

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/93/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/36)
Date: 17.09.2020

Name and address of the applicant	:	M/s Gujarat Narmada Valley Fertilizers & Chemicals Ltd., Narmada Nagar, Bharuch, Gujarat.
GSTIN/ User Id of the applicant	:	24AAACG8372Q1Z2
Date of application	:	10.06.2019
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	e) Determination of the liability to pay tax on any goods or services or both:
Date of Personal Hearing	:	17.08.2020(through video conferencing)
Present for the applicant	:	Shri. Nilesh V Suchak

M/s. Gujarat Narmada Valley Fertilizers & Chemicals Ltd., Narmada Nagar, Bharuch, Gujarat having a GSTIN : 24AAACG8372Q1Z2, filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and Section 97 of the GGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the SGST Act.

2. M/s. Gujarat Narmada Valley Fertilizers & Chemicals Ltd.(hereinafter referred to as “GNFC” or “lessor” or “Applicant”) has entered into a lease agreement dated 01.12.2015 with the President of India acting through the Commissioner of Central Excise, Audit-I, Ahmedabad (hereinafter called the “lessee”) to provide along with the building for a rent the interior infrastructure like partitions, cabins, work stations, electrical air conditioners, fire safety systems, tables, chairs etc. at agreed monthly rent.

3. The applicant submitted that CGST department was paying service tax on total consideration of rent including that on electricity charges to the applicant up to 30.06.2017. However, CGST department has stopped paying GST component on electricity and incidental charges from 01.07.2017 under the pretext that GST is not applicable in terms of Rule 33 of the CGST Rules, 2017 on such electricity charges even though such charges are clearly incidental expenses in respect of supply of service of renting or immovable property. They are charging GST on electricity charges, recovered as a part of

total consideration for renting of immovable property and recovering the same from other tenants and is also paying GST to respective governments.

4. The applicant further submitted that they have taken opinion from different GST consultants and advised that electricity charges or incidental charges are in relation to composite supply of principal service of renting of immovable property, any incidental charges or expenses in respect of supply of service shall form part of value of taxable supply in terms of clear provisions of Section 15 of the CGST Act, 2017.

5. The applicant submitted that in terms of clause 9 of the agreement, *“the Govt. of India” shall pay all charges in respect of electric power, Air-conditioning charges, light and water used along with the applicable taxes thereon for the said premises during the continuance of these presents*”. Further, the applicant has bonafide believe that in terms of Section 15 (1) of CGST Act, 2017 they are liable to pay GST on rent including electricity charges and other incidental charges relating to renting. Section 15(1) of CGST Act, 2017 stipulate as, *“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.”* Further, Section 15(2) (c) of CGST Act, 2017 stipulates as, *“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;”*.

6. The applicant submitted that they have let out some other part of its premises at GNFC tower, Bodakdev, Ahmadabad to other parties and is charging GST even on electricity charges to other and they are paying GST on rent charges including electricity charges; that electricity bill for electricity used in rented premises is received in the name of GNFC and GNFC is the person liable to pay this amount of bill for entire premises located at GNFC Info Tower, Bodakdev, Ahmedabad and charged proportionate amount of electricity charges from different tenants including the office of Commissioner (Audit). GNFC has charged GST (CGST+SGST) on rent amount including that of amount charged for electricity and other charges; that Dy. Commr. Vide letter dated 24.01.2018 informed GNFC that electricity payment is taken by GNFC on reimbursable basis constitutes the expenditure incurred by GNFC on behalf of Commissioner of CGST (Audit) Commissionerate and therefore, no GST is applicable in terms of Rule 33 of CGST Rules, 2017; that CGST department stopped paying GST on electricity charges and other incidental charges but released payment of Rent and GST thereon except the GST on electricity and other incidental charges for the period from 01.07.2017 to 31.07.2017 and also for subsequent periods; that Dy. Commissioner, CGST (Audit) vide letter dated 10.08.2018 stated that department is not legally

entitled to make payment of electricity duty and requested to take up the matter with electricity company for exemption of electricity duty.

7. Accordingly, the applicant sought the Advance Rulings on the following questions :

1. When landlord charges electricity or incidental charges in addition to rent as per Lease Agreement for immovable property rented to the tenant, is landlord liable to pay and recover GST from tenant on electricity or incidental charges charged by it?
2. Can electricity charges paid by landlord to Torrent Power Ltd. (the supplier of electricity) for electricity connection in the name of landlord and recovered based on sub meters from different tenants be considered as amount recovered as pure agent of the tenant when the legal liability to pay electricity bill to Torrent Power Ltd. is that of landlord?

Applicant's interpretation of law and/or fact

8. The applicant submitted that in terms of provision of Section 15(1) of the CGST Act, 2017, the value of supply shall be the transaction value, which is the price actually paid or payable for the said supply. Further, in terms of provisions of Section 15(2), the value of supply shall include incidental expenses charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of supply of goods or services.

9. The applicant further submitted that in terms of the provisions of Section 15 of CGST Act, 2017, it appears that electricity or other incidental charges recovered proportionately by a landlord from a tenant in addition to rent are nothing but incidental expenses or amount charged in respect of supply of renting service and hence the value thereof shall be included in value of taxable supplies; that when the applicant pays electricity charges to Torrent Power Limited (Electricity supplier), it pays electricity charges on its own account and not as a pure agent of the recipient of service of renting for the following reasons :

- i. Electricity Bill is issued by Torrent Power Ltd in name of GNFC and not in the name of tenant.
- ii There is no specific agreement that GNFC has to act as pure agent of CGST department to pay electricity charges to third party as there is no formal authorization in this regard.

iii Composite electricity bill is received by GNFC in respect of the premises which is distributed amongst different tenants by arriving at usages by respective tenants based on sub-meters and no separate bill of electricity charges for each tenant is issued by Torrent Power Ltd.

iv Payment of electricity bill is the responsibility of GNFC and not that of the tenant and hence it appears that GNFC is not paying electricity Bill as pure agent on behalf of its tenant viz. CGST department.

10. The applicant submitted that in view of the discussion their view is that :

i. The applicant is liable to pay applicable GST on amount charged by it from tenant towards electricity or incidental charges in addition to rent as per Lease Agreement for immovable property rented to the tenant and the tenant is required to pay such GST amount to the landlord in terms of provisions of Section 15 of the CGST Act, 2017.

ii Electricity charges paid by landlord to Torrent Power Ltd. (the supplier of electricity) for electricity connection in the name of landlord and recovered based on sub meters from different tenants cannot be considered as amount recovered as pure agent of the tenant as the legal liability to pay electricity bill to Torrent Power Ltd. is that of landlord.

Personal Hearing

11. Personal hearing in the matter was held on 17.08.2020. Authorised representative appeared on behalf of the applicant and re-iterated the submission made in the Application.

Discussion and Finding

12. We have considered the submissions made by the Applicant in their application for advance ruling. We have also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

13. The questions raised by the applicant for an advance ruling are:

1. When landlord charges electricity or incidental charges in addition to rent as per Lease Agreement for immovable property rented to the tenant, is landlord liable to pay and recover GST from tenant on electricity or incidental charges charged by it?
2. Can electricity charges paid by landlord to Torrent Power Ltd. (the supplier of electricity) for electricity connection in the name of landlord and recovered based on sub meters from different tenants be considered as amount recovered as pure agent of the tenant when the legal liability to pay electricity bill to Torrent Power Ltd. is that of landlord?

13.1 Before proceeding with the merits of the case, we deemed fit to make a mention of the matters that qualify for advance ruling in terms of the provisions of Sec. 97(2) of the CGST Act, 2017 which reads as under:

(2) The question on which the advance ruling is sought under this Act, shall be in respect of, —

- (a) classification of any goods or services or both;*
- (b) applicability of a notification issued under the provisions of this Act;*
- (c) determination of time and value of supply of goods or services or both;*
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;*
- (e) determination of the liability to pay tax on any goods or services or both;*
- (f) whether applicant is required to be registered;*
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.*

In view of the above provisions, it is clear that the latter part of the first question raised by the applicant to the effect whether they are liable to recover GST from the tenant on the electricity or incidental charges charged by it is outside the purview of the scheme of advance ruling. The Advance Ruling authorities can only give a decision whether the applicant are liable to pay GST on such charges or otherwise. Whether such GST (if paid) can be recovered from the tenant or otherwise is a civil matter which has to be decided in terms of the agreement entered into by the two parties and the Advance Ruling authority is not empowered to comment on such issues. Thus, we restrict ourselves to answer the following questions:

- a. When landlord charges electricity or incidental charges in addition to rent as per Lease Agreement for immovable property rented to the tenant, is landlord liable to pay GST on electricity or incidental charges charged by it?
- b. Can electricity charges paid by landlord to Torrent Power Ltd. (the supplier of electricity) for electricity connection in the name of landlord and recovered based on sub meters from different tenants be considered as amount recovered as pure agent of the tenant when the legal liability to pay electricity bill to Torrent Power Ltd. is that of landlord?

14. It is the claim of the applicant that the electricity charges are incidental charges collected by them in relation to the supply and as such the same was liable to be added to the value of supply in terms of Sec. 15(2)(c) of the CGST Act, 2017. It is important to go through the said provisions and as such the text of the same is reproduced under:

(2) The value of supply shall include —

(a) -----

(b) -----

(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;

The language employed indicates that the following amount is includible in the value:

- incidental expenses charged by the supplier to the recipient of the supply;
- commission and packing
- any amount charged for anything done by the supplier in respect of the supply of goods or services or both

In the instant case, there is no charge towards commission and packing and as such the same is ruled out. Thus, the only two possible inclusions are the incidental expenses and amount charged for anything done by the supplier. The includible charges are to be examined in terms of the language employed in the statute vis-à-vis the terms and conditions of the agreement and would depend on case to case basis. Thus, the question to the effect whether incidental charges are includible in the value of supply is not answerable in general terms. The facts of each case would be different and such decision would be applicable based on the facts of each case. Therefore, we are discussing the matter only in respect of the specific case in terms of the agreement entered into by the applicant with the CGST department and the discussions and decision would not apply to other agreements.

15. We have gone through the lease agreements and documents submitted by the applicant. The relevant terms of the lease agreement are read as under:

WHEREBY IT IS AGREED AND DECLARED AS FOLLOWS:

In consideration of the rent hereinafter reserved and of the other conditions herein contained, the LESSOR agrees to let out and the LESSEE agrees to take on lease the ALL that premises, being part of the office block No.301,302,504,603,801 (A&B), 804 (at 3rd Floor, 5th Floor, 6th & 8th Floor) admeasuring 3453.35 Sq. Mts equivalent to 37158 Sq. Fts super built-up area of the building known as “GNFC INFOTOWER”, constructed- standing on the land and delineated with the red colour boundary line on the floor plan annexed herewith as Annexure hereto.

- 1) The lessor has also agreed to provide along with the building for rent the Interior Infrastructure like Partitions, Cabins, Work Stations, Electricals, Air Conditioning, Fire Safety System, Tables, Chair etc. more particularly described in SCHEDULE “B” at their cost as per the internal drawings and design provided by the LESSEE.*
- 2) The lease shall commence/shall be deemed to provide along with the building for rent the interior infrastructure like Partitions, Cabins, Work Stations, Electricals, Air Conditioning, Fire Saftey System Tables, Chair etc. more particularly described in SHEDULE “B” at their cost as per the internal drawings and design provided by the LESSEE.*
- 3) The LESSEE shall, subject to the terms thereof pay gross consolidated rent in monthly arrears for the Block Nos. “301,302,504,603, 801(A&B) & 804 of GNFC Ltd. at GNFC Infotower, S.G. Road, Bodakdev, Ahmedabad as described in Schedule “A” covering a total area of 3453.3 Sq. Mtrs. equivalent to 37158 Sq. ft along with all internal infrastructure as described in Schedule “B” at the rate of 56 Sq. Ft. Per month totally amounting to Rs. 20,80,848/- per month + service tax as per prevailing norms, to be made on the 1st day of each month starting from 1st January 2016 which also includes maintenance charges and municipal taxes.*
- 9) “the Govt. of India” shall pay all charges in respect of electric power, Air-conditioning charges, light and water used along with the applicable taxes thereon for the said premises during the continuance of these presents”.*
- 10) The LESSOR shall execute necessary repairs usually made to premises in that locality and may be specified by the Government of India in a notice in writing within such time as may be mentioned therein and if the LESSOR fails to execute any repairs in pursuance of the notice, the Govt. of India*

may cause the repairs specified in the notice to be executed at the expense of the LESSOR and the cost thereof may without prejudice to any other mode of recovery, be deducted from the rent payable to the LESSOR.

The agreement is in respect of letting out of the space on rent and clause 3 above clearly indicates that the value of such supply of renting out the premises has been fixed at Rs. 56/- per sq. ft. and the total rent payable in respect of the total area of 3453.3 Sq. Mtrs. equivalent to 37158 Sq. ft has been agreed upon as Rs. 20,80,848/-. The clause further indicates that the agreed upon rent is for the space of 37158 Sq. ft along with all internal infrastructure. This fact makes it expressly clear that the value of supply of renting of premises has been fixed at Rs. 20,80,848/- which includes the internal infrastructure. In view of such an agreement, it can be said that the amount charged towards internal infrastructure (if any separately charged) would be includible by virtue of the clause '*any amount charged for anything done by the supplier in respect of the supply of goods or services or both*'. Had a similar clause been incorporated in the agreement regarding 'electricity charges', the same would have been includible. However, there is no such clause regarding electricity charges. Thus, the tone and tenor of the agreement clearly demonstrates that the value for offering the space on rent has been fixed at Rs. 20,80,848/-. The agreement does not make any provision for the supplier to make any incidental expense or charge any other amount in respect of such supply of space on rent. Thus, the value for the purpose of renting of immovable property, in the instant case, would be the amount agreed upon for the act of renting of such property.

15.1 The charges towards electricity is covered under clause 9 of the agreement which is independent of clause 3 and the same stipulates that "the Govt. of India" shall pay all charges in respect of electric power, Air-conditioning charges, light and water used along with the applicable taxes thereon. Careful scrutiny of the clause indicates that the supplier of the service has made it mandatory that the Govt. of India is required to pay all the charges in respect of electric power used. The underlined phrases above indicate the following three aspects:

- i) The phrase 'shall pay all charges' indicates a mandate to the effect that the Govt. of India are to pay directly to whomsoever concerned. This is so because the phrase does not say that they shall pay to the supplier. The words to whom the payment is to be done are missing in the agreement and as such the sentence is to be constructed by applying linguistic principles which would mean that the Govt. of

India shall pay the charges to the concerned supplier.

- ii) The words 'electric power' make it all the more clear that the charges in respect of electric power have to be made.
- iii) The word 'used' makes it clear that the charges are in respect of actual usage of electric power

The above indicates that the applicant has cast an onus on the lessee to pay the charges in respect of the electric power used by them directly to the electricity company. Further, the above two clauses clear mean that both are independent of each other and the applicant has agreed upon to charge the fixed amount as per clause 3 towards the supply of services, whereas, the applicant has cast an onus on the lessee to pay the actual electric power charges in respect of the power used by the lessee.

15.2 In view of such an agreement, it cannot be said that the electricity charges would be covered by Sec. 15(2)(c) of the CGST Act, 2017 for the sole reason that the rate for renting of premises has been fixed at an amount and the electricity charges are to be borne by the lessee as per the actual usage of electric power by them in terms of the agreement. Accordingly, the said amount would not be includible in the value of supply. It is reiterated here that the decision would apply to this specific agreement in as much as the clauses of the agreement are specific to the effect that the lessee would bear the electricity expenses at actuals and the value of renting of the immovable property is a fixed amount specified at clause 3 which becomes the value of supply in terms of the statutory provisions.

16. The second question to the effect whether such expenses incurred by the applicant would be considered as charges taken in the capacity of a pure agent or otherwise. This question gains importance owing to the fact that the applicant has not provided a separate electric meter to the lessee in the instant case and as such the lessee cannot make the payment of electric charges directly to the electric company. In such circumstances the applicant makes the payment to the electric company and in-turn collects such charges from the lessee. To make the system work, the applicant have installed sub-meters and they collect the charges of the electric power used by the lessee as per the usage of power ascertained from such sub-meter. Two aspects emerge from the above scheme of arrangement:

- The applicant has not obtained separate meter from the electric company to facilitate the direct payment of electricity charges by the lessee to the electric company.

- In absence of separate meter, the applicant has installed sub-meter and collects the charge of electric power used by the lessee from the lessee and in-turn pays the same to the electricity company.

16.1 The above makes it amply clear that the lessee was supposed to pay the electricity charges directly to the electric company as per the actual usage in terms of the agreement. However, for the failure of the lessor to obtain a separate electric meter for the premises rented to the lessee, they have mutually agreed to collect the electric charges on the basis of actual usage based on the sub-meters and onward payment to the electric company. At this juncture, it is noteworthy to mention that the lessee is Govt. of India and as such would by no means pay any amount in excess or lower than the actual electric power used by them. With a purpose to ensure such actual payment, the lessor i.e. the applicant has installed a sub-meter for the lessee. Thus, it is purely a reimbursable expense made by the lessee which is collected on actual usage of the electric power. Secondly, if at all the amount was not be charged on actual usage basis, it would have been all the more easier for both the parties to fix a certain amount towards electricity charges in the agreement itself. However, this has not been done which clarifies the intent of both the parties that the charges towards electric power usage would be on actual basis.

16.2 The above discussion read with the agreement entered into between the applicant and the Govt. of India makes it expressly clear that the agreement contains an inbuilt clause of actual payment of electric charges by the lessee directly to the electric company. However, due to lack of infrastructure on the part of the lessor, there is a silent agreement between both the parties that the applicant will collect the actual usage charges on the basis of the reading of the sub-meter and in-turn pay the same to the electric company. Since this arrangement has been on-going since such a long time, it can be clearly said that there is a mutual understanding between both the parties and such mutual understanding is also an called an 'agreement' in terms of the provisions of the Indian Contract Act, 1852. Thus, the conditions of Rule 33 of the CGST Rules, 2017 also stand satisfied in the instant case and as such it is concluded that the electricity expenses incurred by the applicant on behalf of the lessee have been incurred in the capacity of a pure agent. At this point it is reiterated that the decision would apply only in respect of the agreement under discussion and analogy of this decision would not be applicable to different set of circumstances.

17. In view of the deliberations as held hereinabove, we pass the Ruling as follows :

RULING

Question 1. When landlord charges electricity or incidental charges in addition to rent as per Lease Agreement for immovable property rented to the tenant, is landlord liable to pay GST on electricity or incidental charges charged by it?

Answer : The facts of the present case infer that the electricity charges collected by the applicant is not covered under the provisions of Sec. 15(2)(c) of the CGST Act, 2017 and as such would not be includible in the value of supply.

Question 2. Can electricity charges paid by landlord to Torrent Power Ltd. (the supplier of electricity) for electricity connection in the name of landlord and recovered based on sub meters from different tenants be considered as amount recovered as pure agent of the tenant when the legal liability to pay electricity bill to Torrent Power Ltd. is that of landlord?

Answer : The electricity charges collected by the landlord from the Govt. of India at actuals based on the reading of the sub-meters is covered under the amount recovered as a pure agent in terms of the provisions of Rule 33 of the CGST Rules, 2017 in respect of the lessor viz. Govt. of India.

(SANJAY SAXENA)

MEMBER

(MOHIT AGRAWAL)

MEMBER

Place: Ahmedabad

Date: 17.09.2020.