have been so specified under section 65(105). This clarification lost its relevance in the negative list where each service was subject to service tax unless included in the negative list of services or exempted. During the GST regime, the service of installation of electricity meter and consequent collection of hire charges for the meter may have nexus with the supply of electricity but is not naturally bundled with supply of electricity, as discussed above. While the practice followed by the Discoms earlier was to compulsorily supply the meter on hire to the consumer, the system has liberalized over years and now a consumer can opt to buy their own meter of specifications approved by CEA/ DERC and accuracy norms as



per BIS. This development clearly shows that supply of electric meter on hire is no more naturally bundled with the supply of electricity. It is one of the additional facilities which is extended by the Discom in order to facilitate the supply of electricity and is supplementary to the supply of electricity. Therefore the circular cited by the petitioner has lost relevance now.

(h) What needs to be appreciated here is that the definition of service/supply of service itself has gone under the anvil and considerable change has taken place in law during the transition, first from positive list regime of service tax to list regime of services in 2012 and from negative list regime of service tax to GST with effect from 01.07.2017. Thus applying the circular of positive list regime of service tax which was discontinued with effect from 01.07.2012 to GST would not be appropriate. In the case of Builders Association of Navi Mumbai Vs. Union of India, the Hon'ble High Court of Bombay has held that:

"It is, therefore, risky to read into one law the definition or provision to similar effect but from different law. A different and distinct tax law with its object and purpose cannot be, therefore, ignored and no automatic borrowing of any definition from another taxing statute is permissible."

- (i) Under the provisions of Article 265 of the Constitution of India, no tax can be levied or collected without the authority of law. However, Article 246A(1) empowers the Parliament and the legislature of every State to make law in respect of Goods and Service Tax to be imposed by Central or State Government. Section 9 of the CGST Act, 2017 provides for levy of central goods and services tax on the intra-State supply of goods or service at such rates as may be notified by the Government on the recommendations of the GST Council. There is no doubt on the taxability of the services in question. The contention that the supplies in question should be exempted because supply of electricity is an exempt supply, cannot be a basis to state that the levy on such supplies is ultra vires the Article 265 of the Constitution of India.



7.4 Further, for a supply to be considered as a composite supply, its constituent supplies should be so integrated with each other that one is not supplied in the ordinary course of business without or independent of the other. In other words, they are naturally bundled. A natural corollary of the above legal provisions and the term naturally bundled used in section 2(30) would be that the different elements in a composite supply are integral to the overall supply and if one of the elements is removed, the nature of the supply will be affected. However, the supplies in question as discussed above may or may not be supplied with each other. Supply of electricity may take place without the ancillary charges for testing or shifting of meters or for providing duplicate bills and these services are neither integral to the supply of electricity nor the charges levied are linked to electricity energy charges. The provision of related services such as shifting of lines or meters is infrequent, need based and is provided upon specific request of the consumer at a cost which is independent of energy cost. They are independent supplies, supplied and paid for only if consumed by the customer. Furthermore, in case the services in question such as testing of meters are not procured with the supply of electricity or are procured separately from the supply of electricity or from a third party, the supply of electricity is not affected in any fashion. Therefore, to say that the services cannot be provided independent of each other would not hold ground, especially when independent service providers can provide the said supplies separately. Merely because the provider of service is bound by a statute to provide the related supplies together with supply of electricity, it would not



make the said supplies composite unless they are **naturally bundled**. Further, any service cannot become a composite merely because they are provided by the same supplier to the same service provider.

In view of the above, the distribution and supply of electricity only is exempted and the other services are not exempted and also not naturally bundled to become composite supply, and any other services provided are taxable.

7.5 Now, the issue whether concessional rate of GST is applicable to the supplies made by contractors to the applicant on the following programs (hereinafter referred to as the said works or "DDUGJY/IPDS/ADSMS") is examined.

Sl.No	Name of the Project	Nature of Works	promoter
1	Deendayal Upadhyay Gram Jyoti Yojna for Rural Electrification (DDUGJY)	System Strengthening works	Central Government with grants of 60%
2	Integrated Power Development Scheme (IPDS)	System Strengthening works	Central Government with grants of 60%
3	Agricultural Demand Side Management Scheme (ADSMS)	Replacement of 65000 Nos. old agricultural pump sets	State Government Scheme with REC Loan funding

The applicant furnished the aims and objectives of these schemes as below:

- The main objectives of Deendayal Upadhyaya Gram Jyoti Yojana(DDUGJY) are:
 - (a) Separation of agriculture and non-agriculture feeders facilitating judicious rostering of supply to agricultural & non-agricultural consumers in the rural areas;
 - (b) Strengthening and augmentation of sub-transmission & distribution infrastructure in rural areas, including metering of distribution transformers/ feeders/ consumers;



(c) Rural electrification as per CCEA approval dated 01.08.2013 for completion of the targets laid down under RGGVY for 12th and 13th plans by carrying forward the approved outlay for RGGVY to DDUGJY.

- The main objectives of Integrated Power Development Scheme (IPDS) are;
 - (a) Strengthening of sub-transmission and distribution networks in the urban areas;
 - (b) Metering of distribution transformers/ feeders/ consumers in the urban areas;
 - (c) IT enablement of distribution sector and strengthening of distribution network, as per CCEA approval dated 21.06.2013 for completion of the targets laid down under R-APDRP for 12th and 13th plans by carrying forward the approved outlay for R-APDRP to IPDS.
- The objective of the Agriculture Demand Side Management Scheme is to reduce peak demand, shift the time during which electricity is consumed to off-peak hours and to reduce the total quantum of consumption.

7.6 The applicant of the view that;

- the Government of India, vide Notification No.11/2017-Central Tax (Rate) dt.28.06.2017 notified the rate of GST applicability on supply of services, under this notification for Heading 9954 the applicable rate of GST is 18% (CGST – 9% & SGST – 9%); the said notification has been amended from time to time and Notification No. 24/2017-Central Tax (Rate) dt.21.09.2017, inserted Entry No. (vi) notified concessional GST rate of 12% (6% CGST & 6% SGST) for the construction services provided to Central Government, State Government, Union Territory, a local authority or a Government Authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of -



(a) A civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) ...; or

(c)

- Vide Notification No.31/2017-Central Tax (Rate) dt.13.10.2017, the word "Central Government, State Government, Union Territory, a local authority or a Government Authority or a Government Entity" was substituted with "Central Government, State Government, Union Territory, a local authority or a Government Authority". As already submitted earlier, the applicant falls under the definition of "Government Entity" as per Notification No.31/2017-Central Tax (Rate) dt.13.10.2017. Therefore, the above said notifications relating to concessional rate of duty shall be applicable to the applicant.
- As per Notification No.32/2017- Central Tax (Rate), dated 13.10.2017, Supply of service or goods by a Government Entity to Central Government, State Government, Local Authority or any person specified by them against consideration received from them in form of grants, shall be exempted. Therefore, the services provided by the applicant to the Central/State Government for executing the project are exempted. But the applicant will execute the project with the help of contractors for which the contractors charge applicable rate of GST. Since the outward supply is exempted, input tax credit cannot be availed as per Sec 17(2) of the CGST Act, 2017. The benefit of exemption on government grants couldn't be availed due to unavailability of ITC, for the government entrusted projects, there would be no margin. From the above, the very intention of government to provide exemption on grants may not be fulfilled and GST charged by the contractor would be the additional cost.



- Further, the Notification No.24/2017-Central Tax (Rate), dated 21.09.2017 clearly mentions that for the construction services provided to Central Government, State Government, Union Territory, a local authority or a Government Authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of – (a) A civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession. There is no doubt that the applicant is a government entity and the service of construction of civil works is for creation of the infrastructure for supply of power to the farmers and in rural areas. As far as the commercial nature is concerned, the Discom is providing the services to the rural areas at concessional rate and for farmers it does not charge any amount for the supply of electricity.
- The nominal charges it collects from the rural area connections do not make the civil works it creates under the said scheme as commercial nature as upheld in the case of B.G. Shirke Construction Technology Pvt. Ltd. vs. CCE, Pune-III 2014 (33) S.T.R. 77 (Tri- Mum). Further, in the case of CCE & S.T., Allahabad vs Ganesh Yadav 2017 (6) G.S.T.L. 428 (Tri. - All.) it was held that when the service is provided under the scheme of the Government for the purpose of welfare of weaker section of the society, such service is not taxable.
- The IPDS works are relating to strengthening of sub-transmission & distribution system, including provisioning of solar panels, metering of distribution transformers/ feeders/ consumers/ in the urban areas, and IT enablement of distribution sector and the above discussion squarely applies to these works also. Hence repetition is avoided.



- Therefore, notwithstanding the full exemption granted to provision of these supplies they being as part of principal supply of exempted supplies, even assuming but not admitting the liability, the works executed under these schemes attract concessional rate of 12% of GST.

In short, the applicant opines that they are covered under the definition of "Government Entity" as per Notification No.31/2017-Central Tax (Rate) dt.13.10.2017; the said works i.e. "DDUGJY/ IPDS/ADSMS" are government programmes for which they get grants/funding from either Central Government or State Government; therefore those works attract concessional rate of 12% under Notification No.24/2017-Central Tax (Rate), dated 21.09.2017.

7.7 As already discussed in para 7.2 above at length, the decisions of Hon'ble Supreme Court on the applicability of exemption provided by a notification;

- the exemption provided by a notification has to be strictly construed;
- the notification has to be interpreted on its wording & no words, not used in the notification can be added;
- Interpretation which not borne out plain wordings of the notification cannot be given; and
- In case of doubt or ambiguity, benefit of it must go to the State.

The relevant portion of the said notification is as follows:

*(a) A civil structure or any other original works meant predominantly **for use other than for commerce, industry, or any other business or profession;***

In the present facts, the applicant M/s APSPDCL are a government entity within the meaning of Notification No. 31/2017 - Central Tax (Rate), dated 13.10.2017 as it is wholly owned by the Government of Andhra Pradesh and also the Government of Andhra Pradesh is having full control over the APSPDCL. However, from the 18th Annual Report



for the year 2017-18, available on their website, it is seen that the applicant M/s SOUTHERN POWER DISTRIBUTION COMPANY OF A.P.LIMITED are a government company and their vision is "To create an organization that is **profitable, viable, responsive, serving the needs of the customer, suppliers and employees**". Thereby the applicant is a commercial concern and also a business entity, though a government corporation.

Further, the works referred by the applicant i.e. strengthening and augmentation of sub-transmission & distribution of infrastructure & networks; strengthening of sub-transmission and distribution networks to reduce peak demand & shifting the time during which electricity is consumed to off-peak hours and to reduce the total quantum of consumption are of industrial nature & for commercial purpose and therefore, this situation cannot be called as non-commercial at no stretch of imagination.

The above works referred by APSPDCL are for business purpose and the benefit of Concessional Rate of 12% (6% under Central tax and 6% State tax) are any other concessional rate is NOT available to the applicant.

As per Section 2 of CGST Act, 2017 and APGST Act, 2017 defines "works contract" as a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

The composite supply of works contract as defined at Section 2 of CGST Act '2017 and APGST Act, 2017 is treated as supply of service in terms of Serial No.6, Schedule II of CGST Act '2017 and APGST Act, 2017.



In view of the above, the said works under the schemes DDUGJY/ IPDS/ADSMS" referred by the applicant fall under the works contract; and covered under entry no. (ii) of S. No. 3 of the table of notification no. 11/2017 - Central Tax (Rate), Dated - 28th June 2017 as amended from time to time and corresponding notifications under APGST Act, 2017; and the applicable rate of tax is 18% (9% under Central tax and 9% State tax).

7.8 Now, we examine the taxability of the services provided by the applicant to farmers up to tube well. The applicant relied on the Notification No.14/2018- Central Tax (Rate), dated 26.07.2018, relevant portion is as follows:

(1)	(2)	(3)	(4)	(5)
"10A	Heading 9954	Services supplied by electricity distribution utilities by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network upto the tube well of the farmer or agriculturist for agricultural use	Nil	Nil"

7.9 The applicant of the view that denial of the exemption to the contractors who provide the service to Discom and indirectly to the farmers is not correct; when similar issues were raised in the past, the Hon'ble Tribunal in the following cases held in service tax matters that "what is to be seen is whether the service was intended to be exempted or not"

- State of A.P. and Ors. V. Larsen and Turbo Ltd. and Ors. (2008) 9 SCC 191
- Khurana Engineering Ltd vs. CST, Ahmedabad 2011 (21) STR 115 (Tri-Ahmd)
- R.B. Chy Ruchi Ram Khattar & Sons vs. CST, New Delhi 2015 (38) S.T.R. 583 (Tri. - Del.)

7.10 As already discussed at length in para 7.2 above and at para 7.7, the ratio of decisions on interpretation & application of exemption from tax, recorded by the Apex Court are to be followed. First of all, in its entirety,



the applicant being an electricity distribution agency is not providing any service for availing the nil rate/ exemption; and Secondly the services referred are done by third parties to the applicant for which exemption is claimed. As per the relied notification, the exemption is not available to the third parties or contractors engaged by the applicant; but it applies for the services done by electricity distribution agency only. As there is no specific mention of extending exemption to the contractors of the applicant in the said notification wording, the same cannot be held applicable.

Accordingly we pass the following order.

RULING

- (a) Whether the supply of services such as connection, re-connection, supervision of the works, erection of poles, sub-stations, transmission lines etc., and supply of meters etc., to the consumers for the purpose and during the course of supply of electricity to them are naturally bundled and thus form part of the composite supply of principal activity of supply of electrical energy?
- (b) Whether the supply of services such as connection, re-connection, supervision of the works, erection of poles, sub-stations, transmission lines etc., and supply of meters etc., to the consumers for the purpose and during the course of supply of electricity to them can be treated as part of principal supply of transmission or distribution of electricity which is exempted?
- (c) Whether the above supplies made to the consumers through contractors and third parties for the purpose of purpose of transmission or distribution of electricity or sale of electrical energy are also exempted?

Answers to questions (a); (b) & (c)

In the facts and circumstances presented by the applicant the "*Transmission or distribution of electricity by an electricity transmission or distribution utility*" is only exempted vide entry no. 25



of the Notification No. 12/2017- Central Tax (Rate) New Delhi, the 28th June, 2017. Any service, other than transmission or distribution of electricity, rendered by the applicant is not covered in the said entry for claiming exemption. Services rendered apart from "transmission or distribution of electricity" are taxable.

- (d) If the answer to the above questions is 'NO', whether the works executed under Deendayal Upadhyay Gram Jyoti Yojna for Rural Electrification ('DDUGJY'), Integrated Power Development Scheme ('IPDS') and Restructured Accelerated Power Development and Reforms Program supplies made through contractors are liable to 12% GST since they are executed under grants provided by central government and no commercial activity is involved with regards these works?
- (e) If the answer to the above questions at (A), (B) and (C) is 'NO', whether the execution of the Agricultural Demand Side Management Scheme (AGL) works are liable to 12% GST since they are executed for the purpose of non-commercial?

Answers to the questions (d) & (e):

The activities referred by the applicant are not covered in the Notification No.24/2017-Central Tax (Rate), dated 21.09.2017 for availing concessional rate of 12% GST rate and the applicable rate of tax is 18% (9% under Central tax and 9% State tax).

- (f) Whether the supply of services and goods made by the applicant through contractors by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network up to the tube well of the farmer or agriculturist for agricultural are exempted vide Notification No.14/2018- Central Tax (Rate) dated 26.07.2018?



Answer to the question (f)

The Applicant is only entitled for the benefit of NIL rate of GST under Sl. No. 10A of Notification no. 12/2017-Central Tax (Rate), dated 28.06.2017, amended by notification no. 14/2018-Central Tax (Rate), dated 26.07.2018 for the stated works and not for the contractors providing services to the applicant.

Sd/-D.Ramesh
Member (State Tax)

Sd/- S.Narasimha Reddy
Member(Central tax)

//t.c.f.b.o//


Assistant Commissioner (ST)
Assistant Commissioner (State Tax)
O/o. Chief Commissioner of State Tax,
Andhra Pradesh, Vijayawada.

To

M/s. Southern Power Distribution Company of AP Ltd., (Corporate Office),
Srinivasapuram, Tirchanoor Road, Tirupati - 517503, Andhra Pradesh

Copy to

1. The Assistant Commissioner of State Tax, Tirupati-II Circle, Chittoor Division.
2. The Superintendent, Central Tax, Chittoor-I Range, Central GST Division, Tirupati.

Copy Submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Government of A.P., Eedupugallu, Vijayawada
2. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central Tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035.

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act 2017, with in a period of 30 days from the date of service of this order.

