

## Electricity and water charges reimbursed by licensee liable to GST – Maharashtra AAR

22 December 2021



## Summary

The Maharashtra Authority for Advance Ruling (AAR) in a recent ruling has held that the electricity and water charges reimbursed by the licensee to the applicant (licensor) at actuals is liable to GST. The AAR observed that without provision of such services the licensee cannot run its business. Therefore, the amounts reimbursed towards electricity and water charges to the licensor along with the rent shall be a part of consideration towards renting services.

### Facts of the case

- The applicant<sup>1</sup> has entered into a Leave and License Agreements with licensee for licensing space for use and occupation for an agreed licensee fee.
- The monthly electricity charges for use and consumption of electricity by the licensee are paid by the applicant. The applicant raises debit notes on the licensee for reimbursement of electricity charges so paid by the licensor at actuals.
- The applicant has also installed water meter for supply of water to all licensees and pays water bills and apportions the charges at actual by raising bill of supply on licensees for reimbursement based on floor space occupied.
- The applicant sought an advance ruling before the Maharashtra AAR to understand whether the electricity charges and water charges paid by the applicant as per meter reading and collected from the recipients at actual on reimbursement basis is liable to GST and whether the applicant shall be considered as a pure agent?

### Maharashtra AAR observations and ruling<sup>2</sup>:

- **Mandatory provision of essential services:** 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 licensor.

- **Amounts reimbursed are part of consideration:** Without provision of such utility services like water and electricity, the licensee cannot run its business. Therefore, amounts towards electricity/water charges reimbursed by licensee to licensor shall be a part of consideration received in relation to renting of immovable property services by the licensor.
- **Value of supply to include incidental expenses:** The electricity and water charges recovered as reimbursements even if at actuals have the nature of incidental expenses in relation to renting of immovable property service. Therefore, such charges are includible in the value of supply and shall be considered as transaction value for the purpose of levy of tax.
- **Conditions of being pure agent not fulfilled:** As the electricity meter and water meter are in the applicant's name therefore, these supplies are on applicant's own account and is for effective enjoyment of premises. Making payment for such supplies is the responsibility of the applicant and it is not paying on behalf of the licensee. Further, there is no authorisation obtained by the applicant from the licensee to act as a pure agent and to make payment to third parties on its behalf. Thus, the applicant does not act

<sup>1</sup> M/s Indiana Engineering Works (Bombay) Pvt. Ltd.

<sup>2</sup> Maharashtra AAR order No. GST-ARA-120/2019-20/B-114 dated 16 December 2021

as a pure agent of the licensee in this respect.

## Our comments

On a similar issue, earlier the Gujarat AAR<sup>3</sup> had held that landlord does not have to pay GST on electricity or incidental charges recovered from tenants, in addition to rent as per lease agreement for renting of immovable property since the said amount would not be includible in the value of supply.

It is pertinent to note that electricity has been kept outside the purview of GST by way of exemption<sup>4</sup>. Further, the Gujarat High Court<sup>5</sup> had quashed the levy of GST on ancillary services provided by electricity distribution companies to consumers<sup>6</sup> as being ultra vires to the provisions of GST law. Therefore, though the present ruling by the Maharashtra AAR is likely to impact the real estate sector and the Resident Welfare Associations (RWA), we may see rise in litigation on the subject matter and is likely to be challenged further.

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<sup>3</sup> Gujarat Narmada Valley Fertilizers & Chemicals Ltd.

<sup>4</sup> Notification no. 02/2017 –Central Tax (Rate) dated 28.06.2017 and Notification no. 12/2017-CT(Rate) dated 28.06.2017

<sup>5</sup> in the case of Torrent Power Ltd.

<sup>6</sup> vide Circular No. 34/8/2018-GST dated 1 March 2018

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