

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH

Goods and Service Tax()

O/o THE COMMISSIONER, COMMERCIAL TAX,

MOTI BUNGALOW,

MAHATMA GANDHI MARG, INDORE (M.P.) - 452007

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PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017

Members Present

1. **Rajiv Agrawal**
Additional Commissioner,
Office of the Commissioner, CGST and Central Excise, Indore
2. **Manoj Kumar Choubey**
Joint Commissioner,
Office of the Commissioner of Commercial Tax, Indore Division-1

GSTIN Number. If any/User-id	23AADCM6175E2ZM
Name and address of the applicant	Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Limited
Date of Application	24.08.18
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; and e) determination of the liability to pay tax on any goods or services or both;
Date of Personal hearing	11.09.18
Present on behalf of applicant	Shree Anil Kumar, Authorized Representative
Order dated	22-11-18
Order Number	19/2018 20/2018

case no.

PROCEEDINGS

**(Under section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh
Goods and Services Tax Act, 2017)**

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and MP Goods & Services Tax Act, 2017 (hereinafter also referred to CGST Act and MPSGT Act respectively) by M/S Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Limited (hereinafter also referred to as applicant), registered under the Goods & Services Tax.
2. The provisions of the CGST Act and MP GST 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 MP GST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.



3. BRIEF FACTS OF THE CASE –

- 3.1 The Applicant is a Public Sector Undertaking fully owned by Government of Madhya Pradesh and engaged in distribution and supply of electricity in 20 districts of Madhya Pradesh.
- 3.2 Applicant is involved in electrification work in to the rural and urban areas under the various Government Schemes; it supplies electricity to all the commercial users and non-commercial consumers and recovers charges for supply of electricity along with other non tariff,
- 3.3 Applicant issues bills of supply of electricity to its consumers, which has a particular due date to pay, every payment received after the due date mentioned in bills is liable to pay delay payment charges.

4. QUESTION RAISED BEFORE THE AUTHORITY –

- 4.1 Whether applicant is eligible to avail the exemption from the 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 of electricity utility' with respect to the Delay Payment Charges recovered by the applicant from its consumers.
- 4.2 If answer of Question no. 1 is negative then what will be the applicable rate of tax and HSN/SAC code for Delayed Payment Charges.

5. DEPARTMENT'S VIEW POINT -

The concerned officer, The Joint Commissioner CGST and Central Excise Hqrs, Jabalpur submitted that as per section 15(2)(d) of CGST Act, 2017 the value of supply shall include interest or late fees or penalty for delayed payment of any consideration for any supply. Further, as per the advance ruling authority order no. RAJ/AAR/2018-19/02, dated – 11/05/2018 passed by Rajasthan Authority of advance ruling, Goods and Services Tax, delay payment are taxable.

Further, as per the tariff heading – 9969 electricity distribution is taxable by 18%. Hence it appears that delay payment charges are taxable by 18% (9% CGST & 9% SGST) under HSN/SAC code – 9969.

6. RECORD OF PERSONAL HEARING

- 6.1. Shree Anil Kumar, Authorized Representative of the company appeared for personal hearing on 11.09.18 and reiterated the submission already made in the application
- 6.2 He submitted that applicant is a Company fully owned and aided by the Govt. of MP. The applicant is a power distribution utility under Electricity Act, 2003 and distributes power to the consumers in eastern part of the state of Madhya Pradesh.
- 6.3. It is governed by Electricity Act 2003 and directions of Madhya Pradesh Electricity Regulation Commission (MPERC) are binding on the company. The Madhya Pradesh Electricity



Regulatory Authority (MPERC) is an Independent Authority fix rates of supply of power in the State of Madhya Pradesh.

6.4. The MPERC exercises the powers conferred by section 50 of the Electricity Act, 2003 for framing rules and regulations to frame Madhya Pradesh Electricity Supply Code, 2013 same is reproduced under-

The State Commission shall specify an electricity supply code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity; measures for preventing tampering, distress or damage to electrical plant, or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter; entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters.

6.5. In addition to the energy charges and distribution charges, the applicant also recovers some Non-Tariff charges from the consumer for certain specific activities carried out by the applicant for the consumer.

6.6. The various non-tariff charges collected from the consumer includes Delay Payment Charges.

The Madhya Pradesh Electricity Supply Code, 2013 specify the recovery the delayed payment Surcharge, same is reproduced under –

9.9 *All categories of consumers committing default in the payment of the billed amount shall be liable to pay delayed payment surcharge, on the amount outstanding, at rates as per applicable retail supply tariff order.*

6.7. The Delayed payment surcharge is a part of Tariff prescribed by MPERC. The Company is duty bound to charge rates as fixed by the Authority and nothing in addition, in any manner. The Delayed Payment Surcharge is billed to consumer when the bill is paid by the consumer after the due date mentioned in the bill. The Delayed Payment Surcharge may be mentioned in the bill as *Surcharge on Outstanding Amount or Late Payment Surcharge*.

6.8 EXEMPTION NOTIFICATION FOR TRANSMISSION AND DISTRIBUTION OF ELECTRICITY BY UTILITY-

A. Electricity Transmission and Distribution Services –



I. Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017 –

As per Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017 the activity of Transmission or distribution of electricity by an electricity transmission or distribution utility is NIL rate of GST-

Sl. No.	Service Code (Tariff) or SAC code	Description of Services	Rate (per cent.)	Condition
25	Heading 9969	Transmission or distribution of electricity by an electricity transmission or distribution utility.	NIL	NIL

Further, the definition given under Notification No. 12/2017- Central Tax (Rate) dated – 28.06.2017 is 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”

Vide Order no. 5555/RS/4/13/2001, Bhopal dated – 1st July 2001 issued by Government of Madhya Pradesh, where in Applicant was entrusted by the state government for distribution and retail supply activities in the commissionerates area of Jabalpur, Rewa and Sagar.

Thus based on above facts, it is concluded that the applicant is covered in the definition of electricity transmission and distribution utility.

6.9 Notification No. 11/2017- Central Tax (Rate) dated 28th June, 2017 -

As per Notification No. 11/2017- Central Tax (Rate) dated 28th June, 2017 at S.No. 13 the activity of electricity, gas, water and other distribution service is taxable and applicable rate of tax is 18% (9% CGST & 9% SGST) –

Sl. No.	Service Code (Tariff) or SAC code	Description of Services	Rate (per cent.)	Condition
13	Heading 9969	Electricity, gas, water and other distribution service.	9	



Being general clause at S.No. 13 Notification No. 11/2017- Central Tax (Rate) dated 28th June, 2017 applicable in cases of electricity distribution services provided by the person other than electricity transmission and distribution utility.

Since, the applicant is covered in the definition of electricity transmission and distribution utility and there is specific exemption for such class of person under Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017, therefore, in the instant case the distribution and transmission of electricity services provided by the applicant is exempted

6.10 Electrical Energy-

As per Notification No. 2/2017- Central Tax (Rate) dated 28th June, 2017 the electrical energy as a goods had been exempted from GST.

Sl. No.	Chapter/Heading/Sub-heading/Tariff item	Description of Goods
104	27160000	Electrical Energy

Thus based on the above facts, it is concluded that both the activity of distribution & Transmission and retail supply of Electricity by the applicant is exempted.

6.11 CIRCULAR NO. 34/8/2018-GST, DATED - 01st MARCH 2018

Vide Circular No. 34/8/2018-GST, Dated - 01st March 2018, Clarification was issued under direction of fitment committee regarding GST in respect of certain services, where inwhether the activities carried by DISCOMS against recovery of charges it had been clarified consumers under State Electricity Act are exempt from GST?. The clarification is as under -

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?	(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, - 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.



Thus vide above circular it is clarified that the, not all the services of the DISCOMS are exempted.

7. **ADVANCE RULLING ISSUED BY THE RAJASTHAN AUTHORITY OF ADVANCE RULING and appeal order on the issue by THE RAJASTHAN APPELLATE AUTHORITY OF ADVANCE RULING GST**

7.1 Rajasthan authority of advance ruling, GST vide order no. RAJ/AAR/2018-19/02, Dated – 11/05/2018 issued ruling on the same matter in case of M/s TP Ajmer Distribution Limited (TPADL). The authority in the instant case provide ruling in case of Delay Payment Charges as under –

*“As per Section 15(2)(d) of the CGST Act, 2017 –
15(2) The Value of supply include -
(d) Interest or late fee or penalty for delayed payment of any consideration for any supply.
Hence taxable”*

Thus, the authority had decided that the Delay Payment Charges are taxable under GST.

7.2 Further, being aggrieved from the ruling issued by Rajasthan AAR, M/s TP Ajmer Distribution Limited had filed appeal before the Rajasthan Appellate Authority for Advance Ruling, GST. The Rajasthan Appellate Authority for Advance Ruling, GST vide order no. RAJ/AAR/02/2018-19, Dated – 18/10/2018 had changed the above ruling and provide ruling as under –

“Based on the available records, we rule that the no GST is chargeable on the delayed payment charges collected from the consumer for delay in payment of consideration for supply of electricity.”

Thus, the appellate authority had decided that the Delay Payment Charges is exempted as the value of main supply i.e., electricity is exempted.

The ruling of Rajasthan authority of advance ruling, GST and the Rajasthan Appellate Authority for Advance Ruling, GST as mentioned above is relevant in the instant case as it is the common practice amongst the electricity distribution Companies to recover the delay payment charges from the consumers in case of delay in payment. Further, the nature of income in the case of applicant and TPADL is same.

8. **DISCUSSION AND FINDINGS:**

The issue raised by the applicant and the material on record are discussed below-



8.1 Vide Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017 and corresponding notification issued under MPGST Act,2017 and Notification No. 2/2017- Central Tax (Rate) dated 28th June, 2017 and corresponding notification issued under MPGST Act,2017 both the activity of distribution& Transmission and retail supply of Electricity by the applicant is exempted.

8.2 Further, Vide Circular No. 34/8/2018-GST, Dated – 01st March 2018, it had been clarified that exemption granted under Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017 and corresponding notification issued under MPGST Act,2017 is not exhaustive and some of the services that are provided by the DISCOMS are taxable under Goods and Services Tax.

8.3 Based on above facts it is important to discuss the nature of service provided by the applicant. The Delayed payment surcharge is a part of Tariff prescribed by MPERC. The Company recovers the said charge at rates fixed by the Authority. The Delayed Payment Surcharge is billed to consumer when the bill is paid by the consumer after the due date mentioned in the bill. The Delayed Payment Surcharge may be mentioned in the bill as *Surcharge on Outstanding Amount or Late Payment Surcharge*. Thus the nature of the service is interest/ late fee/ penalty for delayed in payment of consideration.

As per section 15 of CGST Act, 2017 and MPGST Act,2017 the “Value of Supply” is as under –

15. (1) *The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply*

(2) *The value of supply shall include—*

(a) *any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*

(b) *any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;*

(c) *incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;*

(d) ***interest or late fee or penalty for delayed payment of any consideration for any supply; and***

(e) *subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.*

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

Thus, as per the provision of Section 15(2)(d) of CGST Act, 2017 and MPGST Act,2017, it is clear that any amount recovered in the name of interest or late fee or penalty for delayed payment of any consideration for any supply, than same shall be included in the value of such



supply. We also observe that component of interest and delayed payment charges are obviously having a direct relation with the value of supply to which such interest/delayed charges relate. These are in fact components of the value of supply and do not have any independent status.

Further, as mentioned above as per the ruling of Rajasthan Appellate Authority for Advance Ruling, GST the Delay Payment Charges is exempted as the value of main supply i.e., electricity is exempted.

Attention is drawn towards fact the applicant is recovering delay payment charges not only towards supply of electrical energy as goods, supply Transmission/distribution of electricity service as an electricity distribution utility which are exempted, but also towards charges like metering charges and others which are taxable as per Circular No. 34/8/2018-GST, Dated – 01st March 2018.

Thus, in the instant case the supply in question is set of both, exempted (i.e., distribution & Transmission, retail supply of Electricity) and taxable supply (i.e., the other services as per circular no. 34/8/2018- GST, dated – 1st March, 2018).

Therefore, based on the above facts it can be concluded that the Delayed payment surcharge cannot be treated as separate service and same shall be included in the value of initial service. Thus, portion of Delayed payment surcharge attributable to exempted supply shall be exempted and portion of Delayed payment surcharge attributable to taxable supply shall be taxable.

9. RULING

(Under section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)

9.1 In light of Notification No. 02/2017 and 12/2017 dated – 28th June 2017 Central Tax(Rate) and corresponding notification issued under MPGST Act,2017 and Circular No. 34/8/2018-GST, Dated – 01.03.2018 and as per the provision of Section 15(2)(d) of CGST Act, 2017. The Delayed payment surcharge/ Late Payment Surcharge/ Surcharge on outstanding amount (by whatever name called) cannot be treated as separate service and same shall be included in the value of initial supply to which such charges relate, and the portion of Delayed payment surcharge attributable to exempted supply will be exempted and the portion of Delayed payment surcharge attributable to taxable supply is taxable at the rate on which the corresponding supply is taxed.

9.2 This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act.

—sd—
RAJIV AGRAWAL
(MEMBER)

—sd—
MANOJ KUMAR CHOUBEY
(MEMBER)

Copy to:- NO. 21/2018/A.A.R./R-28/49

INDORE dt. 22/11/2018

1. Applicant
2. The Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal;
3. The Commissioner(SGST), Indore;
4. The Commissionerate, CGST & Central Excise, Jabalpur;



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5. The Concerned Officer
6. The Jurisdictional Officer – State/Central



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