THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009

Advance Ruling No. KAR ADRG 09/ 2023
Dated: 17.02.2023

Present:

1. Dr. M.P. Ravi Prasad
   Additional Commissioner of Commercial Taxes . . . . Member (State)

2. Sri. Kiran Reddy T
   Additional Commissioner of Customs & Indirect Taxes . . . . Member (Central)

1.	Name and address of the applicant	M/s. Chamundeshwari Electricity Supply Corporation Limited, No.29, 2nd Stage, Vijayanagar, Hinkal, Mysore-570017.
2.	GSTIN or User ID	29AACCC6636P1Z1
3.	Date of filing of Form GST ARA-01	11-07-2022
4.	Represented by	Sri Y.C. Shivakumar, Advocate
5.	Jurisdictional Authority – Centre	The Commissioner of Central Taxes, Mysore GST Commissionerate, Vijayanagar Division, Gokulam Range, Mysuru
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.5,000-00 under CGST Act and Rs.5,000-00 under SGST Act vide debit of Electronic Cash Ledger Reference No.DC2904220161638 Dated 19-04-2022

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

M/s. Chamundeshwari Electricity Supply Corporation Limited, (hereinafter referred to as 'The applicant'), No.29, 2nd Stage, Vijayanagar, Hinkal, Mysore-570017 having GSTIN 29AACCC6636P1Z1 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 and the KGST Act.

2. The Applicant is a Public Limited Company registered under the provisions of Central Goods and Services Tax Act, 2017 as well as Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act and KGST/SGST Act respectively). The Applicant is engaged in distribution of electricity and sale of energy.

3. The applicant has sought advance ruling in respect of the following questions:

i. *Since the Government of Karnataka holds 99.99% of equity in the Corporation, whether the Corporation is considered as "Governmental Authority" or "Local Authority"?*
ii. *Since the Corporation is fully owned by the Government of Karnataka and audited by the Comptroller and Auditor General of India, whether filing of Annual Return in Form GSTR-9 and Form GSTR-9C is exempt under the Second Proviso to Section 44 of the CGST and KGST Acts?*
iii. *Whether the Corporation is eligible to claim input tax credit on the inward supply of goods and services which are capitalized in the books of accounts?*
iv. *Whether the Corporation is eligible to claim input tax credit on the inward supply of services against output taxable supplies of support and auxiliary services and other supply of taxable goods?*
v. *Whether the Corporation is eligible to claim input tax credit (on inputs, input services and capital goods) proportionately on the taxable output supply of support services and goods (scrap etc.) as per the provisions of Rule 42 and 43 of the CGST and KGST Rules?*
vi. *Whether the Corporation is eligible to claim taxes paid under RCM, as input tax credit?*
vii. *Whether Additional Surcharge collected from Open Access Consumer as per sub-section (4) of Section 42 of the Electricity Act, 2003, clause 8.5.4 of the Tariff Policy 2016, Clause 5.8.3 of the National Electricity Policy and Clause 11 (vii) of the KERC (Terms and Conditions for Open Access) Regulations, 2004, is taxable under the GST Acts?*
viii. *Whether "Wheeling and Banking Charges" allowed by Commission (KERC) as 5% and 2% of the energy input into the distribution system by Open Access consumer is taxable under the GST Acts?*

4. Admissibility of the application: The question is about the "admissibility of input tax credit of tax paid or deemed to have been paid" and "determination of the liability to pay tax on any goods or services or both" and hence is admissible under Section 97(2) (d) and (e) of the CGST Act 2017.

5. BRIEF FACTS OF THE CASE: The applicant furnishes some facts relevant to the issue:

5.1 The applicant states that it is a Limited Company and engaged in distribution of electricity and sale of energy. Sale of energy is exempt as per serial number 104 of Notification No.2/2017-Central Tax (Rate), dated 28-06-2017. Similarly, transmission and distribution of electricity is exempt as per serial number 25 of Notification No.12/2017-Central Tax (Rate), dated 28-06-2017.

5.2 The applicant states that 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 Limited, Damodar Valley Corporation Limited and short-term and medium-term co-generators. The Corporation supplies and distributes power to various consumers, such as, companies, industries, commercial shops, hospitals, farmers, irrigation pumps, individuals, Government organisations 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.

6. Applicant's Interpretation of Law:

6.1 The applicant submits that the Government of Karnataka holds 99.99% of equity in the Corporation. As per the Explanation under sub-section (16) of Section 2 of the IGST Act, 2017, the expression "governmental authority" means an authority or a board or any other body (i) set up by an Act or Parliament or a State Legislature; or (ii) established by any Government, with ninety percent or more participation by way of equity or control to carry out any function entrusted to a Panchayat under article 243G or to a municipality under Article 243W of the Constitution. Firstly, the Corporation is set up with 99.99% of equity and established by the State of Karnataka. Besides, the Corporation is undertaking rural electrification, including distribution of electricity as per serial number 14 of the Eleventh Schedule to the Constitution, as per Article 243G. Hence, the Corporation is of the opinion that it is a "governmental authority".

6.2 The applicant submits that as per Section 44 of the GST Acts, every registered person shall furnish annual return which may include a self-certified reconciliation statement. However, an exemption has been granted under the second proviso to any Department of the Central Government or a State Government or a local authority, whose books of accounts are subject audit by C & AG. In the case of the Corporation, firstly, it is a Government Authority and secondly, set up by an Act of State Legislature. Thirdly, the books of accounts of the Corporation is audited by the C & AG. Therefore, the applicant is of the opinion that it is exempt from submission of annual returns and reconciliation statement (i.e., Form GSTR-9 and Form GSTR-9C).

6.3 The applicant states that they purchase certain items like poles, cross arms, SMC line materials, anticlimbing device, insulators, conductors, Guy wire and GI wire, PG clamps, distribution transformers, transformer oil, LT protection, LT distribution box, lightning arresters, HG fuse unit, PVC and GI pipes, HT metering equipments, UPS online, Heavy Duty Copper Terminals, compact fluorescent lamps, bolts and nuts, PVC insulated and sheathed and un-sheathed aluminium wires etc. Almost all the purchases are brought from GST registered buyers wherein the applicant pays GST, except on the purchase of power, on which GST is exempt. Similarly the input services of the applicant are transmission charges, open access charges, repair and

maintenance expenses, rent and taxes, audit fees, administrative and general expenses like telephone / mobile and internet charges, man-power services (for obtaining security, data entry operators, house-orderly, sweepers etc.) computer billing charges, legal expenses, professional charges, vehicle hiring expenses, printing and stationery, revenue expenses incurred on software, maintenance charges of FAMS, demonstration transactions and maintenance charges of prepaid meters, transaction charges paid to revenue collecting agency (mobile one), material related expenses, expenses towards consumer relation / education, asset decommissioning costs etc. In all these input services (except open access charges and transmission charges), the applicant incurs GST liability.

Some of the input goods are utilized for creating infrastructure and capitalized. As per KERC (Recovery of Expenditure of Supply of Electricity) (Ninth Amendment) Regulations 2017, Clause 3.2.1, "Deposit shall be collected by CESC towards the cost of Distribution transformer and allied materials / equipment under Deposit Contribution Works (DCW)". By providing Transformer by CESC, the transformer portion of work will be get done by licensed contractor. After completion of the work, the Transformer shall be taken over by Licensee (i.e., CESC) and ownership of the lines and other equipment would thereafter vest with the Licensee who maintains it as per Electricity Supply and Distribution Code, 2000-01, Clause 9.11.

And other than above, the new consumer seeking power supply shall execute the service line works under 'Self Execution Works' as per Electricity Supply and Distribution code 2000-01 and after completion of the works, the same shall be taken over by Licensee (i.e., CESC) and ownership of the lines and other equipment would thereafter vest with the Licensee who maintains it as per Electricity Supply and Distribution code, 2000-01, Clause 9.11. Further, the deposit collected under DCW will be treated as contribution and the asset taken over under both DCW and self-execution will be capitalized in the books of accounts as per statues for maintenance.

The applicant submits that since the Section 16(3) of the GST Act prohibits claiming input tax credit if depreciation on the tax component of the cost of the capital goods and plant and machinery under the provisions of the Income Tax Act, 1961, is claimed, they are of the opinion that on such goods which are capitalized, no input tax credit is allowable. Also, the applicant is of the opinion that when it creates its own infrastructure and capitalizes the same, the input tax credit cannot be claimed to the extent.

6.4 The applicant submits that the input services of the Corporation are transmission charges, open access charges, repair and maintenance expenses, rent and taxes, audit fees, administrative and general expenses like telephone / mobile and internet charges, man-power services (for obtaining security, data entry operators, house-orderly, sweepers etc.,) computer billing charges, legal expenses, professional charges, vehicle hiring expenses, printing and stationery, revenue expenses incurred on software, maintenance charges of FAMS, demonstration transactions and maintenance charges of prepaid meters, transaction charges paid to revenue collecting agency (mobile one), material related expenses, expenses relating to CSR activities, expenses towards consumer relation / education, asset decommissioning costs etc. The

applicant incurs GST liability on these input services, except transmission charges and open access charges.

The output taxable services of the Corporation are application fee, collection of registration fee on HT/Lt/Temporary application on supply of electricity. HT/LT meter testing charges, supervision charges, re-connection 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. These are called auxiliary services or support services on which GST is collected by the Corporation which is an output tax and paid every month by the applicant.

The applicant is of the opinion that it can claim input tax credit on input and input services against output taxable supplies of support and auxiliary services and other supply of taxable goods. On these output taxable supplies of support and auxiliary services, a registered person can claim input tax proportionately.

6.5 The applicant states that they provide auxiliary and support services and collects GST, as has been stated supra. Similarly it receives input services and capital goods and incurs input GST. Therefore, the applicant is of the opinion that it is eligible to claim input tax credit to the extent of output tax collected by it as per the formula given under Rule 42 for the inputs or input services and as per Rule 43 on capital goods.

6.6 The applicant also states that they incur GST liability on hiring of vehicle and advocate fee etc., and pays tax on RCM basis. The applicant is of the opinion that it can claim the taxes paid under RCM as input tax credit as per Section 49(4) of the GST Acts.

6.7 The applicant states that they collect additional surcharge from Open Access Consumers. Additional surcharge is allowed to DISCOMs by KERC to collect from Open Access consumer, to recover stranded cost on account of stranded Power Purchase Agreements (PPAs) and stranded assets due to consumers procuring power through Open Access. This has led to under recovery of power procurement expenses incurred by DISCOMs.

Under the sub section (4) of the Electricity Act 2003, DISCOMs have a universal supply obligation and are required to supply power as and when required by the consumers in its area of supply. Considering the sale forecast approved by the State Commission while determining Annual Revenue Requirement, the DISCOM enter into long term Power Purchase Agreements (PPA) with sellers (generators/traders etc.) so as to ensure supply of power for the envisaged increase in the load. While contracting energy through such long term PPAs, the tariff payable to the generators usually consists of two part i.e., capacity charges and energy charges. Therefore, the DISCOMs have to bear the fixed cost even when there is no off take of energy through

such source. Whenever any consumer opts for open access and takes intermittent supply through open access, the DISCOMs continue to pay fixed charges in lieu of its contracted capacity with generation stations. However, DISCOMs are unable to sufficiently recover such fixed cost obligation from the open access consumers. The cost recovered from fixed charges in the tariff schedule is less than the fixed cost incurred by the DISCOM for supplying energy. This leads to the situation where the DISCOM is saddled with the stranded cost on account of its universal supply obligation. Also, the DISCOMs, in a number of cases, establish assets for supplying power to certain specific consumers. There may be certain cases wherein such assets become redundant. In such cases, fixed charges for such stranded assets should be borne by the customers as part of additional surcharge.

In view of the adverse financial situation caused by arrangements made for complying with the obligation to supply, Section 42(4) of the Electricity Act, 2003 provides as under:

"Where the State Commissioner permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply."

Section 8.5 of the Tariff Policy 2016 also provides;

"The additional surcharge for obligation to supply as per Section 42(4) of the Act should become applicable only if it is conclusively demonstrated that the obligation of a licensee, in terms of existing power purchase commitments, has been and continues to be stranded, or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. The fixed costs related to network assets would be recovered through wheeling charges".

Further, clause 5.8.3 of the National Electricity Policy notified by the Ministry of Power, Government of India, reads as under:

"5.8.3.....An additional surcharge may also be levied under sub-section (4) of Section 42 for meeting the fixed cost of the distribution licensee arising out of his obligation to supply in cases where consumers are allowed open access....."

Since, the applicant is collecting the above charges as provided by statue incurred by CESC towards power purchase from open access consumers who have moved out of CESC to procure power from independent generators / IEX even though CESC has surplus power. Hence, GST is not collected.

Therefore, the applicant is of the opinion that since such Additional Surcharge related to power purchase cost which is exempt. Hence, Additional Surcharge does not comes under purview of GST.

6.8 The applicant submits regarding "Wheeling and Banking Charges", details as under: the Karnataka Electricity Regulatory Commission in its order dated 09-06-2005 has determined the wheeling charges for all renewable energy (RE) generators at 5% of

the energy injected to the grid and Banking charges for Mini hydel and Wind generators at 2% of the injected energy.

Clause 9.07 of the Wheeling charges for NCE projects, the KERC order dated 09-06-2005 reads as under.

"Considering the discussions at Sl.No.4 above, the Commission determines the overall wheeling charges payable by NCE sources as 5% of the energy input into the system. Other than this wheeling charge, they shall not be liable to pay any transmission charges or wheeling charges either in cash or kind as determined in the preceding sections of this order. However, surcharge shall be payable where the wheeling of energy is other than for their own use."

7.06 Banking facility to be provided for Renewable Sources of Energy, KERC order, dated 9-6-2005 reads as under:

"the Commission hereby decides to allow banking facility in respect of wind and mini-hydel projects subject to payment of difference of UI charges between the time of injection and time drawal of the power from these sources, as suggested by KPTCL and also payment of banking charges @ 2% of the input energy."

The commission in its order dated 14-05-2018, revising the wheeling charges for renewable power projects, which was effective from 1-4-2018 was challenged by various renewable energy generators before Hon'ble High Court of Karnataka in various Writ petitions. The Hon'ble High Court of Karnataka vide its order dated 13-03-2019 has quashed the order dated 14-05-2018. The above order of Hon'ble High Court of Karnataka is challenged by ESCOMs before the division bench of the Hon'ble High Court of Karnataka in WA No.1061/2019. And the commission has also filed a separate writ appeal before the Hon'ble High Court of Karnataka vide WA No.1176 / 19 and the matter is pending before the Court. Hence, KERC vide dated 07-09-2021 and 08-02-2022 passed interim orders to continue the existing wheeling and banking charges till 31-07-2022.

Wheeling and Banking:

6.8.1 Large-scale planned Renewable Energy (hereinafter referred to as 'RE') in India is expected to come from **RE resource-rich sites** located in areas remote **from major load centers**. This renewable power is required to be transmitted to the load centers located either within the State or in another State. The host State may not be able to consume all the power generated by it and hence, it may need to be transmitted for long distances to load centers in other States. This will require open access through transmission and distribution systems for transmission and wheeling of the electricity generated.

6.8.2. Section 86(1)(e) of Electricity Act 2003 (hereinafter referred to as EA) requires State Electricity Regulatory Commissions (SERCs) to develop policies that will promote the sale of electricity to any person. In any **open access transaction between an RE generator and its buyer (open access user),** which could be an obligated entity or otherwise, regional/state transmission

charges and losses are required to be paid **depending upon connectivity of the generator** and the buyer at state transmission networks.

6.8.3 Further, if the **generator and/or the buyer are connected at the distributed voltage level**, appropriate wheeling charges and losses are also required to be paid.

Banking of energy:

6.8.4 Banking is a provision wherein an RE power-generating facility is allowed to bank the electricity it produces that is not used by its off-taker or to borrow the energy it needs to sell to the buyer in the event of its inability to produce for a given duration (from 15 minutes to one year). These deviations are accounted for and the net surplus or short-fall is financially settled on a monthly, quarterly, or annual basis. Banking provisions in India are typically provided at the point of consumption by the distribution licensees. In Karnataka, KERC allowed to pay to the generator at the average power purchase cost for the banked energy(Annually).

Wheeling charges:

6.8.5 The concessional Wheeling Charges (i.e., in the form of energy vide order dated 9.6.2005) includes recovery of the fixed costs related to network assets **and Line Loss (i.e. Distribution loss).** The Wheeling charges is based on the account of investments being made in the sector for meeting the **load growth, AT&C loss reduction** and improving the performance standards (Network Assets).

6.8.6 KERC vide order dated 9.6.2005 (**Concessional W&B rates** order) decided **to compensate the distribution loss** as explained **in para 7.07(c)** which is reiterated as follows:

"Wheeling charges in Kind"

***7.07 Commission's Views/Decision**: The Commission is of the view that with proper and efficient management, commercial losses could be curtailed. **The Commission appreciates the fact that while reduction of technical losses requires capital investment, reduction of commercial losses requires sincere and concerted efforts by the utilities**. The Commission, therefore, agrees with the views expressed by the experts/consumers that passing on the inefficiencies of the utilities cannot incentivize the utilities to improve their performance. In respect of open access consumers, the Commission is of the view that commercial losses should not be loaded to open access customers, as they are in no way responsible for the commercial losses of the utilities. **Hence the Commission decides to allocate only technical losses to the open access customers for computing losses in kind.** Further, the allocation of distribution losses to HT level and LT level is based on studies instituted by the*

Commission earlier. The Commission had proposed 50% allocation criteria at the distribution level when the voltage level of injection and drawal is different. ***Since, the Commission is allocating only technical losses for open access transactions, it is considered appropriate to allocate average distribution loss in such cases".***

KERC vide order dated 14.5.2018 (Revised order of Wheeling and Banking charges for renewable power projects) also mentioned that **"The concessional wheeling charge towards Line loss** i.e., **distribution loss".**

6.8.7 Clause 9.07 of the Wheeling charges for NCE projects, **KERC order, dated 9.6.2005** reads as under.

"Considering the discussions at Sl.No.4 above, the Commission determines the overall wheeling charges payable by NCE sources as 5% of the energy input into the system. Other than this wheeling charge, they shall not be liable to pay any transmission charges or wheeling charges either in cash or kind as determined in the preceding sections of this order. However, surcharge shall be payable where the wheeling of energy is other than for their own use."

6.8.8 The calculation of wheeling charges in kind, explained in clause 9.05 of KERC order dated 9.6.2005, is reiterated as follows:

Distribution network Charges in kind:

6.8.9 The Commission had allowed the following loss levels for FY04, ESCOM wise in its Tariff Order 2003:

ESCOM	***Distribution Loss (%)***
BESCOM	*21.35%*
MESCOM	*21.38%*
HESCOM	*27.71%*
GESCOM	*27.05%*

6.8.10 As per Tariff order 2003, the commercial losses as declared by the ESCOMs for FY03 are as follows:

ESCOM	***Commercial Loss (%)***
BESCOM	*9.09%*
MESCOM	*6.45%*
HESCOM	*7.00%*
GESCOM	*12.05%*

6.8.11 The Commission in order to estimate technical loss, has arrived at the commercial losses for FY04 on pro-rata basis as follows:

ESCOM	***Pro-rata***

	Commercial Loss(%)
BESCOM	*7.59%*
MESCOM	*5.68%*
HESCOM	*6.24%*
GESCOM	*11.04%*

6.8.12 After deducting the commercial loss as above, the ***technical loss applicable for the purpose of wheeling*** *would be as follows:*

ESCOM	***33/11KV (%)***	***LT (%)***	***Total Technical loss (%)***
BESCOM –Distribution Loss	*5.5*	*8.26*	*13.76*
MESCOM -Distribution Loss	*6.24*	*9.36*	*15.60*
HESCOM- Distributio Loss	*8.59*	*12.88*	*21.47*
GESCOM- Distribution Loss	*6.40*	*9.61*	*16.01*

i. *If the point of injection & point of drawal are both at 33 kV/11 kV, only 33 kV/11 kV loss is payable in kind.*
ii. *If the point of injection & point of drawal are both at LT level, only LT loss is payable in kind.*
iii. *In case of transactions involving both HT & LT network, the open access customer shall bear the total technical losses indicated above.*

It is to be noted that, the concessional wheeling charges is allowed only at 5%.

6.8.13 Tariff policy 2016 Para 8.55 states that -

"Wheeling charges should be determined on the basis of same principles as laid down for intra-state transmission charges and in addition would include average loss compensation of the relevant voltage level. But, KERC allowed concessional wheeling charges of 5%."

6.8.14 Tariff policy 2016 Para 6.3 states that

"Wheeling charges and other fees and conditions for implementation should be determined in advance by the SERC , duly ensuing that the charges are reasonable and fair."

Additional Surcharge

6.8.15 An open access consumer, receiving supply of electricity from a person other than the distribution licensee of his area of supply, shall pay to the distribution licensee an additional surcharge in addition to **wheeling charges and cross-subsidy surcharge**, to meet the fixed cost of such distribution licensee arising out of his obligation to supply as provided under **sub-section (4) of Section 42 of the Electricity Act 2003.**

6.8.16 This additional surcharge shall become applicable only if the obligation of the licensee in terms of **power purchase commitments** has been and continues to be **stranded** or there is an unavoidable obligation and incidence to bear **fixed costs consequent to such a contract**.

6.8.17 Additional surcharge is allowed to DISCOMs by KERC to collect from Open Access consumer, to recover stranded cost on account of stranded Power Purchase Agreements (PPAs) and stranded assets due to consumers procuring power through Open Access. This has led to under recovery of power procurement expenses incurred by DISCOMs.

6.8.18 Under the sub section (4) of the Electricity Act 2003, DISCOMs have a universal supply obligation and are required to supply power as and when required by the consumers in its area of supply. Considering the sales forecast approved by the State Commission while determining the Annual Revenue Requirement, the DISCOM enter into long term Power Purchase Agreements (PPA) with sellers (generators/ traders etc.) so as to ensure supply of power for the envisaged increase in the load. While contracting energy through such long term PPAs, the tariff payable to the generators usually consists of two part i.e. capacity charges and energy charges. Therefore, the DISCOMs have to bear the fixed cost even when there is no off take of energy through such source. Whenever any consumer opts for open access and takes intermittent supply through open access, the DISCOMs continue to pay fixed charges in lieu of its contracted capacity with generation stations. However, DISCOMs are unable to sufficiently recover such fixed cost obligation from the open access consumers. **The cost recovered from fixed charges in the tariff schedule is less than the fixed cost incurred by the DISCOM for supplying energy.** This leads to the situation where the DISCOM is saddled with the stranded cost on account of its universal supply obligation. Also, the DISCOMs, in a number of cases, establish assets for supplying power to certain specific consumers. There may be certain cases wherein such assets become redundant. In such cases, fixed charges for such stranded assets should be borne by the customers as part of additional surcharge.

6.8.19 In view of the adverse financial situation caused by arrangements made for complying with the obligation to supply, Section 42(4) of The Electricity Act, 2003 provides as under:

"Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge

on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply."

6.8.20 Section 8.5 of the **Tariff Policy 2016** also provides as follows:

"The additional surcharge for obligation to supply as per section 42(4) of the Act should become applicable only if it is conclusively demonstrated that the obligation of a licensee, in terms of existing power purchase commitments, has been and continues to be stranded, or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract".

6.8.21 Further, clause 5.8.3 of the **National Electricity Policy** notified by the Ministry of Power, Govt. of India, reads as under.

"5.8.3... An additional surcharge may also be levied under sub-section (4) of Section 42 for meeting the fixed cost of the distribution licensee arising out of his obligation to supply in cases where consumers are allowed open access. ..."

6.8.22 CESC is collecting the above charges as provided by statue incurred by CESC towards power purchase from open access consumers who have moved out of CESC to procure power from independent generators.

Cross Subsidy Surcharge:

6.8.23 It is the charge payable by a consumer who opts to avail power supply through open access from someone other than such Distribution Licensee in whose area the consumer is situated. Such surcharge is meant to compensate such Distribution Licensee from the loss of cross subsidy that such Distribution Licensee would suffer by reason of the consumer taking supply from someone other than such Distribution Licensee."

6.8.24 Banking Charges:

7.06 Banking facility to be provided for Renewable Sources of Energy, as per **KERC order, dated 9.6.2005** reads as under.

"the Commission hereby decides to allow banking facility in respect of wind and mini-hydel projects subject to payment of difference of UI charges between the time of injection and time drawal of the power from these sources, as suggested by KPTCL and also payment of banking charges @ 2% of the input energy."

6.8.25 The order of the Commission dated 14.5.2018, revising the concessional wheeling charges (allowed vide order dated 9.6.2005) for renewable power projects, which was effective from 1.4.2018, was challenged by various Renewable energy generators before Hon'ble High Court of Karnataka in various Writ petitions. The Hon'ble High Court of Karnataka vide its order dated 13.3.2019 has quashed the order dated 14.5.2018. The above order of Hon'ble High Court of Karnataka is challenged by ESCOMs before the Division Bench of the Hon'ble High Court of Karnataka in WA No. 1061/2019. And the Commission has also filed a separate writ appeal before the Hon'ble High Court of Karnataka vide WA No. 1176/2019 and

the matter is pending before the court. Hence, Wheeling and Banking charges are collected as percentage of the energy input/drawal into/from the distribution system.

6.8.26 Effects of W&B to Distribution licensee:

Wheeling charges: Distribution licensees are concerned with losing high-tariff customers, which would leave largely subsidized customers to serve. Fear of losing a large consumer base has been a major deterrent to granting open access. As per the EA 2003, the open access consumers have to pay open access charges such as wheeling charge and losses, standby charges, and CSSs on top of electricity cost. **But the open access charges and CSSs are not sufficient to address the economic loss to the distribution licensee (NPTI 2013).**

6.8.27 Further, only Wind Open Access (OA) consumers have to pay Open Access Charges while all captive and solar open access consumers are exempted from such charges. It must be noted that since 2005, renewable energy sector in Karnataka has changed significantly, as follow:.

- ✓ Renewable energy penetration (excluding hydro) in Karnataka is the highest in the country as it accounts for 38% of the energy consumption in the state.
- ✓ Since 2016, week ahead and day ahead scheduling of wind and solar generation has been institutionalized under the forecasting and scheduling regulations of the KERC.
- ✓ Procedures and processes around metering and billing, especially for open access and captive have been codified for 1 MW and above consumers.
- ✓ With rapidly falling prices for RE, especially solar and wind, power from new projects is available at a rate (< Rs.3/unit) less than the average procurement cost of the ESCOMs. Thus, new projects are in a position to thrive on the basis of its own economic proposition, rather than being driven by concessions/waivers.
- ✓ With rising cost of supply of the ESCOMs and increasing viability of open access and captive procurement through renewables, Karnataka has seen an increase in open access sales by 52% between 2016 and 2019.

6.8.28 Despite these changes, the wheeling and banking charges and the banking period have not changed since 2005 in Karnataka. Further, there have been no changes in concessional wheeling provided as well. This is significant as many other states with RE investments have revised their banking frame work and wheeling charges significantly in recent years.

6.8.29 Banking Provisions: Result in an Increase in Distribution Licensee's Power Purchase Costs. Wind energy generation is available at its maximum during the monsoon, when distribution licensees' overall demand is lessened due to low agricultural load as well as lower air-conditioning loads. During this time, distribution licensees have to scale down to lower-cost thermal generation in order to absorb the wind energy, part of which will be treated as banked energy. But during the non-windy season when the system demand is higher and consequently cost of power is also high, use of banked energy by the captive and third-party users results in more costly power purchase by the distribution licensee to service

such banked energy. Quite often, in the event of their inability to buy expensive power during such a period, the distribution licensees resort to load shedding. Load management becomes difficult and results in adverse impact to consumers in terms of unreliable power supply (Live Mint 2015).

6.8.30 Switching of cross subsidizing consumers. Distribution licensees face revenue loss due to migration of industrial and commercial consumers as they subsidize consumers paying lower tariffs. This forces distribution companies to seek higher tariffs to offset the loss of cross subsidies from high-paying industrial and commercial consumers.

6.8.31 Concerns of distribution licensee in RE resource-rich states: In the RE resource-rich states, if RE IPPs are allowed the benefit of concessional wheeling, they would prefer to sell under open access if power sales under open access are more than feed-in tariffs (FiTs). This would lead to a situation wherein the distribution licensees in such states would have to purchase RECs from the open market, which will be an additional cost, even after investing huge amounts in infrastructure construction of lines and substations for RE procurement. This also has the potential of increasing the distribution licensees' RPO compliance cost.

6.8.32 Transmission Licensee's Perspective: In order to promote RE, if procurers' obligation to pay transmission charges and loss is reduced (as in states like Karnataka, Andhra Pradesh, Telangana, and Madhya Pradesh), any shortfall in the annual revenue requirement (ARR) **needs be socialized on distribution licensees and other open access users**. This also impacts on **distribution licensees** like CESC.

6.8.33 Approved Distribution Losses to CESC by KERC:

Figures in % Losses

Particulars	**FY 20**	**FY 21**	**FY 22**
Upper Limit	12.95	11.75	11.00
Average	12.70	11.50	10.75
Lower limit	12.45	11.25	10.50

The approved Distribution loss of CESC is approximately between 11%-12% as determined by Karnataka Electricity Regulatory Commission. But, the Commission allowed only 5% of wheeled energy as wheeling charges and 2% banked energy as banking charges. The charges allowed by KERC is not compensating the distribution loss incurred by CESC.

6.8.34The study ('Estimating impact of renewable energy wheeling and banking arrangement on Karnataka ESCOMs' – May 22) conducted by Prayas (Energy Group), in compliance with KERC directions is to assess impact of current banking arrangement and concessional wheeling charges on the finances of the ESCOMs. As per the study, the significant **financial impact** on ESCOMs are as follows:

a) The **concessional wheeling** and **transmission charges** result in ESCOMs and KPTCL foregoing revenue of Rs.243 crores and Rs.277 crores in FY 2019-20 and FY 2020-21 respectively. Transmission charge waiver is a major contributor to this revenue loss accounting for 50% of the revenue foregone.

b) The total loss to the ESCOMs for FY 2019-20 and 2020-21 from **energy banking and concessional wheeling and transmission** is Rs.343-373 crores and Rs.530-630 crores respectively.

6.8.35 Considering the above financial impacts on the ESCOMs, following recommendations are made in the report by Prayas:

a) Considering the actual loss of wheeled energy, recommended to increase banking charge to 10-12% of wheeled energy (as against existing 2% charge) to adequately compensate ESCOMs for their losses.
b) Banking charge should be levied as Rs./KWh charge per unit of banked energy so that there is a clear economic signal to the cost of banking which would directly incentivize consumers to align their consumption and generation patterns to the extent possible .
c) Discontinue all wheeling and transmission concessions on charges.

6.8.36 The concessional wheeling and banking arrangement for RE has remained unchanged in the last 17 years. As per the results presented in the study, the current practice of banking and concessional wheeling has a significant financial impact on Distribution licensees. Hence, the Charges collected in kind (Wheeling & Banking charges) and in cash (Additional surcharge and cross subsidy surcharge) are the concessional charges allowed to Distribution licensee by the regulator. It is only compensating the losses incurred by distribution licensee as explained by various statutes and because of compulsion of various national level RE polices.

6.8.37 Since such charges directly relate to supply and distribution and transmission of electricity which is exempt as per Notification No.12/2017-Central Tax (Tax Rate), dated 28-06-2017, and the relevant notification under the KGST Act, the Corporation is of the opinion that such charges are exempt from levy of GST also.

6.8.38 In support of the same, the Appellate Authority for Advance Ruling for the State of Uttarakhand Goods and Services Tax, in the Case of M/s Uttarakhand Power Corporation Limited, vide its order dated 29th March 2019, in Appeal No.UK/06/03-01-2019/18-19 has ruled that **"wheeling charges, cross-subsidy surcharge and additional surcharge etc."** are exempt from levy of GST since it is a service by way of transmission of distribution of electricity by an electricity transmission or distribution utility. Since CESC is a distribution utility, is covered by the said ruling and hence it is exempt from levy and collection of GST

on such wheeling charges, cross-subsidy surcharge and additional surcharge etc. The 'etc.' referred to in the order also covers "**Banking Charges**".

The applicant is of the opinion that since, the Wheeling and Banking charges are payable by Open Access Consumer as percentage (not in cash) of the energy input / drawal into/from the distribution system by them is not taxable. Hence, GST is not collected from open access consumer.

PERSONAL HEARING / PROCEEDINGS HELD ON 18-08-2022

7. Sri Y.C. Shivakumar, Advocate and Duly Authorised Representative appeared for personal hearing proceedings held on **18-08-2022** 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 matter 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 have also considered the issues involved on which advance ruling is sought by the applicant and the relevant facts along with the arguments made by their authorized representative and also their submissions made during the time of hearing.

10. Regarding the first question as to whether applicant can be treated as "Governmental Authority" or "Local Authority", the contention of the applicant is that since the Government of Karnataka holds 99.99% of equity in the Corporation, they shall have to be treated within the meaning of Governmental Authority. The term "governmental authority" is defined in clause (zf) of para 2 of Notification No.12/2017 – Central Tax (Rate) dated 28.06.2017 as under:

"2. For the purposes of this notification, unless the context otherwise requires,-

" (zf) "governmental authority" means an authority or a board of any other body, -
(i) set up by an Act of Parliament or a State Legslature; or
(ii) established by any Government,
With 90 per cent, or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution."

First of all, this definition is applicable only for the purposes of interpretation of the entries in the Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 and not for any other purposes.

Even the Explanation to clause (16) of section 2 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) is issued only for the purposes of that clause only and not applicable for all purposes.

Hence, there is no definition of "governmental authority" which is universally applicable under the GST Acts and it is not clear in what context the applicant has sought to know whether he is covered or not.

As per the above definitions, there are two conditions to be satisfied to be covered under the above term,

(a) It must be either set up by an Act of Parliament or a State Legislature or must be established by any Government, with 90 per cent or more participation by way of equity or control
(b) This must be either set up or established to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution.

The applicant states that Government of Karnataka holds 99.99% of equity in the applicant company and is established by the Government of Karnataka and hence the first condition is satisfied.

Article 243W of the Constitution and Twelfth Schedule to the Constitution relating to the functions entrusted to a Municipality is verified and found that the supply of electricity is not covered. Article 243G of the Constitution and Eleventh Schedule to the Constitution relating to the functions entrusted to a Panchayat is verified and found that the Rural Electrification including the distribution of electricity is covered. But the applicant company is not set up or established only to provide Rural Electrification and hence the second condition is not satisfied.

Hence, even for the purposes of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017, the applicant cannot be covered under the definition of "governmental authority" and hence the same is clarified.

11. Regarding the issue whether annual returns in FORM GSTR-9 and FORM GSTR-9C are required to be filed by the applicant under Second proviso to section 44 of the CGST Act and KGST Acts as it is a corporation is fully owned by the Government of Karnataka and audited by the Comptroller and Auditor General of India, Section 44 of the CGST Act reads as under:

"Section 44: Annual return:-

Every registered person, other than an Input Service Distributor, a person paying tax under Section 51 or Section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self-

certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed:

Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section:

Provided further that nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subjected to audit by the Comptroller and Auditor General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force."

As per the second proviso of the above provision, it is seen that the same is applicable only to a department of Central Government or State Government or to a local authority. The applicant is a company fully owned by the Government of Karnataka and hence this proviso is not applicable to the applicant.

12. Regarding whether the applicant is eligible to claim input tax credit on the inward supplies of goods and services which are capitalized in the books of accounts, Section 16(1) of the Central Goods and Services Tax Act reads as under:

"Section 16: Eligibility and conditions for taking input tax credit

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person."

Further, Clause (62) of section 2 of the Central Goods and Services Tax Act defines the "input tax" as under:

"(62) "input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes,-

(a) the integrated goods and services tax charged on import of goods;
(b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
(c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
(d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
(e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

but does not include the tax paid under the composition levy;"

As per the above it is seen that every registered person is entitled to take credit of input tax charged and input tax means tax charged on **any** supply of goods or services or both made to him.

Goods or services procured by the applicant and capitalized, if used or intended to be used in the course or furtherance of business, then the applicant is entitled to take credit of input tax.

13. Regarding the applicant is eligible to claim input tax credit on the inward supply of services against output taxable supplies of support and auxiliary services and other supply of taxable goods, Section 17(1) and 17(2) of the Central Goods and Services Tax Act, 2017 which reads as under:

> ***"Section 17: Apportionment of credit and blocked credits***
>
> *(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax is attributable to the purposes of his business.*
>
> *(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies."*

Since the applicant is effecting both supplies of taxable goods and exempted goods, the eligible input tax credit claimed shall be restricted as per Section 17(2) of the CGST Act as prescribed in Rule 42 and 43 of the CGST Rules.

In view of the above, subject to section 17(2) of the CGST Act read with Rule 42 and 43 of CGST Rules, the applicant is eligible to claim input tax credit on the inward supply of services against output taxable supplies of support and auxiliary services and other supply of taxable goods.

14. Regarding the fifth question, whether the applicant is eligible to claim input tax credit (on inputs, input services and capital goods) proportionately on the taxable output supply of support services and goods (scrap etc.,) as per the provisions of Rule 42 and 43 of the CGST and KGST Rules, it is seen that the same is already answered in the earlier paragraphs.

15. Regarding the sixth question whether the applicant is eligible to taxes paid under RCM as input tax credit, section 16(1) of the CGST Act is referred again. It is clear that the tax on a transaction is paid under reverse charge basis would still be a tax on the inward supply of goods or services or both and would be eligible as input tax credit under Section 16(1) of the CGST Act subject to apportionment of input tax credit in terms of Section 17(2) of the Act, ibid read with Rules 42 and 43 of the Rules, ibid.

16. Regarding the seventh question as to whether Additional Surcharge collected from Open Access Consumer as per sub-section (4) of Section 42 of the Electricity Act, 2003, clause 8.5.4 of the Tariff Policy 2016, Clause 5.8.3 of the National Electricity Policy and Clause 11(VII) of the KERC (Terms and Conditions for Open Access) Regulations, 2004, is taxable under the GST Acts, it could be seen that

(a) Para 5.8.3 of the National Electricity Policy reads as under

> "5.8.3 Under sub-section (2) of Section 42 of the Act, a surcharge is to be levied by the respective State Commissions on consumers switching to alternate supplies under open access. This is to compensate the host distribution licensee serving such consumers who are permitted open access under section 42(2), for loss of the cross-subsidy element built into the tariff of such consumers. An additional surcharge may also be levied under sub-section (4) of Section 42 for meeting the fixed cost of the distribution licensee arising out of his obligation to supply in cases where consumers are allowed open access. The amount of surcharge and additional surcharge levied from consumers who are permitted open access should not become so onerous that it eliminates competition that is intended to be fostered in generation and supply of power directly to consumers through the provision of Open Access under Section 42(2) of the Act. Further it is essential that the Surcharge be reduced progressively in step with the reduction of cross-subsidies as foreseen in Section 42(2) of the Electricity Act 2003."

16.1 It is seen from the submissions made by the applicant that an open access consumer receiving electricity from a person other than the distribution licensee of his area of supply, shall have to pay to the distribution licensee an additional surcharge to meet the fixed cost of such distribution licensee arising out of his obligation to supply. Further, he goes on to say that the applicant is collecting the above charges as provided by statue incurred by CESC towards power purchase from open access consumers who have moved out of CESC to procure power from independent generators. This is nothing but a charge levied for tolerating an act which is a supply under section 7(1) of the CGST Act and hence is taxable under GST Act. It is also important to note that these charges are made from the consumers who have moved out of the applicant and hence cannot be linked to the supply of electricity or distribution of electricity.

17. Regarding the last question on whether "wheeling and banking charges collected by Corporation in kind, i.e. in terms of energy units but not in terms of cash, is taxable under the GST Acts, it is clear from the fact that it is covered under the scope of supply as envisaged in sub-section (1) of Section 7 of the CGST Act. Further, clause (31) of Section 2 to the CGST Act, states as under:

"(31) "consideration" in relation to the supply of goods or services or both includes –

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

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government."

Hence, it is clear that the consideration need not be in the form of money only and ts is very clear from the words used "money or otherwise" and also by the words "monetary value of any act or forbearance" and hence the wheeling and banking charges collected by the applicant in kind, i.e., in terms of energy units but not in terms of cash, is taxable, if the same is found to be taxable, under the GST Act.

17.1 Regarding the nature of wheeling services, it is seen that the applicant has stated that if the generator and the buyer are connected at the distributed voltage level, appropriate wheeling charges and losses are required to be paid. The wheeling charges include recovered of the fixed costs related to network assets and line loss (i.e., distribution loss). The wheeling charges is based on the account of investments being made in the sector for meeting the load growth, AT&C loss reduction and improving the performance standards (network assets). The applicant has quoted the clause 9.07 of the Wheeling charges for NCE projects, KERC Order dated 09.06.2005 which reads – "*Considering the discussions at Sl.No.4 above, the Commission determines the overall wheeling charges payable by NCE sources as 5% of the energy input into the system. Other than this wheeling charge, they shall not be liable to pay* ***any transmission charges or wheeling charges*** *either in cash or kind as determined in the preceding sections of this order. However, surcharge shall be payable where the wheeling of energy is other than for their own use*". From the above, it is clearly seen that the regulatory authority has distinguished that the wheeling charges and the transmission charges are different in nature.

17.2 Further, it could be seen that the service provided by the applicant to the users as wheeling charges, the applicant is only providing the services of transmission of electricity only and whatever the applicant is charging are for the services for transmission of electricity from the point of production to the point of its usage, whatever heads the same is charged. Hence they form the part of consideration for the same single service and as per section 15, they form the consideration for the same service. Further it is seen that the charges are on the basis of the energy input into the system. Separating the transmission charges as transmission charges, wheeling charges and other charges are only to recover the cost of transmission and hence consideration for the transmission of energy only.

17.3 Entry No. 25 of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 states that "Services of transmission or distribution of electricity by an electricity transmission or distribution utility". Hence the wheeling charges collected is for the services of transmission of electricity and hence is covered under this entry and hence exempted from the levy of tax under the GST Act.

17.4 Regarding the Banking charges, the applicant has submitted that Banking is a provision wherein an RE power-generating facility is allowed to bank the electricity it produces that is not used by its off-taker or to borrow the energy it needs to sell to the buyer in the event of its inability to produce for a given duration (from 15 minutes to one year). These deviations are accounted for and the net surplus or shortfall is finally

settled on a monthly, quarterly or annual basis. Banking provisions in India are typically provided at the point of consumption by the distribution licensees. In Karnataka, KERC has allowed to pay at the average power purchase cost for the banked energy annually. From this it is very clear that the applicant charges the user for the energy used by the user in excess of the energy input made into the system of transmission. Hence it is nothing but the amount of consideration charged for the energy consumed and is the consideration charged for supply of electrical energy. This is covered Sl.No. 104 of Notification No.2/2017- Central Tax (rate) dated 28.06.2017 and is exempt from the levy of GST.

In view of the above, Wheeling charges and Banking charges collected by the applicant is exempt from the payment of GST.

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

RULING

1. *Chamundeshwari Electricity Supply Corporation Limited cannot be considered either as "Governmental Authority" or "Local Authority".*

2. *The Applicant is not exempted from filing of Annual Return in Form GSTR-9 and Form GSTR-9C under the Second Proviso to Section 44 of the CGST and KGST Act.*

3. *The Applicant is eligible to claim input tax credit on the inward supply of goods and services which are capitalized in the books of accounts if they are used or intended to be used in the course or furtherance of business.*

4. *The applicant is eligible to claim input tax credit on the inward supply of services against output taxable supplies of support and auxiliary services and other supply of taxable goods subject to section 17(2) of the CGST Act read with Rule 42 and 43 of CGST Rules.*

5. *The Applicant is eligible to claim input tax credit (on inputs, input services and capital goods) proportionately on the taxable output supply of support services and goods (scrap etc.) subject to section 17(2) of the CGST Act read with Rule 42 and 43 of CGST Rules.*

6. *The Applicant is eligible to claim taxes paid under RCM, as input tax credit, subject to section 17(2) of the CGST Act read with Rule 42 and 43 of CGST Rules.*

7. *Additional Surcharge collected from Open Access Consumer as per sub-section (4) of Section 42 of the Electricity Act, 2003, clause 8.5.4 of the Tariff Policy 2016, Clause 5.8.3 of the National Electricity Policy and Clause 11 (vii) of the KERC (Terms and Conditions for Open Access) Regulations, 2004, is taxable under GST Act.*

8. *The "Wheeling and Banking Charges" collected by the Applicant is exempted from the payment of GST.*

(Dr. M.P. Ravi Prasad)
Member
MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

(Kiran Reddy T)
Member
MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

Place: Bengaluru,

Date: 17.02.2023

To,
The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Taxes, Mysore GST Commissionerate, Vijayanagar Division, Gokulam Range, Mysuru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-190, Mysuru.
5. Office Folder.

Authority For Advance Ruling ★ Karnataka, Bengaluru ★