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|  | KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWERS, THIRUVANANTHAPURAM |  |
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BEFORE THE AUTHORITY OF: Dr. S.L. Sreeparvathy, IRS &
: Shri. K. Abdul Latheef

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| Legal Name of the applicant | M/s.YIS Power Solutions Private Limited |
| GSTIN | 322100000246ARC |
| Address | 5/208, Onthirickal, B Division Road, Rajakumari, Idukki, Kerala-685619 |
| Advance Ruling sought for | 1. Whether GST is payable on the electricity produced from solar panels installed by the Applicant when sold to customers? 2. Whether KSEB is liable to levy GST on wheeling charges, transmission and distribution charges and carrying charges that will be billed to the Applicant by it against providing the infrastructure of KSEB for delivering the electricity produced by the Applicant to its sellers? |
| Date of Personal Hearing | 19.04.2023 |
| Authorized Representative | Shri. Soman.N.L, Chartered Accountant |

ADVANCE RULING No. KER/23/2023 Dated 27/06/2023

1. M/s YIS Power Solutions Private Ltd (**herein after referred to as the applicant**) is a private limited company having registered office at No. 5/2018, Onthirickal, Rajakumari, Idukki District. The company is incorporated with the object to produce electricity from solar power panels



and sell it to institutional customers through the transmission lines of Kerala State Electricity Board.

2. At the outset it is clarified that the provisions of the Central Goods and Services Tax Act, 2017 (*herein after referred to as CGST Act*) and the Kerala State Goods and Services Tax Act, 2017 (*herein after referred to as KSGST Act*) are same except for certain provisions. Accordingly, a reference herein after to the provisions of the CGST Act, Rules and Notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the Notifications issued there under.

3. The applicant requested advance ruling on the following:

3.1. Whether GST is payable on the electricity produced from solar panels installed by the applicant when sold to customers?

3.2. Whether KSEB is liable to levy GST on wheeling charges, transmission and distribution charges and carrying charges that will be billed to the applicant by it against providing the infrastructure of KSEB for delivering the electricity produced by the applicant to its sellers?

4. Contentions of the Applicant:

4.1. The applicant submits that the company is planning to install solar power panels and produce and supply electrical energy [electricity] to institutional customers. The electricity so produced from solar panels is proposed to be distributed through the transmission lines of Kerala State Electricity Board (**KSEB**) to the customers. The applicant is in the process of obtaining necessary license from KSEB to commence the above activities. For the utilization of transmission lines, KSEB will be collecting various charges such as transmission charges, wheeling charges and carrying cost. Wheeling charge is the charge collected by KSEB for using their transmission assets. In addition to the above charges, some other

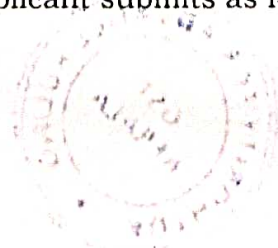


incidental charges also to be paid to KSEB such as loading charges, distribution charges, etc.

4.2. The price at which the electricity is proposed to be sold to the prospective consumers in the market is at a lesser unit rate than the rate offered by KSEB, with a view to making the same commercially more attractive to the consumers. The applicant is in the process of negotiating the contract terms of distribution with the KSEB and finalization of its procurement contracts with the suppliers. The applicant is of the understanding that the electricity generated from solar panels is exempted from the Goods and Services Tax. The applicant further submits that as per serial No. 25 of Notification No. 12/2017-CT (Rate) dated 28.06.2017 transmission or distribution of electricity under Heading 9969 by an electricity transmission or distribution utility is an exempted service.

4.3. The applicant submits that "electricity" is defined in Section 2(23) of the Electricity Act 2003 as follows; "electricity" means electrical energy- (a) generated, transmitted, supplied or traded for any purpose; or (b) used for any purpose except the transmission of a message. Therefore, the words, 'electricity' and 'electrical energy' convey the same meaning. The activity of the applicant in the instant case is supply of electricity which is an exempt good under GST. The applicant collects the value of electricity from the end customers. Electricity (electrical energy) is a good falling under Chapter/Heading/Sub-heading No. 2716 00 00 of Customs Tariff Act. The supply of electrical energy is exempted from levy of GST vide entry at serial No. 104 of Notification No.2/2017-CT (Rate) dated 28.06.2017. Hence the activity of generation of electricity from solar panels installed by them and the distribution of the same to the end customers through the distribution facility of KSEB is non-taxable or exempted under GST.

4.4. Regarding the applicability of GST on various charges to be collected by KSEB for the transmission of electricity produced by the applicant to its consumers, the applicant submits as follows;



“Transmit”:- As per Section 2(74) of the Electricity Act 2003, the word “transmit” means conveyance of electricity by means of transmission lines and the expression “transmission” shall be construed accordingly.

As per Section 2(19) of the Electricity Act 2003, “Distribution system” means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers.

As per Section 2(67) of the Electricity Act 2003, “State Transmission Utility” means the Board or the Government Company specified as such by the State Government under sub-section (1) of section 39. After the enactment of Electricity Act, 2003, KSEB has been functioning as the State Transmission Utility (STU) and a distribution licensee under section 172(a) of the said Act.

4.5. The applicant sources the input services of KSEB for delivering electricity to the customers for which transmission and distribution charges apart from wheeling and other charges are paid to KSEB. Thus the supply of services is being carried out by KSEB. Since the applicant is not engaged in the services of supplying electricity to the end customers, there is no supply of services by the applicant in this scenario. The distribution services involved in the supply of electricity by KSEB is an exempt supply of service. The predominant supply provided by KSEB is transmission and distribution of electricity. In addition to the above service, KSEB also provides usage services of their facilities for which the wheeling and other charges are also levied. Wheeling charge is for using their transmission assets for distributing electricity. Whatever charges may be levied by KSEB in connection with the distribution of electricity to the ultimate customers, the predominant supply is the distribution services along with some other ancillary services making the entire bundle of services as a composite supply. The services of transmission or distribution of electricity by an electricity transmission or distribution utility classified under SAC 9969 is



exempt from GST as per Serial No.25 of Notification No. 12/2017 CT (Rate) dated 28.06.2017. When the predominant element in the composite supply is transmission and distribution of electricity, which is exempt, then all other charges levied by KSEB on the applicant is also exempt from GST as per section 8 of the CGST/KSGST Act 2017. Hence GST is not leviable on the amount billed by KSEB to the applicant against the services provided in connection with the distribution of electricity to the customers.

5. Comments of the Jurisdictional Officer:

The application was forwarded to the jurisdictional officer as per provisions of Section 98(1) of the CGST Act. The Jurisdictional Officer reported that there are no pending or decided proceedings against the applicant under any provisions of GST Act 2017.

6. Personal Hearing:

The applicant was granted opportunity for personal hearing on 19.04.2023 through Virtual Mode. Shri. Soman.N.L, Chartered Accountant represented the applicant. The applicant filed detailed statement of facts along with the application. He requested to issue the ruling on the basis of the submissions made by them in the application and during the personal hearing.

7. Discussion and Conclusion:

7.1. We have carefully examined the statement of facts and the oral submissions made during virtual hearing. The first question raised is regarding the applicability of GST on the supply of electricity produced from solar panels installed by the applicant to customers and the second question is whether GST applicable on various services provided by Kerala State Electricity Board to the applicant for the distribution of electricity, so produced, through their transmission assets.



7.2. At the outset it has to be examined whether the questions on which advance ruling is sought are admissible as per the provisions of the CGST Act 2017 governing advance ruling.

7.3. Section 95(a) of CGST Act defines 'advance ruling' as follows:-

(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority or the National Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of Section 97 or sub-section (1) of section 100 or of section 101C, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

7.4. From the above definition it is evident that an applicant can seek an advance ruling in relation to supply of goods or services or both undertaken or proposed to be undertaken by them.

7.5. Section 97 of the CGST / SGST Act specifies the subjects on which an application for advance ruling can be made. Section 97 of the CGST/ SGST Act reads as follows:-

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought under this Act shall be in respect of,—

- (a) classification of any goods or services or both;*
- (b) applicability of a notification issued under the provisions of this Act;*
- (c) determination of time and value of supply of goods or services or both;*
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;*
- (e) determination of the liability to pay tax on any goods or services or both;*
- (f) whether applicant is required to be registered;*



(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

7.6. Section 103 of the CGST Act governs the applicability of Advance ruling wherein it is specified that;

(1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—

(a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;

(b) on the concerned officer or the jurisdictional officer in respect of the applicant.

(2) The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

Therefore, an Advance Ruling is binding only on the applicant who has sought the ruling and on the officer concerned or the jurisdictional officer in respect of the applicant.

7.7. On a combined reading of the above provisions governing advance ruling under the CGST Act it is evident that an applicant can make an application for advance ruling if the following conditions are satisfied; (1) the applicant is either registered under GST law or is desirous of obtaining registration; (2) the matter or question pertains to any issue specified in Section 97 (2); (3) such a transaction is being undertaken or proposed to be undertaken by the applicant and the advance ruling is binding only on the applicant and the jurisdictional officer of the applicant.

7.8. On perusal of the second question raised by the applicant it is seen that the applicant has sought the taxability of the services provided by Kerala State Electricity Board to the applicant and hence the applicant is the recipient of the services in the transaction. Therefore, the question do



not pertain to a transaction that is being undertaken or proposed to be undertaken by the applicant and hence do not fall within the purview of the definition of advance ruling. Further, it is categorically stated in Section 103 of the CGST Act that the ruling pronounced is binding only on the applicant and the jurisdictional authority of the applicant. Hence, if a recipient obtains a ruling on the taxability of his inward supply of goods or services or both the supplier of such goods or services and their jurisdictional authority is not bound by that ruling and the supplier and their jurisdictional authority is free to assess the supply according to their own determination and the ruling has no relevance or applicability. Therefore, the question is not admissible.

7.9. The first question on which advance ruling is sought by the applicant falls within the purview of clauses (b) and (e) of sub-section (2) of Section 97 of the CGST Act, 2017; i.e; applicability of a notification issued under the Act and determination of the liability to pay tax on any goods or services or both and hence admitted.

7.10. The applicant is a Private limited company incorporated for the purpose of generating electricity from solar power panels installed by the company and supply it to selected institutional customers for commercial purposes at favorable rate. The supply of electricity to the selected institutional customers is stated to be purely on the basis of mutual agreement. The supply of electricity includes, generating electricity from a source like solar panels or hydro-electric stations or thermal power stations and then transmitting the generated electricity to the end customers through transmission lines. Also it is necessary to power up the electricity, transmitted through lines, at intermediate points by transformers. In the instant case, the applicant has only installed solar panels for generating electricity and they do not provide any connected infrastructure such as transmission lines and transformers for carrying and power up the electricity from the generating point to the utilization point. The installation



of transmission lines and connected infrastructure requires huge investment and hence the company approached the Kerala State Electricity Board for transmitting electricity to customers through their transmission assets.

7.11. Now, the issue to be decided is whether the supply of electricity generated by the applicant from the solar panels installed by them is a supply of goods or services and what is the classification HSN/SAC of the supply for the purpose of payment of GST. Section 2 (23) of the Electricity Act, 2003 defines "electricity" as follows;

(23) "electricity" means electrical energy- (a) generated, transmitted, supplied or traded for any purpose; or (b) used for any purpose except the transmission of a message;

Therefore, electricity and electrical energy are one and the same. Electrical energy is classified under Heading 2716 00 00 of the Customs Tariff Act and is goods and not a service. Therefore, the supply of electricity generated from solar panels by the applicant is a supply of goods and the supply of electrical energy falling under Customs Tariff Heading 2716 00 00 is exempted from GST as per entry at Sl No. 104 of Notification No. 02/2017 Central Tax (Rate) dated 28.06.2017.

In the view of the foregoing observations and findings, the following rulings are issued:

RULING


Question-1: Whether GST is payable on the electricity produced from solar panels installed by the applicant when sold to customers?


Answer: The supply of electricity generated from solar panels by the applicant is a supply of goods falling under Customs Tariff Heading 2716 00 00 and is exempted from GST as per entry at Sl No. 104 of Notification No. 02/2017 Central Tax (Rate) dated 28.06.2017.



Question-2: Whether KSEB is liable to levy GST on wheeling charges, transmission and distribution charges and carrying charges that will be billed to the applicant by it against providing the infrastructure of KSEB for delivering the electricity produced by the applicant to its sellers?

Answer: No ruling can be given since the question is not in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.


Sreeparvathy S.L.
Addl Commissioner of Central Tax
Member


Abdul Latheef K
Joint Commissioner of State Tax
Member

To,
M/s YIS Power Solutions Private Limited,
5/208, Onthirickal, B Division Road,
Rajakumari, Idukki, Kerala-685619

Copy to,

1. The Chief Commissioner of Central Tax and Central Excise, Thiruvananthapuram Zone, C.R.Building, I.S.Press Road, Cochin-682018. [E-mail ID: cccochin@nic.in; ccu-cexcok@nic.in]
2. The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram – 695002.
3. The Joint Commissioner, State Goods and Services Tax Department, Idukki.

