M/s Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL / Discom), GSTIN 37AAHCS4056Q2ZM

Appellate Authority for Advance Ruling — Andhra Pradesh

Order /AAAR/AP/05(GST)/2019 in Application No. AAAR/11(GST)/2019, d… Dated **11.12.2019**

Q Questions Before the Authority

- Are connection, re-connection, supervision of works, erection of poles, sub-stations and transmission lines, and supply of meters, provided to consumers during the supply of electricity, naturally bundled with, and part of, the composite supply of electrical energy?
- Can those same services be treated as part of the principal supply of transmission or distribution of electricity, which is exempt?
- Are those supplies, made through contractors and third parties, also exempt as part of transmission or distribution or sale of electrical energy?
- If not, are works under DDUGJY, IPDS and RAPDRP executed through contractors liable to GST at 12%, since they are funded by central grants and are non-commercial?
- If not, are Agricultural Demand Side Management (AGL) works liable to GST at 12%, since they are non-commercial?
- Are supplies made through contractors for extending distribution networks up to farm tube wells exempt under Notification No. 14/2018-Central Tax (Rate) dated 26.07.2018?

F Facts

APSPDCL is a state-owned distribution licensee under the Electricity Act, 2003. Besides supplying electricity, it grants connections and reconnections, supplies meters, builds and maintains distribution and transmission networks, and supervises works executed by contractors, including rural electrification works under central and state schemes. Some of these works are funded by central grants or by REC loans. The question is whether these ancillary services and contractor-executed works attract the exemption for transmission or distribution of electricity, the 12% concessional rate, or the nil rate for tube-well connections.

H Ruling

Ancillary services (connection, reconnection, supervision, erection of poles, sub-stations, lines, meters) as part of exempt electricity supply	**Not exempt. Taxable.**	Not naturally bundled under section 2(30) of the CGST Act, since they are supplied only on consumer demand. Taxable whether supplied by APSPDCL, contractors or third parties. Agrees with the AAR.

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

DDUGJY, IPDS and RAPDRP works executed through contractors, claimed at 12% GST	**12% not available. Rate applicable is 18% (9% CGST and 9% SGST).**	APSPDCL is a Government entity under Notification No. 31/2017-Central Tax (Rate) dated 13.10.2017, but the works are for commercial purpose, so the entry in Notification No. 24/2017-Central Tax (Rate) dated 21.09.2017 does not apply.
AGL works claimed at 12% GST as non-commercial	**12% not available.**	The order treats this together with the DDUGJY, IPDS and RAPDRP question, applying the same commercial-purpose reasoning.
Tube-well extension works through contractors under Notification No. 14/2018-Central Tax (Rate) dated 26.07.2018, entry 10A	**Nil rate not available to contractors. Works taken up by contractors are taxable.**	Entry 10A covers only services supplied by electricity distribution utilities. An exemption notification is not extended to contractors working on the utility's behalf.

The Appellate Authority dismissed the appeal and upheld the Advance Ruling of the AAR. It held that the ancillary services are not naturally bundled with the supply of electricity and are taxable whether supplied directly or through contractors or third parties. It held that the 12% concessional rate is not available because the works are for a commercial purpose, notwithstanding APSPDCL's status as a Government entity. It held that the nil rate for tube-well extension applies only to the electricity distribution utility itself and does not extend to contractors.

R Reasoning

The authority read section 2(30) of the CGST Act and found that the ancillary services are supplied and charged only when the consumer demands them, so they are not naturally bundled with electricity supply. It therefore refused to extend the nil rate for transmission and distribution to them. It relied on the CBIC clarification in Circular No. 34/8/2018-GST, which treats DISCOM charges such as connection fees, meter rent and testing fees as taxable. On the concessional rate, it held that the works, though grant-funded, were promoted to make APSPDCL commercially viable, so they are not non-commercial works under entry (vi) of Notification No. 24/2017. On entry 10A it held that the exemption is confined in plain terms to electricity distribution utilities. The order does not discuss the Gujarat High Court decision in Torrent Power or the section 8(a) argument that the appellant relied on.

P Provisions Relied On

- Section 2(30) of the CGST Act (composite supply definition)
- Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, entry 25 (heading 9969, nil rate) and Sl. No. 10A (as referred t…
- Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (heading 9954, 18% rate)
- Notification No. 24/2017-Central Tax (Rate) dated 21.09.2017, entry (vi) (12% concessional rate for government construction…
- Notification No. 31/2017-Central Tax (Rate) dated 13.10.2017 (Government entity status)
- Notification No. 14/2018-Central Tax (Rate) dated 26.07.2018, entry 10A (nil rate for tube-well extension by electricity distribu…
- CBIC Circular No. 34/8/2018-GST, F. No. 354/17/2018-TRU, Sl. No. 4 (DISCOM charges taxable)

! For the Practitioner

This order is useful for distribution utilities and their contractors on two points. Ancillary charges such as connection, meter rent and testing fees are taxable even though electricity supply is exempt, and contractor-executed works do not inherit the utility's exemptions. The order also confirms that grant-funded utility works are not automatically non-commercial for the 12% rate. It does not decide the Torrent Power point raised on judicial discipline, and it does not resolve the section 8(a) principal-supply argument. Those points may still be open in further proceedings.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> ap_aaar_05_2019_11.12.2019_spdcapl.pdf

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Pune (HQ)
RTC Silver, B4-708, Sai Satyam Park, Wagholi, Pune, Maharashtra 412207

Mumbai
104, Rajshila Building, 597 J.S.S. Road, Marine Lines, Mumbai 400002

Delhi
3rd Floor, B-6/154-155, Sector 5, Rohini, Delhi 110085

Gurugram
Pioneer Urban Square, B109, Golf Course Ext Road, Sector 62, Gurugram...

Ahmedabad
Phoenix Tower, 1107, near Commerce Six Road, Drive In Road, Navrangp...

Talk to us: +91 94594 56700 | sales@patronaccounting.com | patronaccounting.com