



HARYANA AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
HARYANA VANIJYA BHAWAN, PLOT NO 1-3, SECTOR 5,
PANCHKULA-134151 (HARYANA)



ADVANCE RULING NO.HAR/HAAR/R/2018-19/39
(In Application No.: 39/2018-19, dated 30.11.2018)

Name & Address of the Applicant	:	M/s Keysight Technologies International India Pvt. Ltd., Ground and Second Floor, CP-11, Technology Park, Sector-8, IMT Manesar, Gurugram.
GSTIN of the Applicant	:	06AAFCK4575N1Z0
Date of Application	:	30.11.2018
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	:	Clause(e)- determination of liability to pay tax on any goods or services or both
Date of Personal Hearing	:	20.02.2019
Present for the Applicant	:	Sh. Amar Partap Singh (Advocate), Sh. Ankit Awal (C.A) and Sh. Tarun Sharma (C.A).

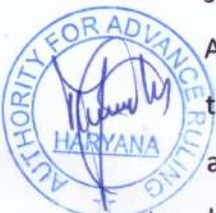
Memo No.: 799

Dated: 09/09/19

Facts in Brief:

1. STATEMENT OF RELEVANT FACTS:

- 1.1 The Applicant is a company registered in India and is engaged in providing IT/ IT enabled services and ancillary research & development activities.
- 1.2 The Application is a 100% Export Oriented Unit under STP Scheme for development of computer software/ IT Enabled Services. The Applicant exports its services to its customers located outside India. Such activities of the Applicant qualify as export of services for the purpose of Integrated Goods & Services Tax Act, 2017 (for short 'IGST Act'). In this regard, copies of invoices raised by the Applicant on its customers are enclosed, on sample basis, as Annexure-2.
- 1.3 M/s Agilent Technologies (International) Private Limited (for short 'Agilent') is owner of a premises located at CP-11, Sector-8 Technology Park, IMT Manesar, Gurgaon, Haryana-122051. The Applicant has entered into a Lease Agreement with Agilent on 15.07.2014 for renting out a part of the said premises. Copy of the Lease Agreement is enclosed as Annexure-3. Annexure-2 to the Agreement describes the portion of premises leased out to the Applicant. Apart from identified areas in the building, the Applicant is also entitled to use the specified common areas, which are to be managed by Agilent only.



Sangeeta

- 1.4 Clause 13 of the Agreement entitles the Applicant to share the leased premises with its group companies, associates and affiliates, subject to obtaining prior written permission from Agilent and with prior written permission from the HSIIDC and other relevant authorities.
- 1.5 Further, the Applicant has entered into '*Utilities & Services Agreement*' with Agilent on 25.08.2014, whereby Agilent has agreed to provide various utilities and services to the Applicant as described in Schedule-I thereto, such as utilities at common area, facility management, technical services, landscaping, window cleaning, parking lot maintenance, pest control, trash removal, toilet supplies & cleaning, conference room set-up, government charges, waste water treatment, elevators, medical room, upkeep of gym, HVAC etc. Copy of the Utilities & Services Agreement is enclosed as Annexure-4.
- 1.6 Under the said agreement, Agilent has also agreed to supply electricity to the Applicant and Applicant has agreed to pay Agilent based on number of electrical units supplied as indicated by the meter(s) installed for the leased premises. Part-D of Schedule-I provides for the formula to be applied for ascertaining the actual cost of electricity units supplied to the Applicant.
- 1.7 Agilent has been charging CGST & SGST @ 9% each on the supply of renting services and electricity made by it to the Applicant. In this regard, copies of invoices raised by Agilent on the applicant for supply of renting services are enclosed, on sample basis, as Annexure-5. Further, copies of invoices raised by Agilent on the applicant for supply of electricity are enclosed, on sample basis, as Annexure-6.
- 1.8 The Applicant is intending to lease out a part of the premises to its group company on the same terms and conditions, as it has with Agilent under the Lease Agreement. For this purpose, the Applicant will enter into a Lease Agreement with group company with the same terms and conditions. The applicant will also enter into a '*Utilities & Services Agreement*' with group company on the same terms and conditions as it has with Agilent. Under the said agreement, the Applicant would also supply electricity to the group company.



Sanjeet

➤ **Contention of the applicant:**

2. Concept of supply:

2.1 The applicant has referred to Section 2(52) of the CGST Act which defines goods as *"every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply"*.

2.2 It maintains that definition of goods covers every kind of movable property except specified ones and electricity is not covered under such excluded items. The applicant has relied upon the decision of Hon'ble Supreme Court in the case titled Commissioner of Sale Tax v/s Madhya Pradesh Electricity Board wherein electricity was held as goods. The applicant has also referred to Notification No. 2/2017 Central Tax Rate, dated 28.06.2017 relating to exempted intra-state supply of **goods**, wherein Electrical Energy is mentioned at Serial No. 104. On this basis, the applicant has contended that intra- states supply of electricity is exempted from Goods and Services Tax.

2.3 The applicant has also referred to Section 8 of the CGST Act which reads. The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:-

- (a) A composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply.
- (b) A mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

It has contended that the supplies provided under the agreement are separately identifiable and the invoices are raised accordingly and as such it does not qualify as a mixed supply as contained in Section 2(74) of the CGST Act.

Section 2(74) reads: *"mixed supply"* means two or more individual supplies of goods or services, or any combination thereof, made in



conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

2.4 The applicant further refers to Section 2(30) of the CGST Act which reads; "*composite supply*" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply and emphasizes that there are 3 essential features of this definition.

- (a) There are two or more taxable supplies of goods or services or both, or any combination thereof.
- (b) That such supplies are naturally bundled and are supplied in conjunction with each other in the ordinary course of business.
- (c) One of such supplies is a principal supply.

If all the above ingredients are satisfied, the supply shall be considered as composite supply and the taxability shall be as per Section 8(a) of the CGST Act.

2.5 The supplier i.e. The Agilent is providing utilities like the common area, facility management, technical service, landscaping, window cleaning, parking lot maintenance, pest control, trash removal, toilet supplies and cleaning, conference room set-up, government charges, waste water treatment, elevators, medical room, upkeep of gym, HVAC etc.

2.6 The applicant is receiving the supply of electricity from the Agilent which is measured on the basis of meters installed at the leased/ business premises.

2.7 The agreement of the applicant with the supplier (Agilent) envisages supply of electricity from grid as well as captive DG sets. For the electricity supplied from grid, the applicant is liable to pay such charges as may be determined by the Distribution Agency (DHBVNL in this case).

2.8 As far as the charges for electricity consumption supplied through DG sets is concerned, the agreement provides for payment at such charges per unit



as may be determined on monthly basis by dividing the cost of actual diesel consumed by the number of units generated by the DG set.

- 2.9 The applicant further submits that the supply of utility is separate from the electricity supply. Although they form part of the same agreement but are covered under Part-A and Part-D respectively. Both the supplies are not in conjunction with each other and cannot be said to be naturally bundled.
- 2.10 It has also argued that availability of principal supply amongst such different supplies is an indispensable condition for attracting the definition of composite supply.
- 2.11 Both the supplies in the instant case are neither naturally bundled together nor is there any principal supply and therefore, the supplies do not qualify for being a composite supply as defined in Section 2(30) of the CGST Act.

3. Classification of supply of Electricity:

- 3.1 As per the applicant, the supply of electricity/ electrical energy is treated as supply of goods and intra-states supply thereof is exempt from payment of CGST in terms of Serial Number 104 Notification No. 2/2017-CT(Rate), dated 28.06.2017. On this basis, it is of the opinion that the supply of electricity is exempt from payment of tax.

4. Eligibility for Input Tax Credit:

- 4.1 In terms of Section 16(1) of the CGST Act, the applicant is entitled to take credit of input tax charged on any supply of goods or services to him, which are used or intended to be used in the course or furtherance of his business.
- 4.2 The applicant is exporter of services which is qualified as zero rated supply under Section 16(1) of the IGST Act, and his entitled to credit of input tax as per Section 16(2) of the IGST Act.
- 4.3 The applicant has rented out premises from Agilent where it is exporting its services. Electricity is also supplied by the Agilent to the applicant. The Agilent is charging CGST and HGST on the supply of renting services and



electricity. These input services are used by the applicant in the course of its business of exporting services.

- 4.4 The rented premises and the electricity are directly used by the applicant for its core business of exporting services and it has placed reliance on some decisions of Hon'ble Tax Tribunal, Chennai wherein it has been held that rented immovable property services used for housing software professionals for software development has direct nexus with the output export services of software development.

5. Queries on which Advance Ruling is sought:

- 5.1 The queries, on which Advance Ruling is sought, are as follows:

- (a) Whether the supply of electricity is a supply of goods or services?
- (b) Whether the supply of electricity and supply of utilities/ leasing are separate supplies or composite supplies?
- (c) If supply of electricity and supply of utilities/ leasing are separate supplies, what is the classification of supply of electricity for the purpose of payment of GST?
- (d) Whether the Applicant is eligible to take credit of input tax charged on such supply of renting services and electricity, if any?

6. Discussion:

- 6.1 The applicant is a software company engaged in the supply of Information Technology Enabled Services (ITES). The supplies made by the applicant are zero rated supplies under Section 16(1) of the IGST Act as it exports its supplies. The applicant registered in the GST Act with GSTIN 06AAFCK4575N1Z0. The applicant has taken the business premises on rent from Agilent Technologies (International) Private Limited located at Sector-8, Technology Park, IMT, Manesar, Gurgaon. As per the lease agreement the lessee is entitled to further sublet with prior permission of the Agilent. As per the agreement, the applicant is also entitled to "utilities and services" such as common area, facility management, technical services, landscaping, window cleaning, parking lot maintenance, pest control, trash removal, toilet supplies and cleaning, conference room set-



up, government charges, waste water treatment, elevators, medical room, upkeep of gym, HVAC etc. Besides, the Agilent has also agreed to supply electricity to the applicant. The electricity supply is by way of grid supply and captive DG sets. However, metering of electricity supply via these two modes is done separately. The applicant has produced two types of sample tax invoices raised by the Agilent technologies wherein Goods and Services Tax has been charged at 18% in both the invoices. The HSN/SAC Code mentioned in one of the Tax Invoice is 997212 for supply of renting services and 997221 for supply of electricity in other. However, the description of services mentioned in both of these sample invoices is Sundry Services.

6.2 Now, let us come to the legal provisions as contained under the Central Goods and Services Tax Act, 2017. It is also worth mentioning here that the provisions contained under the Central Goods and Services Tax and State Goods and Services Tax are identical and unless a special reference is made, the term GST signifies CGST/SGST Act.

6.3 Sale or consumption of electricity is a State subject mentioned at Serial No. 53 of List-II of VIIth Schedule to the Constitution of India under Article 246 of the Indian Constitution. This position has not been altered by the 101st Constitution of Amendment Act, 2016 and therefore, electricity remains outside the purview of the GST.

6.4 Section 2(52) of the GST Act defines **goods** as *"every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply"*.

6.5 Section 2(102) of the GST Act defines **services** as *"anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged"*.

6.6 The Notification No. 2/2017-Central Tax (rate), dated 28th June, 2017 pertains to goods, the intra-state supply of which is exempted under the



Sangeet

GST Act. The Entry No. 104 of this notification is regarding Electrical Energy. This suggests that **Electrical Energy is a goods and not a service**. There is also no doubt that electricity and electrical energy are one and the same thing.

- 6.7 It is therefore, clear that electricity is a goods and not a service.
- 6.8 Having ruled that electricity is goods, we come to the question whether supply of electricity via DG sets is a goods or service. The power backup provided by the Agilent Technologies i.e. the lessee is in the form of a service. The charges for this supply are determined by the lessee as per its convenience. The DG set belongs to the Agilent Technologies, the maintenance charges are also borne by the Agilent Technologies, the expenses record pertaining to the DG set is also maintained by Agilent Technologies. Therefore, the authority has no hesitation in concluding that the provision of electricity supply/power back-up via DG set is in the form of a service and not goods.
- 6.9 In this manner, the electrical supply is liable to GST to the extent it is supplied through DG set.
- 6.10 Now, we come to the issue whether the supply of electricity and supply of utilities / leasing are separate supplies or composite supplies. Section 2 (30) of GST Act defines composite supply as *"a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply"*.
- 6.11 A thread-bare reading of this section highlights following important aspects:-
- (a) Supply is made by a taxable person.
 - (b) The supply consists of two or more taxable supplies of goods and services or both or any combination thereof.
 - (c) The constituent supplies are naturally bundled together and supplied in consumption with each other.



- (d) One of the constituent supplies is a principal supply.

In the instant case, the supply is made by a taxable person and the number of supplies are also multiple. But as discussed earlier, the supply of electricity to the extent of it being supplied through grid is exempt from GST and, therefore, the condition of two or more **taxable supplies** is not satisfied. Further, the supply of utilities and supply of electricity are neither naturally bundled together nor are they supplied in conjunction with each other. Also, neither of the two supplies i.e. utility services and electricity supply can be termed as a principal supply and the other one being a natural ancillary.

- 6.12 In this manner, the supply of utility services and electricity supply are separate supplies.

- 6.13 The provision of electric supply by way of DG set forms part of the utility services taxable at 18% whereas the supply of electricity by way of grid is exempt from GST.

- 6.14 Now, we come to the issue of availability of Input Tax Credit charged on renting services and electricity. Before arriving at any conclusion, let us discuss some legal provision.

- 6.15 Section 2(59) of the GST Act reads "*input*" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business.

- 6.16 Section 2(62) of the GST Act says; "*input tax*" in relation to a registered person, means the Central Tax, State Tax, Integrated Tax or Union Territory Tax charged on any supply of goods or services or both made to him and includes:-

- (a) The Integrated Goods and Services Tax charged on import of goods.
- (b) The tax payable under the provisions of Sub-Sections 3 and 4 of Section 9.
- (c) The tax payable under the provisions of Sub-Sections 3 and 4 of Section 5 of the Integrated Goods and Services Tax Act.



- (d) The tax payable under the provisions of Sub-Sections 3 and 4 of Section 9 of the respective State Goods and Services Tax Act.
- (e) The tax payable under the provisions of Sub-Sections 3 and 4 of Section 7 of the Union Territory Goods and Services Tax Act, but does not include the tax paid under the composition levy.

6.17 It is understood that renting of business premises is indispensable for carrying any business, no matter how small the scale is. It is also admitted that renting of business premises is in the course and furtherance of business as space is required for carrying out the operations relating to business.

6.18 Regarding Input Tax Credit with respect to electricity supply, it is observed that since the grid supplied electricity is exempt from GST, the issue of credit availability does not arise. As regards, the tax on supply of electricity through DG set, the Authority is of the opinion that the applicant is entitled to credit of input tax paid with respect to tax paid on availing the said service.

In view of the above discussion the ruling is as under:-

7. Ruling:

- 7.1 (a) The supply of electricity, to the extent it is grid supplied, is goods.
- (b) The supply of electricity through grid and supply of utilities are separate supplies.
- (c) The supply of electricity through grid is classified under Entry No. Entry No. 104 Notification No. 2/2017-Central Tax (rate), dated 28th June, 2017, Tariff Code-27160000.
- (d) The applicant is eligible to take Input Tax Credit on supply of renting services. Input Tax Credit in case of electricity supply shall be restricted to the supply made through DG sets.



Ordered accordingly.
To be communicated.

25.02.2019
Panchkula.

Sangeeta
(Sangeeta Karmakar)
Member CGST


(Madhubala)
Member SGST

Regd. AD/Speed Post

**M/s Keysight Technologies International India Pvt. Ltd.,
Ground and Second Floor, CP-11, Technology Park,
Sector-8, IMT Manesar, Gurugram.**

o/c

Copy to:

1. Deputy Excise and Taxation Commissioner (ST), Gurugram (South).
2. Principal Commissioner of Central Goods & Service Tax, GST Bhavan, Plot No. 36-37, Sector-32, Gurugram (Haryana).