



February 2025

## Hon'ble High Court of Delhi quashes Goods and Services Tax notices issued to Central Electricity Regulatory Commission and Delhi Electricity Regulatory Commission

The Hon'ble High Court of Delhi ("Delhi HC"), by its recent judgment dated January 15, 2025 in ***CERC vs. Addl. Director, Directorate General of GST Intelligence and Anr.***<sup>1</sup> and Batch, quashed the Show Cause Notices ("SCNs") issued by the Directorate General of GST Intelligence ("DGGI") to the Central Electricity Regulatory Commission ("CERC") and Delhi Electricity Regulatory Commission ("DERC") ("**Electricity Regulatory Commissions**"). It was *inter alia* held that the statutory functions discharged by the Electricity Regulatory Commissions under the Electricity Act, 2003 ("**Electricity Act**") are not exigible to Goods and Services Tax ("**GST**") under the Central Goods and Services Tax Act, 2017 ("**CGST Act**") and the Integrated Goods and Services Tax Act, 2017 ("**IGST Act**").

### Brief facts

1. SCNs dated May 29, 2024 and July 23, 2024 were issued by DGGI to the CERC and the DERC respectively alleging that both bodies were liable to pay GST on various fees collected while performing statutory functions under the Electricity Act. These included:
  - a) filing fees for tariff petitions filed by power utilities;
  - b) fees collected for determining or regulating electricity tariffs;
  - c) license fees for granting licenses to transmission and distribution utilities;
  - d) annual registration fees collected from registered entities; and
  - e) miscellaneous fees related to other regulatory activities;
2. DGGI:
  - a) classified these fees as consideration for "*support services to electricity transmission and distribution*" taxable under the Service Accounting Code ("**SAC**") 998631 as per Serial No. 466 of the Annexure to Notification No. 11/2017 - Central Tax (Rate) dated June 28, 2017, read with the explanatory notes to the Scheme of Classification of Services as adopted by the Central Board of Indirect Taxes and Customs ("**CBIC**");

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<sup>1</sup> W.P. (C) No. 10680 of 2024

- b) stated that the support services so rendered would be taxable with a GST rate of 18% as per Serial No. 24(ii) of notification<sup>2</sup> dated June 28, 2017, and thus falling within the ambit of “*support services to mining, electricity, gas and water distribution*”.
- 3. SCNs asserted that regulatory functions of the Electricity Regulatory Commissions were distinct from adjudicatory functions. While the latter could be exempt under Schedule III of the CGST Act, the regulatory activities allegedly constituted ‘supply of services’.
- 4. Petitioners (Electricity Regulatory Commissions) had broadly submitted as under:
  - a) functions of Electricity Regulatory Commissions under the Electricity Act, including regulating tariff and licensing, are statutory and not commercial. In the absence of any commercial consideration or business objective, the discharge of such statutory activities in public interest cannot be subjected to a levy under either the CGST or the IGST; and
  - b) both the Electricity Regulatory Commissions have all the trappings of a court and thus liable to be viewed as a ‘tribunal’, being exempt from taxation.
- 5. Respondent (DGGI) had broadly submitted as under:
  - a) adjudicatory functions (under Section 79(1)(f) / 86(1)(f) of the Electricity Act) of the Electricity Regulatory Commissions alone qualify for exemption, while regulatory functions should attract GST liability;
  - b) regulatory functions appear to be a ‘service’ in terms of Section 2(102) of the CGST Act read with Section 2(24) of the IGST Act and as such, a ‘taxable supply’ in terms of Section 2(108) of the CGST, 2017 read with Section 2(24) of the IGST Act, 2017 which is leviable to tax under the Section 9 of the CGST Act read with Section 5 of IGST Act;
  - c) activities carried out by the Electricity Regulatory Commissions fall under the definition of ‘business’ as defined in Section 2(17) of the CGST Act read with Section 2(24) of the IGST Act;
  - d) CBIC has compiled and released a booklet containing 31 (thirty-one) frequently asked questions on GST in government services sector, stating that statutory or regulatory bodies like the Electricity Regulatory Commissions do not qualify as ‘government’ or ‘local authority’ under the CGST Act; and
  - e) as such, financial consideration/fees received by the CERC/DERC is towards a function/service rendered by them and, in absence of any blanket exemption available, the said services appear to be taxable under the CGST Act, 2017/IGST Act, 2017.

## Issues

The following issues arose for consideration of the Delhi HC:

- a) whether GST is leviable on fees collected by the Electricity Regulatory Commissions for their regulatory functions?
- b) whether the Electricity Regulatory Commissions fall within the scope of “tribunal” under Schedule III of the CGST Act? and
- c) whether a distinction can be drawn between regulatory and adjudicatory functions of the Electricity Regulatory Commissions for the purpose of GST liability?

## Findings of the Delhi HC

The Delhi HC, while allowing the writ petitions filed by CERC and DERC and setting aside the SCNs, held as under:

<sup>2</sup> Notification No. 8 / 2017 - Integrated Tax (Rate) dated June 28, 2017.

1. Schedule III to the CGST Act lists out activities which are neither liable to be treated as a supply of goods nor a supply of services, which includes services rendered by a tribunal established under any law. Electricity Regulatory Commissions act as quasi-judicial bodies with all the trappings of a tribunal. Reliance is placed on *PTC India Ltd. vs. CERC*<sup>3</sup>;
2. Regulatory function discharged by the Electricity Regulatory Commissions would clearly not fall within the scope of the word 'business' as defined by Section 2(17) of the Electricity Act. Thus, even if the fee so received by the CERC and DERC were to be assumed as being consideration received, it was clearly not one obtained in the course or furtherance of business;
3. Schedule III of CGST Act in express and unambiguous words excludes services rendered by a court or tribunal. Once that exclusion had come to be expressly incorporated, DGGI could not have undertaken an exercise to bifurcate or draw a wedge between the adjudicatory and regulatory role of the Electricity Regulatory Commissions;
4. It cannot be accepted that regulation of tariff, inter-state transmission of electricity or the issuance of license would be liable to be construed as activities undertaken or functions discharged in the furtherance of business. Even if these were functions being performed in the exercise of a regulatory function, the same were being discharged by a quasi-judicial body (CERC/DERC) which undoubtedly had all the trappings of a tribunal. The grant of a license to transmit or distribute is clearly not in furtherance of business or trade but in extension of the statutory obligation placed upon a Commission to regulate those subjects;
5. Even though Section 2(102) of the CGST Act defines the expression 'services' to mean 'anything other than goods', the expansive reach of that definition would have to necessarily be read alongside Schedule III which excludes services *per se* rendered by a court or tribunal established under any law. The provision made in Schedule III is clearly intended to insulate and exempt the functions discharged by a court or tribunal from the levy of a tax under the CGST;
6. Electricity Act makes no distinction between the regulatory and adjudicatory functions which it vests in and confers upon an Electricity Regulatory Commission. Those functions are placed in the hands of a quasi-judicial body enjoined to regulate and administer the subject of electricity distribution. Electricity, undoubtedly, is a natural resource which vests in the State. The SCNs infringe the borders of the incredible and inconceivable.
7. SCNs issued by DGGI were arbitrary and unsustainable. Exemption in Schedule III of the CGST Act, which applies to services provided by courts or tribunals, extends to the Electricity Regulatory Commissions. Classification of fees collected as 'support services to electricity transmission and distribution' under SAC 998631 does not override the statutory exemption provided in Schedule III.

## Conclusion

The Delhi HC by the present judgment has held that Electricity Regulatory Commissions such as the CERC and DERC performing statutory and regulatory functions in the public interest under the Electricity Act, cannot be subjected to GST without express provisions under the statute. The exemption under Schedule III of the CGST Act protects Electricity Regulatory Commissions from their statutory roles being classified as taxable supplies. Electricity Act makes no distinction between the regulatory and adjudicatory functions which it vests in and confers upon an Electricity Regulatory Commission. Those functions are placed in the hands of a quasi-judicial body enjoined to regulate and administer the subject of electricity distribution.

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<sup>3</sup> (2010) 4 SCC 603

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