

GST leviable on reimbursement of electricity and water charges and to be included in the value of supply

The AAR, Maharashtra in the matter of *M/s. Indiana Engineering Works (Bombay) Pvt. Ltd. [Advance Ruling No. GST-ARA-120/2019-20/B-114 dated December 16, 2021]* held that, GST payable on electricity charges and water charges as per meter reading and collected from the recipients on actual reimbursement basis. Further, there is no authorization, obtained to act as pure agent and to make payment to third parties, therefore the assessee cannot be considered as a pure agent.

Facts:

M/s. Indiana Engineering Works (Bombay) P. Ltd. ("**the Applicant**") is the absolute owner of "Indiana House" and has entered into a Leave and License Agreements with M/s. Capri Global Capital Ltd ("**the Licensee**"), the Applicant has licensed its office premises to the Licensee for use and occupation of the leased premises on an agreed license fee payable monthly with Service tax/GST, that includes access to the respective common areas. In addition to the giving of the immovable property on lease, the Applicant is also providing utilities, such as electricity, water and internal maintenance in respect of the licensed premises and the charges are recovered from the Licensee based on the reading shown in the electricity/water meters provided by the Applicant.

The Applicant contended that, reimbursement of water charges, electricity charges, is nothing but repayment of certain expenses incurred by the Applicant on behalf of the Licensee and they do not have character of supply as defined under the Central Goods and Services Tax Act, 2017 ("**CGST Act**"). Further, the reimbursement of expenses received by them from the Licensee can qualify towards expenses incurred as a 'Pure Agent' and would not be considered in the value of supply for the levy of tax.

Issues:

1. Whether electricity and water charges paid by the Applicant as per meter reading and collected from the Licensee at actual on reimbursement basis are liable to GST?
2. Whether the Appellant acts as a Pure Agent?

Held:

The AAR, Maharashtra in *Advance Ruling No. GST-ARA-120/2019-20/B-114 dated December 16, 2021* held as under:

- Noted that, the Applicant has agreed to lease out the premises which is an immovable property and as per entry no. 5(a) of Schedule II of the CGST Act, renting of Immovable

property is a supply of services and liable to tax. The utilities such as electricity and water supply are basic amenities subject to which competent authority will not issue occupancy certificate for conducting commercial activities/ business.

- The activity of applicant is renting of immovable property and the same is considered as taxable supply of service under the CGST Act.
- Observed that, the payment of rent is fixed on monthly basis which is for the occupancy and also the use of the premises whereas, the variable amount of electricity and water charges (at actuals), paid by the Licensee, is for effective enjoyment of the rented premises without which the occupation of the premises could not be possible. Thus, the provision of essential services is mandatory on landlord and it is not mere facilitating the payment of electricity charges by the Applicant.
- Further observed that, without the provision of such utility services, like water and electricity, the Licensee cannot run its business and therefore, amounts towards such electricity/water charges by the applicant is a part of 'consideration' received in relation to renting of immovable property by the Applicant.
- Stated that, making payment of electricity charges is the responsibility of the Applicant and not of the Licensee, as the property (main electric/water meters) is owned by the Applicant and the electricity/water connection is obtained in the name of the Applicant. The applicant is not paying the electricity/water bill on behalf of the Licensee. Further, there is no authorization, obtained by the Applicant from the Licensee, to act as their pure agent and to make payment to third parties.
- Held that, the charges for electricity and water charges recovered as reimbursements, even if at actuals, have the nature of incidental expenses in relation to renting of immovable property and are includible in the value of supply and are to be considered as transaction value for the purpose of levy of GST.
- Further held that, the Applicant has failed to establish themselves as a pure agent and, therefore, the expenditure or cost incurred by the Applicant and subsequent reimbursement thereof cannot be excluded from the value of supply. Therefore, the reimbursed electricity and water charges charged to the licensee by issuing debit note or paid by the Applicant is considered monthly license fee and total value along with fixed monthly rent is to be considered as transaction value of rent for the purpose levy of tax under the CGST Act.

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