

DELHI AUTHORITY FOR ADVANCE RULING

(Constituted under section 96 of the Delhi Goods and Services Tax Act, 2017)

GOODS AND SERVICES TAX

DEPARTMENT OF TAXES,

13th FLOOR, VYAPAR BHAWAN, I. P. ESTATE, NEW DELHI – 110002

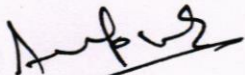
ADVANCE RULING NO. 01/DAAR/2023 DATED 11.07.2023

(IN APPLICATION /NO. 108/DAAR/2019 DATED 05.12.2019)

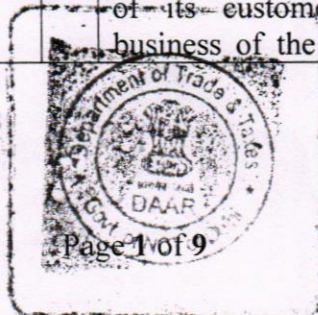
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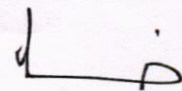
1. Sh. Anup Kumar, Joint Commissioner of Central Tax (Member)
2. Sh. Lekh Raj, Additional Commissioner of State Tax (Member)

GSTIN of the Applicant	:	07AABCN6808R1ZV
Legal name of the Applicant	:	M/s TATA POWER DELHI DISTRIBUTION LIMITED
Registered Address		NDPL House, Hudson Lines, Kingsway Camp, New Delhi – 110009
Date of Application	:	05.12.2019
Clause(s) of Section 97(2) of CGST/DGST Act, 2017, under which the questions raised	:	(g)
Date of Hearing	:	04.05.2023
Jurisdictional Authority (Centre)	:	Range 23, Model Town Division
Jurisdictional Authority (State)	:	Ward 112, SPL Zone
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A. Category	:	Service Portion
B. Description (in brief)	:	M/s Tata Power Delhi Distribution Limited ('the Applicant' in short) is engaged in providing various 'Consumer Funded Jobs' such as creating new connections for supply of electricity, load enhancement/ augmentation, electrification of un-electrified area, pole shifting, conversion of overhead lines into underground cables etc. at the specific request of its customers. However. The principal business of the Applicant is transmission and



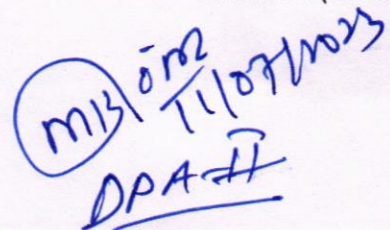
Member (Centre)





Member (State)

Despatch :- 353/DAAR/2023/11.07.23



		distribution of electricity. Section 46 of Electricity Act, 2003 empowers the applicant to recover the expenses reasonably incurred in executing the above said activities. 2. Applicant has sought advance ruling on the issue that whether ITC is available on the consumer funded jobs done by them.
Represented for the Applicant by	:	Mrs. Ritu Gupta, HOD Taxation
Issue(s) on which advance ruling required	:	(iv) Admissibility of input tax credit of tax paid deemed to have been paid
Question(s) on which advance ruling required	:	As reproduced in para 01 of the proceedings below

PROCEEDINGS

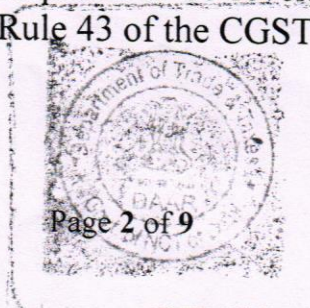
(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Delhi Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Delhi Goods and Services Tax Act, 2017 (hereinafter referred to as “the CGST Act” and “DGST Act” respectively) by M/s Tata Power Delhi Distribution Limited seeking advance ruling in respect of the following issue.

1. Whether the input tax credit (ITC) for input and input services is available to the applicant in undertaking “consumer funded jobs”?
2. Whether input tax credit for the capital goods is available to the applicant in undertaking “consumer funded jobs” i.e. creating infrastructure for electricity distribution?
3. If it is held that the Applicant is eligible for ITC of tax paid on inputs and input services used in manner as stated in the application, then whether any amount of such ITC is required to be reversed under Section 17(2) of the CGST Act read with Rule 42 of the CGST Rules?
4. If it is held that the Applicant is eligible for ITC of tax paid on the capital goods used in manner as stated in the application, then whether any part of such ITC is required to be reversed under Section 17(2) of the CGST Act read with Rule 43 of the CGST Rules?



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2. At the outset, we would like to make it clear that the provisions of both the CGST Act and the DGST Act are the same except certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under DGST Act. Further, to the earlier, henceforth for the purpose of this Advance Ruling, a reference to such similar provisions under CGST Act/DGST Act would be mentioned as being under "GST Act".

3. FACTS AND CONTENTION – AS PER THE APPLICANT

3.1 The Applicant is engaged in providing various 'Consumer Funded Jobs' such as creating new connections for supply of electricity, load enhancement/augmentation, electrification of un-electrified area, pole shifting, conversion of overhead lines into underground cables etc. at the specific request of its customers. However. The principal business of the Applicant is transmission and distribution of electricity. Section 46 of Electricity Act, 2003 empowers the applicant to recovers the expenses reasonably incurred in executing the above said activities.

3.2 Applicant has sought advance ruling on the issue that whether ITC is available on the consumer funded jobs done by them. On this issue, it is relevant to mention that vide Circular No. 34/8/2018-GST dated 01.03.2018 (Sr. No.4(1), CBIC has already clarified that the activities carried by DISCOMS against recovery of charges from consumers under State Electricity Act are exempt from GST.

3.3 In support of his claim. Applicant has relied upon following provisions:

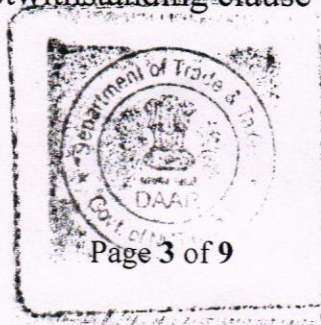
a) Section 16(1) of CGST Act entitles the registered person to take credit of input tax:

b) Section 17(2) of CGST Act read with Rule 42 and 43 of the CGST Rules restricts a person to claim ITC to the extent it relates to the taxable outward supplies;

c) Section 17(5)(c) and Section 17(5)(d) impose restrictions upon ITC on certain supplies by way of notwithstanding clause to Section 16(1);



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d) Explanation to Section 17 provides the meaning of expression plant and machinery for Chapter V (ITC) and Chapter VI (Registration) of the CGST Act.

4. Additional submissions dated 24.02.2023 and 12.04.2023 by the Applicant:

4.1 The applicant vide letter dated 24.02.2023 inter alia submitted that the question which is posed before the Authority is regarding admissibility of the ITC, which is neither pending nor decided by any Authority; that, the issue of taxability of such supply may be before the Hon'ble Delhi High Court in Writ Petition (Civil) No. 12063 of 2018 filed by the Applicant, , the Hon'ble High Court has not given any relief including an interim relief; that the question raised in respect of which advance ruling has been sought from the Authority is not pending or decided in any proceedings in the case of the Applicant under any of the provisions of this Act; that the Writ Petition (Civil) No. 12063 of 2018 of Hon'ble Delhi High Court, which has been transferred vide Transfer Petition (Civil) No. 388/2020 before the Hon'ble Supreme Court and pending before the Hon'ble Supreme Court has not been filed under CGST/SGST Act, so that proceeding before the Constitutional Court is not a proceeding under any of the provisions of this Act; that the ruling on the Application is already delayed due to non-existence of the AAR; that Section 98(6) provides that the Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application; that the very purpose to seek ruling is getting defeated due to the delay and jeopardising the business of the Applicant; and that the application is to be decided expeditiously on merit and questions are to be answered accordingly.

4.2 The applicant vide letter dated 24.02.2023 inter alia requested to provide Ruling in respect of questions mentioned at Sl. 3 and 4 of para 1 above.

5. Contention – As per the Concerned officer (Centre)

The Assistant Commissioner, Model Town Division, CGST Delhi North Commissionerate furnished their comments on the questions for Advance Ruling, stating inter alia that the Input Tax Credit (ITC) for input/input services/ Capital Goods shall not be available to the applicant in undertaking consumer funded jobs”.



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6. **Contention – As per the Concerned officer (State)**

The GSTO, Ward 112, SPL Zone, DGST Delhi Commissionerate furnished their comments on the questions for Advance Ruling, stating inter alia that the input tax credit (ITC) for input and input services shall not be available to the Applicant in undertaking "Consumer Funded Jobs".

Hearing

7. The first hearing in the matter was conducted on 29.10.2020. Sh. Gagan Gugnani, CA appeared for the applicant. None appeared from the Revenue State Govt, Revenue Central Govt. The Consultant for the applicant also requested for adjournment due to their suspended office function during Covid-19. The second hearing scheduled on 16.02.2023, to which the Revenue Central Government requested for adjournment of 15 more days to submit their comments. The applicant vide letter dated 24.02.2023 made additional written submissions. Further, vide letter dated 12.04.2023 the applicant requested to give ruling on additional supplementary questions as detailed Sl. No. 3 and 4 at para 1 above. Final Hearing in matter was conducted on 04.05.2023.

Discussion and findings

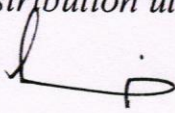
8. We have considered the submissions made by the applicant in their application dated 05.12.2019 for advance ruling; their additional submissions dated 24.02.2023 and 12.04.2023; the comments furnished by the jurisdictional Central Revenue Officer and State Revenue Officer; and those put forth by the Atul Gupta, Advocate and other representatives of the applicant during the personal hearing.

8.1 On careful perusal of the entire case records, placed before us, the moot issue is, whether input tax credit (ITC) for capital goods, input and input services is available to the applicant in undertaking "consumer funded jobs" i.e. creating infrastructure for electricity distribution and if so, whether any amount of such ITC is required to be reversed by the taxpayer under Section 17(2) of the CGST Act read with Rule 42 of the CGST Rules.

8.2 We find that the government of India vide circular no. 34/8/2018-GST dated 01.03.2018 {Sr. No. 4(1), clarified that "*Service by way of transmission or distribution of electricity by an electricity transmission or distribution utility*"


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is exempt from GST under notification No. 12/2017- CT (R), Sl. No. 25. The other services such as,- Application fee for releasing connection of electricity; Rental Charges against metering equipment; Testing fee for meters/ transformers, capacitors etc.; Labor charges from customers for shifting of meters or shifting of services lines; Charges for duplicate bill; provided by DISCOMS to consumer are taxable.

8.3 The applicant challenged the provisions of the above said Circular by filing Writ Petition (Civil) No. 12063/2018 before Hon'ble High Court of Delhi, which is still pending.

8.4 The applicant submitted that according to provisions of Section 16 of the CGST Act, ITC is allowed for any supply of goods or services, which are used or intended to be used in the course of business and furtherance of business; that Section 17(5) restricts ITC in relation to certain supplies; that tax charged on all inward supplies shall be eligible for ITC provided it is not restricted under Section 17(5) of the CGST Act, 2017.

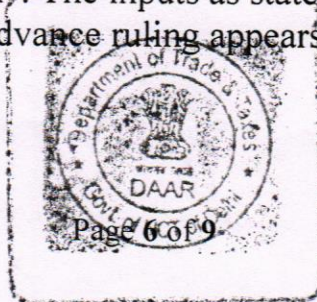
8.5 We also find that as the applicant at para 12 to para 15 of the Annexure-I of the Application Form for advance Ruling states that any asset which has been created by the Applicant for performing the jobs vests with the Applicant only, therefore, it can be derived that the inputs against which the applicant has sought to avail Input Tax Credit are not part of the outward supply classified by the applicant under HSN 9986 "Support Services to Electricity Transmission and Distribution".

8.6 From examination of para 4 of the Annexure-I of the Application form for advance Ruling it can be seen that in order to discharge main responsibility of distribution of power to the consumers it is essential for the applicant to have a network of transformers connected by electrical wires, sub-stations, electricity meters and other equipment. Here, the applicant has admitted that the inputs such as cables, sub-stations etc. are inputs for its principal supply "Electricity Transmission and Distributions" and has no connection with the supply of services such as New Electricity Connections, Load enhancement etc.

8.7 Further, we observe that the list of services as stated at para 9 of the Annexure-I of the Application Form for advance Ruling are services other than the services of Electricity Transmission and Distribution" provided by the applicant to its customers in addition to the principal supply of "Electricity Transmission and Distribution". The inputs as stated at para 4 of the Annexure-I of the application form for advance ruling appears to be the expenses incurred



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for creation infrastructure for electricity transmission. Hence, the inputs used for creating infrastructure for electricity transmission cannot be held to be used in the Business of taxable supplies stated at para 9 of the Annexure-I.

8.8 The applicant in the present case has submitted that the infrastructure is used for making outward supply of services; that the transformers, Network Grid, Cables etc. shall qualify as an equipment/apparatus/machinery which has been fixed to earth by structural support; that various infrastructure created by the applicant is for a particular purpose or function; that the said infrastructure is deployed for provisioning of infrastructure support services and is ultimately used for distribution of electricity; that equipment such as Transformer, RMU etc., shall qualify as plant and machinery.

8.9 We also find that the Uttar Pradesh Authority for Advance Ruling, in the case of Uttar Pradesh Power Transmission Corporation Ltd. vide Order No. 37 dated 05.08.2019 in the similar issue ruled that the applicant is not eligible to claim Input Tax Credit in respect of creating infrastructure for electricity transmission. The relevant portion of the above order of the Authority for Advance Ruling is reproduced as under:

"13. As regard to the question "whether ITC is available to the applicant in undertaking "Deposit Works" i.e. creating infrastructure for electricity transmission", we noticed that

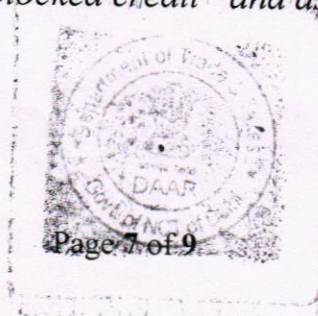
(a) the Applicant, on request of the distribution company, would lay down the required infrastructure and would recover the cost from the consumer directly

(b) In the Annexure-II i.e. "Statement containing applicant's interpretation of Law and/or facts, as the case may be, in respect of the question(s) on which advance ruling is required" the applicant has itself admitted that they does not qualify to be eligible to claim ITC, however in the submission made by the applicant at the time of personal hearing, they have submitted that the deposit were conder taken by them may qualify to be construction of immovable property, and the said constructed property will qualify to be the plant and machinery hence they are eligible to claim input tax credit.

14. Here we notice that section 17 of the CGST Act, 2017 talks about the "Apportionment of credit and blocked credit" and as per section 17(5):



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“(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

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(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.”

15. The expression “plant and machinery” is defined in explanation to section 17(6) of CGST Act, which is as under:

“Explanation.—For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises.”

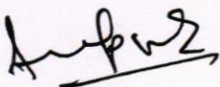
16. From the above discussion we found that the immovable property created by the applicant does not fall under the category of “plant and machinery” therefore they are not eligible to claim Input Tax Credit.

17. In view of above, both the members unanimously rule as under:

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(iv) Whether, ITC is available to the applicant in undertaking “deposit works” i.e. creating infrastructure for electricity transmission?

Ans. Not eligible to claim Input Tax Credit.”



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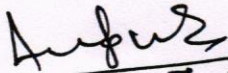
Order

9. In view of foregoing discussion, we order as under:

1. Whether the input tax credit (ITC) for input and input services is available to the applicant in undertaking "consumer funded jobs"? -**No**
2. Whether input tax credit for the capital goods is available to the applicant in undertaking "consumer funded jobs" i.e. creating infrastructure for electricity distribution? - **No**
3. If it is held that the Applicant is eligible for ITC of tax paid on inputs and input services used in manner as stated in the application, then whether any amount of such ITC is required to be reversed under Section 17(2) of the CGST Act read with Rule 42 of the CGST Rules?
-Not relevant in view of (1) above.
4. If it is held that the Applicant is eligible for ITC of tax paid on the capital goods used in manner as stated in the application, then whether any part of such ITC is required to be reversed under Section 17(2) of the CGST Act read with Rule 43 of the CGST Rules?
- Not relevant in view of (2) above.

Place: New Delhi

Date: 11.07.2023


11.07.23
(Anup Kumar)
Member



11.07.23
(Lekh Raj)
Member

Copy to:

1. The Applicant
2. The Concerned Central/State officer
3. The Commissioner of State Tax, Delhi
4. The Jurisdictional Commissioner of Central Tax
- ✓ 5. Senior System Analyst, EDP Branch, to upload on the website of Department of Trade & Taxes, GNCTD.
6. HR Branch, Department of Trade & Taxes, GNCTD.

Note: An appeal against this advance ruling order shall be made before the Delhi Appellate Authority for Advance Ruling for Goods and Services Tax Act, 5th Floor, NDMC Building, Satya Marg, Yashwant Place, Chanakyapuri, New Delhi – 110021.