Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Limited

Authority for Advance Ruling — Madhya Pradesh

Order Number 19/2018 (handwritten; a second handwritten number 20/2… Dated **22.11.2018**

Q Questions Before the Authority

- Whether the applicant is eligible to avail the exemption from GST under Entry No. 25 of Notification 12/2017-Central Tax (Rate) dated 28.06.2017 (transmission or distribution of electricity by an electricity transmission or distribution utility) in respect of Delay Payment Charges recovered from its consumers.
- If the answer to the first question is negative, what will be the applicable rate of tax and HSN/SAC code for Delayed Payment Charges.

F Facts

The applicant is a State-owned power distribution utility supplying electricity in 20 districts of Madhya Pradesh. It bills consumers for electricity and other non-tariff services, and under the MPERC tariff and the Madhya Pradesh Electricity Supply Code, 2013 it levies a delay payment surcharge on amounts paid after the due date. The question is whether that surcharge carries the exemption available for electricity distribution or must be taxed.

H Ruling

Q1: Exemption under Entry 25 of Notification 12/2017-CT(Rate) for Delayed Payment Charges	****Partly exempt.** Exempt only to the extent attributable to the exempt supply of electricity distribution, transmission and retail supply.**	The charges are part of the value of the initial supply, so the exemption follows the underlying supply. The portion attributable to taxable supplies is not exempt.
Q2: Rate of tax and HSN/SAC for Delayed Payment Charges	****Taxable at the rate on which the corresponding supply is taxed.** No separate HSN prescribed in the ruling.**	The Department had suggested 18 percent under HSN 9969, but the ruling does not adopt that as a standalone rate. The applicable rate depends on the supply to which the portion relates.

The authority held that Delayed Payment Charges cannot be treated as a separate service and form part of the value of the initial supply under section 15(2)(d) of the CGST Act. The portion of those charges attributable to the exempt distribution, transmission and retail supply of electricity is exempt, while the portion attributable to taxable supplies (such as metering and testing charges) is taxable at the rate applicable to the corresponding supply. The order does not prescribe a separate HSN for the charges.

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

R Reasoning

The authority accepted that the applicant is an electricity distribution utility under the definition in Notification 12/2017-CT(Rate), relying on a state government order entrusting it with distribution and retail supply. It then held that a delay payment surcharge is interest, late fee or penalty for delayed payment under section 15(2)(d) of the CGST Act and so forms part of the value of the underlying supply. Because Circular 34/8/2018-GST shows that some DISCOM services are taxable, the surcharge had to be apportioned between exempt and taxable supplies. The authority referred to the Rajasthan advance ruling and the Rajasthan Appellate Authority ruling on delay payment charges, but its own apportionment result does not follow either ruling in full.

P Provisions Relied On

- Section 97(2) of CGST/MPGST Act, 2017 (questions raised)
- Section 98 of CGST/MPGST Act, 2017 (proceedings)
- Section 15(2)(d) of CGST Act, 2017 (interest, late fee or penalty for delayed payment forms part of value of supply)
- Section 103(2) and Section 104(1) of the GST Act (binding nature and voidance of ruling)
- Notification 12/2017-Central Tax (Rate) dated 28.06.2017, Entry No. 25 (exemption for transmission or distribution of electricit…
- Notification 11/2017-Central Tax (Rate) dated 28.06.2017, Entry No. 13 (heading 9969, distribution service at 9 percent CGST)
- Notification 2/2017-Central Tax (Rate) dated 28.06.2017, Entry 104 (electrical energy, tariff item 27160000)
- Circular No. 34/8/2018-GST dated 01.03.2018 (certain DISCOM services such as metering rentals and testing fees are taxabl…
- Madhya Pradesh Electricity Supply Code, 2013 (delayed payment surcharge provision, as quoted in the order)
- Electricity Act, 2003 section 50 (as referred to in the order)
- Advance ruling of Rajasthan AAR (RAJ/AAR/2018-19/02, 11.05.2018) and Rajasthan Appellate AAR (RAJ/AAR/02/2018-19,…

! For the Practitioner

This order is useful to electricity distribution utilities that want to know how delay payment surcharges are treated for GST. It settles that the surcharge is not a standalone service and is apportioned between exempt electricity supply and taxable ancillary services. It does not give a single rate or HSN for delay payment charges, so the tax treatment must be worked out for each underlying supply. The ruling binds only the applicant and is subject to sections 103(2) and 104(1).

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 -> 19-2018_mppkvvcl.pdf

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