

**Amount received for security services including amount of wages for guards taxable @18%**

The Hon'ble AAR Gujarat in *M/s Gujarat Industrial Security Force Society [Advance Ruling No. GUJ/GAAR/R/100/2020 decided on October 14, 2020]* held that the security services would be taxable to GST @18% on the entire amount received including the wages for the guards. Input Tax Credit ("ITC") would be available if the procedure of paying GST is followed on the entire amount received by assessee, subject to the fulfillment of the conditions as envisaged in the relevant sections and rules of the Central Goods and Services Tax Act, 2017 ("CGST Act") and Central Goods and Services Tax Rules, 2017("CGST Rules").

**Facts:-**

M/s Gujarat Industrial Security Force Society ("**the Applicant**") is involved in providing the services of security to many organizations. The Applicant is a society registered under Society Registration Act, 1860 and Public Charitable Trust registered with Charity Commissioner and registered under Section 12AA of the Income Tax Act, 1961 and purely non-profit organization providing employment to youth of rural and urban areas of the state for their upliftment and good lives.

The Applicant is paying salary to the security guards as per Minimum Wages Act, 1948 ("**Minimum Wages Act**") as prescribed by the authority from to time to time.

The consideration received from the clients includes the salary paid to the security guards plus 12% as establishment charges to run their administration office and to cover their administration cost. If they are left with any surplus after recovering their administration cost then it will be utilized for capital expenditure of society like purchase of uniform, shoes etc., for security guards.

The Applicant used to levy GST @18% on the consideration received by the Applicant (i.e., 12% establishment charges) and collected the same from their client and paid to the Government in the same way since the incorporation of GST.

**Applicant's Contention:-**

- The Applicant relied on the judgement of **Security Guards Board for Greater Bombay and Thane Dist v. Commissioner of Central Excise [Order No.- A/94539/16/STB dated December 14, 2016]** to contend that GST @ 18% should be levied after deduction of wages and allowances from the consideration received from the clients.

- Further, relied on the judgement of ***M/s. M.P. Security Force v. Commissioner. of Central Excise and Service Tax [Order No. 50970/2019 dated August 2, 2019]*** to contend that abatement should be granted towards the payment made on account of contribution towards ESL, EPF and PF and also through wages and salaries while computing the assessable value.
- Cited the following judgments in support of their claim that reimbursable expenses are not to be added in the assessable value of GST for charging GST on security guard services:
  - Judgement of CESTAT Allahabad in ***Commissioner of Central Excise and S.T. Agra v. M/s Antz Management Consultancy Pvt. Ltd. [Order No.-71115/2016 dated December 2, 2016]***
  - Judgement of Delhi HC in ***Intercontinental Consultants and Technocrafts Pvt. Ltd. v. UOI and ANR [Writ Petition No 6370/2008 dated November 30, 2012]***
  - Judgement of Supreme Court in ***UOI and ANR v. Intercontinental Consultants and Technocrafts Pvt. Ltd. [Civil Appeal No. 2013 of 2014 dated March 7, 2018]***
  - Judgement of CESTAT New Delhi in ***M/s Kassa Finvest Pvt. Ltd. v. CST New Delhi [Order No. 53407/2018 dated December 10, 2018]***
  - Judgement of CESTAT Bangalore in ***Sri Bhagavathy Traders v. Commissioner of Central Excise, Cochin [Order No. 376/2011 dated August 8, 2011]***
  - Judgement of CESTAT Hyderabad in ***Karvy Consultants Ltd. v. CCE [Order No. A/31540/2018 dated October 25, 2018]***

**Issues:-**

- Whether GST @18% will be charged only on the establishment charges or on the whole consideration received by the Applicant?
- Whether the Applicant is eligible for ITC on the amount of tax @ 18% paid on establishment charges?

**Held:-**

The Hon'ble AAR Gujarat in **Advance Ruling No. GUJ/GAAR/R/100/2020 decided on October 14, 2020** has held that:

- Observed that, the security services provided by the Applicant falls under Heading 9985 wherein the GST payable is @18%. The same appears at Entry No. 23 of **Notification No.11/2017-Central Tax (Rate) dated June 28, 2017 ("Services Rate Notification")**.
- Distinguished the judgements cited by the Applicant w.r.t. valuation on the ground that all the relied judgments were of pre-GST period and further stated that provisions with respect to valuation are very clear in GST and are already a part of the CGST Act itself.
- Referred to the definition of 'Consideration' under Section 2(31) of the CGST Act, to state that consideration would include the entire payment received by the Applicant from their clients and GST would be payable on the entire amount collected by them from their client, which includes the salary, wages etc., to be paid to the security guards as well as the establishment charges to run their administration office and to cover their administration cost like administration staff salary, stationery, electricity of admin office etc.
- Further observed that, as per Section 15 of the CGST Act:
  - Sub-section 1 of Section 15 ibid clearly stipulates that the value of supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both.
  - Sub Section 2 of Section 15 ibid elaborates in detail the items that are required to be included in the value of supply.
  - Sub Section 3 of Section 15 ibid specifically elaborates the items that are not to be included in the value of supply.

Thus, it is very much apparent that all the aspects of valuation of supply have been covered in the CGST Act itself.

- Concluded that, the Applicant has to pay GST @18% on the entire amount received by them from their clients, which includes the salary to be paid to the security guards

as well as on the establishment charges to run their administration office and to cover their administration cost.

- Held that, the Applicant would be eligible to take the ITC if they follow the procedure of paying GST on the entire amount received by the Applicant from their clients.

**Relevant Provisions:-**

**Entry No. 23 of Services Rate Notification:**

<b>Sl No</b>	<b>Heading</b>	<b>Description of Service</b>	<b>Rate (%)</b>	<b>Condition</b>
23	<b>Heading 9985</b> (Support services)	(i) Supply of tour operators services.  Explanation.- "tour operator" means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours.	2.5	1. Provided that credit of input tax charged on goods and services used in supplying the service, other than the input tax credit of input service in the same line of business (i.e. tour operator service procured from another tour operator) has not been taken  [Please refer to Explanation no. (iv)]  2. The bill issued for supply of this service indicates that it is inclusive of charges of

				accommodation and transportation required for such a tour and the amount charged in the bill is the gross amount charged for such a tour including the charges of accommodation and transportation required for such a tour.
		<i>(ii) Services by way of house-keeping, such as plumbing, carpentering, etc. where the person supplying such service through electronic commerce operator is not liable for registration under sub-section (1) of section 22 of the Central Goods and Services Tax Act, 2017.</i>	2.5	<i>Provided that credit of input tax charged on goods and services has not been taken [Please refer to Explanation no. (iv)].</i>
		<i>(iii) Support services other than (i) and (ii) above.</i>	9	-

**Section 2(31) of the CGST Act:**

*“(31) “consideration” in relation to the supply of goods or services or both includes–*

*(a) any payment made or to be made, whether in money or otherwise, 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;*

*(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”*

**Relevant portion of Section 15 of the CGST Act:**

*“15. Value of taxable supply*

*(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*

*(2) The value of supply shall include—*

*(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*

*(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;*

*(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;*

*(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and*

*(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.*

**Explanation.**—*For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.*

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*(3) The value of the supply shall not include any discount which is given—*

*(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and*

*(b) after the supply has been effected, if—*

*(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and*

*(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.”*

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