

TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Constituted under Section 99 of Tamil Nadu Goods and Services Tax Act 2017)

A.R.Appeal No.02/2024 AAAR

Date: 06.06.2024

BEFORE THE BENCH OF

Sh. Ashish Varma, I.R.S., Pr. Chief Commissioner of GST & Central Excise, Member, Appellate Authority for Advance Ruling, Tamil Nadu	Dr. D. Jagannathan, I.A.S., Commissioner of Commercial Taxes, Member, Appellate Authority for Advance Ruling, Tamil Nadu
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Order No. AAAR/7/2024 (AR)

(Passed by Tamil Nadu State Appellate Authority for Advance Ruling under Section 101(1) of the Tamil Nadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamil Nadu Goods & Services Tax Act 2017("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the Order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.
2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only
 - (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling;
 - (b) on the concerned officer or the jurisdictional officer in respect of the applicant.
3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.
4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

Name and address of the Appellant	M/s. Tamilnadu Generation and Distribution Corporation Limited, 144, NPKRR MAALIGAI, Anna Salai, Mount Road, Chennai - 600 002.
GSTIN or User ID	33AADCT4784E1ZC
Advance Ruling Order against which appeal is filed	Advance Ruling No.122/AAR/2023 dated 19.12.2023
Date of filing appeal	13.03.2024
Represented by	Shri V Ravindran, Advocate Smt. R. Emerald Jeeva, Financial Controller/Taxation, TANGEDCO
Jurisdictional Authority - State	Deputy Commissioner (ST) Large Tax Payer Unit-1
Jurisdictional Authority - Center	Chennai North Commissionerate
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Payment of Rs.20,000/- (CGST-10,000/- and SGST-10,000/-) made vide Challan CIN:IOBA24033300080543 dated 13.03.2024

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are in *pari materia* and have the same provisions in like matter and differ from each other only on few specific provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act, 2017 would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act, 2017.

2. The subject appeal was filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 (hereinafter referred to 'the Act') by M/s Tamil Nadu Generation and Distribution Corporation Ltd., (hereinafter referred to as 'Appellant'). The Appellant was registered under the GST Act vide GSTIN 33AADCT4784E1ZC. The appeal was filed against the Advance Ruling No.122/AAR/2023 dated 19.12.2023 passed by the Tamilnadu State Authority for Advance ruling on the Application for Advance ruling filed by the Appellant.

3.1. The Appellant, as a State Government entity, is assigned the functions of generation and distribution of electricity. The appellant is "distribution licensee" in terms of the provisions of the Electricity Act, 2003. In effecting the distribution service as per the various provisions of the Act, charges for various activities, which are inherent and essential to electricity distribution service are charged as stipulated. The question raised in the application for advance ruling was as under:

<p>Question(s) on which advance ruling was required</p>	<ol style="list-style-type: none">1. GST on network/wheeling charges, cross subsidy surcharge, and additional surcharge which are charges for distribution of electricity charged by the Applicant.2. Liability to levy of GST on the following:<ol style="list-style-type: none">1. Application fee2. Meter rent3. Testing fee4. Harmonic Compensation charges5. Capacitor Compensation charge6. Estimate charges for Additional load or reduction in load7. Excess contracted load charges8. Belated payment charges9. Service/line, structure and equipment shifting charge,10. Name transfer charge11. Reconnection charge12. Consumer Meter card replacement charge13. Dishonoured cheque service charge14. Charges for restoration of cheque payment facility15. Excess demand charge and excess energy charge during restriction and control of supply16. Labour charges for shifting of meters or shifting of service lines17. Excess demand and excess energy charges18. Charges for providing CMRI data19. Recoveries from consumers for damage to board properties20. Changing meter at the request of the consumer21. Inspection charges22. Levy of charges for reduction in demand23. Changing/shifting of meter board/LTCT box/HT box due to damage or for accommodating additional safety features24. Replacement of damaged/burnt meter25. Temporary disconnection at the request of the consumer26. Charges for furnishing certified copies of documents to consumer27. Additional surcharge28. Tariff change29. Dismantling charges
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The Authority for Advance Ruling (AAR) vide Ruling No.122/AAR/2023 dated 19.12.2023 ruled that the charges collected by the Appellant for the activities, viz., Belated Payment Surcharge, Dishonoured cheque service charge, and Network/Wheeling charges are exempted from GST as per entry No.25 of the Notification No.12/2017-CT (Rate) dated 28.06.2017, and that all other charges are liable for GST at the appropriate rates.

3.2. Aggrieved, the Appellant has filed the present appeal. Under the grounds of appeal as submitted by the Appellant, it is seen that they have argued that para 4.1 of the Circular dated 01.03.2018 has been struck down as ultra vires by the Hon'ble High Court of Gujarat and that once the services in question are found to be ancillary to transmission and distribution of electricity, the AAR had erred in not holding these services to be naturally bundled supply in the course of ordinary business as a 'composite supply' with the principal supply of electricity by a transmission and distribution utility.

3.3 We observe that in this case, apart from the merits of the case, the appellant had also filed a petition dated 13.03.2024 in the form of an Affidavit of Shri K.Balakrishnan, Chief Financial Controller/General of TANGEDCO (the appellant) for condonation of one day delay in filing the appeal. Since the filing of appeal by the appellant in the instant case was beyond the prescribed time limit of 30 days from the communication of Order No. 122/AAR/2023 dated 19.12.2023, an opportunity of personal hearing was accorded to the appellant on 23.04.2024 for the limited purpose of condonation of delay. Since the delay of one day in filing the appeal was owing to paucity of staff and also due to administrative reasons their request for condonation of delay in filing the appeal was considered and condoned vide Order-in-Appeal No.AAAR/05/2024(AR) dated 24.04.2024.

3.4 Accordingly, the appeal is now taken up for consideration on merits. Under the 'Grounds of Appeal' filed along with the application for appeal, the appellant has stated that

i) The impugned order No.122/AAR/2023 dated 19.12.2023 in para 5.6.1, has relied on the Circular dated 01.03.2018, though para 4.1 of the said circular which is relevant to the issue on hand, has been struck down by the Hon'ble High Court of Gujarat as ultra vires. Though the Department is stated to have appealed, there is no stay against the said judgement, and therefore the AAR could not legally have substituted their reasoning over that of the Hon'ble Court.

ii) According to 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. The findings of the AAR in para 5.6.1 of the impugned ruling is that the **ten charges** referred therein are **ancillary** to transmission and distribution of electricity. The very meaning of "ancillary", is "providing **necessary support to the main work or activities** of an organization." Therefore, the AAR erred in not holding these services to be naturally bundled in the ordinary course of business with the principal supply of electricity by a transmission and distribution utility. Moreover, it is a further noted position from the Electricity Supply Code in paragraph 2.2 in the impugned order that all these charges referred to in the proceedings are those prescribed statutorily under the Electricity Act, 2003 by way of notifications issued.

iii) Similarly, the seventeen charges enumerated in paragraph 5.6.3 of the impugned order are also found by the AAR to be ancillary to the principal supply. Here again, the AAR erred in not finding them to be 'composite supply' for the same reason as stated above.

iv) In this regard, it may also be noted that the Hon'ble Rajasthan High Court also held in the case of Jodhpur Vidyut Vitran Nigam Ltd., 2022 (56) G.S.T.L. 273 (Raj.) that they were "in total agreement with the view taken by Gujarat High Court in the case of Torrent Power Ltd."

PERSONAL HEARING:

4.1 Accordingly on 14.05.2024, the authorized representatives (AR), viz., Shri V. Ravindran, Advocate, and Smt. R. Emerald Jeeva, Financial Controller/Taxation of M/s.Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) appeared for the Personal Hearing. The AR reiterated the submissions made by TANGEDCO in the 'Grounds of Appeal' filed along with the application for appeal. The AR stated that TANGEDCO is a transmission and distribution utility, which is a 100% Tamil Nadu Government owned Undertaking established under the Electricity Act, 2003. The present appeal is to challenge that part of the impugned ruling dated 19.12.2023 of the Authority for Advance Ruling, Tamilnadu (AAR) under which certain activities were ruled as taxable.

4.2 The AR stated that the reasoning of the AAR in para 5.6.1 of the impugned ruling that the Hon'ble Gujarat High Court Order dated 19.12.2018 in the case of M/s.Torrent Power Ltd., cannot be cited as a precedent, since a departmental appeal has been filed against the same, is bad in law, especially when no stay is available against the said order. The AR further stated that after the Hon'ble Gujarat High Court struck down para 4(1) of the Circular No.34/8/2018-GST dated 01.03.2018 as ultra vires to Section 8 of the CGST Act, 2017 and Notification No.12/2017-CT (Rate) dated 28.06.2017, two other judgements i.e., the Hon'ble Rajasthan High Court order dated 05.02.2021 in the case of M/s.Jodhpur Vidyut Vitran Nigam Ltd., and the Hon'ble Delhi High Court order dated 13.12.2023 in the case of M/s.BSES Rajdhani Power Ltd., have been issued concurring with the decision as in M/s.Torrent Power Ltd., case.

4.3 Likewise, under para 5.6.3 of the AAR ruling, they contended that to deny exemption to impugned services under the premise that they are not naturally bundled is unwarranted, having already conceded that the services in question may have nexus with the supply of electricity. The AR added that the judgement in the case of M/s.Torrent Power Ltd., treats the services related to transmission and distribution of electricity as a 'Composite supply', thereby getting covered under the exempted category, as the principal supply of transmission and distribution of electricity stands exempted.

4.4 They stated further that Notifications issued during the pre-Negative List era, viz., 11/2010-ST dated 27.02.2010, 32/2010 dated 22.06.2010, 45/2010-ST dated 20.07.2010, etc., do have relevance in the present scenario as well, as the clauses

relating to exemption have remained the same throughout. They furnished an additional written submission during the personal hearing and they undertook to furnish any other information/document in this regard, as and when called for.

4.5 Under the additional submissions filed during the personal hearing held on 14.05.2024, the following points were highlighted, apart from reiterating the points discussed already during the personal hearing, i.e.,

- i) It is an admitted fact that the decisions of the Hon'ble High Courts in the cases of M/s.Torrent Power Ltd., M/s.Jodhpur Vidyut Vitran Nigam Ltd., and M/s.BSES Rajdhani Power Ltd., are holding the field and not stayed by the Hon'ble Supreme Court in the appeals filed by the Department. Therefore, these decisions of Hon'ble High Courts are binding on lower authorities in the absence of a contrary decision on the same issue, rendered by the High Court at Madras having jurisdiction over the state of Tamil Nadu.
- ii) Reliance is placed by the AR on the following decisions for the proposition that even non-jurisdictional High Court decisions would have authoritative binding force on the subordinates across the country in the absence of any contrary decision of their respective jurisdictional High Court, as laid down in the case of East India Commercial Co. Ltd., Vs. Collector of Customs – 1962 (5) TMI 23 – Supreme Court, and in para Commissioner of Income Income-Tax, Vidarbha Vs. Smt.Godavaridevi Saraf.
- iii) As regards the rest of the 17 services discussed in para 5.6.3 of the ruling, the findings given are self-contradictory and therefore based on the admitted position, the ruling must have been in favour of the appellant. Firstly, it is stated that the “These charges may have nexus with supply of electricity, but then they are not naturally bundled”. Once it was found by the ARA that the services (for which these charges are collected) are having nexus with the supply of electricity, it is not appropriate for that authority to say the same are not naturally bundled, in the cases cited above. The ARA could have even sought for from the applicant/appellant or obtained independently, a Chartered Engineer's certificate in this regard.
- iv) Further, the observations viz., “Moreover we also notice that independent suppliers can also provide these services separately, in which case these services can never be termed as composite supply as they are not naturally bundled with the main service”, are beyond the issue raised in the application seeking advance ruling. The application sought as to the exigibility to GST, the activities which the applicant/appellant was carrying out and for which the fees/charges were being collected by them.
- v) The appellant therefore prayed that the advance ruling, in so far as it relates to the above 17 activities concerned, may be set aside and the present appeal may be allowed, in view of the specific coverage of the issue under the Court rulings cited above.

4.6 It was noticed that the Hon'ble Gujarat High Court of Gujarat at Ahmedabad, in the case of Torrent Power Ltd. Vs UOI [R/Special Civil Application No.5343 of 2018], vide its Order dated 19.12.2018 has ruled that the exclusion clause of the para 4(1) of the impugned circular No.34/8/2018-GST dated 01.03.2018 is struck down as being ultra vires to Section 8 of the CGST Act, 2017 as well as Notification No.12/2017-CT(Rate) dated 28.06.2017[sl.no.25]. This being the crux of the issue in

the instant case, it is ascertained that the Hon'ble HC's order has not been accepted by the Department, and a SLP(C) Diary (Civil) No.019431/2019 (Diary No.24733 of 2019) has been filed before the Hon'ble Supreme Court. The Supreme Court after condoning the delay has granted leave in the said case, whereby the matter becomes sub-judice.

4.7 As the aforesaid legal position did not form part of the discussions during the personal hearing held on 14.05.2024, it was imperative on the part of Department to inform the appellant of the said legal position and seek their comments/view before proceeding further in this case. Therefore, the appellant was accorded another opportunity for hearing on 29.05.2024 to represent their stand on the issue. Accordingly, on 29.05.2024, Shri V. Ravindran, Advocate, and Smt. R. Emerald Jeeva, Financial Controller/Taxation of M/s.Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) appeared for the Personal Hearing.

4.8 When the Members cited the provisions of Section 98(2) of the CGST/TNGST Acts for comments, the AR stated that these provisions apply only to the applicant who furnished the application for advance ruling, and that having admitted the original application, the authorities are bound to pass a ruling in the instant case. They further stated that there are no cases either pending or decided against the applicant in respect of the questions raised in the instant application. The AR further contended that the case of the appellant is not different from the case discussed in the case of M/s.Torrent Power Ltd., and that even in the event of considering the same, as no stay has been granted by the Hon'ble Supreme Court in the instant case, the Appellate Authority for Advance Ruling may decide the issue on merits. In this regard, they undertook to furnish additional written submission by the end of the day, on this issue.

4.9 As undertaken, the AR furnished the additional written submissions on 29.05.2024, wherein the following points were presented before the Appellate Authority for Advance Ruling for consideration, viz.,

1. After hearing the appellant in detail on 14.05.2024 and taking on record the written submissions submitted during the hearing, the Hon'ble AAAR has issued a communication dated 24.05.2024, wherein it is observed that the Hon'ble High Court's judgment in Torrent Power case has not been accepted by the department and a SLP has been filed and that the Supreme Court after condoning the delay has granted leave in the said case and because of this the matter becomes sub-judice and no decision could be made at this stage. Yet, the Hon'ble AAAR has granted a personal hearing on 29.05.2024 in this regard, again.

2. It is already a fact on record that the Advance Ruling Authority in its Ruling No. **122/AAR/2023 dated 19.12.2023** [Impugned ruling in the present appeal] had observed that because of the department's SLP, the ratio of the decision in case of Torrent Power cannot be cited as precedent and to counter this finding the appellant herein, in the written submissions taken on record in the earlier hearing on 14.05.2024 itself, it was highlighted, among various

submissions, the fact of the binding nature of the High Court judgments and in this context, two decisions were also cited.

3. It is respectfully submitted that the GST is an all India legislation, and the law laid down by the Hon'ble High Court in Torrent Power is squarely covering the appellant's case in the present appeal, which fact is apparently agreed in the communication dated 24.05.2024 cited as the crux of the issue. It is further respectfully submitted that Article 261 of the Constitution mandates the application of the law laid down by the Hon'ble High Courts in any part of the country.

4. As regards the present appeal, it is submitted that the appellant is a 100% owned entity of the Government of Tamil Nadu. The appeal was filed and admitted after due process of law. The provisions of Section 101 of CGST/SGST Acts mandate disposal of the appeal by Hon'ble AAAR and this mandatory requirement is also within a time frame of ninety days from the date of filing of the appeal. Further there is no enabling provision in the law to make exception to this timeline under Sec.101, if there is pending litigation on the issue in the appeal any third party. It is submitted that the said timeline is, therefore, inviolable under the law.

5. In this context, it is relevant to highlight the Board's e-flyer, which lauds the advance ruling mechanism as "An advance ruling helps the applicant in planning his activities, which are liable for payment of GST, well in advance. It also brings certainty in determining the tax liability, as the ruling given by the Authority for Advance Ruling is binding on the applicant as well as Government authorities. Further, it helps in avoiding long drawn and expensive litigation at a later date. Seeking an advance ruling is inexpensive and the procedure is simple and expeditious. It thus provides certainty and transparency to a taxpayer with respect to an issue which may potentially cause a dispute with the tax administration. A legally constituted body called Authority for Advance Ruling (AAR) can give a binding ruling to an applicant who is a registered person or is desirous of obtaining registration. The advance ruling given by the Authority can be appealed before an Appellate authority for Advance Ruling (AAAR). There are timelines prescribed for passing an order by AAR and by AAAR".

6. It is again respectfully submitted that in the communication dated 24.05.2024, while affording personal hearing again on 29.05.2024, it is observed that "...no decision could be made at this stage." It is submitted that the provisions of Sec. 101 of the GST Acts cited above or any Board's circulars/instructions, do not give any scope for keeping any appeal in call book on account of department's appeal against a High Court order. In other words, it is submitted that *Lis pendens* is not one ground provided for under the GST Acts **not to decide the issue on merits.**

7. It is respectfully submitted that it would not be predictable as to when the Hon'ble Supreme Court would decide the SLP in question, pending before. It may well take long years. That however cannot take away the mandate in Section 101 of the GST Acts. It is therefore further submitted that in the backdrop of the highlights of the scheme of Advance Ruling explained by the Board through the E-flier extracted above, it is respectfully submitted that the appellant is unable to persuade itself to accept the observations conveyed in the communication dated 24.05.2024, to the effect that "no decision could be made at this stage". The appellant had made all the submissions on the merits

in support of its appeal seeking a favourable advance ruling from the AAAR and the Hon'ble AAAR recorded the same after their patient hearing, on 14.05.2024.

8. It is further highlighted that it is already over 5 years since the said SLP was filed by the department before the Hon'ble Court. The appellant apprehends that any delay in the disposal of the present appeal, particularly without expression sanction in law available in GST Acts, would cause irreparable loss and hardship to the appellant. The very purpose and the objectives of its decision to seek an advance ruling would defeat the objectives and the uncertainties would have a cascading effect on the Government owned utility. On the contrary, the Hon'ble AAAR's ruling in line with the Torrent Power case would pave way for the certainty of law and procedure under GST not only for the appellant, but would serve as a wholesome ruling having persuasive and precedence value.

9. It is respectfully submitted that the Hon'ble Supreme Court has merely granted leave to appeal against the impugned order before it in the SLP against Torrent Power case. It is on record that no stay has been granted even for the operation of the order for the parties thereto. The ratio **decidendi** in the Gujarat High Court and Rajasthan High Court judgments cited in the appellant's written submissions are fully operational and are unassailable on the basis of the provisions of the GST Acts cited and discussed in the said judgments.

10. In view of the above, the appellant prayed that –

- (a) By applying the mandate of Section 101 of the GST Acts, the appeal may be allowed; and
- (b) The ratio **decidendi** in the two judgments of the Hon'ble High Courts be followed and justice be rendered through Advance Ruling.

DISCUSSION AND FINDINGS:

5.1. We have carefully considered all evidence on record including the submissions made by the Appellant in their application for appeal, the submissions made during the personal hearing, and the additional submissions furnished by the appellant.

5.2 We note that under the Advance Ruling No.122/AAR/2023 dated 19.12.2023, passed by the AAR, after holding that the following charges are exempt from GST,

- (i) Belated payment surcharge,
- (ii) Dishonoured cheque service charge, and
- (iii) Network/Wheeling charges

all other charges for which advance ruling was sought originally by the appellant, were found to be liable to GST, based on the discussions as in paras 5.6.1 and 5.6.3 of the impugned order. As we find that the instant appeal is only against the ruling extended in respect of those services that were held as liable to GST, we restrict our discussion and analysis to the same.

5.3 Accordingly, we find that in para 5.6.1 of the impugned order, the AAR after discussing the contents of para 4(1) of the Circular No.34/8/2018-GST dated 01.03.2018, has reasoned that the intention of the circular is to keep away those services which are only ancillary in nature and not closely or directly in relation to

transmission or distribution of electricity from being exempt from GST. In this regard, it is also seen that the Applicant has relied on the decision of the Hon'ble Gujarat High Court, in an identical issue in the matter of **Torrent Power Ltd. Vs UOI [Order dated 19.12.2018 in R/Special Civil Application No.5343 of 2018]**, wherein the exclusion clause of the para 4(1) of the said circular has been struck down as ultra vires to Section 8 of the CGST Act, 2017 as well as Notification No.12/2017-CT(Rate) dated 28.06.2017[sl.no.25]. We notice that though the AAR has taken cognizance of the above; it has been stated in the impugned order that the said decision of the Hon'ble High Court cannot be cited as a precedent in the present case since the issue has not reached finality, in as much as the Hon'ble High Court order has not been accepted by the Commissionerate concerned and a SLP(C) No.019431/2019 (Diary No.24733/2019) has been filed before the Hon'ble Supreme Court. Accordingly, the AAR had gone on to hold that the following services are taxable based on the Board's Circular cited supra, i.e.,

- i) Application fee
- ii) Meter Rent
- iii) Testing fee
- iv) Service/line structures and equipment shifting charge.

and that the following services that are akin to the one included in the exclusion clause of para 4 of the impugned Circular are also accordingly taxable, viz.,

- v) Reconnection Charge
- vi) Labour charges for shifting meters or shifting of service lines
- vii) Charges for providing CMRI data
- viii) Changing/shifting of meter board/LTCT box/HT box due to damage or for accommodating additional safety features
- ix) Charges for furnishing certified copies of documents to consumer.
- x) Dismantling charge.

5.4 Likewise, we find that in para 5.6.3 of the impugned order, the AAR has reasoned out that the services mentioned below can never be termed as 'composite supply', and that they are not naturally bundled with the principal supply, i.e., transmission/distribution of electricity, as the main supply may take place without the said ancillary charges, viz.,

- i) Harmonic compensation charges
- ii) Capacitor compensation charges
- iii) Estimate charges for Additional load or reduction in load
- iv) Excess contracted load charges
- v) Name transfer charge
- vi) Consumer Meter card replacement charge
- vii) Charges for restoration of cheque payment facility
- viii) Excess demand charge and excess energy charge during restriction and control of supply
- ix) Excess demand and Excess energy charges
- x) Recoveries from consumers for damage to board properties
- xi) Changing meter at the request of the consumer
- xii) Inspection Charges
- xiii) Replacement of burnt/damaged meter
- xiv) Temporary disconnection at the request of the consumer

- xv) Additional surcharge
- xvi) Tariff change
- xvii) Cross subsidy surcharge

5.5 Reverting back to the issue in hand, we observe that Sl.No.25 of the Notification No.12/2017-CT (Rate) dated 28.06.2017, exempts the intra-State supply of services of description as specified in column (3) of the Table annexed thereto, i.e.,

Sl.no.	Chapter, Section, Heading, Group or Service code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
25	Heading 9969	Transmission or distribution of electricity by an electricity transmission or distribution utility	NIL	NIL

Therefore, the appellant, M/s. Tamilnadu Generation and Distribution Corporation Limited, being a 'Distribution licensee', in terms of the Electricity Act, 2003, is exempted from the supply of 'services of distribution of electricity'. As per their submissions, in the course of providing service for distribution of electricity, they also provide other services for which they collect charges as detailed in para 3.1 above.

5.6 In this regard, the clarification issued by the CBIC, in relation to query 4(1) of the Circular No.34/8/2018-GST dated 01.03.2018, is reproduced as below :-

Sl.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 <u>by way of</u> 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 <u>other services such as</u> , - 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 <u>are taxable</u> .

We find the impugned Circular stresses on the term that “Service by way of transmission or distribution of electricity by an electricity transmission or distribution utility” alone is exempt from GST. Further, we find that aforesaid 5 services, which are in the nature of services other than by way of transmission or distribution of electricity are found to be taxable, as per the clarification provided. It is interesting to note the phrase “The other services **such as**” preceding the 5 specified services, in the clarification provided. This goes to prove that the intention of the circular is to keep away all those services outside the ambit of exemption even if they happen to be ‘in relation’ to transmission or distribution of electricity. In this regard, we find that the Applicant has relied on the decision of the Hon’ble Gujarat High Court, in an identical issue in the matter of **Torrent Power Ltd. Vs UOI [Order dated 19.12.2018 in R/Special Civil Application No.5343 of 2018]**, wherein the exclusion clause of the para 4(1) of the said circular has been struck down as ultra vires to Section 8 of the CGST Act, 2017 as well as Notification No.12/2017-CT(Rate) dated 28.06.2017 [Sl.No.25].

5.7 Under normal circumstances, appeal shall lie to the Supreme Court in civil matters if the High Court concerned certifies: (a) that the case involves a substantial question of law of general importance, and (b) that, in the opinion of the High Court, the said question needs to be decided by the Supreme Court. However, where no such certificate is given by the Hon’ble High Court, the Supreme Court may, in its discretion grant special leave to appeal from any judgment, decree determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India, as per Article 136 of the Constitution of India.

5.8 It is ascertained that in the case of M/s. Torrent Power Ltd., the Hon’ble High Court’s order dated 19.12.2018 has not been accepted by the Department, and a SLP(C) No.019431/2019 (Diary No.24733 of 2019) has been filed before the Hon’ble Supreme Court. The Supreme Court after condoning the delay has granted leave on 9.08.2019 in the said case, and the appeal filed under CA No.006278/2019 (Diary No.24733/2019) is pending decision before the Hon’ble Supreme Court, whereby the matter becomes sub-judice at this stage, whether with a stay or otherwise. We would like to highlight here that the issue involved in the instant case is being widely discussed/contested throughout the country, as confirmed by the appellant themselves through their submissions that two other judgements i.e., the Hon’ble Rajasthan High Court order dated 05.02.2021 in the case of M/s. Jodhpur Vidyut Vitran Nigam Ltd., and the Hon’ble Delhi High Court order dated 13.12.2023 in the case of M/s.BSES Rajdhani Power Ltd., have been issued concurring with the decision as in M/s. Torrent Power Ltd., case; and therefore we feel that many other decisions on this very same issue may be pending at various levels. Therefore, once a special leave is granted in a case which is widely discussed, and the appeal is admitted by the Hon’ble Supreme Court, the matter becomes sub-judice. On this aspect, we derive strength from the Hon’ble Supreme Court judgement dated 5.02.2004 in the case involving Union of India Vs. West Coast Paper Mills Ltd., reported in 2004 (164) E.L.T. 375 (S.C), where under paras 14 and 15, it has been stated as follows :-

“14. Article 136 of the Constitution of India confers a special power upon this Court in terms whereof an appeal shall lie against any order passed by a Court or Tribunal. Once a **Special leave is granted and the appeal is admitted** the correctness or otherwise of the judgment of the Tribunal becomes wide open. In such an appeal the court is entitled to go into both questions of fact as well as law. In such an event the correctness of the judgment is in jeopardy.”

15. Even in relation to civil dispute, an appeal is considered to be a continuation of the suit and a decree becomes executable only when the same is finally disposed of by the Court of Appeal.”

5.9 At the outset, we would like to make it clear that the Authority for Advance Ruling and the Appellate Authority for Advance Ruling under the CGST Act, 2017, and under the GST Acts of the respective State/Union Territory, have been constituted to answer queries specified under Section 97(2) of the CGST/TNGST Acts, relating to GST only, and therefore we are of the opinion that any reference made by the appellant to the statutory provisions, notifications, clarifications, etc., relating to the pre-GST regime are not required to be considered in the context of GST in the instant case. However, in this regard we find that the AR during the personal hearing held on 14.05.2024, have stated that Notifications issued during the pre-Negative List era, viz., 11/2010-ST dated 27.02.2010, 32/2010-ST dated 22.06.2010, 45/2010-ST dated 20.07.2010, etc., do have relevance in the present scenario as well, as the clauses relating to exemption have remained the same throughout.

5.10 Accordingly, the chronological sequence of events involving the exemption on the services of ‘transmission or distribution of electricity’ are also taken up for analysis, and it is seen that:-

Notification No.11/2010-ST dated 27.02.2010 - exempts the taxable service provided to any person, by any other person **for transmission** of electricity, from the whole of service tax leviable thereon.

Notification No.32/2010-ST dated 22.06.2010 - exempts the taxable service provided to any person, by a distribution licensee, a distribution franchisee, or any other person **for distribution** of electricity, from the whole of service tax leviable thereon.

Notification No.45/2010-ST dated 20.07.2010 – service tax payable on all taxable services **relating to transmission** (upto 26.02.2010) and **distribution** (upto 21.06.2010) of electricity, shall not be required to be paid, during the aforesaid period.

Section 66D of the Finance Act, 1994 (Negative List) - The negative list shall comprise of the following **services**, namely :— “k) **transmission or distribution of electricity by an electricity transmission or distribution utility.**”

Notification No.12/2017-CT(Rate) dated 28.06.2017 – Sl.No.25 – Supply of services of “Transmission or distribution of electricity by an electricity transmission or distribution utility.”

5.11 From the above, it could be seen that at present, the exemption under Sl.No.25 is available to supply of ‘services of transmission or distribution of electricity’, and under the ‘Negative List era’, the exemption as provided under clause (k) of Negative List was also available to ‘service of transmission or distribution of electricity’. Even during the ‘pre-Negative List era’ exemption was available to ‘services for transmission of electricity’ separately under Notification No.11/2010-ST dated 27.02.2010, and to ‘services for distribution of electricity’ under Notification No.32/2010-ST dated 22.06.2010. The phrase ‘services relating to’, appears only under Notification No.45/2010-ST dated 20.07.2010, and therefore the contents of this notification assumes immense significance in the context of the case.

“Whereas, the Central Government is satisfied that a practice was generally prevalent regarding levy of service tax (including non-levy thereof), under section 66 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as ‘the Finance Act’), on all taxable services relating to transmission and distribution of electricity provided by a person (hereinafter called ‘the service provider’) to any other person (hereinafter called ‘the service receiver’), and that all such services were liable to service tax under the said Finance Act, which were not being levied according to the said practice during the period up to 26th day of February, 2010 for all taxable services relating to transmission of electricity, and the period up to 21st day of June, 2010 for all taxable services relating to distribution of electricity;

Now, therefore, in exercise of the powers conferred by section 11C of the Central Excise Act, 1944 (1 of 1944), read with section 83 of the said Finance Act, the Central Government hereby directs that the service tax payable on said taxable services relating to transmission and distribution of electricity provided by the service provider to the service receiver, which was not being levied in accordance with the said practice, shall not be required to be paid in respect of the said taxable services relating to transmission and distribution of electricity during the aforesaid period.”

It becomes clear from the above that even in respect of the period prior to the issue of Notifications No.11/2010-ST dated 27.02.2010, and No.32/2010-ST dated 22.06.2010, services relating to transmission and distribution of electricity were liable to service tax. As a practice was generally prevalent during the said period involving non-levy of service tax on such services, the Central Government in exercise of the powers conferred by section 11C of the Central Excise Act, 1944 (1 of 1944), read with section 83 of the said Finance Act, have extended the said benefit, but only upto the day prior to the issue of Notifications No.11/2010-ST dated 27.02.2010, and No.32/2010-ST dated 22.06.2010.

5.12 Accordingly, we note that the various legal provisions relating to exemption from payment of taxes on services involving transmission or distribution of electricity

during the 'pre-Negative List era', Negative List era', and the 'GST era' at present, are only for the **services of** transmission of distribution of electricity', and not in respect of the services 'related to' it. Even the Notification No.45/2010-ST dated 20.07.2010, exempting services **relating to** transmission or distribution of electricity, covering only a specified period upto the year 2010 during the 'pre-Negative List era', appears to have been issued by the Government as a 'one-time measure' probably only intended to avoid retrospective effect of legislation or to avoid litigation for the period prior to 2010. Other than this, the absence of the term 'services relating to' preceding 'transmission or distribution of electricity' in any other exemption Notification/Negative list, is to be seen as a conscious effort on the part of the Government to not include the services related to transmission or distribution of electricity within the ambit of exemption at any point of time after 2010. We are therefore of the firm opinion that the exemption applies only to the service of transmission or distribution of electricity and not to the other services related to it.

5.13 Under these circumstances, when the sub-judice nature of the issue involved, was brought to the notice of the appellant, an additional opportunity of personal hearing was extended to them on 29.05.2024. Accordingly, when the Members cited the said provisions Section 98(2) of the CGST Act, 2017, for comments, the AR stated that these provisions apply only to the applicant who furnished the application for advance ruling, and that having admitted the original application, the authorities are bound to pass a ruling in the instant case. They further stated that there are no cases either pending or decided against the applicant in respect of the questions raised in the instant application. The AR further contended that the case of the appellant is not different from the case discussed in the case of M/s. Torrent Power Ltd., and that even in the event of considering the same, as no stay has been granted by the Hon'ble Supreme Court in the instant case, the Appellate Authority for Advance Ruling may decide the issue on merits.

5.14 We find that the appellant relies on the judgement dated 19.12.2018 of the Hon'ble High Court of Gujarat at Ahmedabad in the case of M/s. Torrent Power Ltd., and that they have confirmed the fact that the case of the appellant is not different from the case discussed in the case of M/s. Torrent Power Ltd., during the personal hearing held on 29.05.2024. This being the case, we are of the opinion that the issue involved in the case of the appellant, which is the same as that of M/s. Torrent Power Ltd., is pending decision before the Hon'ble Supreme Court.

5.15 In this regard, we observe that the first proviso to Section 98(2) of the CGST Act, 2017, reads as,

*"Provided that the Authority shall not admit the application where the **question raised in the application is already pending** or decided in any proceedings in the case of **an applicant under any of the provisions of this Act.**"*

We find that as per the appellant's argument, their application is liable to be admitted in as much as no case is pending before the Hon'ble Court in the name of the applicant on the issue in hand. In this context, we find that the term 'applicant' is defined under Section 95(c) of the Act, which "means any person registered or

desirous of obtaining registration under this Act", which goes to prove that the definition of 'applicant' is not restricted to provisions related to Advance Ruling alone, and that the definition is meant to cater to the entire Act. Further, we notice that English has two articles, 'the' which is called definite article and 'a/an' which is indefinite article. While the article 'the' is used to refer to specific or particular nouns, 'a/an' on the other hand is used to modify non-specific or non-particular nouns. The use of the article 'an' before the noun 'applicant' is meant to denote a non-specific noun, and in other words, the term "an applicant" has to mean any applicant and not a particular applicant. Thus, in the light of said definition, we do not find force in the applicant's argument inasmuch as the term "applicant" means any person registered under this Act and it could be best interpreted that the legislative intent in its wisdom is to draft the relevant proviso to empower the Authority to reject the application in the cases where there is repeated filing of the application before the Authority on the same issue which is either pending for decision or already decided. We find that the Appellate Authority for Advance Ruling, Uttarakhand vide Ruling No.02/2020-21 dated 11.11.2020, in relation to an appeal filed by M/s. Vardhan Holidays, Uttarakhand, has come up with a similar view, and while referring the matter back, has directed the lower authority to examine the referred cases on merits and pass a detailed speaking order, "if they are not sub-judice."

5.16 Accordingly, we notice that apart from the three services for which a speaking order has been pronounced in the Advance Ruling No.122/AAR/2023 dated 19.12.2023, the AAR ought to have not admitted the application filed by the appellant originally, in so far as it relates to the remaining services in question. In doing so, we note that the AAR has erred in pronouncing a decision on the services in question, when the matter is sub-judice and pending decision by the Hon'ble Supreme Court. We are of the opinion that the impugned ruling of the AAR is liable to be modified to that extent. In this regard, we notice that we are empowered to do so in terms of Section 101(1) of CGST Act, 2017, that reads as :-

"The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to."

5.17 We notice that the appellant in their written submissions filed on 14.05.2024, have contended that regarding the 17 services discussed in para 5.6.3 of the ruling, the findings given are self-contradictory, as it has been stated that "These charges may have nexus with supply of electricity, but then they are not naturally bundled", and accordingly prayed that the advance ruling, in so far as it relates to the above 17 activities concerned, may be set aside and the present appeal may be allowed, in view of the specific coverage of the issue under the Court rulings cited above. In this regard, we observe that the AAR has rightly reasoned out while arriving at the decision, stating that the services mentioned therein can never be termed as 'composite supply', and that they are not naturally bundled with the principal supply, i.e., transmission/distribution of electricity, as the main supply may take place without the said ancillary charges. Notwithstanding the same, we notice from the 'Grounds of Appeal' filed by the Department, that the appeal is on both counts, i.e., services

in relation to transmission and distribution of electricity, which are not covered under Sl.No.25 of the exemption Notification No.12/2017, dated 28.06.2017, and also in respect of the services that cannot be termed as 'composite' in nature to the principal supply of transmission and distribution of electricity as laid down in Section 8(a) of the CGST Act, 2017. For the sake of clarity, the operative portion of the judgment dated 19.12.2018 of the Hon'ble High Court is reproduced as below:-

*"Paragraph 4(1) of the impugned circular No.34/8/2018-GST dated 1.3.2018 to the extent the same reads as under is hereby struck down as being ultra vires the provisions of **Section 8** of the Central Goods and Services Tax Act, 2017 **as well as** Notification No.12/2017-CT (R) **serial No.25.**"*

5.18 Further, the appellant has contended in their written submissions filed on 29.05.2024 that the provisions of Sec. 101 of the GST Acts cited above or any Board's circulars/instructions, do not give any scope for keeping any appeal in call book on account of department's appeal against a High Court order. We would like to clarify here that transferring cases to 'call book', is an internal mechanism adopted by the Department where cases could not be decided owing to specified reasons. Further, as the term 'Call Book', or the procedures relating to the same have not been provided for under the CGST/TNGST Act, 2017 or the rules made thereunder, no comments are required to be made in this regard. Notwithstanding the same, we would like to clarify that in the instant case of the applicant, the case is neither transferred to 'Call Book', nor the decision on the same is kept pending; instead the application is actually being disposed of, by way of not admitting the application, as provided under Section 98(2) of the CGST Act, 2017, in so far as it relates to the services in question, in view of the detailed discussions supra.

5.19 Accordingly, we pass the following order:

ORDER

The Application for Advance Ruling filed by appellant, vide Application Sl.No.05/2023/ARA received on 14.03.2023, is not admitted under Section 98(2) of the CGST/TNGST Act, 2017, in so far as it relates to the taxability of services as discussed in paras 5.6.1 and 5.6.3 of the Advance Ruling No.122/AAR/2023 dated 19.12.2023 passed by the AAR, and the impugned ruling is modified to that extent.


(D. JAGANNATHAN)

Commissioner of Commercial Taxes
Tamil Nadu/Member AAAR


(ASHISH VARMA)

Pr. Chief Commissioner of GST
& Central Excise, Tamilnadu &
Pondicherry Zone/Member AAAR

To

M/s Tamil Nadu Generation & Distribution Corporation Limited,
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//by RPAD//

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