

**AUTHORITY FOR ADVANCE RULING, TAMILNADU**  
**INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32,**  
**5<sup>TH</sup> FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,**  
**CHENNAI – 600 003.**  
**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE**  
**GOODS AND SERVICES TAX ACT, 2017.**

**Members present are:**

Shri R.Gopalsamy, I.R.S., Additional Commissioner / Member, Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600034	Tmt N.Usha, Joint Commissioner (ST)/ Member, Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600003
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**ORDER No. 39 /AAR/2022 DATED: 07 .12.2022**

1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Rulings, Chennai as under Sub-Section (1) of Section 100 of CGST Act / TNGST Act 2017, within 30 days from the date on which the ruling sought to be appealed is communicated.
2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-
  - (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling.
  - (b) on the concerned officer or the jurisdictional officer in respect of the applicant.
3. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.
4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void *ab initio* in accordance with Section 104 of the Act.
5. The provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.



GSTIN Number, if any / User id		33AAQFG2906D1ZO
Legal Name of Applicant		GOOD HANDS FACILITY MANAGEMENT SERVICES
Registered Address/Address provided while obtaining user id		Plot No.35, 3 <sup>rd</sup> Street, Jemi Nagar, Pattunoolchathiram Sriperumbudur-602105
Details of Application		GST ARA- 01 Application Sl.No. 15/2022/ARA dated: 06.04.2022
Concerned Officer		Centre: Chennai Outer Commissionerate State: Sriperumbudur Circle
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service Provider
B	Description (in Brief)	The applicant is supplying manpower service to clients in the manufacturing sector in and around Sriperumbudur and also providing hostel services, including food, at the request of client, to various employees including those recruited through other staffing contractors.
Issue/s on which advance ruling required		1. Admissibility of input tax credit of tax paid 2. Determination of the liability to pay tax on any goods or services or both.
Question(s) on which advance ruling is required		1. Output tax on food supply - affirm we are right on charging 5% GST on our invoice to client 2, Input tax on food supply - affirm we are right on availing 5% input tax credit on the food supply received for making outward supply of the same food. 3. Electricity charges of hostel premises taken on rent - affirm we are right on not charging any GST as this is contractually classified as reimbursement of 'actual' TNEB bill that comes without GST & our role being pure agent.



	<p>4. Diesel charges for back up Gensets at hostel premises - affirm we are right on not charging any GST as this is contractually classified as reimbursement of 'actual' diesel bill that comes without GST and our role being a pure agent.</p> <p>5. Input tax on Rent, Security services and Housekeeping services - affirm we are right on availing input tax credit at 18% on each of these services in line with section 17(5)(b)(i) where an inward supply is used for making an outward taxable supply of the same category.</p>
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M/s Good Hands Facility Management Services, Plot No.35, 3<sup>rd</sup> Street, Jemi Nagar, Pattunoolchathiram, Sriperumbudur-602105 (hereinafter called the Applicant) are registered under GST with GSTIN 33AAQFG2906D1ZO. The applicant has sought Advance Ruling on the following questions:

1. Output tax on food supply - affirm we are right on charging 5% GST on our invoice to client.
2. Input tax on food supply - affirm we are right on availing 5% input tax credit on the food supply received for making outward supply of the same food.
3. Electricity charges of hostel premises taken on rent - affirm we are right on not charging any GST as this is contractually classified as reimbursement of 'actual' TNEB bill that comes without GST & our role being pure agent.
4. Diesel charges for back up gensets at hostel premises - affirm we are right on not charging any GST as this is contractually classified as reimbursement of 'actual' diesel bill that comes without GST and our role being a pure agent.
5. Input tax on Rent, Security services and Housekeeping services - affirm we are right on availing input tax credit at 18% on each of these services in line with section 17(5)(b)(i) where an inward supply is used for making an outward taxable supply of the same category.

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted copy of evidence for payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.



2.1.1 The applicant has stated that they are providing staffing / manpower services to clients in the manufacturing sector in and around Sriperumpudur and also providing hostel services, including food, at the request of client, to various employees including those recruited through other staffing contractors. Manpower supply and hostel services are independent of each other. They are governed by separate agreements and are billed separately. Even within the hostel services - hostel rent, house-keeping/maintenance, supply of food, security etc - will be separately billed as the agreement insists them to bill each of the services separately. Hence, those services are neither being considered as mixed supply nor composite supply.

2.1.2 Food vendor will be supplying food at 5% GST, hostels are taken on rent & its landlord will be charging 18% GST on rent, security service provider (Private Limited Co.) will be charging 18% GST and Housekeeping service provider will be charging 18% GST. Hence, they bill the client for food supplies at 5% GST, hostel rent, security services and housekeeping - each at 18%. TNEB's Electricity charges for the rented premises and diesel expenses (incurred when power generators are run) will be reimbursed at actual as outlined in the contract clause. There is no separate rent on using the diesel generator as the same is provided without separate charge by landlord.

2.1.3 Hostel facility is common for all workers and being used by workers sourced from other staffing agencies as well. Hence, their role will be a mere 'contractor' facilitating the services on the request of client and have to pass on the bills to client separately for each of the service on actual basis. They will bill the client a separate service charge with 18% GST for the facilitation work.

2.1.4 Input credit is not availed by their client on consuming any of those services.

2.2.1 As per statement of facts, the applicant state that Outward food supply at 5% tax - as they are deeming the supply to be an independent one and not a mixed supply, they will bill food at the same 5% rate charged by the vendor (who charges it as per S. No.7(a)(i) of Notification No. 13/2018).

2.2.2 Input tax on food supply received - as ultimate consumer of food is their client and the cooked food is supplied by Caterer (Food vendor) at the hostel premises, they position themselves as a mere contractor facilitating food supplies at the hostel premises. Caterer (Food vendor), supplying the food, charge them 5% GST and they will in turn bill their client the same with 5% GST after availing the input tax credit of 5%.



2.2.3 Electricity charges - contractually as per agreement clause they are entitled only for actual reimbursement- Hence, no GST will be charged, as TNEB does not levy tax on electricity consumed. Payment proof and TNEB's bill will be enclosed as annexure to their bill.

2.2.4 Power generator diesel charges - contractually they are entitled only for actual reimbursement as per the agreement clause. As no separate rent for the generator is charged by landlord, only diesel charges incurred will be billed for reimbursement (with fuel pump bills as annexure). With fuel pump not charging GST, as diesel being non-GST supply, and owing to the reimbursement clause, they bill only the actual diesel charges without GST on it.

2.2.5 Rent, Security service and Housekeeping - they are merely contractors, will be facilitating the aforesaid services. Respective service providers charge 18% GST and they will in turn bill their client at 18% GST after availing the input.

2.3 On interpretation of law, the applicant submitted their interpretation of law on the following elements of supply and their eligibility to input tax credit on food supplies.

2.3.1 **Regarding outward food supply at 5% GST:** In line with Explanation 1 of Sl. No. 7(a)(i) of Notification 13/2018 of Central Tax (Rate) which says "this item includes such supply at a canteen, mess, cafeteria or dining space of an institution such as a school, college, hospital, industrial unit, office, by such institution or by any other person based on a contractual arrangement with such institution for such supply, provided that such supply is not event based or occasional and considering the fact that the applicant being a recipient of supply, for making outward supply of the same services, they are of the opinion that the output tax on their bill is rightly charged at 5%.

2.3.2 **Input tax credit on food supplies:** As per section 17(5)(b)(i) input tax credit is not blocked where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply. Hence, they reiterate that they get inward supply of food for making outward taxable supply of the same food. In addition, section 15(2) states that taxes levied under CGST/ SGST shall not be value of supply if charged separately by the supplier - i.e., no tax on tax - this when read with section 17(5)(b)(i) makes it clear



that they can avail input on food supply received for making outward supply of the same food.

**2.3.3 Electricity charges of hostel taken on rent:** As TNEB does not levy tax in line with section 7(2)(b) of CGST Act, 2017 on electricity and contractually they are acting as "Pure agent" to receive electricity charges as reimbursement of actuals, they are not charging GST.

**2.3.4 Diesel charges for generators at hostel premises:** As per section 9(2) of CGST Act, 2017, diesel is considered non-GST supply until notified. As contractually they are acting as "Pure agent" to receive diesel charges as reimbursement of actuals, applicant will not be charging GST as fuel pump does not charge GST at present on diesel supply as per section 9(2).

**2.3.5** The applicant confirm that they meet the conditions laid down by Rule 33 to consider electricity and diesel as "Pure agent" supplies.

**3.1** Due to the prevailing pandemic situation and in order not to delay the proceedings, the applicant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital media. The applicant consented and the hearing was held on 29.04.2022 and 20.07.2022. Sri M.Saravanan, Partner of the applicant Firm and Authorized Representative (AR) Sri S.Sankara Subramaniam appeared for the hearing on 29.04.2022 and reiterated the submissions made. When asked about the location of the hostels, the AR replied that they have hostels within the premises and outside the premises. They were asked to submit the following documents.

**1. Copy of agreement:**

- (i) Entered into with the clients for providing hostel and related services.
- (ii) Entered with the Land owner for renting the building for the purposes of hostel.
- (iii) Entered for security services and Housekeeping
- (iv) Entered with the food vendor

**2. Copy of invoice:**

- (i) Raised on the applicant by the food vendor, Land owner, Service providers of security service and House keeping
- (ii) Raised by the applicant on the clients

**3.** Documentary evidence substantiating input credit is not availed by their client.

**4.** Documentary evidence substantiating their claim that they act as 'Pure agent'.



5. Substantiation for the claim that they are covered under Sl. No. 7(a)(i) of Notification No.11/2017-CT(Rate) dt.28.06.2017 as amended by Notification No.13/2018-CT(R).

6. Write up on their interpretation as to how various supplies based on an agreement are neither mixed supply nor composite supply.

3.2 The applicant vide their letter dated 02.06.2022 submitted the following documents:

- Manpower Supply Agreement dated 14.09.2017 between M/s Rising Stars Mobile India Private Limited and M/s Good Hands Management Services.
- Renewal Cum Amendment Agreement of Manpower Supply (Dorm-16-ACT Campus-Good Hands-TN) dated 15.09.2020 between M/s Rising Stars Mobile India Private Limited and M/s Good Hands Management Services.
- Food Service Agreement (Dorm No.14-Sakthi Mariamman College Dorm-TN) dated 15.07.2020 between M/s Good Hands Management Services and M/s A-Diet Express Hospitality Service Limited.
- Lease Agreement (Dorm 16-ACT Campus-TN) dated 15.09.2020 between M/s A.C.T. Educational & Charitable Trust and M/s Good Hands Management Services.
- Security Services Agreement (Walsons-TN) dated 19.12.2020 between M/s Good Hands Management Services and M/s Walsons Services Private Limited.
- Housekeeping & Maintenance Services Agreement (Dorm No.16-ACT Dorm-Nelvoy) dated 16.09.2020 between M/s Good Hands Management Services and M/s Star Delight Facility Services.
- Invoice No.402 dated 04.05.2021 for Rs.959381/- (including GST @ 5%) issued by M/s Good Hands Management Services to M/s Rising Stars Mobile India Private Limited towards reimbursement of food expenses enclosing Invoice No. FB/21-22/04/010 dated 29.04.2021 for Rs.959381/- (including GST @ 5%) issued by M/s Indrayani Biotech Limited to M/s Good Hands Management Services towards supply of Breakfast, Lunch, dinner and Egg curry to 6996, 9983, 11719 and 721 numbers respectively during the period from 21.03.2021 to 20.04.2021 at ACT College.
- Invoice No.420 dated 04.05.2021 for Rs.843941.71 (including GST @ 18%) issued by M/s Good Hands Management Services to M/s Rising Stars Mobile India Private Limited towards reimbursement of Security services in ACT Dorm-Nelvoy by Walsons Services Private Limited enclosing Invoice No. CHEI/000037/2122 dated 29.04.2021 for Rs.843941.72 (including GST @



18%) issued by M/s Walsons Services Private Limited to M/s Good Hands Management Services towards supply of Security Agency Services at ACT College, Nelvoy.

- Invoice No.400 dated 04.05.2021 for Rs.1001591/- (including GST @ 18%) issued by M/s Good Hands Management Services to M/s Rising Stars Mobile India Private Limited towards reimbursement of Rental charges for ACT Educational and Charitable Trust-Nelvoy-Dorm-16-Rent for the month of May 2021 enclosing Invoice No. 003/2021-22 dated 03.05.2021 for Rs.1001591/- (including GST @ 18%) issued by M/s A.C.T. Educational and Charitable Trust to M/s Good Hands Management Services towards Rent for Hostel building at ACT Campus, Nelvoy for May 2021.
- Invoice No.401 dated 04.05.2021 for Rs.50079/- (including GST @ 18%) issued by M/s Good Hands Management Services to M/s Rising Stars Mobile India Private Limited towards reimbursement of maintenance charges for ACT Educational and Charitable Trust-Nelvoy-Dorm-16 for the month of May 2021 enclosing Invoice No. 004/2021-22 dated 03.05.2021 for Rs.50079/- (including GST @ 18%) issued by M/s A.C.T. Educational and Charitable Trust to M/s Good Hands Management Services towards Maintenance charges for May 2021.
- Invoice No.415 dated 04.05.2021 for Rs.663668/- (including GST @ 18%) issued by M/s Good Hands Management Services to M/s Rising Stars Mobile India Private Limited towards reimbursement of Housekeeping & Maintenance in ACT Hostel from 21.03.2021 to 20.04.2021 enclosing Invoice No. 028 dated 02.05.2021 for Rs.663668/- (including GST @ 18% on supply value including diesel cost, excluding electricity charges of Rs.110500/-) issued by M/s Star Delight Facility Services to M/s Good Hands Management Services towards housekeeping, electrical and maintenance manpower, repairs & maintenance, recreation & equipment cost, sewerage clearance and disposal, feminine charges, housekeeping materials, EB charges, drinking water and service charges @ 10% and GST @ 18% on supply value except electricity charges Rs.110500/-.
- Invoice No.426 dated 25.05.2021 for Rs.9268727/- (including GST @ 18%) issued by M/s Good Hands Management Services to M/s Rising Stars Mobile India Private Limited towards total compensation payable on gross pay for the month of May 2021 contract employees, employer PF contribution, ESI contribution and Service charges.



- Written submission on interpretation as to how various supplies based on an agreement are neither mixed supply nor composite supply.

3.3 Sri M.Saravanan, Partner of the applicant Firm and AR Sri S.Sankara Subramaniam appeared for the virtual hearing on 20.07.2022. The AR was asked whether there is separate agreement for hostel services, he replied that Master Agreement is entered into for Manpower supply and Renewal cum Amendment Agreement includes rent, maintenance, security and food charges. He stated that no separate agreement for providing hostel services with client. On being asked about inclusion of diesel charges and exclusion of electricity charges from the maintenance value charged by Star Delight Facility Services, the AR stated that they are charging GST inclusive of diesel charges and are before the Authority for seeking clarification as to whether diesel charges should be included in the maintenance charges. The AR vide email dated 25.07.2022 clarified that although the addendum is signed for provisioning of hostel services, it may be terminated anytime when the particular facility is discontinued. The master agreement will remain and manpower will be continued to be supplied.

3.4 Consequent to change of members of Authority, a fresh personal hearing was extended to the applicant. AR appeared for the virtual hearing on 09.11.2022, wherein he reiterated the questions raised and facts stated in the application. AR stated that as per Section 17(5)(b)(i), input tax credit is not blocked where an inward supply of service is used by a registered person for making an outward taxable supply of the same category of service. He further added that the supply by vendor (Caterer) fulfil all the conditions put forth in explanation 1 of Sl. No.7(a)(i) of Notification No,13/2018 CTR.

3.5 The AR vide email dated 11.11.2022 requested another hearing in physical mode to explain in detail and appeared for physical hearing along with Sri M.Saravanan, Managing Partner of the applicant Firm on 29.11.2022. AR emphasized the submissions made in the application and written submissions. The AR was asked for documentary evidence to substantiate accommodation of manpower of other manpower contractors of RSM as averred in the application for which he stated that there is no documentary evidence available. When AR was asked to explain about Management Fee of 10% incorporated in the Expenses Statement in Annexure 1A to Renewal cum Amendment of Manpower Supply dated 15<sup>th</sup> September 2020, he stated that Management Fee is paid to Vendor. AR further added that Food Vendor directly serves the employees, food cooked in the Kitchen available in the hostel premises.



4.1 The Centre Jurisdictional Authority, Chennai Outer Commissionerate, who has administrative jurisdiction over the applicant was addressed vide this office letter dated 22.04.2022 requiring to furnish comments on the issue raised by the applicant and report whether any proceedings are pending in respect of the applicant. The said authority has stated that no proceedings in the applicant's case on the issues raised by the applicant are pending and the following comments on the issues raised were received.

4.2 The taxpayer is not supposed to charge 5% GST but only 18% GST on the food supply in terms of Notification No.11/2017-CT(Rate) dated 28.06.2017 Sl. No. 7(a)(ix) as the tax payer is providing only manpower service and not catering / restaurant service falling under Sl. No. (i) to (viii) thereof.

4.3 The taxpayer can take 5% ITC as per first proviso to section 17(5)(b)(i) of CGST Act. 2017 and also there is no condition specified under Sl. No. 7(ix) of Notification No. 11/2017 CT (Rate) dated 28.06.2017 for not taking ITC.

4.4 With regard to electricity charges of hostel premises taken on rent and diesel charges for backup gensets at hostel premises, no comments were offered as they are not within the purview of GST taxation.

4.5 The first proviso to section 17(5)(b)(i) of CGST Act, 2017, stipulates that ITC is available on rent, security and housekeeping services, wherein an inward supply is used for making an outward taxable supply of the same category.

5. The State Jurisdictional Authority has submitted that GST audit has not been conducted by any State Authorities.

6. We have carefully examined the statement of facts, supporting documents filed by the Applicant, all the additional submissions made during the hearings and the submissions of the Jurisdictional authorities. The applicant engaged in the business of supply of manpower to client in the manufacturing sector through manpower supply agreement between the applicant and M/s Rising Stars Mobile India Private Limited. The said agreement was modified through "Renewal cum Amendment Agreement of Manpower Supply (Dorm-16-ACT Campus – Good Hands – TN)" dated 15.09.2020, wherein the service recipient has agreed to pay certain expenses with respect to dormitory, such as Security deposit, Rent, Food cost, Maintenance and security charges, etc. The applicant in turn entered into multiple sourcing agreement with respective service providers for Dormitory accommodation, Building maintenance, Food, Security, Housekeeping, Repairs and maintenance. The respective service providers have raised invoice on the applicant along with GST @



18% applicable to respective services provided, except Food supply which is charged @ 5%. The applicant further raised invoice on the client viz M/s Rising Stars Mobile India Private Limited by quoting the same nature of goods / service supplied, taxable value, GST rate, gross invoice value in addition to invoice raised for supply of manpower by the applicant with GST @ 18%. The applicant has not charged GST on electricity charges as done by the sub-contractor.

7.1 The question which needs to be answered is whether the applicant is right in;

- i. charging 5% GST on Foods supplies to client;
- ii. claiming 5% GST as ITC on the input invoices for food supplies received;
- iii. not charging GST on electricity charges of hostel premises as reimbursement of actual TNEB bill that comes without GST as a pure agent;
- iv. not charging GST on Diesel charges for back up genset at hostel premises as reimbursement of actual TNEB bill that comes without GST as a pure agent;
- v. claiming input tax credit @ 18% on Rent, Security service and Housekeeping service in line with section 17(5)(b)(i) of CGST Act 2017, where an inward supply is used for making an outward taxable supply of the same category;

7.2 From the submissions before us, we find that the question which needs answer is covered under Section 97(2) (e) & (f) of the GST Act 2017 as mentioned in Sl. No.13 of AAR application in Form GST ARA-01 and therefore admissible before this authority for consideration and pronouncement of ruling.

8. The applicant has submitted various documents including agreements in relation to various supplies on own account and supplies of third parties procured at the instance of service recipient. The perusal of the said documents are essential to ascertain the rights and obligations of the applicant in relation to the scope of outward supply and the use of inward supplies in relation to outward supplies or otherwise.

8.1.1 Manpower Supply Agreement dated 14.07.2017 between the applicant and M/s Rising Stars Mobile Private Limited (RSM) states that every Manpower shall exclusively be engaged by applicant; under no circumstances shall the relationship of employer and employee deem to arise between RSM and Manpower. Applicant warrants that Manpower arrangements made by applicant shall strictly be under the supervision of applicant.

8.1.2 The applicant shall make payment to ESI, PF and other relevant authorities.

8.1.3 RSM at its sole discretion may provide canteen facilities to the Manpower and these facilities are liable to be withdrawn on seven (7) days prior notice to applicant



and therefore applicant shall keep themselves prepared with alternative arrangements to provide healthy and hygienic food to the Manpower at their own cost, in the event RSM discontinues canteen facilities to Manpower.

8.1.4 The term “Manpower” means male or female personnel of applicant aged not less than eighteen (18) years being engaged by applicant as casual labourers, permanent employees, contract employees, consultants or engaged in any other capacity by applicant and sent by applicant to RSM to undertake the task for RSM as per the terms of this agreement.

8.1.5 RSM would provide task schedule as deemed fit by RSM and applicant shall supply Manpower to meet 100% of the needs of RSM based upon the said task schedule and applicant shall ensure that the Manpower has completed task assigned by RSM on a timely manner.

8.1.6 For general administration and monitoring of scope of this Agreement applicant shall appoint such number of coordinators as deem fit by RSM, who shall enforce the assigned task to ensure that all Manpower contribute fully with respect to the task assigned.

8.1.7 Applicant on its own shall recruit, hire, train, supervise and direct personnel to render said services. Applicant is solely responsible for transfer and discharge of applicant’s representatives. All Manpower shall at all time for all purposes, solely and exclusively be the Manpower of applicant and in no circumstances they shall be treated as personnel of RSM.

8.2.1 As per “Renewal cum Amendment Agreement of Manpower Supply (Dorm-16-ACT Campus – Good Hands – TN)” dated 15.09.2020 between the applicant and M/s Rising Stars Mobile Private Limited, parties agreed that with respect to Manpower Supply Agreement (Parent Agreement) dated 14.09.2017 / Renewal the lease period will expire on 30.09.2022 and it is agreed between the parties that the said agreement will be renewed for a further period of twenty four months will effect from 01.10.2020 to 30.09.2022 on the terms and conditions of the latest renewal / amendment agreement.

8.2.2 It is agreed between the parties with respect to the dorm situated at the ACT Campus, RSM shall pay applicant certain expenses which includes Security Deposit, Rent, Food cost, Maintenance and Security charges, etc, (more fully mentioned in the Annexure to Agreement dated 15.09.2020) with effect from 01.10.2020 to 30.09.2022, however in the event the date of commencement / closure of lease / service vary, the payment by RSM to applicant will accordingly stand modified to that extent which will be incorporated in the relevant agreements.



8.2.3 It is agreed that if the Factory not in operation or operating with the very lean work force, the service charges shall be reduced proportionately by RSM.

8.2.4 It is agreed between the parties that in the event the RSM is not in a position to utilize the services of applicant due to force majeure condition including epidemic deceases or due to reasons attributed to applicant, RSM shall have no obligation to pay for the services ordered but not utilized and also if the RSM is of the opinion that the possibility of the usage of the services of applicant is difficult to determine, RSM has the option to terminate this agreement at a shorter written notice of seven days.

8.2.5 In case the tax authorities recover any amount from RSM towards non-deduction of tax or disallows any expenditure u/s 37 of IT Act, 1961 with respect to the payments made to applicant along with interest and penalty the RSM shall be entitled to recover the same along with interest from applicant.

8.2.6 All the terms and conditions of Parent / Renewal / amendment agreements shall remain mutatis mutandis, remains unchanged (except to the extent of the terms mentioned above) and therefore all other terms, conditions, covenants, rights and obligations of the parties arising out of the Parent / Renewal / Amendment agreement shall continue to bind and govern the parties thereto.

8.2.7 As per Expenses Statement as Annexure 1A to Housekeeping & Maintenance Services Agreement dated 16.09.2020, Drinking Water and Electricity bills will be paid on actual (electricity based on EB bills issued by TNEB authorities). Management fee of 10% will be applicable for the same.

8.2.8 Management Fees @ 10% on the monthly service fee applicable for Repairs & maintenance, Recreation cost, Pest control, DTH recharge/Magazines & Others, Sewerage clearance & disposals, Feminine charges, diesel charges and Housekeeping materials.

8.3 The applicant has entered into various agreements, as listed in para 3.2 supra, with suppliers to procure Food services, Security services, Renting of Immovable property, Building maintenance and Housekeeping & maintenance services.

8.4 The applicant submitted the following written submissions to buttress their view that Manpower and hostel supplies are neither mixed nor composite supply.

8.4.1 The key condition of considering a supply as composite is when supplies are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

8.4.2 To identify a particular supply to be composite supply, the important ingredient is, it must be naturally bundled. The concept of natural bundling is not defined in GST Act. However, CBIC in its GST flyer on "composite supply and mixed



supply” issued following guidelines on how to identify whether natural bundling exists in a supply or not.

8.4.3 “Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators like service receivers expecting such services to be provided as package or majority service providers providing such services in bundled form, etc.

8.4.4 With the guidance from flyer, it becomes clear that the intention of the receiver & supplier is more relevant. Hence, based on the above points they are stating that the agreement by client demands for hostel services when there is need and it is not related to the number of headcounts sourced through Good Hands.

8.4.5 The agreement neither solicits supply of manpower with hostel services for single price (mixed) nor in a bundled (composite) form.

8.4.6 Even within the hostel services the agreement stated that services as obtained from each service provider is to be billed as such to client with specific conditions against each element within the service.

9.1 The applicant has raised various questions revolving around eligibility to claim ITC on several services / goods procured and the value of such invoices recovered from client through different invoices at same rate of GST on same value and certain supply as pure agent to client. The question before us to decide is whether the applicant is entitled to claim input tax credit on such input goods and services; to decide the rate of GST on such supplies to client and to decide whether the applicant is right in not charging GST on Electricity and Diesel, as a pure agent to client. The advance ruling is sought on the admissibility of input tax credit paid, rate of GST and determination of the liability to pay tax. It requires a comprehensive study of facts of business activity and scope of service required to be provided by the applicant under various agreements with client, in the light of the following statutory provisions of the Acts and Rules relevant to the questions raised.

9.2 Section 15 of the Act deals with provisions relating to Value of taxable supply and the same is given below for ease of reference:

*(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.

*Explanation . -For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.*

### 9.3 Rule 33.Value of supply of services in case of pure agent. -

*Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as 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 authorisation 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 supply are in addition to the services he supplies on his own account.*

*Explanation. - For the purposes 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.*

9.4 The provision relevant to blocked credits is given under Section 17(5) of the Act, which is as under:

*(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:-*

*(b) the following supply of goods or services or both-*

*(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:*

*Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;*

*(ii) membership of a club, health and fitness centre; and*

*(iii) travel benefits extended to employees on vacation such as leave or home travel concession:*

*Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.*

9.5 The provision relevant to provision of Canteen facility by labour Contractor is given under Section 16 of the Contract Labour (Regulation and Abolition) Act, 1970 is as under:

*16. Canteens- (1) The appropriate Government may make rules requiring that in every establishment-*

*(a) to which this Act applies,*



*(b) wherein work requiring employment of contract labour is likely to continue for such period as may be prescribed, and*

*(c) wherein contract labour numbering one hundred or more is ordinarily employed by a contractor, one or more canteens shall be provided and maintained by the contractor for the use of such contract labour.*

*(2) Without prejudice to the generality of the foregoing power, such rules may provide for -*

*(a) the date by which the canteens shall be provided,*

*(b) the number of canteens that shall be provided, and the standards in respect of construction, accommodation, furniture and other equipment of the canteens; and*

*(c) the foodstuffs which may be served therein and the charges which may be made thereof.*

10.1 Now, we proceed to deliberate on the scope of supply envisaged in the Manpower Supply Agreement dated 14.09.2017 discussed in para 8.1 supra and “Renewal cum Amendment Agreement of Manpower Supply (Dorm-16-ACT Campus – Good Hands – TN)” dated 15.09.2020 discussed in para 8.2 supra. Both the agreements are between the applicant and M/s Rising Stars Mobile Private Limited (RSM), the service recipient.

10.2 The Manpower Supply Agreement, inter alia, provides that “Manpower” means male or female personnel of applicant aged not less than 18 years being engaged by applicant as casual labourers, permanent employees, contract employees, consultants or engaged in any other capacity by applicant and sent by applicant to RSM to undertake the task for RSM. RSM would provide task schedule as deemed fit by RSM and applicant shall supply Manpower to meet 100% of the needs of RSM based upon the said task schedule and applicant shall ensure that the Manpower has completed task assigned by RSM on a timely manner. Applicant shall appoint such number of coordinators as deem fit by RSM, who shall enforce the assigned task to ensure that all Manpower contribute fully with respect to the task assigned. Applicant on its own shall recruit, hire, train, supervise and direct personnel to render said services. Applicant is solely responsible for transfer and discharge of applicant’s representatives. All Manpower shall at all time for all purposes, solely and exclusively be the Manpower of applicant and in no circumstances they shall be treated as personnel of RSM. Manpower shall exclusively be engaged by applicant; under no circumstances shall the relationship of employer and employee deem to arise between RSM and Manpower. Manpower arrangements made by applicant shall strictly be



under the supervision of applicant. The applicant shall make payment to ESI, PF and other relevant authorities.

10.3 Comprehensive reading of various recitals of Manpower Supply Agreement reveals that the applicant is the employer of the contract workers who are engaged by the applicant to complete the task assigned by RSM, under applicant's supervision. Therefore, the only service provided by the applicant is supply of manpower to fulfil the task assigned by the service recipient.

10.4 RSM at its sole discretion may provide canteen facilities to the Manpower and these facilities are liable to be withdrawn on 7 days prior notice to applicant and therefore applicant shall keep themselves prepared with alternative arrangements to provide healthy and hygienic food to the Manpower at their own cost, in the event RSM discontinues canteen facilities to Manpower.

10.5 RSM shall pay applicant certain expenses which includes Security Deposit, Rent, Food cost, Maintenance and Security charges, etc, with effect from 01.10.2020 to 30.09.2022. If the Factory is not in operation or operating with the very lean work force, the service charges shall be reduced proportionately by RSM. If RSM is not in a position to utilize the services of applicant due to force majeure condition including epidemic diseases or due to reasons attributed to applicant, RSM shall have no obligation to pay for the services ordered but not utilized and also if the RSM is of the opinion that the possibility of the usage of the services of applicant is difficult to determine, RSM has the option to terminate this agreement at a shorter written notice of seven days. In case the tax authorities recover any amount from RSM towards non-deduction of tax or disallows any expenditure u/s 37 of IT Act, 1961 with respect to the payments made to applicant along with interest and penalty the RSM shall be entitled to recover the same along with interest from applicant. All the terms and conditions of Parent / Renewal / amendment agreements shall remain mutatis mutandis, remains unchanged and therefore all other terms, conditions, covenants, rights and obligations of the parties arising out of the Parent / Renewal / Amendment agreement shall continue to bind and govern the parties.

10.6 As per Expenses Statement as Annexure 1A to Housekeeping & Maintenance Services Agreement dated 16.09.2020, Drinking Water and Electricity bills will be paid on actuals based on EB bills issued by TNEB. Management fee of 10% will be applicable for the same. Management Fees @ 10% on the monthly service fee applicable for Repairs & maintenance, Recreation cost, Pest control, DTH recharge/Magazines & Others, Sewerage clearance & disposals, Feminine charges,



diesel charges and Housekeeping materials. The AR during physical personal hearing stated that Management Fee @ 10% incorporated in the Expenses Statement in 1A to Renewal cum Amendment Agreement of Manpower Supply is paid to the vendor. But, the agreements with the vendors does not have such recital as claimed by the AR. It is beyond doubt that Management Fee @ 10% of various expenses is the entitlement of the applicant and the same has been stated by the applicant under Sl. No.12 of Application for Advance Ruling that they will bill the client a separate service charge with 18% GST for the facilitation work.

10.7 The Renewal Cum amendment Agreement of Manpower Supply provides for payment of additional consideration to the applicant to defray various expenses towards food and accommodation on cost plus 10% management fee basis to be consumed by the contract workers who are employees of the applicant. The said agreement does not provide for supply of any of the said services to be consumed by RSM, rather it provides to compensate the applicant with additional consideration to incur various expenses towards food and accommodation to workers, deployed in the Factory premises of RSM, while they are off duty. The averment of the applicant, with regard to supply of food and accommodation in the hostel managed by applicant to workers supplied to RSM by other labour contractors, is not supported by any Agreement or any other document. The AR during physical personal hearing conceded that no evidence is available to substantiate the said averment.

10.8 The applicant's view that various services sourced towards food and accommodation to their employees from various vendors and reimbursement from RSM qualifies as pure agent, is not supported by the agreement with RSM. The agreement does not provide for unqualified reimbursement of the actual expenses, as the applicant is eligible for management fee of 10% on the vendor bills and RSM restricts reimbursement of such expenses proportionate to actual consumption by workers. It further provides for recovery of such expenses, if RSM is not allowed deduction of such expenses under Income Tax Act. Above all, the food and accommodation in hostel facility are consumed by workers who are employees of the applicant. Therefore, such expenses incurred by applicant fails the test of pure agent as per Rule 33. Consequently, any amount, other than GST, received by applicant from RSM, including electricity charges and Diesel expenses, shall form part of taxable value as per Section 15 of the Act and attract GST rate, as applicable to supply of manpower service.

10.9 From the invoices given by vendor to applicant for food supply, it is ascertained that the applicant is engaging more than 100 workers and therefore, the provisions




of Section 16 of the Contract Labour (Regulation and Abolition) Act, 1970 (CLRA Act) read with Rules 42 to 50 of The Tamil Nadu Contract Labour (Regulation and Abolition) Rules, 1995 stipulates that labour contractor shall provide the canteen facility to the labour employed by the contractor. Thus, there is a mandate to the applicant to provide canteen facility to the contractual worker. We find that ITC on foods, beverages, outdoor catering is not blocked, provided it is obligatory for an employer to provide the same to its employees under any law for the time being in force as per proviso to Section 17 (5) (b) after its substitution with effect from 01.12.2019 based on the recommendations of GST Council in its 28<sup>th</sup> meeting and clarified by CBIC Circular No.172/04/2022-GST dated 06.07.2022. The rationale of the GST Council for recommending said amendment is reproduced for ready reference; *"Presently, in accordance with the provisions of section 17 (5) (b), ITC is not available in respect of food and beverages, health services, travel benefits to employees etc. This sub-section is being amended to allow ITC in respect of such goods or services or both where the provision of such goods or services or both is obligatory for an employer to provide to its employees under any law for the time being in force"* (Sl. No.17 of Annexure I to Agenda Item 6 of 28<sup>th</sup> GST Council Meeting Volume – 1). In the instant case, the applicant and contractual workers are covered under the category of employer-employee relationship and also it is obligatory on the applicant to provide canteen facility to the Contractual worker as per the provisions of CLRA Act and Rules made thereunder. Section 17 (5) allows ITC on food, beverages and outdoor catering only in case it is obligatory under any law for the time being in force. Thus, applicant is eligible for ITC on the food supplied by food vendor to contractual worker and is not blocked under Section 17(5) (b) of the Act.


10.10 Similarly, the applicant is receiving, invoices with GST @ 18%, from vendors for supply of various other services, viz, Security service, Renting of Immovable Property for hostel accommodation, Building maintenance service, Housekeeping and maintenance service and consumed for supply of manpower service. As the input services are used by the applicant for supply of taxable service, the GST paid on such invoices qualify for claim of ITC subject to eligibility and conditions stipulated under Section 16 of the Act.



## RULING

1. Amount received by applicant from manpower service recipient towards food supply to workers, who are employees of applicant, shall be a consideration includible in the taxable value for supply of manpower under Section 15 of the Act and GST shall be paid at the rate of 18%, as applicable to supply of manpower service.
2. GST paid on food supply is eligible for input tax credit under proviso to Section 17(5)(b), as it is obligatory on the applicant to provide canteen facility to employees under Section 16 of the Contract Labour (Regulation and Abolition) Act, 1970.
3. Electricity charges of hostel premises taken on rent reimbursed from service recipient does not qualify for exclusion from value of supply as pure agent, as the same was consumed in the hostel premises used by the workers who are employees of the applicant. The amount received by the applicant from the service recipient shall be a consideration includible in the taxable value for supply of manpower under Section 15 of the Act and GST shall be paid at the rate of 18%, as applicable to supply of manpower service.
4. Diesel charges for back up gensets at hostel premises reimbursed from service recipient does not qualify for exclusion from value of supply as pure agent, as the same was used for gensets in the hostel premises used by the workers who are employees of applicant. The amount received by the applicant from the service recipient shall be a consideration includible in the taxable value for supply of manpower under Section 15 of the Act and GST shall be paid at the rate of 18%, as applicable to supply of manpower service.
5. Amount received by applicant from manpower service recipient towards Rent, Building maintenance, Security service, Housekeeping and maintenance for the hostel premises used by the workers, who are employees of applicant, shall be a consideration includible in the taxable value for supply of manpower under Section 15 of the Act and GST shall be paid at the rate of 18%, as applicable to supply of manpower service. Accordingly, the GST paid on the said services is eligible for input tax credit subject to eligibility and conditions stipulated under Section 16 of the Act.

  
(N. USHA)  
Member (SGST)

  
(R. GOPALSAMY)  
Member (CGST)





To

**// BY SPEED POST WITH ACK.DUE //**

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