



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 28<sup>TH</sup> DAY OF NOVEMBER, 2025**

**BEFORE**

**THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR**

**WRIT PETITION NO. 6442 OF 2025 (T-RES)**

**BETWEEN:**

M/S KARNATAKA ELECTRICITY REGULATORY  
COMMISSION  
HAVING ITS REGISTERED OFFICE AT  
NO.16, C-1, MILLERS TANK BED AREA,  
VASANTH NAGAR,  
BENGALURU,  
KARNATAKA 560 032  
DEEMED TO BE THE STATE COMMISSION,  
REP. BY ITS SECRETARY, FOR THE PURPOSE OF  
ELECTRICITY ACT, 2003.

...PETITIONER

(BY SRI. ASHWIN G. RAJ, SMT. KEERTHI KRISHNA REDDY,  
ADVOCATES FOR SRI. ABHISHEK K., ADVOCATE)

**AND:**

1. JOINT COMMISSIONER CENTRAL TAX  
BENGALURU -NORTH COMMISSIONERATE,  
HMT BHAVAN, GANGA NAGAR,  
BENGALURU - 560 032
2. UNION OF INDIA,  
THROUGH SECRETARY,  
MINISTRY OF FINANCE,  
6A, 3<sup>RD</sup> FLOOR, JEEVAN DEEP BUILDING  
SANSAD MARG,  
NEW DELHI - 110 001





3. OFFICE OF THE  
COMMISSIONER OF CENTRAL TAX  
BENGALURU NORTH COMMISSIONERATE  
HMT BHAVAN, GANGA NAGAR,  
BENGALURU - 560 032

...RESPONDENTS

(BY SRI. AKASH B. SHETTY, ADVOCATE FOR R1 AND R3  
SRI. K.S. BHEEMAIHAH, ADVOCATE FOR R2)

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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO a) ISSUE A WRIT OF CERTIORARI OR WRIT IN THE NATURE OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, DIRECTION OR ORDER FOR QUASHING THE IMPUGNED ORDER BEARING NO.78/2024-2025/GST/JC DATED 15/01/2025 (ANNEXURE-B) WHICH WAS ORDERED BY THE JOINT COMMISSIONER, CGST, BANGALORE NORTH COMMISSIONERATE RESPONDENT NO.1 DEMANDING GST AMOUNTING TO RS.13,42,66,423/- (CGST RS.6,71,33,423/- AND SGST RS.6,71,33,423/-) AS THE SAME IS ILLEGAL, WITHOUT JURISDICTION, VIOLATIVE OF PRINCIPLES OF NATURAL JUSTICE AS ALSO VIOLATIVE OF ARTICLES 14 AND 265 OF THE CONSTITUTION OF INDIA, ETC.

THIS WRIT PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR



**ORAL ORDER**

In this petition, petitioner seeks the following reliefs.

"a) *Issue a writ of certiorari or writ in the nature of certiorari or any other appropriate writ, direction or order for quashing the impugned order bearing No.78/2024-2025/GST/JC dated 15.01.2025(Annexure B) which was ordered by the Joint Commissioner, CGST, Bangalore North Commissionerate Respondent No.1 demanding GST amounting to Rs.13,42,66,423/- (CGST-Rs.6,71,33,423/- and SGST-Rs.6,71,33,423/-) as the same is illegal, without jurisdiction, violative of principles of natural justice as also violative of Articles 14 and 265 of the Constitution of India.*

b) *Issue a writ of certiorari or writ in the nature of certiorari or any other appropriate writ, direction or order for quashing the show cause notice dated 02.08.2024 (Annexure A) bearing No.SGN No.86/24-25 which was issued by the Office of the Commissioner of Central Tax, Bangalore North Commissionerate proposing to demand GST amounting to Rs.13,42,66,423/- (CGST-Rs.6,71,33,423/- and SGST - Rs.6,71,33,423/-) as the same is illegal, without jurisdiction, violative of principles of natural justice as also violative of Articles 14 and 265 of the Constitution of India and/or pass such order/orders as this Court may deem fit and proper in the circumstances of the case;*



c) *Issue any writ or order or direction which deemed which this Hon'ble Court deems fit in the circumstances of the case, in the interest of justice and equity."*

2. Heard the learned counsel for the petitioner and learned counsel for respondents.

3. A perusal of the material on record will indicate that the petitioner herein is the Karnataka Electricity Regulatory Commission (KERC), who is aggrieved by the impugned order at Annexure B dated 15.01.2025, demanding GST sum of Rs.13,42,66,423/- from the petitioner/KERC.

4. Under identical circumstances, in relation to the **Central Electricity Regulatory Commission (CERC) and Delhi Electricity Regulatory Commission (DERC) in W.P.(C) No.10680/2024 & CM Appl.43919/2024, on 15.01.2025**, the Division Bench of Delhi High Court has held as under:

*"17. It becomes pertinent to note that the CGST Act imposes a tax on an inter-state supply of goods or services or both by virtue of Section 9 which reads as follows:-*

*"9. Levy and collection.--(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic*



*liquor, for human consumption, on the value determined under Section 15 and at such rates, not exceeding twenty per cent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.*

*(2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.*

*(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.*

*(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.*

*(5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:*

*Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic*



*commerce operator for any purpose in the taxable territory shall be liable to pay tax:*

*Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax."*

*18. In terms of the charging section referred to above, the tax becomes leviable on a supply of goods, services or both. The scope of the expression "supply", which appears repeatedly in the CGST Act, is defined by Section 7 and reads thus:-*

*"7. Scope of supply.-- (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, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*

*(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.*

*Explanation.--For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;*

*(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;[\* \* \*]*

*[\* \* \*]*

*(1-A) 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.*

*(2) Notwithstanding anything contained in sub-section (1),--*

*(a) activities or transactions specified in Schedule III; or*

*(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.*

*(3) Subject to the provisions of sub-sections (1), (1-A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as--*

*(a) a supply of goods and not as a supply of services; or*

*(b) a supply of services and not as a supply of goods."*

*19. Insofar as supply of goods and services are concerned, Section 7(1)(a) stipulates that it would include within its ambit all forms of supply of goods or services or both including such as sale, transfer, barter, exchange, licence, rental, lease or disposal otherwise made or agreed to be*



*made for a consideration by a person in the course or furtherance of business. Section 7 also brings within its fold activities or transactions of a person, other than an individual, in relation with its members or constituents. The third limb of services which are included in the scope of supply is the import of services for a consideration whether or not in the course or furtherance of business as well as activities specified in Schedule I, even though the same may be made without a consideration.*

*20. Insofar as the facts of the present matters are concerned, it was not the case of the respondents that the regulatory function as discharged by the writ petitioners would fall within Schedule I. We are also not concerned with subjects which form part of clauses (aa) and (b) of Section 7(1).*

*21. In order to evaluate the correctness of the stands struck by the respondents it would thus be apposite at the outset to extract Schedules II and III of the CGST Act and which spell out activities which are liable to be treated as a supply of goods or services. Schedules II and III of the CGST Act read as under: -*

**"SCHEDULE II**

**[See Section 7]**

**Activities [or Transactions] to be treated as supply of goods or supply of services**

**1. Transfer**

*(a) any transfer of the title in goods is a supply of goods;*

*(b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;*

*(c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.*

**2. Land and Building**



*(a) any lease, tenancy, easement, licence to occupy land is a supply of services;*

*(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.*

**3.** *Treatment or process Any treatment or process which is applied to another person's goods is a supply of services.*

**4.** *Transfer of business assets*

*(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, such transfer or disposal is a supply of goods by the person;*

*(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, the usage or making available of such goods is a supply of services;*

*(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless--*

*(i) the business is transferred as a going concern to another person; or*

*(ii) the business is carried on by a personal representative who is deemed to be a taxable person.*



**5. Supply of services** The following shall be treated as supply of services, namely:--

- (a) renting of immovable property;
- (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

*Explanation.--For the purposes of this clause--*

(1) the expression —competent authority\ means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:--

- (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or
- (ii) a chartered engineer registered with the Institution of Engineers (India); or
- (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression —construction\ includes additions, alterations, replacements or remodelling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and

(f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for



*cash, deferred payment or other valuable consideration.*

**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; and*

*(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.*

**7. [\* \* \*]**

**SCHEDULE III**

*[See Section 7]*

*Activities or transactions which shall be treated neither as a supply of goods nor a supply of services*

**1.** *Services by an employee to the employer in the course of or in relation to his employment.*

**2.** *Services by any court or Tribunal established under any law for the time being in force.*

**3.** *(a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;*

*(b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or*



*(c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.*

**4.** *Services of funeral, burial, crematorium or mortuary including transportation of the deceased.*

**5.** *Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.*

**6.** *Actionable claims, other than [specified actionable claims].*

*[7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.*

**8. (a)** *Supply of warehoused goods to any person before clearance for home consumption;*

*(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.]*

**[9.** *Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in co-insurance agreements, subject to the condition that the lead insurer pays the central tax, the State tax, the Union territory tax and the integrated tax on the entire amount of premium paid by the insured.*

**10.** *Services by insurer to the reinsurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, subject to the condition that the central tax, the State tax, the Union territory tax*



*and the integrated tax is paid by the reinsurer on the gross reinsurance premium payable by the insurer to the reinsurer, inclusive of the said ceding commission or the reinsurance commission.]*

*Explanation [1].--For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.*

*[Explanation 2.--For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962.]"*

*22. Whilst the supply of goods or services stands comprised in Schedule II, Schedule III to the CGST Act lists out activities which are neither liable to be treated as a supply of goods nor a supply of services. Schedule III assumes significance since one such genre is prescribed to be services rendered by a tribunal established under any law. The fact that an electricity regulatory commission acts as a "tribunal" cannot perhaps be disputed bearing in mind the judgment rendered by the Supreme Court in PTC India Ltd. v. Central Electricity Regulatory Commission (2010 4 SCC 603) and where the following observations appear: -*

*"49. On the above analysis of various sections of the 2003 Act, we find that the decision-making and regulation-making functions are both assigned to CERC. Law comes into existence not only through legislation but also by regulation and litigation. Laws from all three sources are binding. According to Professor Wade, —between legislative and administrative functions we have regulatory functions. A statutory instrument, such as a rule or regulation, emanates from the exercise of delegated legislative power which is a part of administrative process resembling enactment of law by the legislature whereas a quasi-judicial order comes from adjudication which is also a part of administrative process resembling a judicial decision by a court of law. (See Shri Sitaram Sugar Co. Ltd. v. Union of India [(1990) 3 SCC 223] .)*



*50. Applying the above test, price fixation exercise is really legislative in character, unless by the terms of a particular statute it is made quasi-judicial as in the case of tariff fixation under Section 62 made appealable under Section 111 of the 2003 Act, though Section 61 is an enabling provision for the framing of regulations by CERC. If one takes —tariff as a subject-matter, one finds that under Part VII of the 2003 Act actual determination/fixation of tariff is done by the appropriate Commission under Section 62 whereas Section 61 is the enabling provision for framing of regulations containing generic propositions in accordance with which the appropriate Commission has to fix the tariff. This basic scheme equally applies to the subject-matter —trading margin in a different statutory context as will be demonstrated by discussion hereinbelow.*

*51. In Narinder Chand Hem Raj v. Lt. Governor, H.P. [(1971) 2 SCC 747] this Court has held that power to tax is a legislative power which can be exercised by the legislature directly or subject to certain conditions. The legislature can delegate that power to some other authority. But the exercise of that power, whether by the legislature or by the delegate will be an exercise of legislative power. The fact that the power can be delegated will not make it an administrative power or adjudicatory power. In the said judgment, it has been further held that no court can direct a subordinate legislative body or the legislature to enact a law or to modify the existing law and if courts cannot so direct, much less the tribunal, unless power to annul or modify is expressly given to it.*

*52. In Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [(1985) 1 SCC 641 : 1985 SCC (Tax) 121] this Court held that subordinate legislation is outside the purview of administrative action i.e. on the grounds of violation of rules of natural justice or that it has not taken into account relevant circumstances or that it is not reasonable. However, a distinction must be made between delegation of legislative function and investment of discretion to*



*exercise a particular discretionary power by a statute. In the latter case, the impugned exercise of discretion may be considered on all grounds on which administrative action may be questioned such as non-application of mind, taking irrelevant matters into consideration, etc. The subordinate legislation is, however, beyond the reach of administrative law. Thus, delegated legislation--otherwise known as secondary, subordinate or administrative legislation--is enacted by the administrative branch of the Government, usually under the powers conferred upon it by the primary legislation. Delegated legislation takes a number of forms and a number of terms--rules, regulations, bye-laws, etc.; however, instead of the said labels what is of significance is the provisions in the primary legislation which, in the first place, confer the power to enact administrative legislation. Such provisions are also called as "enabling provisions". They demarcate the extent of the administrator's legislative power, the decision-making power and the policy-making power. However, any legislation enacted outside the terms of the enabling provision will be vulnerable to judicial review and ultra vires.*

**53. Applying the abovementioned tests to the scheme of the 2003 Act, we find that under the Act, the Central Commission is a decision-making as well as regulation-making authority, simultaneously.** Section 79 delineates the functions of the Central Commission broadly into two categories --mandatory functions and advisory functions. Tariff regulation, licensing (including inter-State trading licensing), adjudication upon disputes involving generating companies or transmission licensees fall under the head "mandatory functions" whereas advising the Central Government on formulation of National Electricity Policy and tariff policy would fall under the head "advisory functions". In this sense, the Central Commission is the decision-making authority. Such decision-making under Section 79(1) is not dependent upon making of regulations under Section 178 by the Central Commission. Therefore, functions of the Central Commission enumerated in Section 79



*are separate and distinct from functions of the Central Commission under Section 178. The former are administrative/adjudicatory functions whereas the latter are legislative."*

*23. The respondents, however, seek to discern a distinction between the adjudicatory function performed by a regulatory commission as distinguishable from what they assert to be the exercise of a power to regulate. According to the respondents, any income or receipts derived by those Commissions in the course of discharge of their regulatory function would be exigible to tax under the CGST Act.*

*24. It becomes pertinent to note that the CGST Act not only deals with the supply of goods or services per se, it also brings within its ambit composite and mixed supplies in terms of Section 8. Composite supplies are those which are spelt out and enumerated in serial 6 of Schedule II. The supply of services generically is dealt with in serial 5. Undisputedly, the regulatory function discharged by Commissions can neither be said to be akin to renting of immovable property, construction of a complex or building, temporary transfer or permissive use or enjoyment of an intellectual property right, development, design of software, transfer of the right to use goods and which are subjects enumerated in serial 5 of Schedule II. The regulatory power which is wielded by Commissions under the provisions of the Electricity Act would also not fall within the ambit of clause (e) of serial 5 and which speaks of an obligation to refrain from doing an act or toleration of an act or situation.*

*25. Of equal significance is the definition of "business" and "consideration" as it appears in the statute. Section 2(17) defines "business" as follows: -*

**"2. Definitions.** --In this Act, unless the context otherwise requires-

xxxx

xxxx

xxxx

(17)"business" includes--

*(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;*





*(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:*

*Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;"*

*27. The definition clauses referred to above assume significance in light of the language employed in Section 7 and which speaks of the supply of goods, services or both provided by a person for consideration being in the course or furtherance of business. When we revert to Section 2(17), we find that the statute defines the said expression to mean any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity irrespective of whether it be for a pecuniary benefit or not. Clauses (b) and (c) of Section 2(17) are again coupled to clause (a). Clause (d) of Section 2(17) is concerned with the supply or acquisition of goods, while clauses (e), (f), (g) and (h) would also have no application whatsoever considering the nature of activities which are contemplated therein.*

*28. That thus leaves us to consider whether the power to regulate, as exercised, could be said to be an activity akin to trade, commerce, manufacture, profession, vocation, adventure, voyager and which are activities enumerated in Section 2(17)(a). We find ourselves unable to fathom how a power of regulation which stands statutorily vested in a Commission could be countenanced to fall within the ambit of any of those activities. It becomes pertinent to note that while Section 2(17)(i) also encompasses activities or transactions undertaken by the Central or State Governments or a local authority, the said clause too would have no application since a Commission which comes to be constituted under the Electricity Act cannot be equated with the Central or State Governments. The expression "local authority" is defined by Section 2(69) to include local bodies such as Panchayats, Municipalities, Municipal Committees,*



*Cantonment Boards or Regional Councils and other authorities which may come to be constituted in terms of Articles 371, 371A, 371J or the Sixth Schedule to the Constitution. A Commission which is constituted under the Electricity Act would undisputedly not fall within the ken of such authorities.*

*29. The word "consideration", in our considered opinion, would necessarily have to draw colour and meaning from Section 2(31) and which speaks of payment made in respect of, in response to or for the inducement of a supply of goods. Suffice it to note that it was not even remotely sought to be contended by the respondents that the payments in the form of fee as received by Commissions were an outcome of an inducement to supply goods or services.*

*30. More importantly we find that by virtue of Section 7, a supply would necessarily have to be of goods or services not only for consideration but more importantly in the course or furtherance of business. We have in the preceding parts of this decision clearly found that the regulatory function discharged by Commissions would clearly not fall within the scope of the word —business as defined by Section 2(17). Thus, even if the fee so received by such Commissions were to be assumed as being consideration received, it was clearly not one obtained in the course or furtherance of business. We are thus of the considered opinion that the view as expressed by the respondents in the SCNs' impugned before us are rendered wholly arbitrary and unsustainable.*

*31. As was noted hereinbefore, Schedule III in express and unambiguous words excludes services rendered by a court or tribunal. Once that exclusion had come to be expressly incorporated, we fail to appreciate how the respondents could have undertaken an exercise to bifurcate or draw a wedge between the adjudicatory and regulatory role of Commissions. Mixed as well as composite supplies of services or goods are aspects which are duly and independently defined and explained. Even those provisions cannot possibly be interpreted or stretched so as to hold that the fees received by Commissions could have been subjected to tax. The assumption of jurisdiction in terms of*



*the notices impugned before us is thus found to be ex facie wholly untenable.*

32. *Of significance is the respondent observing —Therefore, **anything other than goods, money and securities** will also include the activities of "regulating the tariff of generating companies owned or controlled by the Central Government, regulating the inter-State transmission of electricity, **to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations; to levy fees for the purposes of this Act"** falls under the scope of "**Supply of Services**" in para 6.1 of the impugned SCN.*

33. *We find ourselves unable to accept, affirm or even fathom the conclusion that regulation of tariff, inter-State transmission of electricity or the issuance of license would be liable to be construed as activities undertaken or functions discharged in the furtherance of business. The respondents have clearly failed to bear in consideration the indubitable fact that even if these be functions which could be understood to be in the exercise of a regulatory function, those were being discharged by a quasi-judicial body which undoubtedly had all the trappings of a tribunal. The grant of a license to transmit or distribute is clearly not in furtherance of business or trade but in extension of the statutory obligation placed upon a Commission to regulate those subjects.*

34. *We are also of the firm opinion that even though Section 2(102) of the CGST Act defines the expression —servicesll to mean —anything other than goodsll, the expansive reach of that definition would have to necessarily be read alongside Schedule III and which excludes services per se rendered by a court or tribunal established under any law. The provision made in Schedule III is clearly intended to insulate and exempt the functions discharged by a court or tribunal from the levy of a tax under the CGST.*

35. *The Electricity Act makes no distinction between the regulatory and adjudicatory functions which it vests in and confers upon a Commission. Those functions are placed in the hands of a quasi-judicial body enjoined to regulate and administer the subject of electricity distribution. Electricity,*



*undoubtedly, is a natural resource which vests in the State. We have thus no hesitation in observing that the SCNs' infringe the borders of the incredible and inconceivable.*

*36. That only leaves us to examine the correctness of the stand of the respondent based on the Notification dated 28 June 2017 and their assertion that the functions discharged by these Commissions would be liable to be classified under the heading "Support services to electricity, gas and water distribution" which is placed under Group Heading 99863. Suffice it to note that the notification dated 28 June 2017 notifies the rates of integrated tax of various services as falling under various chapters, sections or headings of the scheme of classification of as specified in Column 2 thereof. The scheme of classification which is alluded to would necessarily compel us to revert to the Schedules of the CGST Act by virtue of their adoption for purposes of levy of integrated tax in terms of Section 20 of the IGST Act. Since those Schedules are to mutatis mutandi apply and the scope of supply as well as composite and mixed supplies being construed accordingly, the exemption incorporated in Schedule III of the CGST Act would continue to govern and be applicable. The mere mention of support services in that notification thus would not detract from the exemption which otherwise operates and stands accorded with respect to "services by any court or Tribunal.....". What we seek to emphasise is that a notification would neither expand the scope of the parent entry nor can it be construed as taking away an exemption which stands granted under the CGST Act. There cannot possibly be even a cavil of doubt that a Schedule constitutes an integral part and component of the principal legislation.*

*37. Accordingly, and for all the aforesaid reasons, we allow the present writ petitions and quash the impugned SCNs dated 29 May 2024 [W.P.(C) 10680/2024] and 23 July 2024 [W.P.(C) 14723/2024].*

*38. We further observe that the Order-in-Original dated 30 August 2024 in W.P.(C) 10680/2024, was, in terms of our initial interim order made subject to the outcome of the present petition. Since we have come to hold that the SCN themselves are invalid, the said order dated 30 August 2024*



*also cannot sustain. It too, shall consequently, stand set aside."*

5. The said judgment of the Division Bench of the Delhi High Court was carried in appeal by the respondent Revenue in a Special Leave Petition (Civil) Diary No.32626/2025, which was dismissed vide final order dated 21.07.2025, the operative portion of which reads as hereunder:

*" 1. Delay condoned.*

*2. We do not find any good ground to entertain these Special Leave Petitions. The Special Leave Petitions are, accordingly, dismissed.*

*3. Pending application(s), if any, stands disposed of."*

6. In view of the aforesaid facts and circumstances of the case and the judgment of the Delhi High Court which is confirmed by the Hon'ble Apex Court in relation to the Delhi Electricity Regulatory Commission, which is obviously similar and identical to that of the petitioner(KERC) in the present petition, I am of the considered opinion that the impugned order and the show cause notice deserve to be quashed.

Accordingly, I pass the following:



**ORDER**

- (i) Writ Petition is ***allowed***;
- (ii) The impugned Show Cause Notice dated 02.08.2024 at Annexure A, issued by the third respondent and the order dated 15.01.2025 at Annexure B passed by the first respondent are hereby quashed.

**Sd/-  
(S.R.KRISHNA KUMAR)  
JUDGE**