



RAJASTHAN APPELLATE AUTHORITY FOR
ADVANCE RULING
GOODS AND SERVICES TAX
NCR BUILDING, STATUE CIRCLE, C-SCHEME
JAIPUR – 302005 (RAJASTHAN)



PROCEEDINGS UNDER SECTION 101 OF THE CENTRAL GST ACT, 2017 AND RAJASTHAN
GST ACT, 2017



BEFORE THE BENCH OF

1. MS. ARCHANA P. TIWARI, MEMBER
2. SH. ALOK GUPTA, MEMBER

ORDER NO. RAJ/AAAR/-02/2018-19 DATED 18.10.2018

| | | |
|---|---|--|
| Name and address of the appellants | : | M/S TP AJMER DISTRIBUTION LIMITED FLORENCE APARTMENT, F. NO.-915, PENT HOUSE, NEAR HARIPRABHU UPADHYAY NAGAR, AJMER (RAJASTHAN) - 305004 |
| GSTIN of the appellants | : | 08AAGCT2158P1ZR |
| Clause(s) of Section 97(2) of CGST / SGST Act, 2017, under which the question(s) raised | : | (b) applicability of a notification issued under the provisions of this Act; (e) determination of the liability to pay tax on any goods or services or both; (g) whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term. |
| Date of Personal Hearing | : | 09.10.2018 |
| Present for the applicant | : | Sh. Narendra Singhvi, Advocate |
| Details of Appeal | : | Appeal No. RAJ/AAAR/APP/02/2018-19 against Advance Ruling No. RAJ/AAR/2018-19/03 dated 11.06.2018 |

Proceedings

(Under Section 101 of the Central GST Act, 2017 and Rajasthan GST Act, 2017)

1. At the outset we would like to make it clear that provisions of both the Central GST Act, 2017 and Rajasthan GST Act, 2017 are same except for certain provisions. Therefore, unless a

mention is specifically made to such dissimilar provisions, a reference to the Central GST Act would also mean a reference to the same provisions under Rajasthan GST Act.

2. The present appeal has been filed under Section 100 of the Central GST Act, 2017 (hereinafter also referred to as 'CGST Act') and Rajasthan GST Act, 2017 (hereinafter also referred to as 'RGST Act') by M/s TP Ajmer Distribution Limited, Ajmer against the Advance Ruling No. RAJ/AAR/2018-19/02 dated 11.05.2018.



CONDONATION OF DELAY

3. The first issue relates to the issue of condonation of delay in filing appeal under Section 100(2) of the CGST Act. The Appellants has submitted that in the instant matter, the impugned advance ruling dated 11.5.2018 passed by the Learned Rajasthan Authority for Advance Ruling (hereinafter referred to as "Ld. AAR") was communicated to them on 25.05.2018. Accordingly, considering the time limit of 30 days for filing the appeal, appeal was to be filed by 24.6.2018.

4. The appellants has submitted that the GST is a new levy, they did not have a detailed understanding of the provisions of CGST Act. They became aware of the fact that the Appeal against the impugned advance ruling ought to have be filed within 30 days, only when the same was pointed out to it by the advocates. Thus, they were under a bonafide belief that the time limit for filing an appeal against impugned advance ruling passed by the Ld. AAR had not lapsed.

5. Further, the appellants has submitted that during the month of June 2018, Mr. Kailash Pati Mali, their Chief Finance Officer (CFO) was, inter alia, occupied in handling the queries and requirement of the Auditors for the quarterly Audits of the company. The Taxation matter of the appellants are looked after by Mr. Kailash Mali. Since, Mr. Kailash Mali was busy in the Quarterly Audit, the Appeal against the impugned Advance Ruling could not be filed within the aforementioned time limit. Consequently, there is a delay of 29 days in filing the appeal.

6. The appellants has requested to condone this delay and accept the appeal.

7. Considering the facts and circumstances narrated by the appellants, we condone the delay in filing the appeal and accept it for disposal.

BRIEF FACTS OF THE CASE

8. Tata Power Company Limited ('TPCL') has entered into a Distribution Franchisee Agreement ('DFA') with Ajmer Vidyut Vitran Nigam Limited ('AVVNL'). In terms of the aforesaid DFA, TPCL has undertaken to supply Electricity to the customers of AVVNL in Ajmer district, Rajasthan, for a period of 20 years.

9. In order to fulfill its obligation under the DFA entered into with AVVNL, TPLC has set up a Special Purpose Vehicle ('SPV') under the name of M/s. TP Ajmer Distribution Limited (Appellants).

10. The Appellants are registered under Central Goods and Services Tax Act, 2017 ('CGST Act') and holding GST Registration No. 08AAGCT2158P1ZR.

11. The appellants are responsible for operating and maintaining the distribution network in Ajmer City and supplying Electricity to Industrial and domestic consumers.

12. For the aforesaid activity, the appellants raise invoice on the customers for the consideration for supply of electricity.

13. The aforesaid charges are recovered in terms of the Rajasthan Electricity Regulatory Commission (Terms and Condition for Development of Tariff) Regulation, 2014 (hereinafter referred to as "RERC Tariff Regulations").

14. In addition to the Energy charges and distribution charges, the appellants also recover some Non-tariff charges from the customer for certain specific activities carried out by the appellants for the customers.

15. The various non-tariff charges collected from the customer can be broadly categorized as –

- Application / Connection fees
- Charges for equipment such as Meters, Transformers, etc.
- Charges for extension of supply lines
- Cheque dishonour fees

- Delayed payment charges

16. The aforesaid non-tariff charges are fixed and recovered from the customers in accordance with the provisions of Electricity Act, 2003 and regulations made in this behalf by the Rajasthan Electricity Regulatory Commission ('RERC').

17. The appellants filed an application for Advance Ruling in Form ARA-1 before the Authority for Advance Ruling, Rajasthan (AAR) for obtaining an Advance Ruling on the issue as to whether the various Non-tariff charges recovered by the appellants from its customers would be eligible for exemption under Sr. No. 25 of Notification No. 12/2017 - Central Tax (Rate).

18. The AAR, considered the application filed by the appellants and passed Advance Ruling No. RAJ/AAR/2018-19/02 dated 11.5.2018 and held as follows—

- In respect of the cheque dishonour fees, the AAR has held that the said fee is a consideration for 'tolerating an act', which is supply in terms of Clause 5(e) of Schedule II to CGST Act, and hence leviable to GST.
- In respect of the Delayed payment charges, the AAR has held that the said charges are includible in the value of 'supply' under Section 15(2)(d) and hence taxable under GST.
- In respect of other non-tariff charges, the Ld. AAR has relied on the Department Circular no. 34/8/2018-GST dated 1.3.2018 and held that such charges are leviable to GST.

19. Aggrieved by the above ruling passed by the AAR, the appellants has filed this appeal in respect of the 'Cheque Dishonour Fees' and 'Delayed payment charges', on the following amongst other grounds which are without prejudice to each other.

CASE FOR THE PARTY

20. The delayed payment charges collected towards the delay in payment of consideration for supply of Electricity is not taxable under GST in terms of Section 15(2) of CGST Act.

A.1 In the present case, the appellants are engaged in making supply of Electrical energy to the customers in Ajmer. The appellants recover Electricity charges for aforesaid supply from the customer as per the tariff rates fixed by RERC.

A.2 Further, the appellants are also recovering Delayed payment charges from the customers in case where the customer fails to make payment of consideration for the supply of Electricity, by the due date. The Delayed payment charges is in nature of interest charged on consideration for the supply of Electricity. Sample copies of Invoices raised by appellants for recovering Delayed payment charges are enclosed as Appendix-3.

A.3 The supply of 'Electrical energy', classified under Tariff Heading 2716 00 00 of the Customs Tariff Act, 1975, is exempted from the payment of GST under Sr. No.104 of Notification No. 2/2017 – Central Tax (Rate) dated 28.6.2017. Thus, the appellants are not required to pay GST on the Energy Charges collected from the customers.

A.4 The Ld. AAR, in para 7 of the impugned Advance Ruling dated 11.5.2018 has held that the Delayed payment charges shall be included in the consideration for supply in terms of Section 15(2)(d) of the CGST Act. The relevant portion of finding given by the Ld. AAR is extracted as under.

“7.5 DELAYED PAYMENT CHARGES –

As per section 15(2)(d) of the CGST Act, 2017

15(2) The value of supply shall include –

(d) Interest or late fee or penalty for delayed payment of any consideration for any supply;

Hence Taxable.”

A.5 Section 15(2) provides for certain amounts which shall be included in the value of supply. Clause (d) of Section 15(2) states that any amount in the nature of interest or late fees or penalty collected for delay in payment of consideration of a supply shall be included in the value of such supply.

A.6 The appellants submit that, even if the finding given by the Ld. AAR that the Delayed payment charges collected by the appellants shall form part of the value of supply, such Delayed payment charges would only be an additional consideration for the main supply made by the appellants i.e. the supply of Electricity.

A.7 Therefore, the appellants submit that since the main supply of Electricity is exempt from the payment of GST under Sr. No.104 of Notification No. 2/2017 – Central Tax (Rate) dated 28.6.2017, the Delayed payment charges forming part of value of such supply would also be exempted from payment of GST.

A.8 Thus, the appellants are not required to pay GST on the delayed payment charges collected from the customer for delay made in making payment of consideration for supply of electricity.

A.9 In view of the above, the impugned Advance Ruling dated 11.5.2018 is liable to be modified to the extent it pertains to Delayed payment charges.

21. The Cheque Dishonour fees collected by the appellants is not leviable to GST as the same is in nature of penal charges and not for any 'supply' made by the appellants.

B.1 As discussed above, section 15(1) of the CGST Act states that the value of 'supply' of goods or services would be the transaction value, which is the price actually paid or payable for such supply between unrelated parties, and where the price is sole consideration for supply.

B.2 Section 2(31) of the CGST Act, defines 'consideration', in relation to the supply of goods or services, as under:

“consideration” in relation to the supply of goods or services or both includes—

a. Any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services, whether by the recipient or by any other person but shall not include any subsidy given by the Central or State Government;

...”

... emphasis supplied

B.3 Thus, a payment would qualify as 'consideration' for a supply only if such payment is made 'in respect of', 'in response to', or 'for the inducement of' a supply. In other words, there must be a direct relation between a supply being made and the payment received.

B.4 In the present case, the appellants recover Cheque Dishonour fees from the customer in cases where the cheque given by the customers is dishonoured upon presenting it to the bank. Sample

copies of Invoices raised by appellants for recovering Cheque dishonour fees are enclosed as Appendix-4.

B.5 The appellants submit that the Cheque dishonour fee collected from the customers are in nature of penalty. The said fees are recovered by the appellants merely as a compensation for the penal charges paid by the appellants to the Banks for the dishonoured cheque.

B.6 Thus, the appellants submit that there is no 'supply' made by the appellants to the customer against the Cheque dishonour fee recovered from the customers. Hence the same does not qualifies as a 'consideration' for a supply under Section 2(31) of the CGST Act.

B.7 The Ld. AAR in para 7.4 of the impugned Advance ruling has held that the Cheque dishonour fee recovered by the appellants is a consideration for 'tolerating an act' of the customers, which is a supply of service in terms of Clause 5(e) of the Schedule II to the CGST Act.

B.8 The appellants submit that the aforesaid finding of the Ld. AAR is incorrect since the Cheque dishonour fee is paid by the customer only to compensate the appellants for the penal charges levied by the banks on the appellants for dishonour of the cheques presented before it.

B.9 In view of the above, the impugned Advance Ruling dated 11.5.2018 is liable to be modified to the extent it pertains to Delayed payment charges.

PERSONAL HEARING

22. Personal hearing was given to appellants on 9.10.2018. Shri Narendra Singhvi , Advocate appeared on behalf of Appellant for personal hearing . During the PH they reiterated the submission already made in the appeal memo . Upon being asked about the components of the fixed charge (as is being reflected in the electricity bills) and how these are arrived at, the Authorized representative of the appellant vide letter dated 15.10.2018 submitted that fixed cost is charged based on the 'Tariff for Supply of Electricity' issued by the Rajasthan Electricity Regulatory Commission (RERC), in terms of the provisions of the Electricity Act, 2003 and the RERC Tariff Regulations. Such orders specify the amount of fixed charges to be charged from consumers depending upon the consumption and category under which the consumer falls. Copy of one such Tariff Order is enclosed as Annexure-1. The components of the Fixed Cost are the following:

- Return on Equity
- Interest on loans capital
- Depreciation, including advance against depreciation
- O&M Expenses
- Interest on Working Capital Loan

However, in arriving at the fixed cost to be recovered from consumers, the Non-Tariff Income are excluded from the above component of fixed cost.

DISCUSSION AND FINDINGS

23. Having gone through the decision of the Authority for Advance Ruling (AAR) and submissions made by the appellants in written form as well as those made during the course of personal hearing, we find that the issues before us to decide are:-

1. whether the delayed payment charges collected from the consumers for delay in payment of consideration for supply of electricity is liable to GST in terms of Section 15(2) of the CGST Act, 2017; and
2. whether the cheque dishonor fee collected by the appellants is liable to GST.

Taxability of delayed payment charges under Section 15(2) of the CGST Act, 2017

24. For the sake of convenience, we are reproducing the Section 15(1) and the Section 15(2) of the CGST Act.

15 (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

15 (2) The value of supply shall include—

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

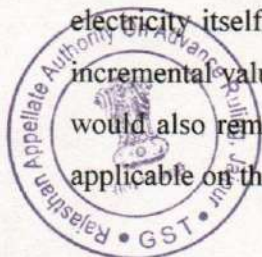
(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

25. From above , it is crystal clear that the value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply .

26. Now the question which arises is what is the value of supply in the instant case . We find that the value of supply is the consideration charged by the appellants from the consumers of electricity on account of consumption of electricity by them. Coming to the taxability of the supply of electricity , we find that electrical energy has been classified under tariff item No. 27160000 under Customs Tariff Act, 1975 and value of its supply has been exempted vide entry No.104 of the notification No. 02/2017- Central Tax (Rate) dated 28.06.2017. As per Section 15(2) ibid , delayed payment charges should form part of the value of supply of electricity . When value of supply of electricity itself stands exempted by virtue of the above exemption notification dated 28.06.2017 , incremental value (i.e. consideration for delayed payment of the electricity bills as discussed above) would also remain exempted. Thus we do not endorse the ruling given by the AAR that GST is applicable on the delayed payment charges received by the Appellants .



Taxability of cheque dishonour fee collected by the appellants

27. Now we come to the next question whether the cheque dishonor fee collected by the appellants is liable to GST or not. The appellants is collecting this fee from those consumers of electricity whose cheque upon presenting to the bank are being dishonoured. The appellants have pleaded that since bank is charging penalty from them when any cheque gets dishonoured , this fee is nothing but compensation for penal charges paid by them to bank.

28. For the sake of convenience , we are reproducing clause 5 (e) of the Schedule -II of the CGST Act.

5. Supply of services

The following shall be treated as supply of services, namely:—

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;

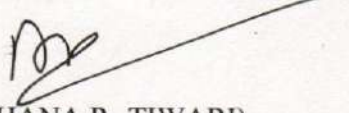
29. Going by the above clause 5(e) , it is evident that if any person tolerates any act or a situation and recovers a certain amount for such tolerance then it is supply of service . In the instant case , the appellants is tolerating the situation of dishonor of cheques, tendered by the consumers of electricity for payment of electricity bill , by charging certain amount from the consumers , hence , it is a supply of service in terms of the above clause 5(e) . Needless to mention that Banks are also paying GST on the charges (by whatever name) received from customers when their cheques gets dishonoured. Therefore, cheque dishonor charges, being a supply of service and not exempted anywhere, appropriate GST is chargeable on the value of its supply.


30. In view of foregoing, we rule as under

RULING

31. Based on the available records, we rule that the no GST is chargeable on the delayed payment charges collected from the consumers for delay in payment of consideration for supply of electricity . While GST is chargeable on the cheque dishonor charges collected (by whatever name) from the consumers .

32. The Appeal stands disposed of as above .


(ARCHANA P. TIWARI)
MEMBER


(ALOK GUPTA)
MEMBER

Speed Post


To

M/S TP AJMER DISTRIBUTION LIMITED,
FLORENCE APARTMENT, F. NO.-915,
PENT HOUSE, NEAR HARIPRABHU UPADHYAY NAGAR,
AJMER (RAJASTHAN) - 305004

F.No. IV(16)AAAR/RAJ/02/2018-19 / 11477/-11482 Dated. 22.10.2018

Copy to :-

1. The Chief Commissioner of CGST , Jaipur Zone , Jaipur .
2. The Commissioner of SGST & Commercial Taxes, Rajasthan , Jaipur.
3. The Assistant Commissioner of CGST & Central Excise Division-J, C.R. Building, Jaipur Road, Ajmer-305001
4. The State Tax Officer, Kar Bhawan, Commercial Taxes Department, Ajmer-305001
5. Guard File


Superintendent