



**BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING
for the State of Andhra Pradesh (Goods and Service Tax)**

(Office at O/o Chief Commissioner of State Tax, Govt. of A.P., D No 5-56, Block-B,
R.K.Spring Valley Apartment, Bunder Road, Edupugallu, Vijayawada,
Andhra Pradesh - 521151)

Present:

Sri PEEYUSH KUMAR, (Member) (State Tax)

Sri NARESH PENUMAKA, (Member) (Central Tax)

The 11th day of December, 2019

Order /AAAR/AP/ 05(GST)/2019

In

Application No. AAAR/11(GST)/2019

1	Name and address of the applicant	M/s. Southern Power Distribution Company of Andhra Pradesh Limited 19-3-65/A, Srinivasapuram, Tirchanoor Road, Tirupati-517 503, Andhra Pradesh
2	GSTIN	37AAHCS4056Q2ZM
3	Date of filing of Form GST ARA-02	16.09.2019
4	Date of Personal Hearing	19.11.2019
5	Authorized Representative	Sri. Y. Srinivasa Reddy, Advocate
6	Jurisdictional Authority - State	Assistant Commissioner (ST), Tirupathi-II Circle, Chittoor Division

ORDER

M/s. Southern Power Distribution Company of Andhra Pradesh Limited 19-3-65/A, Srinivasapuram, Tirchanoor Road, Tirupati-517503 Andhra Pradesh (hereinafter referred to as appellant) registered under GST Act. The appellant, (referred to as 'Discom' or 'APSPDCL', for brevity) is a state-owned company having 'Distribution License' as defined in Electricity Act, 2003, and engaged in transmission of electricity from sub-stations and distribution of electricity to consumers.

The appellant had filed an application before the Appellate Authority for Advance Ruling in ARA-02 dated 16.09.2019, contending the Ruling passed by the Authority for Advance Ruling, A.P vide Ruling AAR NO. 22/AP/GST/2019, Dated 08.07.2019. As per sub section 2 of section 100 of APGST Act 2017/CGST Act 201, the appeal shall be filed within a period of 30 days from the date on which the ruling sought to be appealed against is

communicated to the applicant. But it is observed that the appellant had filed the application on 16.9.2019 with a delay of 23 days from the date of receipt of the ruling. They cited the technical glitches in the state GST portal and delay in administrative approvals at their end as reasons for their failure to file the appeal online within the time limit and requested for the condonation of delay. The appeal is considered and the delay is condoned by this authority in exercise of the powers contained in proviso to subsection 2 of Section 100 of the Central Goods and Services Tax Act 2017 and the Andhra Pradesh Goods and Services Tax Act 2017, and the appeal is admitted.

1. Brief History of the Case:

The APSPDCL is a distribution licensee under Section 2(17) of the Electricity Act, 2003. The main activity of the appellant is supply of electricity and for this purpose engages in other ancillary activities in connection and in relation to supply of electricity. Some of the activities it is engaged in and in connection with supply of electricity to the consumers are mentioned below:

- (a) Granting electricity connections including re-connection and also supply of equipment such as meters.
- (b) Creation of distribution and transmission systems.
- (c) Maintenance of the distribution and transmission networks.
- (d) Collection of charges from the consumers for the services provided as per the rates prescribed by ERC.
- (e) Supervision of execution of works by the contractors.
- (f) Allowing other generating companies to transmit electricity through its network.

The appellant in his plea to the Authority for Advance Ruling, had raised the following questions:

- a. Whether the supply of services such as connection, re-connection, supervision of the works, erection of poles, sub-stations, transmission lines etc., and supply of meters etc., to the consumers for the purpose and during the course of supply of electricity to them are naturally bundled and thus form part of the composite supply of principal activity of supply of electrical energy?
- b. Whether the supply of services such as connection, re-connection, supervision of the works, erection of poles, sub-stations, transmission lines etc., and supply of meters etc., to the consumers for the purpose and during the course of supply of electricity to them can be treated as part of principal supply of transmission or distribution of electricity which is exempted?

- c. Whether the above supplies made to the consumers through contractors and third parties for the purpose of transmission or distribution of electricity or sale of electrical energy are also exempted?
- d. If the answer to the above questions is 'NO', whether the works executed under Deendayal Upadhyay Gram Jyoti Yojna for Rural Electrification ('DDUGJY'), Integrated Power Development Scheme ('IPDS') and Restructured Accelerated Power Development and Reforms Program supplies made through contractors are liable to 12% GST since they are executed under grants provided by central government and no commercial activity is involved with regards these works?
- e. If the answer to the above questions at (A), (B) and (C) is 'NO', whether the execution of the Agricultural Demand Side Management Scheme (AGL) works are liable to 12% GST since they are executed for the purpose of non-commercial?
- f. Whether the supply of services and goods made by the petitioner through contractors by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network up to the tube well of the farmer or agriculturist for agricultural are exempted vide Notification No.14/2018- Central Tax (Rate) dated 26.07.2018?

The Authority for Advance Ruling had ruled that

Answers to questions (a); (b) & (c)

In the facts and circumstances presented by the applicant the "*Transmission or distribution of electricity by an electricity transmission or distribution utility*" is only exempted vide entry no. 25 of the Notification No. 12/2017- Central Tax (Rate) New Delhi, the 28th June, 2017. Any service, other than transmission or distribution of electricity, rendered by the applicant is not covered in the said entry for claiming exemption. Services rendered apart from "transmission or distribution of electricity" are taxable.

Answers to the questions (d) & (e):

The activities referred by the applicant are not covered in the Notification No.24/2017-Central Tax (Rate), dated 21.09.2017 for availing concessional rate of 12% GST rate and the applicable rate of tax is 18% (9% under Central tax and 9% State tax).

Answer to the question (f)

The Applicant is only entitled for the benefit of NIL rate of GST under Sl. No. 10A of Notification no. 12/2017-Central Tax (Rate), dated 28.06.2017, amended by Notification no. 14/2018 - Central Tax (Rate), dated 26.07.2018 for the stated works and not for the contractors providing services to the applicant.

Aggrieved by the Ruling passed by the AAR, A.P vide CCST Ruling No.22/AP/GST/2019, Dated 08.07.2019, the appellant preferred the present Appeal before the Appellate Authority for Advance Ruling, in ARA-02, with the following contention.

In the circumstances, the appellant prays that the Hon'ble Appellate Authority may be pleased to:

- (a) To set aside the impugned AAR No 22/AP/GST/2019 dt 08.07.2019 passed by the Authority for Advance Ruling as being arbitrary, illegal and against principles of natural justice and judicial discipline;
- (b) Pass orders to the effect that the supply of services such as connection, re-connection, supervision of the works, erection of poles, sub-stations, transmission lines etc., and supply of meters etc., to the consumers for the purpose and during the course of supply of electricity to them are naturally bundled and thus form part of the composite supply of principal activity of supply of electrical energy.
- (c) Pass further orders that the supply of services such as connection, re-connection, supervision of the works, erection of poles, sub-stations, transmission lines etc., and supply of meters etc., to the consumers for the purpose and during the course of supply of electricity to them can be treated as part of principal supply of transmission or distribution of electricity and exempted from payment of GST.
- (d) Pass orders to the effect that the above supplies made to the consumers through contractors and third parties for the purpose of transmission or distribution of electricity or sale of electrical energy are also exempted.
- (e) Alternatively, pass orders stating that the works executed under Deendayal Upadhyay Gram Jyoti Yojna for Rural Electrification ('DDUGJY'), Integrated Power Development Scheme ('IPDS') and Restructured Accelerated Power Development and Reforms Program supplies made through contractors are liable to 12% GST since they are executed under grants provided by central government and no commercial activity is involved with regard to these works.
- (f) Orders be passed to the effect that the execution of the Agricultural Demand Side Management Scheme (AGL) works are liable to 12% GST since they are executed for non-commercial purposes.
- (g) Orders be issued that the supply of services and goods made by the appellant through contractors by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network up to the tube well of the farmer or agriculturist for agricultural are exempted vide Notification No.14/2018- Central Tax (Rate) dated 26.07.2018.

(h) Please to pass any pass such further orders in the interest of justice.

2. Grounds of appeal:

The Appellant submits the following contentions:

- 1) The order of the Hon'ble Advance Ruling Authority is not a speaking order and passed with a revenue bias. The details of activities undertaken by the APSPDCL ought to have been discussed by the Authority in its order.
- 2) The learned authority failed to appreciate that all supplies in relation to transmission or distribution of electricity are not liable to GST. Any consideration received for provision of a service attracts GST. However, the services provided by a distribution licensee such as the present appellant are always out of the ambit of the tax. Prior to introduction of GST, service tax was exempted on the services provided in relation to transmission or distribution of electricity. Notification No.45/2010-ST dt.20.07.2010 issued by the Government of India under Section 11C of the Central Excise Act, 1944 made applicable to the matters of Service Tax by section 83 of Finance Act, 1994 provided exemption from payment of service tax on all taxable services relating to transmission of electricity provided till 21.02.2010 and all services relating to distribution of electricity provided till 21.06.2010 and they were exempted thereafter also under other notifications.
- 3) The authority has not considered the case laws submitted by the appellant, which supports their case.
 - (a) In the case of M/s Columbia Asia Hospitals Pvt. Ltd., 2018-TIOL-293-AAR-GST, it is held that where two or more supplies of goods or services or both which are naturally bundled, wherein the principal supply is exempt & others are taxable, can be treated as a composite supply of the principal supply. In cases where such principal supply is not a non-taxable supply, the composite supply with the principal supply would be treated as exempt composite supply.
 - (b) In the case of M/s Giriraj Renewables Private Ltd., 2018-TIOL-16-AAAR-GST, it is held that a composite supply comprising of two or more supplies, one of which is a principal supply will be treated as supply of such principal supply. Therefore, GST applicable on the principal supply is applicable for all the services forming part of composite supply.
 - (c) In the case of M/s. Taranjeet Singh Tuteja & Brothers 2018-TIOL-262-AAR-GST, it is held that where an applicant has been allotted with a principal work and along with the same, they will

be paid for incidental works, since there exists a single contract, the supply should be treated as composite supply.

- 4) The authority did not follow the judicial discipline and dis-regarded the Hon'ble Gujarat High Court's Order in the case of M/s Torrent Power Ltd., The said decision has not been stayed by the Hon'ble Supreme Court and the Advance Ruling Authority, being a quasi-judicial authority is duty bound to follow the same;
- 5) Instead of following the Hon'ble Gujarat High Court's order, the Advance Ruling Authority discussed about the merits of the decision taken by the Hon'ble High Court. Further, the decision of the Hon'ble High Court was not even admitted on the date of order of Advance Ruling i.e., 08.07.2019. The petition filed by the department was admitted only on 09.08.2019 in SCA(Civil) Diary No 24733/2019.
- 6) In para 7.3(g) of the impugned order dt 08.07.2019, the authority held that the circular dt.07.12.2010 is not applicable after the introduction of GST. This is contrary to the finding at para 29 of the Hon'ble High Court's order, wherein the Hon'ble High Court has summarized that:
 - *As per the circular dated 7th December, 2010, the reason for saying that supply of electricity meters for hire to consumers is covered by the exemption notification is that such service is an essential activity having direct and close nexus with transmission and distribution of electricity. This circular only provides an interpretation of when a service would stand included in another service, namely, when such service is an essential activity having direct and close nexus with the exempted activity. Therefore, the fact that the exemption notifications came to be rescinded has no relevance in as much as all that the circular clarifies is what according to the Government of India would stand included in another service. Such interpretation would not change merely because such exemption is now granted under some other provision.*
- 7) By taking contradictory stand, even after the Hon'ble High Court's order was brought to the notice of the authority for advance ruling, the authority has clearly exceeded its jurisdiction and therefore, illegal and has to be set aside forthwith in the interest of the justice.
- 8) The Gujarat High Court order cited supra squarely covers the issue on hand and Para 29 of the order is re-produced hereunder, wherein it is clearly held that if the principal supply of transmission and distribution of electricity is exempt from levy of service tax, the tax liability of the related services shall be determined accordingly.

"29.....Therefore, all the services related to transmission and distribution of electricity are naturally bundled in the ordinary course of business of the petitioner and are required to be treated as provision of

the single service of transmission and distribution of electricity which gives the bundle its essential character.

- The term "taxability" means liability to taxation. Thus, the term taxability would take within its sweep not being taxable also inasmuch as liability to taxation would also mean not being liable to any tax. Thus, the liability to tax of a bundled service has to be determined in the manner provided under sub-section (3) of section 66F of the Finance Act. If the services are naturally bundled in the ordinary course of business, the bundle of services shall be treated as provision of the single service which gives the bundle its essential character and where the services are not naturally bundled in the ordinary course of business, the same is required to be treated as provision of the single service which results in highest liability of service tax. Accordingly, where the services are naturally bundled in the ordinary course of business and the single service which gives such bundle its essential character is exempt from tax, the entire bundle will have to be treated as provision of such single service.

- In respect of the period falling under the negative list regime, the services in question would fall within the ambit of bundled services as contemplated under sub-section (3) of section 66F of the Act, and would have to be treated in the same manner as the service which gives the bundle its essential character, namely, transmission and distribution of electricity and, would therefore, be exempt from payment of service tax.

- The services provided by the petitioner are in the nature of composite supply and therefore, in view of the provisions of clause (a) of section 8 of the CGST Act, the tax liability thereof has to be determined by treating such composite same as a supply of the principal supply of transmission and distribution of electricity. Consequently, if the principal supply of transmission and distribution of electricity is exempt from levy of service tax, the tax liability of the related services shall be determined accordingly.

- 9) The Advance Ruling Authority did not examine the alternative plea of the appellant with regard to avilment of concessional rate in terms of Notifications cited in the appellant, though they are rightly eligible for the same
- 10) For denying the concessional rate sought under Notification No.11/2017-Central Tax(Rate) dt 28.06.2017 read with Notification No. 31/2017- Central Tax(Rate) dt 13.10.2017, the authority simply stated that the appellant is a business entity and the works referred are for business purpose, whereas it was clearly mentioned in Para 21 of the application submitted by the appellant that, the works undertaken were promoted by Central

Government with grants of 60% or of State Government scheme with REC loan funding and such works cannot be regarded as commercial.

- 11) The learned authority did not discuss about the applicability of the Notification 32/2017-Central Tax (Rate) dt.13.10.2017 and Notification No.24/2017-Central Tax(Rate) dt.21.09.2017 specifically.
- 12) As regards applicability of Nil rate of GST rate on services provided to farmers up to tube well is concerned, with regard to Notification No.12/2017-Central Tax(Rate) dt.28.06.2017 read with Notification No.14/2018 dt 26.07.2018, the authority stated that Discoms alone are eligible and the exemption is not available, when the work is executed through contractors. The authority chose to ignore the decisions cited by the appellant, though recorded in Para 7.9 of the order, and they are squarely applicable to the facts of the case.
- 13) In the case of RB Chy Ruchi Ram Khattar & Sons Vs CST, New Delhi [2015(38) STR 583(Tri-Delhi)], the Hon'ble Tribunal held the following:

"7. Viewing the above facts in totality, it is observed that merely because the construction has been get done from the contractor/sub-contractor, it will not change the nature or the activity from non-commercial to commercial. Once it comes out that Government has undertaken a project which is non-commercial in nature and not taxable, service received on this account by the Government would not come under the taxability. In above context, judgment quoted by the Commissioner (appeals) and subsequent reference to the Ministry circular will not convert the activity from non-commercial to commercial".

- 14) The appellant does not provide any supplies to the ultimate consumers directly except supply of electricity and undertakes all supplies such as construction of sub-stations, laying of cables etc., through sub-contractors. If the exemption provided to supply of electricity and its ancillary activities provided through the contractors to the ultimate consumers is not extended to the services as envisaged by the Governments, the policy of non-taxing the electricity gets defeated as held in the above cases.

3. Personal Hearing

The Personal Hearing was called on 19th November 2019, for which the authorized representative Sri Y. Srinivasa Reddy, Advocate attended and reiterated the written submission.

The appellant made additional submissions at the time of Personal Hearing as under.

Additional Submission

1. The appellant contended that a detailed worksheet with details of all supplies and revenues against these supplies had been submitted to the

AAR and asked whether each of them or any of them are exempted from GST. However, the Hon'ble AAR had issued the subject ruling without making any discussion on each one of the supplies for which the ruling is sought but by only picking up of only supply of service of testing of meters and holding that it is not an incidental supply to the main supply of electrical energy and distribution of electricity.

2. The appellant further contended that the AAR had not considered the decision of Hon'ble High Court of Gujarat on the ground that appeal against it is pending before the Hon'ble Supreme Court of India (para 7.3 of the order). It is a settled legal position that unless the order of a lower Court is stayed by a higher judicial forum, same has to be followed by the lower authority and hence passing of the impugned order on the ground that the HC order is appealed against is not valid. The appellant referred to few of such cases mentioned below:

- (a) UOI vs. Topland Engines Pvt Ltd 2010 (253) ELT A17 (SC)
- (b) Allovers and Lace Pvt Ltd vs. CCE, Pune 2011 (264) ELT 292 (Tri-Mum)
- (c) CCE vs. Suratjari Pvt Ltd 2014 (309) ELT A93 (SC)

3. The appellant stated that they had explained in the statement how each of the supplies and the revenues corresponding are exempted from GST and how they are incidental to the main activity of transmission and distribution and supply of electrical energy, both of which are exempted. The lower authority had not negated this claim of the appellant and in fact held in the order that there is close nexus between the main activity and the ancillary activities (page 11 of the impugned order) and are naturally bundled. But even after holding that they are naturally bundled and have nexus to the principal supply, the lower authority had given a ruling that these incidental activities are liable to GST on the ground that a Notification is to be interpreted as it is and only that mentioned in the notification are exempted. The lower authority failed to appreciate Section 8(a) of the GST Act which deals with the determination of principal supply in a composite supply.

4. The appellant stated that they collect all the monies from the consumers mostly for supply of electrical energy which is exempted. For the purpose of supply of electricity, he needs to create infrastructure and collects amounts for the same. Unless this infrastructure is created, electricity cannot be supplied. Even though the consumers pay amount for the provision of infrastructure, the equipment for which money was paid by the consumers will become property of the appellant as per the Electricity Act, 2003 as can be seen from the GTCS (General terms and conditions of supply) issued by the Electricity Regulatory Commission. Thus, there is no supply of any goods or services to the consumers except supply of electricity as the property in the goods is not transferred to the consumers and the amounts are collected

only for facilitating supply of electricity. Even in the balance sheet of the appellant company, the value of these goods for which monies are collected from the consumers is shown in the depreciation account. In this context, the appellant refers to the ruling of the ARA in the case of National Highways Authority of India reported in 2019 (27) GSTL 155 (AAR-GST).

5. The appellant claimed that the department was proposing demand of GST on the services basing on the circular dt.1.3.2018 wherein it was clarified that supply of electricity is exempted but the ancillary activities are taxable. The said circular is held as ultra vires and struck down by Hon'ble High Court. Even if it is valid, as an appeal is filed against the order of HC, the demand could be raised only from 1.3.2018 since an oppressive circular can have only retrospective effect as held in the case of Suchitra Components Ltd vs. UOI filed herewith notwithstanding the fact that a circular cannot create tax liability.
6. The appellant stated that it can be seen from the MAA (Memorandum and Articles of Association) filed with the appeal that the main objective of the appellant is supply of electrical energy.
7. In view of the above, it is prayed that the appeal of the appellant may please be allowed. Alternatively, the case may be remanded to the lower authority to pass a speaking order on the nexus of each of the activity of the appellant detailed in the worksheet to the main activities of transmission or distribution of electricity and supply of electrical energy.

4. Discussion & Findings:

We have gone through the entire records, facts of the case, and also considered the written as well as oral submissions made by the appellant and the ruling pronounced by the AAR as well.

As seen from the Ruling of the AAR and the grounds of appeal of the appellant, the main contentions before us to decide are :

- 1) Whether the activities enlisted by the appellant in the queries such as connection, re-connection, supervision of the works, erection of poles, sub-stations, transmission lines and supply of meters etc., to the consumers for the purpose and during the course of supply of electricity to them are naturally bundled and thus form part of the composite supply of principal activity of supply of electrical energy or not.
- 2) Whether all the activities enlisted above can be treated as part of principal supply of "transmission or distribution of electricity", which is exempted.
- 3) Whether supplies made to the consumers through contractors and third parties for the purpose of transmission or distribution of electricity or sale of electrical energy are also exempted.

The appellant relies on the following entry, while contending his activities as part of the principal supply of "transmission or distribution of electricity", which reads as under

The entry no. 25 of the Notification No. 12/2017-Central Tax (Rate) New Delhi, the 28th June, 2017 reads as follows:

25	Heading 9969	Transmission or distribution of electricity by an electricity transmission or distribution utility.	Nil	Nil
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It is undisputed that the appellant's main activity of "transmission or distribution of electricity" is rated nil as per the above entry. But the issue to be decided is whether the activities of the appellant as enlisted in the application are taxable or not.

In this regard it is pertinent to make a reference to the clarificatory circular issued with regard to the following services as approved by the Fitment Committee to the GST Council in its meeting held on 9th, 10th and 13th January 2018 as under

Circular No. 34/8/2018-GST

F. No. 354/17/2018-TRU

Subject: Clarifications regarding GST in respect of certain services

S. 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 by way of 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 other services such as, - 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 are taxable.

From the above clarificatory circular, it is clear that the above mentioned services numbered from (i) to (iv) as provided by DISCOMS to consumer are taxable. It is to be noted that the supply of electricity is a continuous

supply whereas the ancillary services provided by the appellant are made at the specific request of the consumer. It is the same principle that guides in the determination of the question whether the ancillary activities form part of the composite supply or not. The relevant provision of the CGST Act is reproduced as below

"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;

Illustration — Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;"

When we look into the above definition it is clear that the ancillary activities of the appellant such as connection, re-connection, supervision of the works, erection of poles, sub-stations, transmission lines etc., and supply of meters etc., are not naturally bundled with supply of electricity rather they are supplied by and charged for by the appellant only if demanded or consumed by the customers. Thus, the exemption notified for 'transmission and distribution of electricity' cannot be extended to its ancillary supplies on the pretext of they being a part of composite supply, which is far from true; and they are taxable irrespective of the fact that whether they are supplied by contractors or third parties. In this regard we agree with the decision of the AAR.

At the next stage, now we look into the following issues

- 1) whether the works executed under Deendayal Upadhyay Gram Jyoti Yojna for Rural Electrification ('DDUGJY'), Integrated Power Development Scheme ('IPDS') and Restructured Accelerated Power Development and Reforms Program supplies made through contractors are liable to 12% GST since they are executed under grants provided by central government and no commercial activity is involved with regards these works.
- 2) Whether the execution of the Agricultural Demand Side Management Scheme (AGL) works are liable to 12% GST since they are executed for non-commercial purposes.

In this context, the appellant contends that the AAR had not examined their alternative plea with regard to availment of concessional rate sought for their above mentioned programs under Notification No.11/2017 - Central Tax (Rate) dt. 28.06.2017 read with Notification No. 31/2017 - Central Tax (Rate) dt. 13.10.2017.

When we examine the above issue, it is clear that it is a settled issue between the appellant and the lower authority that APSPDCL is a Government entity vide Notification No.31/2017 Central Tax (Rate) dt. 13.10.2017. But the issue to be determined is whether the concessional rate

of tax is applicable to the appellant. The Government of India vide Notification No.11/2017-Central Tax (Rate) dt.28.06.2017 notified the rate of GST applicability on supply of services. Under this notification for Heading 9954 the applicable rate of GST is 18% (CGST – 9% & SGST – 9%); the said notification has been amended from time to time and Notification No. 24/2017-Central Tax (Rate) dt.21.09.2017, inserted Entry No. (vi) notified concessional GST rate of 12% (6% CGST & 6% SGST) for the construction services provided to Central Government, State Government, Union Territory, a local authority or a Government Authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of -

- (a) *A civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;*
- (b) *...; or*
- (c) *....*

In this regard it is an undeniable fact that the appellant i.e., APSPDCL is a Government entity within the meaning of Notification No 31/2017 dated 13.10.2017 and the profile of the company as mentioned in the company website reads as under

*"APSPDCL was formed in April 1, 2000 to serve Krishna, Guntur, Prakasam, Nellore, Chittoor and Kadapa districts with a vision to become an efficient utility supplying reliable and quality power, promoting economic development and being **self-reliant commercially**".*

The formation of the appellant company itself is made with an objective of being **self-reliant commercially** and all the programmes of Deendayal Upadhyay Gram Jyoti Yojna for Rural Electrification ('DDUGJY'), Integrated Power Development Scheme ('IPDS') and Restructured Accelerated Power Development and Reforms Program and the execution of the Agricultural Demand Side Management Scheme (AGL) works taken up by the appellant through the contractors, even though funded by the Central Government with grants of 60% or by the State Government with REC loan funding, have the main objective of making the organization as commercially viable. It clarifies that the works referred by APSPDCL are for commercial purpose and the benefit of concessional rate of 12% as per the Notification No. 24/2017- Central Tax (Rate) dt.21.09.2017 is not applicable to the appellant. We agree with the decision of the lower authority in this regard.

Finally, we look into the question whether the supply of services and goods made by the appellant through contractors by way of construction, erection, commissioning, or installation of infrastructure for extending

electricity distribution network up to the tube well of the farmer or agriculturist for agricultural use are exempted vide Notification No.14/2018 - Central Tax (Rate) dated 26.07.2018. The relevant portion of the Notification is mentioned here under

	(2)	(3)	(4)	(5)
"10A	Heading 9954	Services supplied by electricity distribution utilities by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network upto the tube well of the farmer or agriculturist for agricultural use	Nil	Nil"

The plain reading of the above entry clarifies that the exemption is applicable only to the 'electricity distribution utilities' i.e., the appellant alone and it being a exemption notification cannot be interpreted or extended to the contractors who carry out the above mentioned works on behalf of the appellant and therefore the works taken up by contractors are exigible to tax. We concur with the decision of the lower authority in this regard.

5. Order

In view of the aforesaid, we are of the opinion that the Ruling of the AAR is in tune with legal position and it needs no interference and the appeal is accordingly dismissed.

We confirm and uphold the decision of the lower Authority.

Sd/- Peeyush Kumar
Chief Commissioner (State Tax)
Member

Sd/- Naresh Penumaka
Chief Commissioner (Central Tax)
Member

//t.c.f.b.o//


Assistant Commissioner (ST)

To:

M/s Southern Power Distribution Company of Andhra Pradesh Limited
19-3-65/A, Srinivasapuram,
Tirchanoor Road,
Tirupati-517 503, Andhra Pradesh **(By Regd. Post)**

Copy to:

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