

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)
(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

ARN No.	AD270220033573I
GSTIN Number, if any/ User-id	27AAACH1465N1ZC
Legal Name of Applicant	M/s. Indiana Engineering Works (Bombay) Pvt. Ltd
Registered Address/Address provided while obtaining user id	Indiana House, Off. M.V. Road, Marol Naka, Andheri (East), MUMBAI-400059
Details of application	GST-ARA, Application No. 120 Dated 04.03.2020
Concerned officer	Division-V, Commissionerate Mumbai East.
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A	Category
B	Description (in brief)(As per applicant)
	Factory/ Manufacturing, Service Provision
	M/s. Indiana Engineering Works (Bombay) P. Ltd., the Applicant, owner of “Indiana House” situated at Marol Village, Andheri (East), Mumbai-400059 has entered into a Leave and License Agreement dated 12.06.2017 vide which it has licensed the 4 th floor M/s. Capri Global Capital Ltd (“Licensee”) having Office at 502 Tower A, Peninsula Business Park, S.B, Marg, Lower Parel, Mumbai-400013, for a License fee payable monthly with applicable GST. Applicant has also entered into identical lease agreements with other Licensees for leasing other space therein. Applicant has installed electricity meters for use and consumption of power by the Licensees. As per agreements, applicant pays electricity charges as per specific meter reading and also apportions electricity charges paid by them for common utilities. Further, water meter is also installed in the name of Applicant who pays the water bill and apportions water charges to the Licensees as per floor space occupied. Applicant raises debit notes for electricity charges and Bill for water charges & collect at actual on reimbursement basis. Applicant feels that electricity/water charges paid by them to utility providers and reimbursed by the Licensees at actuals, would not attract GST.
Issue/s on which advance ruling required	Whether Electricity/Water charges paid as per meter reading and collected from recipients at actuals are liable to GST
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.



NO.GST-ARA- 120/2019-20/B- 114

Mumbai, dt. 16.12.2021

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act” respectively] by M/s. **Indiana Engineering Works (Bombay) Pvt. Ltd.**, the applicant, seeking an advance ruling in respect of the following questions.

- a) **Whether Electricity charges and Water charges paid by the Applicant as per meter reading and collected from the recipients at actual on reimbursement basis are liable to GST?**
- b) **In the above scenario, whether the Appellant acts as a Pure Agent?**
- c) **Is the Applicant 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?**

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression ‘GST Act’ would mean CGST Act and MGST Act.

2. “FACTS AND CONTENTION – (AS PER THE APPLICANT):

The submissions made by, M/s. Indiana Engineering Works (Bombay) P. Ltd., the Applicant, are as under-

- 2.1 *Applicant, situated at Indiana House, off. M. Vasanji Road, Marol Naka, Andheri (East), Mumbai-40059 and holding GSTIN 27AAACI465NIZC, is the absolute owner of “Indiana House” situated at Survey No. CTS 621 at Marol Village, Andheri East, Mumbai-40059 and has entered into a Leave and License Agreements dated 12.06.2017 with M/s. Capri Global Capital Ltd (“Licensee”) situated at 502, Tower A, Peninsula Business Park, Lower Parel, Mumbai-400013, the Applicant has licensed 4th floor of the said Indiana House for use and occupation of the leased premises on an agreed license fee payable monthly with Service tax/GST.*



- 2.2 Applicant has also entered into almost identical lease agreements with other Licensees on similar terms and conditions for leasing the remaining available space in the said "Indiana House".
- 2.3 As installed in other floors, Applicant, the Licensor, has also installed separate electricity meters in their name on the 4th floor also and the monthly electricity charges for use and consumption of electricity by the Licensees are paid by the Applicant and collected from Licensees at actuals. The Applicant raises debit notes on the licensees for reimbursement of electricity charges so paid by the Licensor at actual on principal to principal basis.
- 2.4 Applicant refers to Sr. No.104 of Not.No.2/2017-C.T. (R) dated 28.06.2017 wherein Electricity charges under HSN 2716 attract NIL rate of GST. Further Sr.No.25 of Not.No.12/2017-C.T. (R) dated 28.6.2017 also exempts transmission or distribution of electricity by an electricity transmission or distribution utility.
- 2.5 Applicant also has installed water meter for supply of water to all occupants/Licensees, pays the water bills and apportions the charges at actuals by raising Bill of Supply on the Licensees for reimbursement on the basis of floor space occupied.
- 2.6 Applicant further refers to Sr. No.99 of Not.No.2/2017 Central Tax (Rate) dated 28.06.2017 wherein water (other than aerated water, mineral, purified, distilled, medical, ionic, battery, de-mineralized and water sold in separate containers) attract NIL GST. Hence the Applicant is of the view that supply of portable water to the Licensees would also not attract GST.
- 2.7 As per Section 15 of the CGST Act, 2017, 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 and the expenses and charges mentioned in sub serial (2) shall be included. However, in the instant case the electricity and water charges paid by the Applicant and reimbursed by the Licensees at actuals appear to be out of the purview of GST as the Applicant is of the view that these charges and expenses are not includable in the value of supply as per the provisions of the said Section of the CGST Act.
- 2.8 It is undisputed fact that where the Licensee has a separate meter from the Distributor of Electricity but pays the bill amount at actual to the Licensor who effects payment to the Distributor of electricity, then it amounts that the charges are collected by the Licensor in the capacity of a Pure Agent, as defined under Rule 33 of the CGST Rules, 2017 and hence such charges would not attract GST.



B. APPLICANT'S INTERPRETATION OF LAW (APPLICANT'S INTERPRETATION)

- 2.9 Applicant has leased 4th floor of the building, "Indiana House", as per Leave and License Agreement dated 12th June, 2017 entered into with the Licensee, where the Licensor is charging monthly License fee with Service Tax, as more specifically agreed therein. Accordingly, the Licensor periodically discharges the Tax payable on the License Fee and collects from the Licensees as per contractual obligation.
- 2.10 Among other basic amenities, Applicant has also agreed to provide electricity and water in addition to leasing of the immovable property. The electricity & water meters are installed in Applicant's name and the electricity charges are paid to the distribution utility by the applicant and collected from the Licensees at actual on reimbursement basis by raising Debit Notes.
- 2.11 The water meter is also installed in the name of the Licensor and the charges are apportioned and collected on the basis of floor space occupied by the Licensees at actual on reimbursement basis by raising Bill of supply.
- 2.12 Applicant is of the view that reimbursement of electricity and water charges at actuals is nothing but repayment of certain expenses incurred by a person on behalf of another and they do not have the character of supply as defined under Section 7 of the GST Act, 2017. In the instant case it clearly demonstrates that the Applicant has acted as Pure Agent.
- 2.13 In *E-Square Leisure Pvt. Ltd.* [2019 (23) GSTL 514 (AAR-GST)] the Hon'ble Authority for Advance Ruling under GST has accepted the contention of the Jurisdictional Officer who viewed that the expenditure or cost incurred by the Applicant and subsequent reimbursement thereof cannot be excluded from the value of supply. It appears that the view is based on the terms of the agreement and the transaction, wherein no authorization obtained by the Applicant from the recipient of the services to act as pure agent and to make payment to third party.
- 2.14 In the Applicant's case, condition No.4 of the Leave and License Agreement clearly states that the Licensees shall pay to the Licensor electricity charges, monthly water charges, internal maintenance, in respect of the licensed premises at actuals. In the Applicant's view they are acting as pure agent on behalf of the Licensees.
- 2.15 In the case of erstwhile Service Tax, in plethora of judgment judiciary has allowed that reimbursement of expenses at actual cannot be clubbed together. Some of them are:
i) In *South Eastern Coalfields Ltd. vs. C. Cx. &S.T.* [2019(22) GSTL 393 (Tri. Del)] and

ii) In *Kiran Gems Pvt. Ltd. Vs. CCE &ST [2019 (25) GSTL 62 (Tri. Ahmed.)]* It has been held that mere facilitating the payment of electricity charges by the Appellant and subsequently taking the reimbursement of the same will not form part and parcel of gross value of service of renting of immovable property. The issue no longer res integra as the same has been decided time and again in the following decisions:

ICC Reality (India) Pvt. Ltd vs. CCE, Pune – 2013 (32) STR 427 (Tri. Mumbai)]

2.16 The Leave and License agreements between the Licensor and the Licensees have been registered with the proper authority. The Licensor is in the possession of the Electricity and Water Meters installed by the appropriate authorities who distribute electricity and also provide water in Applicant's name. The Licensor acts as Pure Agent and issues Debit Note for electricity charges and bill of supply for reimbursement of water charges without any value addition.

2.17 The Applicant refers to Condition No.6 of the Agreement wherein it is stated that the monthly License Fee will be paid by the Licensees before the 7th of every month in advance and the electricity charges, monthly water charges, as per actuals on producing the bills, which shall be paid to the Licensor before the due date of the bills, for availing rebates, if any. This clearly shows that these charges are only reimbursed over and above the License Fee and the same do not form part of the value of supply.

2.18 Considering the above facts, legal provisions and its interpretation, Applicant is of the view that in respect of the electricity charges and water charges paid to the authorities and collected on reimbursement basis at actuals on principal to principal by the Applicant, they are acting like a Pure Agent.

Written submissions for final hearing on 23/11/2021

2.19 The applicant has reiterated all the submissions made by them at the time of the application.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

The submissions made by the jurisdictional/concerned officer vide letter date 11.07.2021 are as under:-

3.2 GST is payable on the **supply** of goods and service for consideration. The definition of supply in terms of Section 7 of the CGST / MGST Act, 2017 includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licensee, rental, lease or disposal made or agreed to be **made for a consideration** by a person in the course or furtherance of business.

3.3 The applicant has agreed to lease out the premises which is the immovable property to Licensee to conduct business for rent and the said activity treated as renting of immovable



property service and liable to tax under the provisions of GST Act. The utilities such as electricity and water supply are basic amenities to conduct the business and said charges may be paid by the Licensee to the electricity board or BMC directly or may be paid to the Licensor.

3.4 As per Section 2(31) of the CGST Act, 2017 "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;**

3.5 The amount of electricity and water charges paid by the Licensee is covered as a part of consideration as it is payment made in respect to the supply of rental services by the Licensor. Section 15 of the CGST/MGST Act, 2017 covers the provisions relating to valuation for supply of goods and service. As per the said Section 15, the value of supply includes all amounts that pertain to specific supply for the purpose of levy of tax except, subsidies provided by the Government and the value of discount. Therefore, the amount of electricity and water charges are in the nature of incidental expenses while supplying main service of renting of immovable property. Accordingly, the electricity charges and water charges recovered as reimbursements, even if at actual, would get covered as incidental **expenses** towards the value consideration in connection with supply of renting of immovable services of commercial property which is the main supply.

3.6 Further, as precondition (i) of Rule 33 of the CGST / SGST Rules, the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by the recipient. In the present case, the Applicant/ Licensor, is the supplier. Contractual agreement is between the applicant and the recipient of service for renting of immovable property; that there is incidental supply of electricity and water from the Licensor to the Licensee. The aforesaid electricity and water charges, though are recovered from the Licensee at actual, condition (i) to Rule 33 of CGST Rules is not fulfilled as there is not any authorization obtained by the applicant from the recipient of the service to act as pure agent and to make payment to third party.

3.7 Further, making payment of electricity charges is responsibility of the Licensor and not of the Licensee as the property is owned by the applicant and the electricity connection is obtained in the name of the applicant. The applicant is not paying the electricity bill on behalf of the Licensee. Therefore, the activity of recovery of electricity charges and water charges even at actual on reimbursement basis would not qualify as recovery by '**pure agent**'.



3.8 *From the facts detailed above and as per the provisions cited above, reimbursement of expenses of electricity and water charges incurred by the Licensor, do not qualify as 'pure agent. Also, reimbursed electricity and water charges even though charged separately in debit note or paid by the tenant user i.e. Licensee directly to the Service provider i.e. Electricity Power Distributor/BMC is liable to be added in value of the monthly License fee for tax under GST Act."*

04. HEARING

4.1 Preliminary e-hearing in the matter was held on 02.06.2021. Authorized Representative of the applicant, Shri. Ramkrishna Lingsur (learned C.A) was present. Jurisdictional officer Smt. Nilima Dhamnaskar, Suptd. Division- V, Mumbai East was also present. The Authorized Representative made oral submissions with respect to admission of their application.

4.2 The application was admitted and called for final online hearing on 23.11.2021. Shri. Ramkrishna Lingsur (learned C.A), Authorized Representative, appeared, made oral and written submissions. Jurisdictional Officer was absent during the final hearing. However, the written submissions were duly filed by the jurisdictional officer.

05. OBSERVATIONS AND FINDINGS:

5.1 We have gone through the facts of the case, oral & written submissions made by the applicant as well as the jurisdictional officer and the applicable provisions of the GST laws in this regard.

5.2 The Applicant has leased out its office premises situated at the 4th floor of Indiana House to M/s Capri Global Housing Finance Limited, including access to the respective common areas of the Indiana House. The applicant has fixed monthly amounts towards rent, based on time periods, from the commencement date. The Licensee shall have to pay monthly license fee of Rs 2,52,000/- per month, i.e. Rs. 63/- per square feet for the use and occupation of the licensed premises. 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. The charges related to electricity/water is recovered from the lessee based on the reading shown in the electricity/water meters provided by the applicant. The Applicant is of the view 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 GST Act. Alternatively, applicant is of the view that the reimbursement of expenses received by them from the lessees can qualify towards expenses incurred as a 'Pure Agent' and would not be considered in the value of supply for the levy of tax.



5.3 In order to ascertain the true nature of transaction we feel it necessary to refer to certain clauses of the sample agreement, which are as follows:-

(1) WHEREAS the LICENSOR is the absolute owner of and is in physical possession of the building known as "Indian House" (hereafter referred to as the "Said Building") which is constructed as per the approved plan and is situated at plot bearing survey No. CTS 621, at Marol Village, Andheri (East) Mumbai 400059 and the LICENSOR is seized and possessed of and has clear and marketable title and absolute and unrestricted right to give on leave and license basis, the premises total admeasuring 4000 sq. ft. super built up area on the 4th Floor including the assess to their respective common areas of the Indian House, A wing, left side detailed in SCHEDULE "A" along with furniture & fixtures and facilities together with 2 car parking spaces within the said premises (hereinafter collectively referred to as the "Licensed Premises") on leave and license basis.

AND WHEREAS the LICENSEE is engaged in the business of lending business and registered as a non-banking financial company licensed by the Reserve bank of India.

AND WHEREAS the licensee being in need of premises in Mumbai for the proposes of setting up an office has agreed to take and the Licensor has agreed to give on leave and license basis, the Licensed Premises for a period of 5 Years commencing from 5th June, 2017 and on the term and conditions stipulated herein and agreed by the parties hereto.

AND WHEREAS the LICENSOR has agreed that though the commencement date of License period would be 5th, June 2017, the payment of the monthly License Fees shall be affective from 20th June, 2017 i.e. upon completion of rent free period of 15 days.

AND WHEREAS the Licensor has represented that the said Building is permitted to be used for carrying out commercial activities/business, the Licensor has obtained Occupation Certificate in respect thereof from the MCGM, and the Licensor has the absolute right and necessary authority to give the Licensed Premises on leave and license basis to the Licensee for running its business, without procuring consent/concurrence from anybody. The Licensor has also represented that the Licensor has clear title to the said Building and there is no dispute pending under any authorities established under law.

AND WHEREAS the LICENSOR and the LICENSEE have agreed to record the terms and conditions of their agreement in relation to the grant of the Licensed Premises on leave and license basis.

(3) The LICENSOR shall during the subsistence of this Agreement at its costs, charges and expenses in all respect provide and make available to the LICENSEE the Licensed Premises including but not limited to the following facilities: -

- a. To allow the LICENSEE, its group companies, associate companies, subsidiaries and/ or joint venture companies to exclusively occupy and use the said Licensed Premises on the 4th Floor of the building known as "Indian House A Wing, left side".
- b. Use of all facilities as annexed hereto as Annexure "A" of this Agreement and provided by the LICENSOR in the Licensed premises.
- c. Use of furniture & fixtures, interior decoration, etc. as indicated in Layout plan and annexed hereto as Annexure "A".
- d. Availability of lifts for going up and down to and from the Licensed Premises.
- e. Permit the LICENSEE to install their own telephone lines if required, 24 hours of electricity, water supply, and security guards for the main gate.
- f. Two Toilets block (One for gents and one for ladies) in the licensed premises; as per layout plan which is annexed hereto as Annexure "A"

The LICENSEE shall pay to the License monthly license fee of Rs 2,52,000/- (Rupees two Lakhs Fifty-Two Thousand only) per month i.e. Rs. 63/- per Square Feet on a super built up area of 4000 square feet for the use and occupation of the Licensed Premises during the said period plus service tax as applicable from time to time. The LICENSEE shall pay to the LICENSOR electricity charges, monthly water charges, internal maintenance, in respect of the licensed premises at actual (hereinafter referred to as "Monthly license Fee"). The LICENSEE hereby agrees that there shall be an escalation of 5% (five percent) every year from the last said Monthly License Fee after the completion of every 12(TWELVE) months.

The Licensee agrees to pay to the Licensor the electricity charges monthly water charges, as per actuals within 7 (seven) days form the date of receipt of an invoice by the Licensee in this regard along with necessary supporting.

- 5.4 From a conjoint reading of above clauses of the agreement, we find that the applicant has agreed to lease out the premises which is an immovable property. As per entry no. 5 (a) of Schedule II, Renting of Immovable Property is a supply of services and liable to tax under the provisions of GST Act. 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.
- 5.5 The activity of applicant is renting of immovable property and the same is considered as taxable supply of service under the Goods and Service Tax Act, 2017, therefore, it is required to understand the scope of "supply" as per section 7 of the GST Act which reads as under-
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, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;.....

5.6 It is also necessary to understand the definition of the term “consideration”, received in lieu of the said supply of service. As per *Section 2(31) of the CGST Act, 2017* “**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;**

5.7 The applicant is receiving monthly license fee of Rs 2,52,000/- per month i.e Rs. 63/- per square feet for the use and occupation of the licensed premises; whereas the charges for electricity are recovered from lessees, based on the reading shown in the sub-meter provided by the applicant. The water meter is also installed in the name of the Licensor who pays the water bill and apportions water charges to the Licensee as per floor space occupied.

5.8 As the renting of immovable property is effected within the state of Maharashtra, we may refer to the provisions of the Maharashtra Rent Control Act, 1999 specially, Explanation to section 29 which mentions that – “*essential supply or service includes supply of water, electricity, lights in passages and on staircases, lifts and conservancy or sanitary service*”. It is also mentioned that no landlord, either himself or through any person acting or purporting to act on his behalf, shall, without just or sufficient cause, cut-off or withhold any essential supply or service enjoyed by the tenant in respect of the premises let out.

5.9 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 licensor.

5.10 It is pertinent to note para 3 of the agreement which mentions as, - ‘***The LICENSEE shall pay to the License monthly license fee of Rs 2,52,000/- (Rupees two Lakhs Fifty-Two Thousand only) per month i.e. Rs. 63/- per Square Feet on a super built up area of 4000 square feet for the use and occupation of the Licensed Premises.....***’

“The LICENSEE shall pay to the LICENSOR electricity charges, monthly water charges, internal maintenance, in respect of the licensed premises at actual (hereinafter referred to as “Monthly license Fee”.

It is seen that the total value of rent fixed for a month and variable amount of electricity and water charges are treated as “*Monthly license Fee*” by the applicant itself. We cannot deviate from the terms of the agreement between the Licensor and licensee with respect to lease of premises as discussed in earlier paras.

5.11 We find 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 Licensor.

5.12 It is also pertinent to find out as to what is the transaction value of supply in respect of renting of immovable property, whether the incidental expenses such as electricity charges and water charges borne by the licensee be included in the value of supply?

5.13 Section 15 of the CGST/MGST Act, 2017 covers the provisions relating to valuation for supply of goods and service and is reproduced as under:-

(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.

5.14 Thus, the value of supply includes incidental expenses charged by the supplier in respect to renting of premises for the purpose of levy of tax except for subsidies provided by the Government and the value of discount. Therefore, 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 tax.

5.15 The applicant further argued that even if the reimbursement is construed as a supply under the GST Act, tax cannot be levied as the expenses are incurred by them as 'pure agent'.

5.16 The concept of a "pure agent" under GST Laws is covered under the provisions of Rule 33 of CGST Rules, 2017 and as per the said Rule 33, the expenditure or cost incurred by a supplier, as a pure agent of the recipient of the supply shall be excluded from the value of supply. However, such exclusion of expenditure incurred as a pure agent is possible only where certain conditions as mentioned in the said Rules are fulfilled and benefit is available only if the conditions stipulated in the rules are satisfied by the supplier.

5.17 The relevant Rule 33 is reproduced as under:-

"Rule 33. Value of supply of services in case of pure agent; Notwithstanding anything contended in the provisions of this Chapter, the expenditure or costs incurred by a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, -

(i) The supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;

(ii) The payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and,

(iii) The supplies procured by the pure agent from the third party as a pure agent of the recipient of the supply are in addition to the services he supplies on his own account.

Explanation- For the purpose of this rule, the expression pure agent means a person who-

(a) Enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) Neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

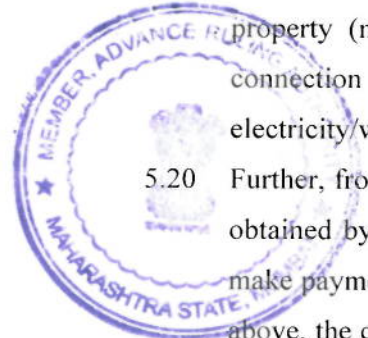
(c) Does not use for his own interest such goods or services so procured; and

(d) Receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account."

5.18 Therefore, a 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. While the relationship between the provider of service and recipient of service, in respect of the main service is on a principal to principal basis, the relationship between them in respect of other ancillary services may be that of a pure agent. Here clauses (a) to (c) mentioned above are important.

5.19 In the instant case : the main electric meter is in the name of the Applicant ; the service is not acquired from main supplier of electricity on the instructions from the tenant and thus the

applicant does not act as pure agent of tenant in this respect. Even after the tenant leaves the premises, the main electric (or main water) meter is going to remain in the name of the Applicant. The supply under the main meter is not due to instructions from any particular tenant. With regards to a 'pure agent', the applicant contends that the reimbursement of expenses, such as electricity charges, water supply charges etc. incurred by it and received from lessee are towards payment to the third party suppliers. In present case the applicant has got the main electric connection in its own name and has created different sub connections at each location to know the actual consumption of electricity and water charges by the tenants which are to be apportioned/recovered from them as per floor space occupied. All these activities show that these supplies are on applicant's own account and is for effective enjoyment of premises. The applicant procures those services from various agencies and it is the primary responsibility of the applicant to pay to those agencies for supply of said services at initial or first stage. We agree with the contention of the Jurisdictional officer that, making payment of electricity charges is the (primary) responsibility of the Licensor 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.



- 5.20 Further, from the terms of the agreement and the transaction, we do not find any authorization, obtained by the applicant from the recipient of the services, to act as their pure agent and to make payment to third parties. In the case of a 'pure agent', as explained in the legal provisions above, the concerned pure agent services are required to be procured from the directed supplier (suppliers directed by the tenants). No such situation exists in the present case.
- 5.21 In view of the above, we accept the contention of the jurisdictional officer that the applicant has failed to establish themselves as a pure agent as defined under the CGST Rules and, therefore, the expenditure or cost incurred by the applicant and subsequent reimbursement thereof cannot be excluded from the value of supply.
- 5.22 Therefore, from the facts mentioned above and the provisions discussed supra, reimbursed electricity and water charges charged to the licensee by issuing debit note or paid by the licensee 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 GST Act.
- 5.23 Attention is also invited to the ruling by Maharashtra AAR in the case of **E-Square Leisure Pvt. Ltd. vide its Order No. GST-ARA-71/2018-19/B-171 dated December 29, 2018**. In this case also it was held that renting of immovable property would be the main supply and the provision of other utilities such as electricity, and water supply, fuel etc. would be in the nature

of ancillary supply which help in better enjoyment of the main supply. Therefore, the utility charges in the nature of electricity charges and water reimbursed to the applicant by the lessee forms a part of value of supply. For the purpose of present ruling we have analyzed the clauses as contained in the contract/agreement involved in the present case and have come to conclusion as enumerated above.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

For reasons as discussed in the body of the order, the questions are answered thus –

Question 1:- Whether Electricity charges and Water charges paid by the Applicant as per meter reading and collected from the recipients at actual on reimbursement basis are liable to GST?

Answer:- Answered in the affirmative.

Question 2:- In the above scenario, whether the Appellant acts as a Pure Agent?

Answer:- Answered in the Negative.

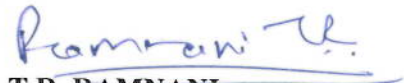
Question 3:- Is the Applicant liable to add value of Electricity and Water charges to the monthly License Fee if as per terms of the contract tenant user is paying for such utility services directly to the Service Provider i.e. Electricity Power Distributor/BMC, as the case may be, even though Electric and Water meters continue to remain in the name of the Applicant

Answer:- 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.





**RAJIV MAGOO
(MEMBER)**



**T.R. RAMNANI
(MEMBER)**

- Copy to:-**
1. The applicant
 2. The concerned Central / State officer
 3. The Commissioner of State Tax, Maharashtra State, Mumbai
 4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai



5. The Joint Commissioner of State Tax, Mahavikas for Website.

Note:- An Appeal against this advance ruling order shall be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.

