M/S TP AJMER DISTRIBUTION LIMITED (appellant), Florence Apartment, F. No. 915, Pent House, Near Hariprabhu Upadhyay Nagar, Ajmer (Rajasthan) 305004; GSTIN 08AAGCT2158P1ZR

Appellate Authority for Advance Ruling — Rajasthan

ORDER NO. RAJ/AAAR/02/2018-19 DATED 18.10.2018 (Rajasthan Appell… Dated **18.10.2018**

Q Questions Before the Authority

- Whether the delayed payment charges collected from consumers for delay in payment of consideration for supply of electricity are liable to GST under Section 15(2) of the CGST Act, 2017.
- Whether the cheque dishonour fee collected by the appellant from consumers is liable to GST.

F Facts

Tata Power Company Limited holds a 20-year Distribution Franchisee Agreement with Ajmer Vidyut Vitran Nigam Limited, and the appellant is the special purpose vehicle set up to distribute electricity in Ajmer city. Besides energy and distribution charges, the appellant recovers non-tariff charges, including delayed payment charges on late payment of electricity bills and cheque dishonour fees when a customer's cheque is returned by the bank. The advance ruling application concerned whether these non-tariff charges are exempt under Sr. No. 25 of Notification No. 12/2017-Central Tax (Rate).

H Ruling

Delayed payment charges collected for late payment of electricity bills	**No GST chargeable**	Charges are part of the value of supply under Section 15(2)(d), but the principal supply of electricity is exempt under entry No. 104 of Notification No. 02/2017-Central Tax (Rate), so the incremental value remains exempt. The AAR's contrary ruling is not endorsed.
Cheque dishonour fee collected from consumers	**GST chargeable**	Treated as supply of services under Schedule II, para 5(e) (tolerating an act or situation), and taxable on its value. No rate or HSN is stated in the order.

The Authority held that **no GST is chargeable on delayed payment charges** collected for late payment of consideration for electricity supply, because those charges form part of the value of an exempt supply of electricity. It held that **GST is chargeable on cheque dishonour charges** , treating them as consideration for the customer's obligation to tolerate a situation, which is a supply of services under Schedule II, para 5(e). The appellant's appeal was therefore allowed in part as regards delayed payment charges and dismissed as regards cheque dishonour fees.

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

R Reasoning

The Authority read Section 15(2)(d) as bringing interest, late fee or penalty for delayed payment within the value of supply. It then reasoned that the value of electricity supply is exempt under entry No. 104 of Notification No. 02/2017-Central Tax (Rate), and that an incremental charge forming part of that value must share the exemption. For cheque dishonour fees, the Authority relied on Schedule II, para 5(e) of the CGST Act, holding that the appellant agrees to tolerate the dishonour of a cheque in return for a payment, which is a supply of services. The appellant's argument that the fee is merely compensation for bank penalties, and so not consideration under Section 2(31), is not discussed in detail in the ruling.

P Provisions Relied On

- Section 15(1) of the CGST Act, 2017 (transaction value)
- Section 15(2)(d) of the CGST Act, 2017 (interest, late fee or penalty for delayed payment)
- Schedule II, para 5(e) of the CGST Act, 2017 (agreeing to tolerate an act or situation as supply of services)
- Entry No. 104 of Notification No. 02/2017-Central Tax (Rate) dated 28.06.2017 (exemption for electrical energy, tariff heading…
- Section 2(31) of the CGST Act, 2017 (definition of consideration), cited by the appellant
- Sections 97(2) and 101 of the CGST Act, 2017 (scope of advance ruling appeal)

! For the Practitioner

The order is useful for electricity distributors and similar utilities: delayed payment charges on exempt electricity supply are held exempt, as an incremental part of that exempt value. Cheque dishonour fees are held taxable as a service under para 5(e), and a practitioner should expect that treatment to be challenged on the appellant's compensation argument. The order does not give a rate or HSN for cheque dishonour fees, and it does not deal with other non-tariff charges, which were not appealed. The appeal caption cites the AAR ruling as No. 03 dated 11.06.2018, while the body of the order (para 2) cites No. 02 dated 11.05.2018, so the citation should be checked against the original.

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 -> aaar-raj-2-2018_dtd. 18.10.18_tp_ajmer.pdf

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