



## GST & ELECTRICITY – A MYSTERIOUS AFFAIR

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“With great power comes a great Electricity Bill”, kudos to CBIC for issuing a circular that turned the tables and increased the electricity bills for consumers. Before proceeding with the validity of above statement, here are certain provisions of Electricity Act, 2003 that are relevant to be placed governing the topic for which we shall discuss:

Section	Provision
2(23)	"electricity" means <b>electrical energy-</b> (a) generated, transmitted, supplied or traded for any purpose; or (b) used for any purpose except the transmission of a message;
2(26)	"electricity trader" means a person who has been granted a licence to undertake trading in electricity under section 12.
2(70)	"supply", in relation to electricity, means the <b>sale of electricity</b> to a licensee or <b>consumer</b> .
12	No person shall (a) transmit electricity; or (b) distribute electricity; or (c) undertake trading in electricity, unless he is authorised to do so by a licence issued under section 14, or is exempt under section 13.

Relevant extract of Notifications issued under GST governing the Electricity Sector:

Sl. No	Description of Goods/ Services	Notification No
104	Electrical Energy	02/2017 – CT(R) dated 28.06.2017 (Classified as NIL rate)
25	Service of distribution or transmission of electricity by an electricity transmission or distribution utility	12/2017 – CT (R) dated 28.06.2019 (Classified as Exempt)

Readers may be aware that **circular no. 34/2018** dated **01.03.2018** was issued stating that all services apart from distribution of electricity is liable to GST. Now, the moot question that arises, are the ancillary services (Like application fees, meter testing fees, meter rent etc) in relation to electricity distribution actually taxable?

In Service Tax regime, it was a clear picture that all services in relation to electricity distribution would not be subjected to Service Tax. However, under GST regime it is opposite.

Attention of the readers is invited to Hon’ble Apex court judgement in the case of **Aluminium Co. [CIVIL APPEAL NOS. 2771-2822 OF 1996]** wherein it was duly upheld that from the generation till consumption of electricity it shall be regarded as **sale of goods**.

Moreover, under SL. 104 of **Notification No. 02/2017 – CT(R)** dated **28.06.2017**, which deals with exemption relating to goods, classifies electrical energy as a **Nil rate supply**. With this our first question is addressed that sale of electricity (means electrical energy as per definition (supra)) commonly known as “**Energy Charges**” reflected on our electricity bills is a **NIL rated** supply.

The definition of electricity as envisaged in section 2(23) covers within itself the process of Generation, Transmission and Distribution of Electricity. Now what is covered in the service notification is “Service of distribution of electricity”.

As per clause (102) of Section 2 of the CGST Act, 2017 “service means anything **other than goods (electricity distribution)**”. Now the readers may get a hint, that the circular has proceeded to tax something indirectly which was actually not taxable directly, which is against the settled principles of law.

What is covered in the said notification no 12/2017, in the opinion of the author are the ancillary services and not the main service of distribution of electricity (as referred to by circular no. 34/2018), as the distribution of electricity is not service but merely a sale transaction of goods (electrical energy).

The author has not discussed the Hon’ble Gujarat High Court Judgment in the case of **Torrents Power Limited (2018)**, wherein the said circular was set aside on the pretext that, distribution of electricity is a composite supply and hence exempted from GST. Readers are advised to read the said ruling of High Court.

Now, summon proceedings have already been initiated on various DISCOMs post issuance of this circular by DGGSTI on PAN India Level. It is pertinent to note that officers under DGGSTI are **central tax officers only** whose appointment although is legally not valid as they are not appointed as per provisions of Section 3 of the CGST Act, 2017. Irony is, being a central tax officer, they are exercise-ing jurisdiction over tax payers governed under State Tax.

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