

Whether charging of electric battery - which involves two components - is an activity of 'supply of electrical energy' (as supply of goods) and 'service charges' (as supply of service); HELD The charging of electric battery is an activity amounting to supply service, i.e., 'Battery Charging Service' for motors. (2) Whether the 'supply of electrical energy' and 'service charges' - both components - to be treated as 'supply of service' as held by the Ministry of Power, vide its Clarification dated 13-04-2018; HELD The 'supply of electrical energy' and 'service charges' together are to be treated as 'supply of service'. (3) If the 'supply of electrical energy' and 'service charges' are treated as two different components, then whether the 'supply of electrical energy' is exempt as per serial number 104 of Notification No.2/2017-Central Tax (Rate), dated 28-06-2017 (HSN 2716 00 00) and 'service charges' is taxable as per Notification No. 11/2017-Central Tax (Rate), dated 28-06-2017; HELD not applicable to the instant case. (4) If both the components are treated as 'supply of service', then the Service Accounting Code and the rate of tax applicable under the GST and the relevant notification, may please be clarified; HELD The activity of the applicant i.e. charging battery of Electrical Vehicle is treated as 'supply of service' that gets covered under SAC 998714 and attracts GST @18% in terms of entry No.25(ii) of the Notification No.11/2017 (5) Whether the GST collected, which is treated as output tax, can be set-off against the input paid by the Corporation on its inputs and input services, as provided under Rule 42 and 43 of the GST Rules. HELD The GST collected, which is treated as output tax, can be set-off against the input tax credit received by the applicant on its inputs and input services, in terms of Sections 16 & 17 of the CGST Act 2017 read with Rules 42 and 43 of the CGST Rules 2017.

Advance Ruling No. KAR ADRG 24/2023, Dated 13th July, 2023

THE AUTHORITY FOR ADVANCE RULINGS

IN KARNATAKA

GOODS AND SERVICES TAX

VANIJYA THERIGE KARYALAYA, KALIDASA ROAD

GANDHINAGAR, BENGALURU - 560 009

Present:

1. Dr. M.P.Ravi Prasad

Additional Commissioner of Commercial Taxes Member (State)

2. Sri. Kiran Reddy T

Additional Commissioner of Customs & Indirect TaxesMember (Central)

1.	Name and address of the applicant	M/s. CHAMUNDESWARI ELECRICITY SUPPLY CORPORATION LIMITED, # 29, 2nd Stage, Vijayanagar, Hinkal, Hinkal Village, Mysuru - 570017, Karnataka.
2.	GSTIN or User ID	29AACCC6636P1Z1
3.	Date of filing of Form GST ARA-01	17-10-2022
4.	Represented by	Sri. Y C Shivakumar, Advocate, & Authorised Representative
5.	Jurisdictional Authority -Centre	The Principal Commissioner of Central Tax, Mysuru Commissionerate, Mysuru - 570017. (Gokulam Range, Vijayanagar Division)
6.	Jurisdictional Authority - State	ACCT, LGSTO-190, Mysuru.
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act & Rs.5,000/- under KGST Act through debit from

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND
UNDER SECTION 98(4) OF THE KGST ACT, 2017**

M/s. Chamundeswari Electricity Supply Corporation Ltd., # 29, 2nd Stage, Vijayanagar, Hinkal, Hinkal Village, Mysuru - 570017, Karnataka, having GSTIN 29AACC6636P1Z1, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act, KGST Act.

2. The applicant stated that they are a limited company, registered under the CGST / KGST Acts, regularly filing the returns and paying the taxes; engaged in sale of energy and transmission and distribution of electricity; sale of energy is exempt as per serial number 104 of Notification No.2/2017-Central Tax (Rate), dated 28-06-2017 and also transmission and distribution of electricity is exempt as per serial number 25 of Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017.

2.1 The Applicant further stated that they are going to set up various public charging stations (PCS) on its own, for charging electric vehicles (EVs), both two-wheelers and four-wheelers. The charging of a battery in EVs requires electricity. The Applicant will provide electric energy to these public charging stations. All electric vehicle users can access these public charging stations for battery charging. The Applicant would like to issue tax invoices and collect "Electric Vehicle Charging Fee". It includes two components - (a) 'Energy Charges', and (b) 'Service Charges'. 'Energy Charge' refers to the number of units of energy consumed and the 'Service Charge' refers to the services provided by the charging station, i.e. the cost of setting up the service station and running the same.

2.2 Further, the applicant also stated that the Ministry of Power, in its guidelines dated 13-04-2018, has laid down various requirements which a person would be required to comply in order to operate a charging station; this includes the public charging stations set up by the Applicant; the Ministry of Power also clarified that charging of an EV battery by a charging station involves 'a service' requiring the consumption of electricity by the charging station; The activity does not involve any sale of electricity but the charging of an EV battery by a charging station involves 'a service' requiring the consumption of electricity by the charging station and hence as per the Ministry of Power, the activity does not involve any sale of electricity, but a service.

3. In view of the above, the applicant has sought advance ruling in respect of the following questions:-^

- a) Whether charging of electric battery - which involves two components - is an activity of 'supply of electrical energy' (as supply of goods) and 'service charges' (as supply of service); or
- b) Whether the 'supply of electrical energy' and 'service charges' - both components - to be treated as 'supply of service' as held by the Ministry of Power, vide its Clarification dated 13-04-2018; and
- c) If the 'supply of electrical energy' and 'service charges' are treated as two different components, then whether the 'supply of electrical energy' is exempt as per serial number 104 of Notification No. 2/2017-Central Tax (Rate), dated 28-06-2017 (HSN 2716 00 00) and 'service charges' is taxable as per Notification No. 11/2017-Central Tax (Rate), dated 28-06-2017;
- d) If both the components are treated as 'supply of service', then the Service Accounting Code and the rate of tax applicable under the GST and the relevant notification, may please be clarified;
- e) Whether the GST collected, which is treated as output tax, can be set-off against the input paid by the Corporation on its inputs and input services, as provided under Rule 42 and 43 of the GST Rules.~

4. Admissibility of the application : The applicant claimed that the questions on which advance rulings have been sought are with regard to "classification of any goods or services or both"; "Applicability of a notification issued under the provisions of the CGST Act 2017"; "Admissibility of input tax credit of tax paid or deemed to have been paid"; "Determination of the liability to pay tax on any goods or services or both" and "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 service or both, within the meaning of that term", which are covered under Sections 97(2) (a), (b), (d),(e) and (g) respectively of the CGST Act 2017 and hence the instant application is admissible.

5. BRIEF FACTS OF THE CASE: The applicant furnished the following facts relevant to the issue:

5.1 The applicant is a limited company, engaged in distribution of electricity and sale of energy; they purchase power from central and state generating stations, major independent power producers and independent power producers from non-conventional sources like wind, solar and mini hydel, Telangana State Power Generation Corporation Ltd., Damodar Valley Corporation Ltd. and short-term and medium-term co-generators; they supply and distribute power to various consumers, such as, companies, industries, commercial shops, hospitals, farmers, irrigation pumps, individuals, Government organizations etc. in the districts of Mysore, Mandya, Chamarajanagar, Hassan and Kodagu. The retail tariff is determined by the Karnataka Electricity Regulatory Commission (KERC) as per Electricity Act 2003.

5.2 The supplies of energy and services of transmission and distribution of electricity are exempt as per Sl. No. 104 of Notification No.2/2017- Central Tax (Rate) dated 28-06-2017 and as per Sl. No.25 of Notification No. 12/2017 - Central Tax (Rate), dated 28-06-2017, respectively. However, all other services like sale of application fee, collection of registration fee on HT/LT/Temporary application on supply of electricity, HT/LT meter testing charges, supervision charges, reconnection fee, augmentation charge, fee for testing of installation, fee for inspection of installations, installation fee collected towards issue of NOC, facilitation fee towards solar roof top system, name transfer fee, service line charges, ledger abstract fee, amount collected towards self-execution works, vendor approval fee, tender application fee, meter burn-out cost, additional load fees, load reduction fees, development charges, penalty recovered from supplier bills, disconnection fee, re-connection fee, delayed payment charges, calibration charges, meter testing charges, re-sealing charges, rentals collected from TV cable operators, one-time maintenance cost from new layouts, line shifting charges etc. are taxable at present. (There are nearly 90+ services and the above items are illustrative and not exhaustive). These are called auxiliary services or support services on which GST is collected by the applicant which is an output tax and paid every month by the applicant.

5.3 The applicant intends to set up various public charging stations (PCS) on its own, for charging electric vehicles (EVs), both two-wheelers and four-wheelers. The charging of a battery in EVs requires electricity and the applicant will provide electricity supply to these public charging stations. All electric vehicle users can access these public charging stations for battery charging. The applicant would like to issue tax invoices and collect "Electric Vehicle Charging Fee", which includes two components - (a) 'Energy Charges', and (b) 'Service Charges'. 'Energy Charge' refers to the number of units of energy consumed and the 'Service Charge' refers to the services provided by the charging station, i.e. the cost of setting up the service station and running the same.

5.4 The Ministry of Power, in its guidelines dated 13-04-2018, has laid down various requirements which a person would be required to comply in order to operate a charging station. This includes the public charging stations set up by the Corporation. It (the Ministry of Power) clarified that charging of an EV battery by a charging station involves 'a service' requiring the consumption of electricity by the charging station. The activity does not involve any sale of electricity. Relevant para of the said clarification reads as under:-^

"3. The charging of battery essentially involves utilization of electrical energy for its conversion to chemical energy, which gets stored in the battery. Thus, the charging of battery of an electric vehicle by a charging station involves a service requiring consumption of electricity by the charging station and earning revenue for this purpose from the owner of the vehicle. The activity does not in any way include sale of electricity to any person as the electricity is consumed within the premises owned by the charging station, which may be connected to the distribution system or otherwise for receiving electricity. By the same logic, the activity does not involve further distribution of transmission of electricity".

4. Therefore, it is clarified that during the activity of charging of battery for use in electric vehicle, the charging station does not perform any of the activities namely transmission, distribution or trading of electricity, which require license under the provisions of the Act, hence the charging of batteries of electric vehicles through charging station does not require any license under the provisions of the Electricity Act, 2003". (Emphasis supplied)~

(A copy of clarification dated 13-04-2018 is enclosed for ready reference).

5.5 As could be seen from the above clarification, the charging of an EV battery by a charging station involves 'a service' requiring the consumption of electricity by the charging station. According to the Ministry of Power, the activity does not involve any sale of electricity, but a service. Going by the clarification, the activity of charging of an *EV Battery' by a charging station is 'Service". Therefore, the question is whether the entire charges collected by the Applicant i.e. 'Energy Charge' and 'Service Charge' should be considered as 'supply of service' and taxable under the GST Acts. If that is so, the rate of tax and the SAC of such service may be clarified.

5.6 The Applicant is of the opinion that the clarification of the Ministry of Power, vide its Clarification dated 13-04-2018, is with regard to obtaining license to operate the charging station. While clarifying so, it states that the charging stations do not require license under the Electricity Act, 2003, since charging stations do not perform

any of the activities, namely, transmission, distribution and trading of electricity.

6. Applicant's Interpretation of Law: The applicant furnished their interpretation of law inter alia stating as under:

6.1

ISSUES ON WHICH ADVANCE RULING IS SOUGHT						
SL. No.	Nature of Supply	Recipient	Supply is Goods/ Service	HSN / SAC	Applicable Notifications/Circulars	Advance Ruling sought
1	2	3	4	5	6	7
1	'Sale of Energy' in a public charging station for Electrical vehicles.	General Public / Consumer	Goods	2716 00 00	Sl.No.104 of Notification No.2/2017-Central Tax (Rate), dated 28-06-2017.	The Corporation wants to know whether the claim of exemption on the sale of energy in public charging stations to be set up for charging electric vehicles, both two-wheelers and four-wheelers, is correct.
2	'Service charges' collected in a public charging stations for electrical vehicles.	General public / consumer	Service	Not known	Notification No. 11/2017-Central Tax (Rate), dated 28-06-2018.	The Corporation wants to know whether the service charges collected from public / consumer in public charging stations for charging electric vehicles is taxable. If so, at what rate and the SAC of the same.

> Therefore, the questions arise in the context of GST are that -^

a) Whether charging of battery, which involves two components, is an activity of 'supply of electrical energy' (as supply of goods) and 'service charges' (as supply of service); or

b) Whether the 'supply of electrical energy' and 'service charges', both components to be treated as 'supply of service' as held by the Ministry of Power, vide its Clarification dated 13-04-2018; and

c) If the 'supply of electrical energy' and 'service charges' are treated as two different components, then whether the 'supply of electrical energy' is exempt as per serial number 104 of Notification No.2/2017-Central Tax (Rate), dated 28-06-2017 (HSN 2716 00 00) and 'service charges' is taxable as per Notification No. 11/2017-Central Tax (Rate), dated 28-06-2017;

d) If the entire transaction is treated as 'supply of service', then the SAC and the rate of tax applicable under the GST and the relevant notification, may please be clarified;

e) Whether the GST collected, which is treated as output tax, can be set-off against the input paid by the Corporation on its inputs and input services, as provided under Rule 42 and 43 of the GST Rules.~

PERSONAL HEARING PROCEEDINGS HELD ON 10.11.2022

7. Sri Y C Shivakumar, Advocate & Authorised Representative of the applicant appeared for personal hearing proceedings and reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

8. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia and have the same provisions in like matters and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

9. We have considered the submissions made by the applicant in their application for advance ruling. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts along with the arguments made by the applicant & the submissions made by their learned representative during the time of hearing.

10. The applicant is a limited company engaged in sale of Electrical energy and also transmission & distribution of Electricity. They intend to set up various Public Charging Stations (PCS) on their own, for charging batteries of Electric Vehicles (EVs), both two wheelers and four wheelers. The charging of a battery in EVs requires electric energy, which will be provided by the applicant to the PCSs. The applicant would like to issue tax invoices and collect "Electric Vehicle Charging Fee", which includes two components i.e. 'Energy Charges' which refers to the number of units of energy consumed and 'Service Charges' that refers to services provided by the charging station. In view of the foregoing, the applicant sought for advance rulings in respect of the questions mentioned at para 3 supra.

11. The applicant though raised 5 questions with regard to their activity the core issue before us to decide is whether their activity of electric vehicle charging amounts to supply of goods or services. While supply of electricity without any doubt is treated as supply of goods with HSN 2716 00 00 and covered under Sl. No. 104 of exemption Notification No.2/2017-Central Tax (Rate), dated 28-06-2017, the question before us is whether electric vehicle charging amounts to supply of electricity or not. The activity of electric vehicle charging involves charging of a battery i.e, conversion of electric energy to chemical energy in the premises of the applicant's Public Charging Stations (PCS). Electricity which is a 'moveable' property and classified as goods, is not supplied as such to the consumer, rather it is converted into chemical energy. Recipient or the consumer does not receive electricity as such as in the case with any other supply of goods or moveable property. Consumer receives only chemical energy stored in the battery. It is a case of putting to use electrical energy at the PCS for its conversion into chemical energy. The applicant also measures the 'Energy Charges' in the number of units of energy consumed for undertaking the said activity of charging of battery and not the amount of electricity transmitted to the consumer for his further application or usage. Thus we find that the activity of charging of electric vehicle does not amount to supply of electricity or supply of any moveable property, but it is a supply of service.

12. We also invite reference to the Electricity Act, 2003, which governs generation, transmission, distribution, trading and use of electricity. Section 2 of the said Act 2003 defines certain terms and the relevant ones are as appended below:

Section 2(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;

Section 2(70) : "supply", in relation to electricity, means the sale of electricity to a licensee or consumer;

section 2(71) : "trading" means purchase of electricity for resale thereof and the expression "trade" shall be construed accordingly;

Section 2(15) : "consumer" means any person who is supplied with electricity for his own use by a licensee or

the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;

Section 2(39) : " licensee" means a person who has been granted a licence under section 14;

Section 2(49) : "person" shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;

Section 2(51): "premises" includes any land, building or structure;

Section 2(61) : "service-line" means any electric supply-line through which electricity is, or is intended to be, supplied - (a) to a single consumer either from a distributing main or immediately from the Distribution Licensee's premises; or (b) from a distributing main to a group of consumers on the same premises or on contiguous premises supplied from the same point of the distributing main;

Section 2(74) : "transmit" means conveyance of electricity by means of transmission lines and the expression "transmission" shall be construed accordingly;

Section 12. (Authorised persons to transmit, supply, etc., electricity): No person shall (a) transmit electricity; or (b) distribute electricity; or (c) undertake trading in electricity, unless he is authorised to do so by a licence issued under section 14, or is exempt under section 13.

From the above it is seen that "supply", in relation to electricity, to mean the sale of electricity to a licensee or consumer and Section 2(15) of the said Act defines "consumer" to mean any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be. From the said provisions, it can be inferred that it is mandatory to have a licence to supply electricity and the premises of consumer including land, building or structure to be connected for the purpose of receiving electricity. In the instant case, it is admitted that the Public Charging Stations (PCS) proposed by the applicant do not have licence as required under the Act, 2003 and the consumer lacks any premises for transmission through a service line or otherwise. The consumer is also not supplied with electricity, rather gets his electric vehicle battery charged using the electricity. Thus even in terms of the Electricity Act, 2003 the activity does not amount to supply of electricity.

Therefore it is mandatory to have a licence to supply the electricity and in the instant case the applicant does not have a licence as required and hence the supply of electricity by the applicant does not arise even on this count also. Moreover it is also admitted by the applicant that the Ministry of Power, Government of India have also clarified that there is no requirement of licence for EV charging stations.

Thus the applicant's activity of charging of battery does not involve sale of electricity to any person as the electricity is consumed by the charging station and thus the electrical energy is put to use as a consumable, for charging of battery. In other words the owner of the Electric Vehicle is being allowed to use the infrastructure/facilities that are provided by the charging station and therefore the said activity amounts to supply of service, for which the applicant admittedly collects Electric Vehicle Charging Fee as consideration. Thus the impugned activity amounts to supply of service in terms of Section 7(l)(a) read with Section 2(102) of the CGST Act 2017.

13. Further, the Ministry of Power, Government of India, New Delhi vide their letter No.23/08/2018-R&R dated 13.04.2018 issued a clarification on charging infrastructure for Electric Vehicles with reference to the provisions of the Electricity Act 2003, in paras 3 & 4, in accordance to which charging of battery involves utilisation of electrical energy for its conversion to chemical energy, which gets stored in the battery and thus the said activity involves a service requiring consumption of electricity by the charging station and earning revenue for the said purpose. The activity does not in any way include sale of electricity to any person as the electricity is consumed within the premises owned by the charging station, which may be connected to the distribution system or otherwise for receiving electricity. By the same logic, the activity does not involve further distribution or transmission of electricity. Therefore, during the activity of charging of battery for use in electric vehicle, the charging station does not perform any of the activities namely transmission, distribution or trading of electricity, which require licence under the provisions of the Electricity Act 2003 and hence the charging of batteries of electric vehicles through charging station does not require licence under the provisions of the Electricity Act 2003.

14. In view of the above, the charging stations do not require a licence for charging the battery of an EV and thus the said stations are not involved in transmission, distribution or trading of electricity. Therefore, even on

this count also the impugned activity amounts to supply of service.

15. In view of the above, as the activity of charging battery of electrical vehicle is considered as supply of service, the applicability of Notifications 2/2017-Central Tax (Rate) and 12/2017-Central Tax (Rate) both dated 28.06.2017 does not arise to the instant case.

16. Now we proceed to determine the classification of the impugned activity of the applicant i.e. charging battery of Electrical Vehicle as it is already decided in the previous paras that it amounts to supply of service. It is observed from the Explanatory Notes to the Scheme of Classification of Services, which is adopted for the purposes of GST, that SAC 9987 covers Maintenance, repair and installation (except construction) services; SAC 99871 covers Maintenance and repair services of fabricated metal products, machinery and equipment and SAC 998714 covers Maintenance and repair of transport machinery and equipment, which includes electrical system repair and battery charging services for motor cars.

17. The Electrical Vehicle contains a motor to rotate the wheels that functions out of the energy sourced through the battery and thus the said vehicle qualifies to be a motor car. Thus charging the batteries of such electric vehicles amounts to charging of the batteries of motor cars and thus the impugned activity squarely gets covered under SAC 998714. Further Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended, prescribes GST rate of 18% (CGST-9% and KGST-9%) vide entry number 25(ii) for the impugned activity/service.

18. Now we consider the last question i.e. whether the output tax can be set off against the input paid on inputs and input services, as provided under Rule 42 and 43 of the GST Rules. It is observed that the question is not specific and as such the applicant can avail input tax credit and utilize the same in terms of Sections 16 & 17 of the CGST Act 2017 read with Rules 42 and 43 of the CGST Rules 2017.

19. In view of the foregoing, we pass the following

RULING

- a) The charging of electric battery is an activity amounting to supply service, i.e., 'Battery Charging Service' for motors.
- b) The 'supply of electrical energy' and 'service charges' together are to be treated as 'supply of service'.
- c) The 'supply of electrical energy' and 'service charges' are not treated as two different components and thus the entry number 104 of Notification No.2/2017-Central Tax (Rate), dated 28-06-2017 and Notification No. 11/2017-Central Tax (Rate), dated 28-06-2017 are not applicable to the instant case.
- d) The activity of the applicant i.e. charging battery of Electrical Vehicle is treated as 'supply of service' that gets covered under SAC 998714 and attracts GST @18% in terms of entry No.25(ii) of the Notification No. 11/2017-Central Tax (Rate), dated 28-06-2017, as amended.
- e) The GST collected, which is treated as output tax, can be set-off against the input tax credit received by the applicant on its inputs and input services, in terms of Sections 16 & 17 of the CGST Act 2017 read with Rules 42 and 43 of the CGST Rules 2017.

(Dr. M.P.Ravi Prasad)

Member

Place: Bengaluru

Date: 13-07-2023

(Kiran Reddy T)

Member