M/s Uttar Pradesh Power Transmission Corporation Limited, Shakti Bhawan, 14-A, Ashok Marg, Lucknow (GSTIN 09AAACU8823E1Z9)

Authority for Advance Ruling — Uttar Pradesh

Order No. 37, dated 05.08.2019 (Authority for Advance Ruling, Uttar Prad… Dated **05.08.2019**

Q Questions Before the Authority

- Whether the Deposit Work undertaken by the Applicant is an integral part of supply of services of transmission or distribution of electricity?
- Whether the Deposit Work undertaken by the Applicant is ancillary to the principal supply of transmission or distribution of electricity?
- Whether the exemption given under Entry No. 25 of the exemption notification for services by way of transmission or distribution of electricity by an electricity transmission or distribution utility will be applicable on the Applicant?
- Whether ITC is available to the Applicant in undertaking "Deposit Works", i.e. creating infrastructure for electricity transmission?

F Facts

The applicant is the State Transmission Utility of Uttar Pradesh. On the request of distribution licensees, it lays down infrastructure that a consumer needs, which the Electricity Act 2003 allows the licensee to recover from the consumer. The applicant recovers the actual cost of this work directly from the consumer as a non-tariff charge, together with supervision charges, and does not include the cost in transmission tariff. The applicant argued that this deposit work is naturally bundled with transmission and so shares its exemption, and that any ITC on it should be available.

H Ruling

Whether Deposit Work is an integral part of supply of transmission or distribution services	**No**	Deposit work is not directly related to transmission, which can take place with or without it, and the charge is recovered separately as a non-tariff charge.
Whether Deposit Work is ancillary to the principal supply of transmission or distribution	**No**	Same reasoning as the integral-part question; the supplies are not composite.
Whether the Entry 25 exemption for transmission or distribution by a utility applies to the applicant	**No**	Applies to the applicant with respect to non-tariff charges recovered from customers, which are taxable.

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

Whether ITC is available for undertaking Deposit Works (creating infrastructure for transmission)	**Not eligible to claim Input Tax Credit**	The immovable property created is not plant and machinery, so the blocked-credit provisions of s.17(5) apply.

The authority held that deposit work is neither an integral part of, nor ancillary to, the supply of transmission or distribution of electricity. It held that the Entry 25 exemption does not apply to the applicant in respect of non-tariff charges recovered from customers. It further held that the immovable property created is not plant and machinery, so the applicant cannot claim input tax credit on it.

R Reasoning

On composite supply, the authority applied the naturally-bundled test in s.2(30) and found that deposit work is not directly related to transmission, since transmission can occur without it. It relied on the fact that the charge is collected only from specific customers as a non-tariff charge, which shows independence from transmission. On exemption, it followed Circular No. 34/8/2018-GST dated 01.03.2018, which treats the DISCOM charges listed there as taxable, and so denied the exemption for non-tariff charges. On ITC, it held that the work creates immovable property that is not plant and machinery under the s.17(6) explanation, so s.17(5)(c) and (d) bar the credit. The applicant's reliance on the Gujarat High Court in Torrent Power was noted, but the order did not decide on that basis.

P Provisions Relied On

- CGST Act 2017, s.2(30) (composite supply, naturally bundled)
- CGST Act 2017, s.16(1) and s.18(1) (referred to in s.17(5))
- CGST Act 2017, s.17(5)(c) and (d) (blocked credits for works contract and goods or services for construction of immovable pr…
- CGST Act 2017, s.17(6) explanation (definition of plant and machinery)
- Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, Entry No. 25
- Circular No. 34/8/2018-GST dated 01.03.2018 (F. No. 354/17/2018)
- Electricity Act 2003 (cost recovery for enhanced infrastructure; referred to by applicant)
- Torrent Power Ltd v. Union of India, 2018 (17) GSTL 183 (Guj) (relied on by applicant; not followed)

! For the Practitioner

This order is useful for transmission and distribution utilities in Uttar Pradesh that recover deposit-work charges from consumers, since it sets out the authority's view that such charges are taxable and that ITC on the resulting assets is blocked. It settles that the Entry 25 exemption does not reach these non-tariff charges for this applicant. The ruling binds only the applicant and does not decide the valuation of deposit work or the treatment of tariff charges. It also does not resolve the Torrent Power litigation, which the order notes the department may take to the Supreme Court.

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 -> up_aar_37_08.08.2019_upptcl.pdf

Prepared 06-11-2026.

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