

AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32,
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI – 600 003.

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.

Members present are:

1. Thiru Senthilvelavan B., I.R.S Member/ Additional Commissioner,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -34
2. Tmt Padmavathi.T Member/ Joint Commissioner (ST)/
Authority for Advance Ruling, Tamil Nadu, Chennai-600 003.

ORDER No. 29/AAR/2021 DATED: 30. 07 .2021

GSTIN Number, if any / User id	Unregistered	
Legal Name of Applicant	M/s. Andritz Hydro Private Limited	
Trade Name of the Applicant	ANDRITZ HYDRO	
Registered Address / Address provided while obtaining user id	M/s Andritz Hydro Private Limited , D-17, MPAKVN Industrial Area, Mandideep, Madhya Pradesh – 462 046.	
Details of Application	GST ARA- 01 Application Sl.No.27/2020 ARA dated: 09.12.2020	
Concerned Officer	State: Assistant Commissioner(ST) AnnaSalai Assessment Circle, Centre: Coimbatore Commissionerate.	
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	Factory / Manufacturing	
A	Category	Supply of Service.
B	Description (in Brief)	
Issue/s on which advance ruling required	1. Determination of the liability to pay tax on any goods or services or both 2. Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or	

	services or both, within the meaning of that term.
Question(s) on which advance ruling is required	Whether the Components, which were supplied in Sale-in-Transit transaction, without payment of tax under the erstwhile Central Sales Tax regime, by the Applicant, i.e., AHPL to its Customer (i.e., TANGEDCO) in Tamil Nadu, will attract levy of Goods and Services Tax?

Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

M/s. Andritz Hydro Private Limited, D-17, MPAKVN Industrial Area, Mandideep, Madhya Pradesh - 462 046. (hereinafter called the Applicant/ AHPL) are not registered tax payer under Tamil Nadu goods and Service Tax Act 2017. The applicant has sought Advance Ruling on:

Whether Goods and Service Tax is applicable on Components supplied by the Vendors in a Sale-in-Transit to AHPL?

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The applicant has stated that they have entered into a contract dated 21 July 2015 ("Contract") with Tamil Nadu Generation and Distribution

Corporation Limited ("TANGEDCO") for renovation, modernisation and uprating the Sholayar Power House – I from 2x35MW to 2x42MW ("Project") located at Sholayar, District Coimbatore, Tamil Nadu. The applicants have produced a copy of letter dated 30 January 2018 issued by TANGEDCO providing the details of aforementioned transaction. In terms of the Contract, AHPL was required to supply new components, tool, tackles, spares and such other material ("Components") for undertaking modification, engineering, erecting, testing, commissioning and associated technological, civil, mechanical, and electrical works, as part of the Project. For the purpose, the Applicant *inter alia*, purchased Components from various vendors namely, M/s Sun Casting and Alloys, M/s Chloride Power Systems and Solutions Limited, M/s Abhishek Enterprises, M/s Eurobearings India Private Limited, M/s Energy Progress Inc., M/s Parasnath Associates, M/s Megger (India) Private Limited and other such entities ("Vendors"). The applicants have produced copy of Purchase Orders issued by them and Tax Invoices raised by the Vendors.

2.2 On the interpretation of law, they have stated that prior to introduction of GST, the components purchased by the AHPL in a sale – in – transit transaction from its Vendors were subject to the levy of Central Sales Tax ("CST") under the Central Sales Tax Act, 1956 ("CST Act"). In terms of CST Act, CST was levied at first point of sale of taxable goods. Further, in terms of Section 6 (2) of the CST Act, the subsequent sale of such goods during movement thereof from one state to another ("Sale-in-transit") was exempt from levy of CST. Thus, at the time of entering into the Contract, AHPL quoted/ agreed to supply the Components to TANGEDCO at the prices charged by the Vendors during the sale-in-transit *inclusive of* any amount of CST, which was already discharged by the Vendor (s) of AHPL at the time purchase of such goods from their suppliers (i.e., suppliers of Vendors) and was not required to be paid by AHPL on purchase of such Components from Vendors. Post 1 July 2017, the Central Goods and Services Tax Act, 2017, ("CGST Act"), Integrated Goods and Services Tax Act, 2017 ("IGST Act"), State Goods and Service Tax Act (s), 2017 of respective States in India, Union Territory Goods and Services Tax Act, 2017 ("UTGST") and rules, notifications, circulars etc. (collectively referred to as "GST laws") replaced erstwhile indirect taxes, including CST. In terms of extant provisions under the GST laws, they are of the view that the GST became chargeable on supply of goods from one person to another i.e., except specified exempt supplies. Thus, GST was leviable at each stage of supply of goods in a sale-in-transit transaction with the facility to avail input tax credit of GST so paid by the

recipient (s) thereof, who are registered under the GST laws.

3.1 Due to the prevailing PANDEMIC situation and in order not to delay the proceedings, the applicant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital media. The applicant consented and the hearing was held on 19.02.2021. The Authorized representatives Shri Milind J Saraf, Authorised Signatory, Shri Ayush A Mehrotra, Partner, Khaitan and Co LLP, Shri Upkar Agarwal, Associate, Khaitan and Co LLP appeared for the hearing virtually. He was asked to clarify whether the question relates to receipt of the goods by them or the supply made by them to TANGEDCO. The authorized representative stated that the question relates to the receipt of the goods by them and he reiterated his earlier submissions. The authorized representative was stated by the Members that the question raised is on the supply by the vendor to them and therefore not admissible under the Provisions of Section 95 read with Section 97(2) of GST Act. The authorized representative stated that the question is on the applicability of GST on the Sale-in-transit of the goods and requested for reframing the question. They were permitted the same and were asked to furnish the submissions in a week's time.

3.2 The applicant vide their submissions dated 26th February 2021 reframed the question as undertook during personal hearing. The reframed question is as under:

A. Whether the supply of goods undertaken in course of Sale-in-Transit, i.e., supply undertaken when the goods are in movement from one state to another, is exempt under the extant Goods and Services Tax regime?

B. Whether the Components, which were supplied in Sale-in-Transit transaction, without payment of tax under the erstwhile Central Sales Tax regime, by the Applicant, i.e., AHPL to its Customer(i.e., TANGEDCO) in Tamil Nadu, will attract levy of Goods and Service Tax?

It was reiterated that the Company filed the present Application for Advance Ruling No. 27/ 2020 dated 4 December 2020 ("Application") in respect of the contractual arrangement to understand the implications post introduction of GST. In particular, the present application has been filed regarding the levy of GST on supply of above-mentioned Components during the sale-in-transit basis the submissions made in the Application and Additional Submissions dated 26th February 2021. The applicant has further stated that GST laws do not provide

for single point but multiple points of taxation.; GST laws do not provide exemption on subsequent supply of goods or sale of goods in transit by transferring the title of goods by handing over the relevant documents.; GST laws provide for issuance of tax invoice and corresponding e-way bills for supply of goods involving movement thereof from one place to another; they believe that the transaction between vendors & AHPL and AHPL with TANGEDCO is chargeable to GST as

- The Components provided by Vendors and subsequently sold by AHPL falls under the definition of 'Goods';
- TANGEDCO, AHPL and its Vendors are separate legal entities;
- The transaction between AHPL and its Vendor qualifies as "supply" from "one person to another";
- The transaction between AHPL to TANGEDCO, qualifies as "Supply" from "one person to another";
- AHPL and TANGEDCO paid or agrees to pay a "consideration" for such supply of Components received by them respectively;
- The transaction between TANGEDCO, AHPL and Vendors is in the course of business activity & there is no exemption under the GST laws

They also requested an opportunity of hearing *via* video conferencing/ digital hearing facility, to explain their additional submission.

3.3 The applicant was extended a hearing in digital mode on 09.04.2021. The Authorised representatives appeared for the hearing. They stated that as permitted in the earlier hearing, they had amended the questions. It was intimated that Q.No.1 being general in nature cannot be admitted while Q.No. 2 is specific and is admitted. The authorized representative reiterated the submissions. He stated that there is no exemption under CGST or IGST as was available under CST as per Section 6(2) of CST Act. He stated that the agreement entered into with TANGEDCO is a composite contract of Works Contract Services but this application is made to ascertain the applicability of GST on the components, spares i.e., on supply of goods. When the entire contract is a Works Contract Services, a service under GST, the applicant was asked to furnish a write up on how the applicant is a supplier of goods for which ruling is sought along with any purchase order issued by TANGEDCO. The applicant was intimated that Advance Ruling can be extended only for transactions undertaken and question of law on general issues are outside the ambit of Advance Ruling. They were intimated that after their submissions another hearing may be extended.

3.4 The applicant vide their letter dated 6th June 2021 received on 16th June 2021 furnished their submissions, wherein they stated that

- In terms of the table provided under Para 2.01 of the Letter dated 30 January 2018 highlighting the terms and conditions of the Contract, a detailed break-up of prices of material, tool, tackles and spares have been clearly specified separate from the prices of services, i.e., works, civil engineering works etc agreed to be provided by them
- Further, at Sl. No. 9 of the table, the prices for commissioning spares i.e., the spare parts required for commissioning the Project has been stated under a separate category from the spares or components stated as Sl. 10 and/or 11 required post such commissioning work
- In Para 3.01.05 and 3.01.06 it has been categorically stated that the spares will be supplied for operation and maintenance of the Project even beyond the stage of commissioning of the Project
- Neither the contract contemplates that the activity of operation and maintenance be provided by AHPL nor is the same undertaken by them. Tus the Contract between AHPL and TANGEDCO, categorically provides for a scenario where the supply of Components will be sans the supply of service.
- In terms of para 29.05, AHPL has completed the commissioning of the Project on 3rd September 2019 and the completion certificate to this effect has been issued by TANGEDCO
- Post completion of RMU activities, it has been supplying the Components for operation and maintenance of the Project in terms of para 3.01.05 and para 3.01.06 of the letter, without undertaking any supply of services.
- The authority has statutory jurisdiction to determine the issue of taxability of transaction, even if undertaken in course of inter-state trade

They relied on the following decisions to support their above contentions:

- Hon'ble High Court of Kerala in the case of Abbott Healthcare Private Limited vs Commissioner of Commercial Tax, Thrissur, 2020 (34) GSTL 579 (Ker.),
- Hon'ble High Court of Kerala in the case of Sutherland Mortgage Services Inc. vs Principal Commissioner of Customs, CGST and Central Excise, Kochi, 2020 (35) GSTL 40 (Ker.),
- Ruling of the Hon'ble Authority In Re: Bank of Nova Scotia, 2019 (21) G.S.T.L. 238 (A.A.R. - GST).

3.5 Another hearing was extended to the applicant. Authorized representatives appeared for the hearing virtually on 23.07.2021 and reiterated the submissions. They submitted that RMU Phase I has been completed and a certificate has been issued by TANGEDCO on 03.09.2019. The applicant has been supplying components for operation and maintenance without undertaking any supply of services as submitted by them in paras 3.01.05, 3.01.05.02 & 3.01.06 and that they are under an obligation for supply of spares/tools for a period of five years and also to suggest recommended spares for the operation and maintenance of plant. They emphasized on the case laws relied upon in their submissions. Regarding the question of jurisdiction of Advance Ruling Authority on inter-state supplies they stressed upon their submissions in para 15 of letter dated 16.06.2021 and the case laws relied on in this regard. The authorized representative submitted that they have been taxed at 18% constantly. The Member questioned about the registration status of the applicant for which AR submitted that the applicant has not been registered in Tamil Nadu so far and that they would apply if their supplies are found to be taxable by this authority. The member also stated that if any further details are required the same will be called for.

4. The Center Jurisdictional authority submitted that as per the records available with them, no proceedings are pending against the applicant in their Commissionerate.

5. The State jurisdictional authority has not furnished any comments and it is construed that there are no proceedings pending on the issue raised by the applicant.

6.1 We have carefully examined the statements of facts; supporting documents filed by the applicants, comments of the Center Jurisdictional authority and heard the arguments made by the applicant during the personal hearing. The applicant has stated as 'Unregistered' in the application form GST ARA-01. We find that the applicant is not registered in the State of Tamil Nadu but holds Active GST registration at Delhi/Haryana. The applicant undertakes the works of Renovation, Modernisation and Upgrading of Sholayar Power House-I from 2X35 MW to 2X42 MW(herein after referred to as 'Project') as per Contract Agreement dated 21.07.2015 to TANGEDCO, in the State of Tamil Nadu and the ruling sought is on

the supplies made to the 'Project' and therefore, the application is prima-facie taken up for consideration. The ruling sought is on the following reframed questions:

1. Whether the supply of goods undertaken in course of Sale-in-Transit, i.e., supply undertaken when the goods are in movement from one state to another, is exempt under the extant Goods and Services Tax regime?

2. Whether the Components, which were supplied in Sale-in-Transit transaction, without payment of tax under the erstwhile Central Sales Tax regime, by the Applicant, i.e., AHPL to its Customer(i.e., TANGEDCO) in Tamil Nadu, will attract levy of Goods and Service Tax?

6.2 The situation covered under Q.No. 1 seeks ruling on the liability to GST in the case when the ownership of the goods is transferred in the course of Sale-in-Transit i.e., liability to GST when the ownership of the goods intended for TANGEDCO are transferred to TANGEDCO while in Transit. Under GST, each supply is liable to tax with the continuing Credit chain. In respect of Q.1 above, it is seen that the question relates to ascertaining liability which involves two supplies, from Vendor of the applicant to the applicant and the applicant to TANGEDCO. As per Section 95 readwith Section 103 of the GST Act, ruling can be sought by the supplier of the goods/service only in respect of supplies made/proposed to be made. This was explained to the applicant during the hearing. As the issue raised in the Q.No.1 relates pertains to more than one supply, the question is not admitted for consideration in merits.

6.3 The second question requires ruling on the liability to GST of the applicant, when the Components are supplied to TANGEDCO. In this situation, the applicant is the supplier and the question is on the supply being made by them. As the Question No. 2 relates to determination of taxability, the same is covered under the purview of Section 97(2) of the GST Act and the said question is admitted for consideration on merits.

7.1 The Applicant has stated to have entered into a contract dated 21 July 2015 ("Contract") with Tamil Nadu Generation and Distribution Corporation Limited ("TANGEDCO") for renovation, modernisation and uprating ("RMU") the Sholayar Power-House – I ("Project"). The applicant has furnished a copy of letter dated 30th

January 2018 issued by TANGEDCO providing the details of afore-mentioned transaction. They have stated that in pursuance of the contract, AHPL was required to supply new components, tool, tackles, spares, and such other material ("Components") to TANGEDCO. The Contract was executed in terms of the erstwhile indirect tax framework applicable at the relevant time, i.e., prior to introduction of GST with effect from 1 July 2017. However, post the introduction of GST, the Company had discharged its obligation in accordance with the extant regime and paid tax at the rate of 18% on their supplies made, post GST coming into effect. The applicant completed the execution of the project in September 2019 and the same was duly recorded by the recipient vide their communication dated 3rd September 2019. Further, the applicant was required to supply parts and spares to the recipient, during the guarantee period starting on 3rd September 2020. Prior to GST, they were claiming exemption on the sale of components to TANGEDCO in Tamil Nadu under Section 6(2) of the Central sales tax Act 1956. The applicant has stated that GST is leviable at each stage of supply of goods in a sale-in-transit with the facility to avail input tax credit of GST so paid by the recipients thereof, who are registered under the GST laws.

7.2 On perusal of the letter of TANGEDCO WCT No. CE/H/SE/H(E) /EHRM/ A4/ F.Specn.HE.2305/SHOLAYAR PH-I RMU/WCT No.13/D.18/2018 dt. 30.01.2018, the following are observed:

3.01.04.01 The list of commissioning spares is enclosed in Annexure-I. The Contract price includes the prices for such commissioning spares. The Contractor shall supply alongwith the equipment commissioning spares required upto performance guarantee tests.

3.01.05.01 The Contractor shall supply spares for operation and maintenance of the plant for period of one year from commissioning as well as mandatory spares for operation and maintenance for 5 years thereafter as listed in the tender specification. List of such spares along with itemized prices is also enclosed as Annexure-I. The purchaser shall have the option of ordering additional spares at the same unit price which shall be kept firm till the completion of the contract

3.01.05.05 The Contractor shall undertake to supply operating and maintenance spares at reasonable price at any time later during the life of the plant, i.e. twenty five years on request of the purchaser....

7.02 GST In SHOLAYAR RMU: (e) The entire work shall be treated as a

composite supply of services and the GST shall be quoted as per the GST norms

12.05.01 The contractor shall guarantee that the equipment shall be new and in accordance with the contract document and be free from defects in design material and workmanship. The guarantee period shall be 24(Twenty four) months from the date of Initial Take over of units by TANGEDCO. The contractor's liabilities shall be limited to the replacement of any defective parts in the equipment of his own manufacture or those of his sub-contractors under the normal use and arising from faulty design, materials and/or workmanship.

29.03.01 On successful completion of trial operation, the unit will be initially "Taken Over" with a list of major/minor defects and non-conformities prepared jointly by the Purchaser and Contractor....

29.04.06 Commissioning of any equipment of the unit shall be deemed to be successfully completed, when the following requirements are also met:

- a) Unit is able to derive the rated outputs as....
- b) Power consumption is within approved design values
- c) Operation and Maintenance Manuals and Drawings have been supplied to Purchaser
- d) Spares, as required, have been handed over to the Purchaser

29.04.07 On successful completion of commissioning of the unit and after the contractor has supplied the spares (for operation and maintenance) the commissioning certificate shall be issued by the purchaser

From the above clauses, it is evident that the applicant has entered into an agreement to undertake RMU of the Project; the scope of the work covered includes supply of spares; Commissioning certificate will be issued only after the applicant supplies the spares for operation and maintenance as agreed upon in the scope of work; the entire work is to be treated as a composite supply of works contract which are supply of services.

7.3 The applicant has furnished copies of some Purchase Orders/Invoice along with their application. On perusal of these documents the following are observed:

- PO number 4502216645 dated 04/May/2018 raised on M/s. Sun Casting & Alloys, Tirunelveli for 'Paint' with the address for invoicing as the applicant's address and the delivery address at Sholayar site and IGST stands mentioned; Bill No. 1A/2017-18 dated 4/05/2018 addressed to the

applicant and despatched to site.

- PO number 4502505646 dated 19/Mar/2019 raised on M/s. Abhishek Enterprise, Faridabad for 'Specs of Rubber Mat', 'Specific of Lighting Fixtures', 'Specs of Lighting Fixtures Accessories' with CGST/SGST and delivery EXW Faridabad with the Invoice addressed to the applicant address; Invoice No. 2019-20/6365 dated 29-June 2019 addressed to the applicant and consigned to TANGEDCO, Sholayar Power House

From the above documents, it is seen that the applicant places orders on their vendors with the direction to deliver the goods at the Sholayar site for use in the project. The vendors of the applicant raises invoice on the applicant and as per the directions of the applicant delivers the goods.

7.4 The applicant along with their submissions dated 06th June 2021 furnished

- the Initial take over certificate issued by TANGEDCO;
- their letter Ref C-90-970350/SR/CPM/2020/749 dated 11-Sept-2020 addressed to the Chief Engineer-Hydro, TANGEDCO enclosing the BOE No. 53 dated 11.09.2020, Invoice No. 8901004096 dated 26-08-2020, 8901004097 dated 26-08-2020, 8901004098 dated 26-08-2020, 8901004124 dated 07-09-2020 and 8901004125 dated 07-09-2020 raised by them on TANGEDCO for the supplies made by them;
- Lr. No. CE/H/SE/HRM/A4/F.WCT.13 dt 30.01.18/MDCC/D.117/2020 dated 22.06.2020, issued by CE/Hydro TANGEDCO to the applicant, waiving the inspection and allowing dispatch of the products –Table-5 in WCT Mandatory Spares (O & M Spares) and Table -2 in WCT Tools and Tackles;
- Lr. No. CE/H/SE/HRM/A4/F.WCT.13 dt 30.01.18/MDCC/D.161/2020 dated 25.08.2020, issued by CE/Hydro TANGEDCO to the applicant, waiving the inspection and allowing dispatch of the products –BBU-Table-5 in WCT Mandatory Spares;
- Spare Material Handing over note.

On perusal of the above documents, it is seen that TANGEDCO has issued 'Initial Take Over' Certificate after completion of 30 days trial operation including 72 hours of continuous full load operation as per para 29.03. The applicant has been asked to make good the defects and it is stated that the guarantee period starts on 03.09.2019 and ends on 03.09.2021. Vide the invoices mentioned above, the applicant has supplied the spares to be supplied by them for the operation and

Maintenance, which is covered under the scope of work of the agreement. The customer is mentioned as the Chief Engineer, TANGEDCO and the materials are consigned to the Store Officer, Sholayar Poewer House-I, Central Store, TANGEDCO. It is also mentioned that the supplies are as per Contract Agreement dated 21.07.2015 and the invoices are raised with GST.

8.1 The issue raised is whether they are liable to pay GST on the supplies of components made by them to TANGEDCO as per the scope of the works, while the ownership of the goods is transferred to TANGEDCO while the goods are in Transit. Prior to GST, inter-State sales which are charged to tax under the Central Sales Tax Act 1956 coming under section 3(b) of the Central Act, being sales effected by transfer of documents of title to the goods during their movement from one State to another and enjoy exemption under section 6(2). The relevant portion of the Section 6(2) of the Central sales Tax Act 1956 is extracted below for ease of reference:

“Section 6(2) of the Central sales Tax Act 1956

Notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act.”

If an inter-State sale satisfies the pre-conditions provided in sub-section (2) of Section 6 of the Central Sales Tax Act 1956, it shall not be liable to tax-levy. It is essential that the concerned sale must be (i) a subsequent inter-State sale; (ii) effected by transfer of documents of title to the goods during the movement of the goods from one State to another; and (iii) pursuant to an earlier inter-State Sale. It is then that section 6(2) may be attracted in order to make such subsequent sale exempt from levy of sales tax. It clear that to claim exemption u/s. 6(2) of the CST Act, in respect of a second or subsequent sale, the dealer has to furnish: (i) the original form E-1, received from the dealer from whom goods were purchased; and

(ii) form 'C' or 'D' obtained from the person to whom the goods were sold in the course of the inter-State sale. These requirements are mandatory and in the absence of furnishing any one of these forms, the dealer would not be entitled to exemption. The term "document of title to goods" is defined under section 2(4) of the Sale of Goods Act, 1930, as follows:

- "document of title to goods' includes a bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;"
- Prior inter-State sale is the first requirement. – The first requirement of a subsequent sale under section 6(2) is that it must have a relative prior sale "in the course of inter-State trade or commerce" which had (a) either occasioned the movement of such goods from one State to another, or (b) was effected by a transfer of documents of title to such goods during their movement from one State to another. In other words, a movement of the goods in pursuance to a prior sale is the first pre-requisite of a 'subsequent sale' contemplated by section 6(2) for enjoyment of the exemption.

The Constitutional Amendment Act has made insertion of Article 269-A and is linked to clause (2) of article 246-A and in as much as both provide for levy and collection of goods and services tax on supplies in the Course of Inter-State trade or commerce. Clause (1) of the Article 269-A is linked to Article 246-A. Owing to the requirement for territorial nexus in the case of State legislations and the declaration in Article 246-A(2), no tax can be levied by the States.

8.2 Under the GST Regime, Supply is defined under Section 7 of the GST Act which is as follows:

- 7. (1) for the purposes of this Act, the expression "supply" includes—*
- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*

(b) import of services for a consideration whether or not in the course or furtherance of business; and

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.;

As per Schedule II to the Act, which provides whether the supply is to be treated as a 'Supply of Goods' or 'Supply of Service', under

Para 6(a) states as follows :

6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:-

(a) works contract as defined in clause (119) of section 2

Section 2(119) of the GST Act 2017 defines 'Works Contract' as

"works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;"

Composite Supply is defined under Section 2(30) of the GST Act as follows:

(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply; Illustration.—;

8.3 From the various submissions of the applicant, it is seen that the applicant based on the contract for the work of RMU at Sholayar Power House, has procured the Components/Spares to be supplied by them to TANGEDCO and have supplied them to TANGEDCO, raised commercial Invoices for such supply with the applicable GST. The applicant has purchased the components which is a 'Supply' wherein the applicant is the recipient and thereupon has transferred the title to TANGEDCO, i.e., made the supply of the components to TANGEDCO as per the contract conditions. The goods were delivered at the project site by the vendors of the applicant. In the Pre-GST regime, such transactions, inter-state, were exempted subjected to certain conditions as per CST Act. In the GST regime, every limb of supply with/between a supplier and receiver is to be considered as a supply. In the

case at hand, the applicant provides composite supply of Works Contract to TANGEDCO based on the agreement entered into by the applicant vide contract agreement dated 21.07.2015. To fulfill the scope of the contract, they supply the Components/spares for the Operation and Maintenance period, as per para 3.01.04/3.01.05 of the Lr. of TANGEDCO dated 30.01.2018 referred above and the cost of such supplies are included in the contract price. Thus, the supply of Components/spares for the Operation and Maintenance period are part of the supplies of Works Contract entered into with TANGEDCO and therefore liable to GST at the appropriate rates. In the applicant case, the components purchased by the AHPL in a sale - in - transit transaction from its Vendors and supply to TANGEDCO amounts to supply of goods and/ or services for consideration, in the course of furtherance of business.

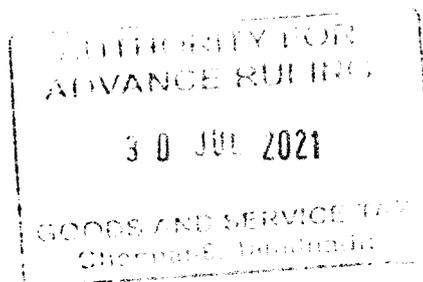
9. In view of the above, we rule as under:

RULING

The Components, which were supplied in Sale-in-Transit transaction, without payment of tax under the erstwhile Central Sales Tax regime, by the Applicant , i.e., AHPL to its Customer (i.e., TANGEDCO) in Tamil Nadu is a 'Supply' as per Section 7 of the CGST/TNGST Act 2017 and will attract levy of Goods and Services Tax.

6/1/21
30/7/2021
Smt. Padmavathi. T
Member, SGST

30/07/21
Shri B.Senthilvelavan
Member, CGST



To

M/s. Andritz Hydro Private Limited **// BY SPEED POST WITH ACK.DUE //**
D-17, MPAKVN Industrial Area,
Mandideep, Madhya Pradesh – 462 046.

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Principal Secretary/Commissioner of Commercial Taxes/Member,
IIndFloor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

3. The Commissioner of GST & Central Excise,
Coimbatore Commissionerate
4. Assistant Commissioner (ST)
Anna Salai Assessment Circle.
4th Floor, PAPJM Annexe Building,
No.1, Greams Road, Chennai -600 006.
5. Master File/ Spare – 2.