

**AUTHORITY FOR ADVANCE RULING, TAMILNADU
ROOM NO.206, 2ND FLOOR, PAPJM BUILDING, NO.1, GREAMS ROAD,
CHENNAI - 600 006.**

**RULING UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND UNDER
SECTION 98(4) OF THE TNGST ACT, 2017.**

Members present:

Smt. D. Jayapriya, I.R.S., Additional Commissioner/ Member(CGST), Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600 034.	Smt. A Valli, M.Sc., Joint Commissioner/Member(SGST), Office of the Commissioner of Commercial Taxes, Chennai-600 006.
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Advance Ruling No. 11/ARA/2024, Dated: 20.06.2024.

1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling Chennai as under Sub-Section (1) of Section 100 of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed is communicated.
2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act 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.
3. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.
4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.
5. The provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services Tax Act (herein after referred to as the Act) are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Services Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act.

GSTIN Number, if any / User id		33AADCT4784E1ZC
Legal Name of Applicant		M/s. Tamil Nadu Generation and Distribution Corporation Limited
Trade Name of Applicant(Optional)		M/s. Tamil Nadu Generation and Distribution Corporation Limited
Registered Address / Address provided while obtaining user id		144, NPKRR MAALIGAI Anna Salai, Mount Road, Chennai – 600 002.
Details of Application		Form GST ARA – 01 Application Sl.No.80/2023/ARA, dated 03.04.2023.
Concerned Officer		State: Deputy Commissioner (ST) Large Tax Payer Unit-1 Center: Chennai North Commissionerate
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Services
B	Description (in brief)	Under the Electricity Act, 2003 (referred to as the 'Central Act') the State Electricity Regulatory Commission (hereinafter referred to as SERC) is required to enact the Electricity supply code to provide for recovery of various charges including those for Deposit Contribution Works (DCW). This Advance ruling authority and subsequently the Appellate Authority for Advance Ruling has confirmed the liability of the applicant to pay applicable GST on the DCW charges. This application is being made for seeking an Advance Ruling on the extent to taxable value of DCW charges for the purposes of discharging applicable GST liability.
Issue/s on which advance ruling Required		Determination of time and value of supply of Goods or Services or both
Question(s) on which advance ruling is required		1) What is the value of the "Deposit Contribution Works" that must be adopted by this Applicant on the Self-Execution Schemes for the purposes of paying applicable taxes under the Central Goods and Services Tax Act, 2017 and Tamil Nadu Goods and Services Tax Act, 2017.

	2) Should the value adopted by the Applicant for, "Deposit Contribution Works" for the purpose of discharging applicable Goods & Services Tax be restricted to the "Establishment and Supervision Charges" & other charges if applicable that the Applicant charges for and receives in the case of the self-execution scheme
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M/s. Tamil Nadu Generation and Distribution Corporation Limited, 144, NPKRR Maaligai, Anna Salai, Mount Road, Chennai - 600002 (hereinafter called as 'the Applicant') is engaged in the generation and distribution of electricity. They are registered under GST Act with GSTIN 33AADCT4784E1ZC. They have filed an application seeking Advance Ruling on the following :-

1) What is the value of the "Deposit Contribution Works" that must be adopted by this Applicant on the Self-Execution Schemes for the purposes of paying applicable taxes under the Central Goods and Services Tax Act, 2017 and Tamil Nadu Goods and Services Tax Act, 2017.

2) Should the value adopted by the Applicant for "Deposit Contribution Works" for the purpose of discharging applicable Goods & Services Tax be restricted to the "Establishment and Supervision Charges" & other charges if applicable that the Applicant charges for and receives in the case of the self-execution scheme.

2.1 The Applicant submitted a copy of challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017.

2.2 The applicant has submitted under the 'Statement of Relevant Facts', that,

1. The Applicant is a Government Company. The Government of Tamil Nadu vide G.O.(Ms.) No.114 Energy Department dated 08.10.2008 accorded in-principal approval for the re-organisation of TNEB by establishment of a holding Company, by the name TNEB Ltd., which is a State Government Company and two subsidiary companies, namely Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) dealing in Generation and Distribution of Power, the Applicant herein and Tamil Nadu Transmission Corporation Limited (TANTRANSCO) engaged in the process of Transmission of Power.

2. The Applicant is an 'Electricity Distribution Utility' under the Electricity Act, 2003. The applicant generates power using 3 basic fuels viz., Thermal (Coal), Hydel (Water), Gas generation and also uses non-conventional energy source of wind for generation of power. The Applicant has its own Thermal Power Stations, Gas stations and Hydro stations for the purpose of Generating Electricity at various locations inside the State of Tamil Nadu. In order to cater to the demand of power in the state, adequate power from Central Generating stations, non -conventional energy sources and from private power generators are being procured. The Applicant distributes the electricity

generated in its Electricity Generating Stations and procured from others to various consumers throughout the State of Tamil Nadu.

3. The Applicant in the course of its activity involving generation and distribution of electricity collects various charges under various heads. With effect from 1.7.2017, the Applicant is a "Registered Person" for the purposes of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'CGST Act'), Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as 'TNGST Act') and Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as 'IGST Act'). As a Registered Person, the Applicant has been filing appropriate statements/returns and discharging applicable Goods & Services Tax (hereinafter referred to as 'GST') under the aforesaid Goods & Service Tax Enactments (hereinafter referred to as 'GST Acts'). While doing so, on certain heads of receipts like sale of power (HSN 27160000), Electricity Distribution service (SAC 996912) the Applicant has been claiming exemption/non-liability. While for certain other receipts like wheeling charges, cross subsidy surcharges, etc., the Applicant has been discharging applicable GST liability. The present application for Advance Ruling is however restricted to only the question of extent of liability or otherwise under the GST Acts on charges received by the Applicant for 'Deposit Contribution Works' (DCW), that too only in relation to 'Self-Execution Scheme'. In other words, the present application for Advance Ruling is only on the question of value of taxable supply that will have to be adopted for the purposes of Section 9 read with Section 15 of CGST/TNGST Acts. This Advance Ruling Authority consequent to an earlier Application vide its Order No. 14/AAR/2020 – dated 20.4.2020 has ruled that the charges received by the Applicant towards DCW are taxable under the GST enactments. That Order was also thereafter confirmed by the Tamil Nadu State Appellate Authority for Advance Ruling in Appeal No.01/2021/AAAR dated 30.3.2021. For the sake of completion, the Applicant also wishes to place on record the fact that the Applicant has also since challenged the aforesaid Appellate Order confirming the Order dated 20.4.2020 passed by this Authority by way of W.P.No.14413 of 2022 before the Hon'ble Madras High Court. The said Writ Petition is pending as on date.

4. Under the Electricity Act, 2003 (referred to as the 'Central Act') the State Electricity Regulatory Commission (hereinafter referred to as SERC) is required to enact the Electricity Supply Code to provide for recovery of various charges including those for DCW. In pursuance of Section 50 of the Central Act read with Section 181 thereof and all other powers enabling in that behalf, the Tamil Nadu Electricity Regulatory Commission (hereinafter referred to as TNERC) has enacted and published the Tamil Nadu Electricity Supply Code (hereinafter referred to as the 'Code'). Amongst other things, the charges recoverable by a Licensee like the Applicant from its consumers are also prescribed by the Code. For the purposes of the present application, Clause 5(6)(3)(2)(i) of that Code is relevant. It provides for the charges to be collected for DWL i.e., the cost of shifting service /Line, structure and Equipment.

While Clause 5(6)(3)(2)(i) of the Code expressly deals with cases where the Consumers are required to bear the entire costs of shifting of service/lines, structure and equipment, the Applicant acts in line with the said principle even for cases of "Self-execution". "Self-execution" involves consumers having to incur all costs for shifting of service/lines/structure and equipment, including costs of equipment/materials, except "Establishment and Supervision Charges" and other charges as referred to in para 5(c) below, if applicable. In cases of self-execution, the Contracting parties pay only the "Establishment & Supervision Charges" and other charges if applicable to the Applicant. As stated above, the present application for Advance Ruling is only relating to the extent of GST liability that this Applicant will have to discharge on the charges received for DCW i.e. only question of valuation. This question for Advance Ruling is also being raised without prejudice to the stand of this Applicant before the Hon' ble Madras High Court that this Applicant does not have any liability to pay any GST on the DCW charges that it receives.

5. Following is the Modus Operandi adopted by the Applicant for charging and receiving consideration for DCW in the case of Self-Execution Scheme.

- a) Any person like for instance, National Highway Authority of India (NHAI), Tamil Nadu State Highways Authority, Local Bodies in Tamil Nadu such as Corporation, Municipalities, Town Panchayat, Chennai Metro Rail Limited (CMRL) etc who require shifting of service/line, structure and equipments in Connection with their Works/Public Works approach this Applicant for permission for such shifting.
- b) That is followed by a joint site inspection by the Applicant and the concerned parties as aforesaid.
- c) Thereupon on the basis of item no. 17 of the proceedings bearing No. (Per) TANGEDCO Proceeding (FB) No.71 dated 29.06.2011 relating to delegation of powers of Officers, the concerned Authority, depending upon the amount involved, provides the sanction for such shifting along with an estimate of charges for the shifting on the basis of model estimate approved by the Board of the Applicant. While, the estimate would cover all costs including the cost of assets as part of the Gross/Nett on the consumer side, it also importantly made it clear that for actual amount payable by the party in question to this Applicant is mostly towards "Establishment and Supervision Charges." In occasional cases involving charging of other non-uniform charges like labour, transport, material, etc., the actual amount payable by the party in question will also include the other charges apart from "Establishment and Supervision Charges." The applicable GST on the same is also set out.
- d) If the party in question accepts the amount payable to the Applicant in terms of the estimate as aforesaid, it will have to pay the entire amount i.e., "Establishment and Supervision Charges" and other charges if applicable along with the applicable GST to the Applicant. In this regard, it is important for this Applicant to state that while it only receives Establishment and

Supervision Charges (Occasionally other charges as aforesaid) from the contracting parties in question, this Applicant has been charging applicable GST on the nett estimate provided to such third parties. However, objection to the same has been raised by parties such as CMRL, NHAI etc. It is their stand that as they are contractually bound and liable to pay only the "Establishment and Supervision Charges." & Other charges if applicable to this applicant, this Applicant can charge applicable GST only on the said charges.

e) upon payment of the "Establishment and Supervision Charges." & other charges if applicable as aforesaid along with the GST, the parties in question on their own undertake the self-execution, i.e., shifting of service/line, structure and equipments. However, prior to doing so, they are required to install a new service/line structure and equipment so that there is no dislocation of the supply of electricity by this Applicant to its Consumers. It is also relevant for the Applicant to state that even in the cases of self-execution, although this Applicant has no privity of contract with the Vendors of its Customers, this Applicant retains title in the structures/equipment/materials and goods which are purchased by its Customers after they are erected/installed by the said Customers on their own in accordance with the requirements of section 12 and 54 of Electricity Act 2003.

6. The Applicant thus states that in the end analysis the contracting parties executing the self-execution schemes are liable to pay to this Applicant only the "Establishment and Supervision Charges." & other charges if applicable. Although the estimate provided to them captures a gross/net amount, such estimates also make it clear that the only contractual obligation/debt that such contracting parties have to pay and discharge to pay to this Applicant only the "Establishment and Supervision Charges." & other charges if applicable. Nothing more, nothing less, of course with the applicable GST. The only amount which the Applicant thus charges for and receives is "Establishment & Supervision Charge" & other charges if applicable along with the GST from the contracting party undertaking the Self-Execution scheme.

7. On the basis of the aforesaid material and relevant facts and circumstances, the present Application is being filed.

2.3 On interpretation of law, it was stated that the Applicant only charges for and received "Establishment & Supervision Charges" & other charges if applicable from its Customers in the cases of self-execution. There is no contractual or other obligation for such Customers to pay any further amounts to this Applicant. Consequently, the value of taxable supply in the case of Deposit Contribution Works pertaining to Self-Execution schemes will only be the "Establishment & Supervision Charges" & other charges if applicable. This is the consequence of Section 9 (Charging provision) read with Section 15 (value of taxable supply) of the Central Goods & Services Tax Act, 2017 (CST Act) and Tamil Nadu Goods & Services Tax act, 2017 (TNGST Act).

3. The authorities of the Center and State were addressed to report if there are any pending proceedings against the applicant on the issues raised by the applicant in the Advance Ruling application and for comments on the issues raised.

3.1 The State jurisdiction Officer viz. the Deputy Commissioner (ST), Large Tax Payers Unit - I, Chennai, vide their letter dated 20.06.2023 has stated as below :-

i) The tax payer has requested that the value of the "Deposit Contribution Works" that must be adopted by the Applicant on the Self-Execution Schemes for the purposes of paying applicable taxes under the Central Goods and Services Tax Act, 2017 and Tamil Nadu Goods and Services Tax Act, 2017.

Should the value adopted by the Applicant for "Deposit Contribution Works" for the purpose of discharging applicable Goods & Services Tax be restricted to the "Establishment and Supervision Charges" & other charges if applicable that the Applicant charges for and receives in the case of Self-Execution Scheme.

ii) The Modus Operandi adopted by the Applicant for charging and receiving consideration for DCW in the case of Self-Execution Scheme.

a) Any person like for instance, National Highway Authority of India (NHAI), Tamil Nadu State Highways Authority, Local Bodies in Tamil Nadu such as Corporation, Municipalities, Town Panchayat, Chennai Metro Rail Limited (CMRL) etc who require shifting of service/line, structure and equipment's in connection with their Works/Public Works approach this Applicant permission for such shifting.

b) That is followed by a joint site inspection by the Applicant and the concerned parties as aforesaid.

c) Thereupon, on the basis of item no. 17 of the proceedings bearing No (per) TANGEDCO Proceedings (F3) No. 71 dated 29.06.2011, relating to delegation of powers to Officers, the concerned Authority, depending upon the amount involved, provides the sanction for such shifting along with an estimate of charges for the shifting on the basis of model estimate approved by the Board of the Applicant. While, the estimate would cover all costs including the cost of assets as part of the Gross/Nett on the consumer side, it also importantly made it clear that for the actual amount payable by the party in question to this Applicant is mostly towards "Establishment and Supervision Charges. In occasional cases involving charging of other non-uniform charges like labour, transport, material, etc., the actual amount payable by the party in question will also include the other charges apart from "Establishment and Supervision charges". The applicable GST on the same is also set out.

d) If the party in question accepts the amount payable to the Applicant in terms of the estimate as aforesaid, it will have to pay the entire

amount i.e., "Establishment and Supervision Charges" and other charges if applicable along with the applicable GST to the Applicant.

iii) As per Section 7 of the TNGST Act, the expression "supply" includes-(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(aa)[the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for case, deferred payment or other valuable consideration.

Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgement, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

iv) In the instant case, Charges includes Supervision charges, Shut down charges, Modification / augmentation/ shifting / additions to the applicants transmission system. The transaction of facilitating the execution of deposit contribution works to the applicants transmission system at the specific request of the consumer is included under the scope of supply in terms of section 7 of TNGST Act, 2017 as the same fulfils all the essential ingredients of 'Supply' as it is a supply of service in the form of facilitation, further there is a consideration as the construction activities carried out by the customer will ultimately be the property of the applicant. Also the applicant by facilitating the access to its transmission systems becomes the supplier of services and the activities are duly in the course of furtherance of business. Thus all the ingredients of Section 7(1) (a) are present to categorize the transaction as supply of services.

v) The valuation of supply includes all service and goods supplied to the recipient should be taken as the supply comes under composite supply and consideration. Hence the tax should be levied on the entire value on the amount for the Deposit Contribution Works. "

3.2 The Joint Commissioner (ST), Intelligence – II has also remarkeded that no proceeding relating to the question raised by the applicant is pending in her jurisdiction.

3.3 The Centre Authority vide letter dated 26.01.2024 stated that there are no pending proceedings on the issues raised in the Advance Ruling Application. Regarding the comments on the issue involved, they stated as below :-

"All transaction (both Goods and Services) between TANGEDCO and TANTRANSCO are for the purpose of transmission and distribution of electricity.

The Deposit Contribution Works (DCW) is like a works contract for erection of Transmission and Distribution Equipment in respect of consumer. Depository Contribution Works is classifiable under SAC 99873 and the applicable rate of tax is CGST 9% as per Notification No.11/2017-C.T dated 28.06.2017. The value adopted by the Applicant for Deposit Contribution Works for the purpose for discharging applicable GST appears to be restricted to Establishment and Supervision charges and other charges, if applicable for TANGEDCO."

PERSONAL HEARING

- 4.1 The Applicant, was given an opportunity to be heard in person on 30.11.2023. Shri N. Sriprakash, Shri K.A. Parthasarathi and Thiru. K. Siri chandana, Advocates, who are the Authorized Representatives of the Applicant appeared for the hearing. The authorized representatives (AR) explained that the ruling is sought in respect of 'Deposit Contribution works (DCW)' only in relation to the 'Self Execution Scheme', and the valuation to be adopted for GST purposes in relation to the same. The AR further explained, that in cases of 'Self Execution' under DCW, the consumers are required to bear the entire costs of shifting of service/lines structure and equipment, which includes cost of equipment/materials, except 'Establishment and Supervision Charges' and 'Other Charges, if any charged by the applicant.
- 4.2 The AR further added that as on date, the question of taxability on DCW charges already stands settled, by way of an order No.14/AAR/2020 dated 20.04.2020, consequent to an earlier application filed before this Advance ruling Authority. On an appeal being filed the applicant, the Appellate Authority for Advance Ruling in Appeal No.01/2021/AAAR dated 30.03.2021, also confirmed the same. Now, the applicant has filed a W.P.No.14413 of 2022 with the Hon'ble Madras High Court, which is pending without any stay, as on date.
- 4.3 Under these circumstances, the applicant seeks a ruling as to the valuation to be adopted for discharging the GST liability on these transactions especially in view of the fact that in such cases, the consumers may be required to bear additional cost on their own account, in respect of the materials involved in the shifting and installation of service lines. He added that though Section 15(2)(b) of the CGST Act, 2017, specifies inclusion of the costs incurred by the recipients of supply, such costs are not within the scope of supply by the supplier (applicant), as the applicant in the instant case is neither required to charge the same on the consumers, nor liable to incur such charges. To this effect, the AR reiterated the submissions made in their Application No.80/2023 dated 28.04.2023 and they also furnished additional submissions which contained case laws, Rulings and the relevant legal provisions relating to the instant case.
- 4.4 The members enquired as to whether they charge any other amount on the consumers, other than the 'Establishment and Supervision Charges', to which the AR replied that apart from 'Establishment and Supervision Charges' the applicant

also charges "Other charges, if any", which normally includes charges towards 'Additional Metres', other appliances, etc., in some cases, if necessary.

4.5 The members further enquired whether any contract or an agreement in respect of DCW is entered into by the applicant with the consumers, to which the AR replied that no formal contracts or agreements are entered in such cases, and that the DCW gets initiated on the basis of requests received from the consumers.

4.6 Then the members requested the AR to provide sample copies of invoices raised on the consumers. The AR stated that they normally do not raise invoices, but that an Estimate/Advice is raised on the consumers specifying the amount payable to them, alongwith other conditions which may be specific and which may differ in relation to the individual cases. He also undertook to furnish a few sets of such estimates along with accompanying documents within a weeks' time, along with another brief additional submission to the case.

4.7 Mr.Sriprakash, Advocate on being authorized by M/s. Tamil Nadu Generation and Distribution Corpn. Ltd., appeared for the Personal Hearing held virtually on 12.01.2024. The authorized representative (AR) stated that, as undertaken in the personal hearing held earlier on 30.11.2023, they have already furnished another brief submission alongwith three sample sets of estimates towards 'Deposit Contribution Work' (DCW) for (i) Shifting of Distribution Transformer (ii) Shifting of LT Lines & (iii) Shifting of Double Pole DP structure, on 05.01.2024.

4.8 The AR explained in detail as to how the estimates are prepared by TANGEDCO in order to work out the 'Establishment and Supervision Charges' to be payable by the consumer. He further stated that the material/labour estimate which is to be borne by the consumer under the 'self execution mode' is arrived at, in the first place, and based on the same, the 'Establishment and Supervision Charges' are worked out at a fixed percentage of 15%.

4.9 On perusal of the estimates furnished, the members observed that apart from the 'Establishment and Supervision Charges' which has been booked as capital expenditure by TANGEDCO vide DCW A/c. Code No.47-601, the other part of the estimate cost involving material, labour, transportation, etc., have also been booked as capital expenditure by TANGEDCO vide DCW A/c. Code No.14-695 & 14-696, whereby it amounted to capitalization of expenditure in the books of accounts of TANGEDCO. Accordingly, the members enquired as to whether the overall expenditure towards shifting is met initially by TANGEDCO and later reimbursed by the consumer. The AR stated that under the 'self execution mode', the cost of shifting the transformer, pole, etc., including the material part and the installation part are not incurred by TANGEDCO, and that the same are borne by the consumer directly. As specified in the first page of the estimates concerned, it is only the 'Establishment and Supervision Charges' which are charged and collected by TANGEDCO from the consumers. However, the AR explained that as the existing structure is being dismantled and shifted at the behest of the consumer, the newly erected Transformer or Pole ultimately becomes the property of TANGEDCO, and so

the material cost, installation cost, including the 'Establishment and Supervision Charges', and other miscellaneous charges, if any, are required to be capitalized for accounting purposes.

4.10 When the members enquired about the GST amount charged at 18% on the material, contingencies, storage, labour, etc., that is figuring in the estimate worksheet, the AR explained that the GST at 18% is not charged on the consumer, but that the same is only an entry added to the material and labour cost, so as to arrive at the overall cost of shifting the structure, which in turn paves the way to arrive at the 'Establishment and Supervision Charges'.

In finality, the AR reiterated that under the 'self execution mode', only the 'Establishment and Supervision Charges' and other miscellaneous charges, if any, are charged and collected from the consumers, and that the entire cost towards the materials and labour are borne directly by the consumers, as the applicant has no privity of contract with the supplier of such materials/services.

DISCUSSION AND FINDINGS:

5.1. We have carefully considered the submissions made by the Applicant in their application, submissions made during the personal hearing and the comments furnished by the Centre and State Tax jurisdictional officers.

5.2 We notice that the present application for Advance Ruling is basically on the question of value of taxable supply to be adopted for the purposes of Section 9 read with Section 15 of CGST / TNGST Acts, in respect of the charges received by the Applicant towards 'Deposit Contribution Works' (DCW in short), in relation to 'Self-Execution Scheme'. As stated by the applicant, Deposit Contribution Works in general deals with cases where the Consumers are required to bear the entire costs of shifting of service/lines, structure and equipment. The Applicant acts in line with the said principle even for cases of DCW under "Self-execution Scheme", in which case, the consumers have to incur all costs for shifting of service/lines/structure and equipment, including costs of equipment/materials, except "Establishment and Supervision Charges" and other charges, if applicable.

5.3 Further, the applicant states that the present application for Advance Ruling is only relating to the extent of GST liability that this Applicant will have to discharge on the charges received for DCW, i.e., only on the question of valuation involved. In this regard, it is learnt that as on date, the question of taxability on DCW charges already stands settled, by way of an order No.14/AAR/2020 dated 20.04.2020, consequent to an earlier application filed before this Advance ruling Authority. On an appeal being filed the applicant, the Appellate Authority for Advance Ruling in Appeal No.01/2021/AAAR dated 30.03.2021, also confirmed the same. Now, the applicant has filed a W.P.No.14413 of 2022 with the Hon'ble Madras High Court, which is pending without any stay, as on date. This question for Advance Ruling is also being raised without prejudice to the stand of this

Applicant before the Hon' ble Madras High Court that this Applicant does not have any liability to pay any GST on the DCW charges that it receives.

5.4 At this juncture, it becomes imperative to appreciate the difference between 'DCW' in general, and 'DCW' under the 'Self Execution Scheme', before proceeding further. We observe that in both the cases, the shifting of service line/equipment takes place on a specific request made by the contracting party/consumer, and that in both the cases, the contracting party/consumer is required to bear the entire cost relating to such shifting. However, in cases of DCW under "Self-execution Scheme", the consumers have to incur all costs for shifting of service/lines/structure and equipment, including costs of equipment/materials, except "Establishment and Supervision Charges" and other charges, as applicable. That is to say, in cases of self-execution, the Contracting parties/Consumers are required to pay to the Applicant, only the "Establishment & Supervision Charges" and other charges, if applicable, and that they on their own have to directly incur the cost of shifting the equipment including the cost of equipment.

5.5 Accordingly, once the applicability of GST on 'DCW' charges stands settled, as of now, as admitted by the applicant, the crucial question that lies before us is to determine the value on which GST is liable to be discharged by the applicant, specifically in relation to DCW under "Self-execution Scheme", i.e., whether GST is payable on the "Establishment and Supervision Charges" and other charges charged by the applicant, or, on the entire cost involved in the shifting process including the cost incurred directly by the Contracting parties/Consumers.

5.6 In this regard, we observe that the taxability and the extent of value to be considered for taxation purposes, depend upon the terms of the contract or agreement between the parties concerned. Accordingly, during the personal hearing conducted initially on 30.11.2023, the applicant was enquired as to whether any contract or an agreement in respect of DCW is entered into by the applicant with the consumers, to which the AR replied that no formal contracts or agreements are entered in such cases, and that the DCW gets initiated on the basis of requests received from the consumers. The AR further stated that an Estimate/Advice is raised on the consumers specifying the amount payable to them, alongwith other conditions, samples of which they furnished along with their further submissions dated 5.01.2024.

5.7 Under the additional submissions furnished on 5.01.2024, the applicant stated the following :-

- i) The applicant received only "Establishment and Supervision Charges" apart from occasionally receiving other charges like Re-connection fee, disconnection charges, Service connection material charges etc., under Self-Execution Scheme in respect of the 'Deposit Contribution Works (DCW)'. It is only such charges actually received by this applicant which constitutes 'price actually paid' or 'payable' by the customers for the support services of

supervision provided by this Applicant within the meaning of Section 15(1) of the CGST/TNGST Acts, 2017.

- ii) Consequently, only the aforesaid charges constitute the value of supply and only on such charges, the applicant is liable to pay applicable GST. That this correct position of law is supported by the principles laid down by the Hon'ble Supreme Court in the judgements of Purolator India Ltd., Vs Commissioner of Central Excise, Delhi-III [2015 (323) ELT 227 (SC)] in paragraph 18, and Union of India Vs Intercontinental Consultants and Technocrats Private Limited [(2018) 4 SCC 669 : 2018 SCC Online SC 196] in paragraph 26.
- iii) Section 15(2)(b) of the CGST/TNGST Acts, 2017, does not have application to this case, as the Applicant is not liable to pay any amounts to any third party in relation to the supply made by this Applicant, i.e., support services of Electricity distribution classified under Heading 99 8631. The applicant has no privity of contract with the suppliers of materials/services to the customer of this applicant, as a result of which they are not liable to pay any such amounts to any such suppliers, within the meaning of Section 15(2)(b) of the CGST/TNGST Acts.
- iv) Although the order of the Authority for Advance Ruling, reported in 2019 (28) G.S.T.L 614 (A.A.R.-GST) (In Re : Rajasthan Rajya Vidyut Prasaran Nigam Limited) holds otherwise, that order is erroneous for the following reasons, viz.,
 - a) The Authority in the said case had used the words, 'liable to pay but which has been incurred by the recipient by reason of, or in connection with the new infrastructure created'. As these words are absent in Section 15(2)(b) of the CGST/TNGST Acts, the authority has undertaken a process of legislation and not interpretation, which is an impermissible exercise.
 - b) The liability of the applicant under the Electricity Act, 2003, in respect of Transmission Lines/Grid has been telescoped into Section 15(2)(b) of the CGST/TNGST Acts. The liability under the Electricity Act is completely different and unconnected with the liability conceived by 15(2)(b) of the CGST/TNGST Acts which alone impacts valuation under the GST Acts.
- v) The principles laid down in the order of the Appellate Authority for Advance Ruling, Uttar Pradesh, reported in 2023 (9) TMI 854 (In Re: M/s.Purvanchal Vidyut Vitran Nigam Limited) supports the stand of this applicant.
- vi) The applicant is thus liable to pay GST only on the 'Establishment and Supervision Charges and other 'Miscellaneous Charges', if charged for, and that they are not liable to pay any GST on any charges borne by the customers of this applicant towards material or services if no part of it had been charged for or received by this Applicant.

5.8 On a perusal of one of the estimates furnished by the applicant vide "Memo.No.SE/EEDC/ED/AEE/GL/AE/GL/CA-2/Prop64/R.141/2023, DT : 15-09-2023", the contents read as below :-

"Under the powers delegated in TANGEDCO Proceedings B.P.(FB) No.71 Dated 29.06.2011, DCW estimate for shifting of Existing IE SS V 100 KVA/22 KV Distribution Transformer along with HT/LT lines and poles to be shifted to the new location due to widening of road in the Rangampalayam to Erode road at the request of the Assistant Engineer, Highways, C&M section-1, Erode under "Self execution" mode in respect of AE/O&M/Muthampalayam Section of urban Erode Division amounting to an estimate cost of **Rs.8,93,660/- Gross** (Rupees Eight lakhs ninety three thousand six hundred and sixty only) and **Rs.8,66,900/- Nett** (Rupees Eight lakhs sixty six thousand and nine hundred only). The amount chargeable to the applicant is Rs.1,12,740/- (Estt & Supervision charge with GST) (Rupees One lakhs twelve thousand seven hundred and forty only) is Administratively Approved and Technically sanctioned and Registered as below:-

695/S/075/23-24 Dated :15-09-2023

696/S/075/23-24 Dated :15-09-2023

Head of Accounts	Estimate amount
1) TANGEDCO - Funds - Capitl Expenditure - DCW A/c. Code No.14-695	Rs.3,02,680/- Gross (Rupees Three lakhs two thousand six hundred and eighty only) and Rs.2,98,310/- Nett (Rupees Two lakhs eighty nine thousand three hundred and ten only)
2) TANGEDCO - Funds - Capitl Expenditure - DCW A/c. Code No.14-696	Rs.5,90,980/- Gross (Rupees Five lakhs ninety thousand nine hundred and eighty only) and Rs.5,77,590/- Nett (Rupees Five lakhs seventy seven thousand five hundred and ninety only)
3) TANGEDCO - Funds - Capitl Expenditure - DCW A/c. Code No.47-601	Rs.1,12,740/- (Rupees One lakhs twelve thousand seven hundred and forty only)

Further, under the "REPORT TO ACCOMPANYING THE ESTIMATE", the following extracts relevant to the issue in question, are noticed, viz.,

GENERAL REPORT

As per the request of the Highways department, work shall be carried out by the Highways with payment of necessary Establishment and supervision charges only to TANGEDCO.

MAIN FEATURES

Consumer Side

- 1 No : Existing Distribution Transformer IE SS V 100 KVA/22 KV now proposed to be dismantled and re-erected at new location.
 2. 4 Nos : Existing RSJ pole now proposed to be dismantled at loc E, E1 & E5.
 3. 0.195 KM : Existing HT/LT as HT 3 Phase 3 wire 22 KV line with ACSR 7/7.409 mm(3) & LT 3 Phase 4 wire line ACSR 7/2.59 mm(4) now proposed to be dismantled.
 4. 0.187 KM : Now proposed HT/LT as HT 3 Phase 3 wire 22 KV line with AAAC 7/3.15 mm(3) & LT 3 Phase 4 wire line ACSR 7/2.50 mm(4).
- HT REGULATION : With in limit
LT REGULATION : With in limit

5.9 It could be seen from the above that the shifting of the Distribution Transformer along with HT/LT lines to a new place takes place at the request of the Highways Department. Further, as per the terms between the two sides, viz., TANGEDCO and the Highways Department, the said shifting shall be carried out by the Highways Department under the "Self execution" mode. The worksheet enclosed to the same carries a detailed estimate for the said shifting process, accommodating the probable material cost, Labour and transport charges, dismantling charges, re-erection of materials at new site, etc. Apart from the same, the GST component on the above estimate cost is also worked out and added to the same to arrive at the Gross estimate. It is seen that "Estt. & Supervision Charges" is worked out at 15% on the above estimate, which in turn is charged to the consumer along with 18% GST on such "Estt. & Supervision Charges".

5.10 In this regard, we take note of the fact that Section 15(2)(b) of the CGST Act, 2017, stipulates that the value of supply shall include -

"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;"

When enquired about this aspect, and the applicability of the same to the instant case, the authorized representative of TANGEDCO explained during the personal hearing held on 30.11.2023 that though Section 15(2)(b) of the CGST Act, 2017, specifies inclusion of the costs incurred by the recipients of supply, such costs are not within the scope of supply by the supplier (applicant), as the applicant in the instant case is neither required to charge the same on the consumers, nor liable to incur such charges. The AR further explained, that in cases of 'Self Execution' under DCW, the consumers are required to bear the entire costs of shifting of service/lines structure and equipment, which includes cost of equipment/materials, except 'Establishment and Supervision Charges' and 'Other Charges, if any, charged by the applicant. On perusal of the sample copy of the estimate furnished by the applicant, it is mentioned clearly that work shall be carried out by the Highways with payment of necessary Establishment and supervision charges only to TANGEDCO, under the clause "GENERAL REPORT" of the estimate, and it is seen that the shifting work is initiated at the request of the Highways department.

5.11 Further, from the estimates furnished, it was observed that apart from the 'Establishment and Supervision Charges' which has been booked as capital expenditure by TANGEDCO vide DCW A/c. Code No.47-601, the other part of the estimate cost involving material, labour, transportation, etc., have also been booked as capital expenditure by TANGEDCO vide DCW A/c. Code No.14-695 & 14-696, whereby it amounts to capitalization of expenditure in the books of accounts of TANGEDCO. Accordingly, when enquired as to whether the overall expenditure towards shifting is met initially by TANGEDCO and later reimbursed by the consumer, the authorized representative during the second hearing held virtually on 21.01.2024, stated that under the 'self execution mode', the cost of

shifting the transformer, pole, etc., including the material part and the installation part are not incurred by TANGEDCO, as they have no privity of contract with the supplier of such materials/services, and that the same are borne by the consumer directly. As specified in the first page of the estimates concerned, it is only the 'Establishment and Supervision Charges' which are charged and collected by TANGEDCO from the consumers. However, the AR explained that as the existing structure is being dismantled and shifted at the behest of the consumer, the newly erected Transformer or Pole ultimately becomes the property of TANGEDCO, and so the material cost, installation cost, including the 'Establishment and Supervision Charges', and other miscellaneous charges, if any, are required to be capitalized for accounting purposes. Further, when the members enquired about the GST amount charged at 18% on the material, contingencies, storage, labour, etc., that is figuring in the estimate worksheet, the AR explained that the GST at 18% is not charged on the consumer, but that the same is only an entry added to the material and labour cost, so as to arrive at the overall cost of shifting the structure, which in turn paves the way to arrive at the 'Establishment and Supervision Charges'.

5.12 The comments dated 20.06.2023 received from Deputy Commissioner (ST), LTU, Chennai, states that execution of DCW falls within the scope of supply, as it is a supply of service in the form of facilitation, further there is a consideration as the construction activities carried out by the customer will ultimately be the property of the applicant. Also the applicant by facilitating the access to its transmission systems becomes the supplier of services and the activities are duly in the course of furtherance of business. Thus all the ingredients of Section 7(1)(a) are present to categorize the transaction as supply of services and that the valuation of supply includes all service and goods supplied to the recipient should be taken as the supply comes under composite supply and consideration. Hence the tax should be levied on the entire value on the amount for the Deposit Contribution Works.

5.13 In respect of the comments referred above, we observe that the execution of DCW (Deposit Contribution Works) certainly fall within the scope of supply, but it depends very much on who or which party executes it. In this regard, the difference between the nature of transactions involved under 'DCW', and under 'DCW - Self execution mode' assumes immense significance in the context of this case. We find that under 'DCW', the entire material and installation work is arranged by the DISCOMs on behalf of the customers, whereby the DISCOMs claim for reimbursement of material cost and installation expenses incurred by them from the customer who had requested for such shifting. Whereas, under the 'self execution mode' of DCW, the entire work with materials are arranged by customers and installation work is done by the contractors engaged by the customers. In this case the role of the DISCOM is limited to supervision only for which a fee is charged from the customers. It is therefore felt that the comments as referred above, may apply to 'DCW' but not to 'DCW - Self execution mode', as it has failed to appreciate the difference between the two modes of transaction involved in the instant case. Further, it has been stated that "*the valuation of supply includes all service and goods supplied to the recipient should be taken as the supply comes under composite supply and consideration.*". It is seen that TANGEDCO is neither

the supplier nor the recipient of service, and the works contract service involved in the demolition, shifting, construction, and installation of the service line is provided by a third party contractor and is received by the customer under whose request the service line gets shifted. Once no goods or service is supplied by TANGEDCO to any person, except for the 'Supervision Services', the question of inclusion of value of all other services for which TANGEDCO is not a party to the contract, does not arise. Further, when the TANGEDCO is not a supplier in so far as it relates to shifting of infrastructure, the question of covering the same under 'composite supply' also does not arise.

5.14 We are of the opinion that to determine the taxability or otherwise of the transaction involved, the following points merit consideration, viz.,

- a) The taxability and valuation on any supply of service depends upon the terms of the contract/agreement entered into between the parties concerned.
- b) As the dislocation work is made on a specific request made by the concerned party (NHAI, Corporation, etc.), and not at the behest of TANGEDCO, TANGEDCO is not liable to pay for the expenses incurred in such shifting.
- c) TANGEDCO does not charge or get any such expenses reimbursed by the concerned party.
- d) In such cases, the works contract services supplied in course of dislocation/shifting are being supplied to the service recipient (NHAI) by independent contractors.
- e) Such services are neither supplied by, nor the consideration for the same has been received by TANGEDCO, and hence there is no supply of services by TANGEDCO to the concerned party.
- f) The service actually being rendered by TANGEDCO in such cases of DCW works, under the 'self execution mode', is restricted to supervision of the shifting process for which charges, in lieu of the 'Establishment and supervision charges' only are charged and collected by them from the concerned party.
- g) Though the property (transmission lines and other such property) that is being subject to works contract service belong to TANGEDCO, the works contract service is not made at the behest of TANGEDCO and that they are a stranger to the contract, since the same is executed between the concerned party and a third party contractor.
- h) In a case, where the third party contractor remains unpaid for the services supplied by him, he can only hold the concerned party to be liable for the same, and not TANGEDCO as they have no privity to the contract.
- i) Further, as per Section 15(2)(b) of the CGST Act, 2017, "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", only is liable to be included in the price actually paid or payable for the goods or services or both. As it is clear that no such supply of goods or service flows from TANGEDCO to concerned party, except the service relating to supervision of the work carried out, the instant case does not get covered under Section 15(2)(b) of the CGST Act, 2017.

5.15 In this regard, we find that the Order No.09/AAAR/2023 dated 16.08.2023 passed by the Appellate Authority for Advance Ruling, Uttar Pradesh in the case of M/s.Purvanchal Vidyut Vitran Nigam limited, discusses the very same issue as in para 9.2 of the said order, that reads as below :-

"9.2 We find that the appellant has adopted two modes for installation of electric lines (also called deposit work) to the designated locations as per requirement of the customers. One is where the entire material and installation work is arranged by the appellant on behalf of the customers and work is done in the supervision of the appellant. The appellant claims for reimbursement of material cost and installation expenses incurred on behalf of the customer on actual basis which is later reimbursed to the appellant by the customer and the net income charged by the appellant is supervision fee only. In the second mode the entire work with materials are arranged by customers and installation work is done by the contractors hired by the customers. In this case the role of the appellant is limited to supervision only and the appellant charge supervision fee from the customers."

From the above, we notice that the second mode of transaction is exactly the same as in the instant case of TANGEDCO involving DCW under "Self-execution Scheme". Accordingly, the Appellate Authority for Advance Ruling, Uttar Pradesh had ruled in para 10 of the said Order as follows :-

"10. Accordingly, we rule that in the facts and circumstances, where the value of materials and cost of execution of work for installation of electric lines are borne by the recipient of service and the appellant charges supervision fee only, the value of materials and cost of installation shall not be included in the value of supply for determination of taxable value under GST and the appellant shall be liable to pay GST only on the supervision charges."

5.16 It is to be noted here that in the very same case earlier, the Authority for Advance Ruling, Uttar Pradesh had also ruled on the same lines vide Ruling No.UP ADRG-23/2023 dated 21.04.2023, where it was held that the applicant shall be liable to pay GST on supervision charge only where the entire cost is borne by the service recipient subject to the condition the customer/recipient of service should have GST invoice of material and same is to be submitted to the appellant after completion of the project. Addressing this issue in the appellate Order No.09/AAAR/2023 dated 16.08.2023, the Appellate Authority for Advance Ruling, Uttar Pradesh had held in para 9.9 of the said Order, as follows :-

"We also find that the Authority for Advance Ruling has held that in case (2) where the entire cost is borne by the recipient of service, the value of taxable supply shall not include the material cost and the appellant shall be liable to pay GST on supervision charge only to avoid double taxation subject to the condition that the customer/recipient of service should have GST invoice which should be submitted after completion of project. We find that there is no such provision stipulated under GST Act and this condition is unwarranted and having no legal backing as argued by the appellant."

In spite of the appeal in the said case to remove the specific condition imposed, it may be noticed that both the orders, that of the Authority for Advance Ruling, Uttar Pradesh, and the Appellate Authority for Advance Ruling, Uttar Pradesh, are on the same page in so far as it relates to the issue in question, i.e., GST is payable only on the supervision charges, in cases where the value of materials and cost of execution of work for installation of electric lines are borne by the recipient of service and the service provider charges supervision fee only.

5.17 Likewise, we observe that in the case of M/s. National Highways Authority of India (NHAI), the Authority for Advance Ruling, Uttar Pradesh, in its Ruling No. UP ADRG-17/2022 dated 8.12.2022, has ruled that the work done by the applicant (NHAI) in shifting the transmission lines for the widening of road under the supervision of Madhyanchal Vidyut Vitaran Nigam Ltd., (MVVNL) does not come under the definition of 'Supply' as per section 15(2)(b) of the CGST Act, 2017, and that the GST is leviable only on the supervision charges charged by MVVNL, and not on the full amount of work done for shifting the transmission lines by NHAI. The justification for arriving at the said decision has also been spelt out clearly in para 16.3 of the said order, which are reproduced as below, for ease of reference,

"16.3. It is pertinent to examine what does a Supplier mean in GST. Section 2(105) of the CGST Act defines the word supplier as such.

In this Act unless the context otherwise requires :-

"Supplier in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the good or services or both supplied."

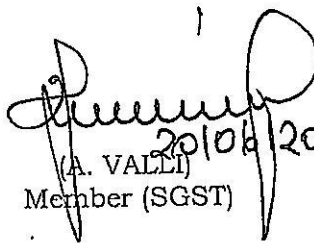
In view of the above, it is observed that MVVNL is not a supplier of goods or services in relation to shifting of transmission lines and other assets which are required to be shifted during construction or widening of roads, the work being undertaken by NHAI itself. Hence, there is no relationship between NHAI and MVVNL which can be categorized as that of supplier and recipient except for the services of supervising the whole operation for which NHAI is paying consideration along with GST leviable thereon. The supplier in the instant operation is the contractor who is undertaking the work of shifting transmission lines and not the MVVNL who are just supplying services of supervision and not that of construction or replacement of transmission lines."

5.18 In this regard, we take note of the fact that the above discussed ruling was later declared void ab-initio through another ruling No. UP ADRG-24/2023 dated 02.05.2023 issued later, due to the fact that the applicant viz., NHAI is the receiver of goods/services provided by MVVNL, and that as per Section 95(a) of the CGST Act, 2017, an advance ruling is extendable only to supplier of goods/services. In spite of the same, we are of the opinion that since the said ruling has been rendered void only on technical grounds, and as the facts and circumstances of the said case is identical to the instant case, the discussions on facts and legalities made therein and the decisions arrived at, have a persuasive value and are squarely applicable to the instant case.

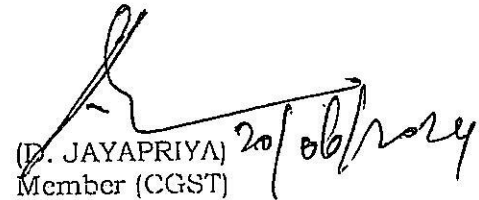
6. Based on the above discussions, we rule as under:

RULING

1. The value of 'Deposit Contribution Works' to be adopted by the applicant on 'Self Execution Schemes' shall be the amount charged and received by the applicant in relation to the said service.
2. Yes. The value to be adopted by the applicant for 'Deposit Contribution Works' under the 'Self Execution Schemes' shall be restricted to "Establishment and Supervision charges" and "Other charges" if charged and received from the recipient of service.


(A. VALLI)
Member (SGST)




(D. JAYAPRIYA)
Member (CGST)

To

M/s Tamil Nadu Generation & Distribution Corporation Limited,
144, NPKRR Maaligai, Anna Salai,
Mount Road, Chennai 600 002.

//by RPAD//

Copy submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600 034.
2. The Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.
3. The Commissioner of Central GST & Central Excise,
Chennai North Commissionerate.
26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai-600 034.

Copy to :

1. The Deputy Commissioner (ST),
Large Taxpayers Unit-I,
Integrated Building for Commercial Taxes and Regn. Dept.,
Government Farm Village,
Saidapet, Chennai 600 035.
2. Master File/ Spare-2