

## GST ARTICLE

### Regulation is not Commerce: Why Statutory Fees collected by Regulators cannot be taxed under GST

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#### 1. Opening: When Regulation Is Mistaken for Revenue

Few debates under GST have generated as much conceptual confusion as the attempt to tax regulatory or statutory fees collected by bodies discharging sovereign functions. At the heart of this controversy lies a fundamental question: can the State, through one arm, tax another arm merely because a fee is charged while performing a statutory duty'

The recent and consistent judicial response from constitutional courts has been a clear and emphatic **no**. The decisions of the Delhi High Court in **Central Electricity Regulatory Commission & Ors. v. Additional Director, Directorate General of GST Intelligence (DGGI) & Anr.** ([2025-VIL-46-DEL](#)), followed by the Punjab & Haryana High Court in **Punjab State Electricity Regulatory Commission v. Union of India & Ors.** ([2026-VIL-140-P&H](#)), bring much-needed doctrinal clarity by reaffirming that regulation is an exercise of public power-not a commercial enterprise-and that statutory fees are not consideration for "business" under GST.

#### 2. The Controversy Before the Courts

The controversy arose when the GST department issued show cause notices to electricity regulatory commissions, seeking to levy GST on fees such as tariff filing fees, licence fees, and ARR processing charges collected under the Electricity Act, 2003. The department's case rested on a carefully constructed-

but ultimately flawed-distinction between *adjudicatory* and *regulatory* functions. While conceding that adjudicatory functions bear the trappings of a court or tribunal and are excluded from GST, the department asserted that regulatory functions amount to "support services" rendered to electricity transmission and distribution utilities, taxable under the GST rate notifications.

This approach effectively treated statutory regulation as a market-facing service, taxable merely because a fee was prescribed by statute and collected as part of the regulatory framework.

### **3. The Department's Fallacy: Stretching 'Business' Beyond Recognition**

A central plank of the department's argument was the expansive definition of "business" under [Section 2\(17\)](#) read with the definition of "consideration" under [Section 2\(31\)](#) of the CGST Act. According to the department, any activity performed for a fee—even if statutory or mandatory—would qualify as business, especially since the definition expressly includes activities undertaken by Government or local authorities.

The flaw in this reasoning lies in conflating *receipt of a fee* with *commercial intent*. The mere existence of a statutory fee does not transform a public duty into a commercial service. Regulatory commissions do not choose their customers, negotiate consideration, or operate in a competitive market. Fees are prescribed by law, collected in trust, often credited to the Public Account, and bear no relation to profit or revenue generation.

### **4. Business vs Quasi-Judicial and Regulatory Functions**

The courts drew a sharp and principled distinction between "business" and "quasi-judicial/regulatory" functions. Business, even under its widest statutory definition, presupposes activities analogous to trade, commerce, profession, or vocation. Regulation, by contrast, is an exercise of delegated legislative and adjudicatory power in public interest.

Electricity regulatory commissions were found to be *quasi-judicial bodies with all the trappings of a tribunal*. Their functions-whether fixing tariffs, issuing licences, or regulating inter-State transmission-are not commercial activities but statutory obligations flowing from the Electricity Act. Importantly, the courts rejected the artificial bifurcation between adjudicatory and regulatory roles, noting that the parent statute itself makes no such distinction. Once an authority is recognised as a tribunal, its functions cannot be selectively carved out to impose tax liability.

## 5. The Decisive Role of 'Supply' and 'Consideration'

The judgments place decisive emphasis on [Section 7](#) of the CGST Act, which mandates that a taxable supply must be made *for consideration* and *in the course or furtherance of business*. Even assuming, *arguendo*, that regulatory fees constitute consideration, the absence of "business" is fatal to the department's case.

Further, [Schedule III](#) to the CGST Act expressly excludes services rendered by a court or tribunal from the scope of supply. The courts held that once Parliament has consciously excluded tribunal services, the executive cannot nullify that exclusion by relying on classification entries or rate notifications. Subordinate legislation cannot expand the charging provision or override statutory schedules.

## 6. Implications for All Similarly Situated Bodies

The implications of these rulings extend far beyond electricity regulators. A wide range of statutory commissions, boards, authorities, and regulators-performing functions such as licensing, accreditation, oversight, standard-setting, and discipline-stand on identical footing. Whether it be market regulators, professional councils, environmental authorities, or sectoral regulators, statutory fees collected in discharge of public regulatory functions cannot be equated with consideration for business services.

Any attempt to tax such bodies merely because a fee is charged would collapse the constitutional distinction between sovereign regulation and commercial activity. It would also result in the absurdity of the State taxing itself for performing duties mandated by law.

## 7. Notifications Cannot Trump the Statute

A crucial aspect of the reasoning lies in the treatment of GST notifications and classification schemes. The courts clarified that references to "support services" in rate notifications cannot dilute or override statutory exclusions under the CGST Act. Schedules form an integral part of the parent legislation, and exemptions embedded therein cannot be taken away indirectly through delegated legislation. This principle is of enduring importance for GST interpretation across sectors.

## 8. Finality and Judicial Consistency

The legal position has now attained finality, with the Supreme Court dismissing the department's challenge to the Delhi High Court judgment in **Additional Director, Directorate General of GST Intelligence (DGGI) & Anr. v. Central Electricity Regulatory Commission** ([2025-VIL-53-SC](#)). The Punjab & Haryana High Court's subsequent decision, faithfully following the Delhi precedent, reinforces judicial consistency and signals a clear closure to this line of revenue experimentation.

## 9. Conclusion: Drawing the Line Between Power and Profit

These decisions mark a vital course correction in GST jurisprudence. They remind us that not every receipt is revenue, not every fee is consideration, and not every statutory function is business. Regulatory bodies exist to govern markets-not to participate in them. Taxing regulation would not only distort the GST framework but would also erode the constitutional character of independent statutory authorities.

In an era where GST is often stretched to its interpretational limits, these judgments restore balance by drawing a firm line between *sovereign power* and *commercial supply*. That distinction, once reaffirmed, protects not just regulators-but the integrity of the tax system itself.

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