

**All the supplies made in relation to distribution of electricity are not exempt under GST**

The AAAR, Tamil Nadu, in the matter of *M/S Tamil Nadu Generation and Distribution Corporation Limited, [Order-in-Appeal No. TN/AAAR/12/2021 of dated March 30, 2021]* has upheld the ruling of the AAR and held that GST is applicable on supply of operation and maintenance materials used in regular day-to-day functioning by one subsidiary company engaged in the generation and distribution of electricity to another subsidiary company engaged in the transmission of electricity. Further, modified the ruling to the extent that GST is not leviable on deployment of employees from one subsidiary company to another.

**Facts:**

M/S Tamil Nadu Generation & Distribution Corporation Ltd. ("**TANGEDCO**" or "**the Appellant**") and M/S Tamil Nadu Transmission Corporation Limited ("**TANTRANSCO**") are two subsidiary companies of M/S Tamil Nadu Electricity Board Limited ("**holding Company**" or "**TNEB**"), 100% owned by Government of Tamil Nadu. The Appellant is in the service of generation and distribution (sale of) electricity in the state of Tamil Nadu and TANTRANSCO is in the business of transmission of electricity.

The Appellant and TANTRANSCO entered into transactions between them in the course of generation, transmission and distribution of electricity in Tamilnadu. The Appellant contends that the various services extended to TANTRANSCO constitute distribution services. The Appellant also contends that all items/activities forming the value chain in relation to transmission and distribution of electricity are beyond purview of GST.

This appeal has been filed against the ruling passed by the AAR, Tamilnadu vide **Order No. 14/AAAR/2020 dated April 20, 2020**, wherein, it was held that, the Appellant is liable to pay GST on the 'supply of goods' operation and maintenance materials used in the regular day to day functioning, transfer of capital assets to TANTRANSCO and on the deployment of employees to TANTRANSCO. Further, the exemption under Sl. No. 25 of **Notification No. 12/ 2017-Central Tax (Rate) dated June 28, 2017** ("**Services Exemption Notification**") is not applicable to such transactions between the Appellant and TANTRANSCO.

**Issue:**

- Whether the entire value chain of electricity and transmission distribution are beyond the purview of GST under the Constitution of India?
- Whether GST is not leviable on deployment of employees from Appellant to TANTRANSCO?

**Held:**

The AAAR, Tamil Nadu, in ***Advance Ruling No. TN/AAAR/12/2021 of dated March 30, 2021*** held as under:

- Noted that, electricity duty is a tax on consumption or sale of electricity and is levied under entry 53 of Part-II State list of Schedule 7 of the Constitution of India. Therefore, the Constitution leaves out only tax on consumption for sale of electricity from the purview of GST.
- Observed that, as per Section 2(17) of the Electricity Act, 2003 which defines distribution licensee (which is the Appellant in our case), distribution can only be received by customers of electricity in the area of supply and not to another entity. Operation and maintenance of a distribution system is only a process for delivery of the supply of electricity.
- Held that, the Appellant is indisputably a generation company and a distribution utility, TANTRANSCO on the other hand is a transmission utility. However, distribution service can be supplied only to consumers in the area of supply of the licensee, and therefore, the services extended by the Appellant to TANTRANSCO cannot constitute distribution service. Thus, the Appellant is not exempt under Sl. No. 25 of Services Exemption Notification.
- Modified the ruling of the AAR, to the extent that, deployment of employees to TANSTRANSCO from the Appellant, where the employees are paid by TANTRANSCO themselves, there is no service involved as they are fully under the control of TANTRANSCO only and deemed to be employees of TANTRANSCO for all purposes. In case, the Appellant extends the services of their employees to TANTRANSCO, and collects the consideration payable to such employees from TANTRANSCO or booked as receivables from TANTRANSCO, the said activity is a 'supply of service' and GST shall be applicable to this supply of service.

**Relevant Provisions:**

**Sl. No. 25 of the Exemption Notification:**

<b>Sl. No.</b>	<b>Heading</b>	<b>Description of service</b>	<b>Rate</b>	<b>Condition</b>
25	Heading 9969	Transmission or distribution of electricity by an electricity transmission or distribution utility.	Nil	Nil

**Section 2(17) of the Electricity Act, 2003:**

*“(17) “distribution licensee” means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply.”* **Entry 53 of Part II (State List) of Seventh Schedule to the Constitution of India:**

*“53. Taxes on the consumption or sale of electricity.”*

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