GST ADVANCE RULING

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1. Case: M/s INDIANA ENGINEERING WORKS BOMBAY PVT LTD [2022-TIOL-05-AAR-GST] (Maharashtra AAR)

Facts of the Case:

1. The Applicant (Licensor) is the absolute owner of Indiana House and has thereby licensed its 4th Floor ("Licensed Premises") to M/s Capri Global Capital Ltd. ("Licensee") vide a Leave and License Agreement.
2. License fees for use of said licensed premises was agreed to be paid by the Licensee to the licensor on monthly basis along with applicable GST. It was agreed that the water and electricity charges shall be paid by the Licensor and later on be reimbursed by the Licensee at actual costs.
3. Based on Principal-to-Principal model the Licensor has been raising debit notes on the licensee at actuals for the electricity charges paid by it on behalf of licensee.
4. With regards to charges relating to water supplied to licensees, the Applicant raised Bill of Supply on basis of floor space occupied by each licensee to reimburse said charges at actuals.

Questions before AAR:

(a) Whether GST is to be levied on electricity& Water charges paid by the Applicant and collected from the recipients at actual on reimbursement basis?

(b) Whether the Applicants have acted in capacity of a Pure Agent, in above scenario?

(c) Whether, Applicant would be liable to add value of Electricity and Water charges to the monthly License Fee if as per terms of the contract tenant user is paying for such utility services directly to the Service Provider i.e. Electricity Power Distributor/BMC, as the case may be, even though Electric and Water meters continue to remain in the name of the Applicant?

Arguments by Applicant:

1. The Applicant has leased the office premises to licensees along with certain amenities like electricity and water supply. The electricity and water charges are being paid by the licensor. It is therefore an expenditure being incurred by the Applicant on behalf of the licensee.
2. They further place reliance on Serial No.99 and 104 of Notification No.2/2017-C.T (R) dated 28th June, 2017 wherein tax payable on Electricity charges and supply of potable water is rated NIL.
3. The Licensee as agreed under the terms of Leave and License Agreement reimburses the water and electricity charges at actuals on monthly basis to the Licensor. Reimbursement of these charges at actuals is made vide Bill of Supply and debit note being raised by the Licensor without value addition. Thus, these expenses do not have the character of supply as is defined under Section 7 of the CGST Act, 2017.
4. That since it is paying electricity and water charges to respective Distribution companies and thereafter collecting the same from the licensee it is acting in capacity of a 'PURE AGENT'.
5. It is contended that these charges are mere expenses incurred by the licensor and are being reimbursed over and above the license fees and thus do not form a part of taxable value of supply.
6. The Applicant has relied on following decisions –
    a. South Eastern Coalfields Ltd. vs. C. Cx. &S. T. [2019 (22) GSTL 393 (Tri. Del)] = 2019-TIOL-1588-CESTAT-DEL
    b. Kiran Gems Pvt. Ld. Vs. CCE &ST [2019 (25) GSTL 62 (Tri. Ahmed)] = 2019-TIOL-81-CESTAT-AHM

c. ICC Reality (India) Pvt. Ltd vs. CCE, Pune - 2013 (32) STR 427 (Tri. Mumbai)] = 2013-TIOL-1751-CESTAT-MUM

Arguments by Revenue:

1. The Concerned officer stated that the activity of the Applicant that of renting of immoveable property is considered as taxable supply of services under Section 7 of the CGST Act, 2017.
2. Thus, as defined in Section 2(31) of the Act, consideration shall include any expenses incurred for inducing the supply of goods or service or both. The only exclusion allowed by the Act is that of subsidies received from government and discount if any.
3. The electricity and water charges so incurred are incidental expenses while supplying main service of renting of immovable property. Accordingly, these charges recovered as reimbursements, even if at actual, would get covered as incidental expenses towards the value consideration received for main supply i.e. of renting of immovable property.
4. The Applicant can be said to be a pure agent of the licensee only when there is an authorization given to the applicant to make payment to a third party. However, the Applicant herein is the supplier of services and the charges incurred by it are incidental to such supply. The requirement of Rule 33 is not fulfilled as there is no authorization to make payment to third party on behalf of the licensee.

Decision of AAR

1. That the utilities such as electricity and water supply are basic amenities in absence of which the competent authorities will not issue OC for conducting commercial or business activities. Also the Maharashtra Rent Control Act, 1999 specially, Explanation to Section 29 mentions that - “essential supply or service includes supply of water, electricity, lights in passages and on staircases, lifts and conservancy or sanitary service” .
2. In accordance with Clause 3 of the Leave and License Agreement the monthly License fees shall include electricity charges, monthly water charges, internal maintenance. It means that both fixed and variable expenses shall be construed as License Fees as per the agreement.
3. Section 15 of the Act states that the taxable value of supply of goods or services or both shall be determined after taking into consideration all incidental expenses incurred by the supplier. Only exclusion allowed is the subsidies provided by Government and the value of discount if any.
4. There is no doubt that renting of Immovable Property is a supply of services and thus liable to tax under entry 5 (a) of Schedule II, read with Section 7 of the Act. Therefore, the taxable value of such supply will be inclusive of electricity and water charges recovered as reimbursements, even if at actuals.
5. The concept of Pure Agent is covered under Rule 33 of CGST Rules, 2017. According to said rule the cost incurred by a supplier of service, as a pure agent of the recipient of such service shall be excluded from the value of supply subject to fulfillment of conditions laid down in Rule 33.
6. According to Rule 33 pure agent is one who, while making a supply to the recipient, also receives and incurs expenditure on some other supply on behalf of the recipient and claims reimbursement (at actuals, without adding it to the value of his own supply) for such supplies, from the recipient of the main supply.
7. In present case the supplier has not availed services from the main electricity distribution company on the instructions from the tenant and thus the applicant does not act as pure agent of tenant. It is to be noted that even after the tenant leaves the premises, the main electric /water meter is going to remain in the name of the Applicant.
8. By agreeing to the contentions of Jurisdictional officer regarding payment of electricity charges being the primary responsibility of the Licensor and not that of the Licensee, it can be concluded that the applicant is not paying the electricity/water bill on behalf of the Licensee but is actually discharging his duty.

9. Further, it was noted that the agreement do not give any authorization, to the Applicant to act as pure agents of the licensee with regards to these expenses and make payment of same to a third party. Thus, in view of above the Applicant in no way can be treated as a 'Pure Agent' of the licensee in the given scenario.

10. As regards the 3rd question, it is held that as the facts of the case do not lead to or show or mention such a situation, therefore, a hypothetical question based on mere assumptions (without proper underlying facts) cannot be answered.

2. Case: M/s BHOPAL SMART CITY DEVELOPMENT CORPORATION LTD [2022-TIOL-19-AAR-GST] (Madhya Pradesh AAR)

Facts of the Case:

1. The Applicant is a PSU incorporated with sole objective of Planning and implementing the "Smart City Project" in Bhopal and is a registered entity under GST. Under the said "Smart City Project" and in pursuance to LAND MONETIZATION SCHEME of Smart City Mission, they intend to allot plots of land for the purpose of development in Bhopal.

2. The Applicant is responsible to provide basic amenities like include 24 X 7 water supply and power, underground utility corridor, smart street lighting, etc., on said plot of land before allotting the same for development purpose.

3. The applicants receive lumpsum consolidated consideration for the developed plot, which comprises of value of Land and value of utilities so developed by the Applicant. The Project is also registered with RERA under the head - 'Commercial Project'. However, in case of "Sale of developed plot", no requirement of obtaining completion certificate has been prescribed in the Local laws.

Questions before AAR:

1. Is GST applicable on sale of developed plot of land for which consideration is received where the sale of plots is after carrying out the development activities such as Drainage line, water line, electricity line, etc. are provided by the applicant before sale of such plot?

2. If GST is applicable then what shall be the rate of GST and what shall be the corresponding applicable HSN or SAC of GST to such supply?

3. If the said transaction is decided to be a taxable supply under GST, whether the actual value of Land as per Government Guidelines can be excluded from the Total Consideration and remaining value (i.e. Gross amount charged less Value of Land as per Government Guidelines) represented by value of Development carried out by applicant can be treated as taxable value of supply?

4. Whether the benefit of Notification No 11/2017 regarding 1/3rd abatement/exclusion on account of the value of transfer of land or undivided share of land from the total amount charged is available to the applicant?

Decision of AAR

1. The Madhya Pradesh AAR before deciding on the said matter has expressly noted and mentioned the Applicant has used the abbreviation "etc". while referring to the amenities that is to be provided by it before the sale of such land.

2. As the abbreviation 'etc.' has a very broad connotation and may include many things which can have adverse impact on the ruling the authority stated that it is not considering the abbreviation etc. while giving its decision in this case. The Authority thereby limited its observation only to those amenities which are mentioned explicitly by the Applicant.

3. By virtue of Section 7(2) of the Act, all activities except for those listed in Schedule III and those notified in terms of Section 7(2)(b), shall amount to supply and be liable to GST. Accordingly vide Entry 5 of Schedule III

sale of land is not a supply and thus, out of the purview of GST. Also, sale of land cannot be considered as sale of goods as defined in Section 2(52) of the Act.

4. The definition of Service given in Section 2(102) however seems to include land in its purview in so far as it states that services means anything other than goods. However, This interpretation of supply of land being a supply of service seems grossly absurd and should have been hit by the Rule of Absurdity, but by virtue of Entry No. 5 in Schedule III. this absurdity seems to have been prevented.
5. It is clarified that in cases where consideration of building being transferred includes value of land, the value of construction services is determined by providing abatement of 1/3rd of the total value of the transaction so as to exclude the value of land from such transaction. This abatement is available vide Notification No. 11/2017-ST.
6. Thus, the intention of the legislature can clearly be understood with regards to exclusion of land from the purview of GST and accordingly, it is beyond doubt that there is no GST on the sale of land per se by excluding sale of land from the definition of supply.
7. The Madhya Pradesh AAR proceeded to examine whether the present transaction constitutes sale of land. Determination of this point in present case is necessary because the said transaction involves a land which is developed to the extent of basic amenities before sale of same.
8. It was held that the benefits of developing a plot of like for basic amenities like that of Drainage / water / electricity line, land levelling, and common facilities viz road and street light etc. does not get transferred to one particular buyer but is being enjoyed people at large who own the adjacent parcel of land as well as all such persons who have a right of way.
9. The development work done on a piece of land is for the whole parcel of land and not for a given plot, which is sold to the customers. The title in the common area and amenities does not belong to the owners of the plot but rests with the Urban Local Body as per the applicable laws. Further, there are easement rights and right of way to be granted, which further show that there is no collective ownership of the common amenities with the plot owners or any association of such plot owners.
10. Further, it is also clear that development of land is not the same as the construction of a complex or building. The concept of obtaining a Completion certificate is applicable to the construction of a complex or building and not to development of land, so far as GST is concerned. Therefore, it is immaterial whether any money is received by the applicant from prospective buyers before CC is received by the applicant from the appropriate authority.
11. For these reasons, it appears that the development of Drainage / water / electricity line, land levelling, and common facilities viz road and street light etc. to the buyers of a plot does not have any bearing on the taxability or otherwise of sale of plot.
12. All other questions of the Applicant thus stood redundant by virtue of this decision.

3. Case: M/S. MAANICARE SYSTEM INDIA PRIVATE LIMITED [2022 (2) TMI 239] (Maharashtra AAR)

Facts of the Case:

1. The Applicant is engaged in the business of providing manpower services. For enabling it employees to reach the desired destination of respective clients the Applicant has arranged for facility of bus services. This service of transportation of employees is being availed by the Applicant from M/s N.B.S. Travel, a proprietorship firm.

2. Since M/s NBS Travel did not charge GST @5% in view Notification No. 22/2019 – CT (Rate) dated 30.09.2019, the Applicant discharges GST on reverse charge basis.

Questions before AAR:

1. Whether the Applicant is eligible to take ITC on GST paid under Reverse Charge Mechanism @ 5% for hiring of buses for transportation of employees?

Arguments by Applicant:

1. In the process of supplying manpower services, the Applicant is availing transportation services from a proprietorship firm for its employees. As per the provisions of Section 16(1) of CGST Act 2017, the ITC used in the course or furtherance of business is allowable to the registered person. Hence, in the instant case, ITC should be allowed to the Applicant.
2. That all conditions laid down in Section 16 (2) of the Act for claiming ITC has been fulfilled by them viz. tax invoice and service is received, liability payable under reverse charge has been discharged and return under section 39 has been furnished.
3. As per amended provision of Section 17(5)(b)(a) of the Act w.e.f. 01.02.2019, ITC on motor vehicles used for transportation of persons having approved seating capacity of less than 13 persons is not allowable. In the instant case, the bus service availed by the Applicant is 49-seater and accordingly, the said clause of 17(5) is not applicable. Therefore, the Applicant contents that is not restricted to avail ITC under the provisions of Section 17(5) of the Act.
4. The Applicant further places reliance on the following judicial precedents on the matter :
    - YKK INDIA PVT. LTD. 2020 (34) G.5. T.L. 670 (App. A.A.R. - GST - Haryana)
    - TATA MOTORS LTD. 2020 (41) G.S.T.L. 35 (A.A.R. - GST - Mah.)

Decision of AAR

1. The GST Council in its 37th meeting recommended that supply of renting of motor vehicles when provided by suppliers paying 5% GST to corporate entities may be place under Reverse Charge Mechanism (RCM). Thus, RCM was not recommended for suppliers paying 12% GST with full Input Tax Credit (ITC). Accordingly, Notification no. 22/2019-Central Tax (Rate) dated 30.09.2019 with effect from 01.10.2019 was issued.
2. As per the Notification no. 22/2019-CTR dated 30.09.2019 w.e.f. 01.10.2019, M/s N.B.S. Travel providing the bus service is not required to levy G5T being non body corporate and not paying G5T @ 5% by availing ITC only of input service in the same line of business. The Applicant, being the service recipient is liable to discharge GST under RCM.
3. From the above notification it is clear that notification restricts the availability of ITC unless the supplier is in same line of business. But, the heading of this column number three is very clear that it applies to the supplier of said service and not to the recipient of service. In the present case, the applicant is the recipient of service and not the supplier of said service.
4. As per Section 16 (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. Hence, ITC in respect of receipt of services is available and can be taken. in the subject case, the supply of services received by the applicant is used in the course or furtherance of their business and therefore prima facie, they are eligible to take credit of GST charged by their supplier.
5. From the above, it is clear and apparent that Section 17 (5) had clearly debarred Input Tax Credit on motor vehicles or conveyances used in transport of passengers till the date of the amendment i.e. 01.02.2019. However, with effect from 01.02.2019, Input Tax Credit has been allowed on leasing, renting or hiring of

motor vehicles, for transportation of persons, having approved seating capacity of more than thirteen persons (including the driver).

6. In the instant case, the bus service availed by the Applicant is 49-seater i.e. more than 13 seater. Accordingly, the same is not falling under the block credit as provided under section 17 (5) of CGST Act 2017 and, therefore, in the instant case, (since the applicant is utilizing the services of renting of motor vehicle for business or furtherance of business), the input tax credit is not restricted to the applicant under the referred Section 17(5) of CGST Act 2017, but only with effect from 01/02/2019 only, as per above legal provisions.